

## CHICAGO HOUSING AUTHORITY LOAN AGREEMENT

**THIS CHICAGO HOUSING AUTHORITY LOAN AGREEMENT** (this “**Loan Agreement**”) is dated as of the 1st day of March, 2023 and is executed by the **CHICAGO HOUSING AUTHORITY**, an Illinois municipal corporation (“**CHA**”), and **WHP-IID, LLC**, an Illinois limited liability company (“**Borrower**”).

### RECITALS

A. Borrower is the holder of the leasehold interest in the Land (as hereinafter defined) pursuant to the Ground Lease (as hereinafter defined) and is the holder of fee title to the Building (as hereinafter defined) and other Improvements (as hereinafter defined) to be constructed on the Land.

B. Borrower desires to obtain from CHA, and CHA desires to make available to Borrower, a loan in the original principal amount of Twelve Million One Hundred Sixty Thousand and 00/100 Dollars (\$12,160,000.00) (the “**CHA Loan**”) to assist in the construction of thirty-eight (38) PHA-Assisted Units (as hereinafter defined) of rental housing (the “**Project**”) in the Development (as hereinafter defined). The CHA Loan is comprised of the Construction Amount, which will be disbursed pursuant to this Agreement to pay Eligible Costs of the Project and the Bond Loan Repayment Amount, which will be disbursed as a reimbursement to the Borrower for Eligible Costs of the Project paid with proceed of the Bond Loan and applied to partially repay the Bond Loan.

C. The Project is part of a larger mixed-use development, which, upon completion, will consist of a mixed-income multi-family residential building (the “**Building**”), containing ninety-six (96) residential housing units (the “**Units**”), of which twenty-five (25) shall be affordable housing units, thirty-eight (38) shall be PHA-Assisted Units, and thirty-three (33) shall be market-rate units, and other related Improvements (as hereinafter defined), all of which are located on the leasehold estate in the land legally described on Exhibit B attached hereto (the “**Land**”) situated in the City of Chicago, Illinois. The Building and related Improvements are hereinafter referred to as the “**Development**”.

D. To evidence the CHA Loan, Borrower has executed and delivered to CHA, a note (such note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof, shall be called, the “**Note**”), payable to the order of CHA, payment of which is secured by, among other things, a Subordinate Mortgage, Security Agreement and Financing Statement (hereinafter, as the same may be amended, supplemented and restated from time to time, called the “**Mortgage**”), from Borrower, as mortgagor, to CHA, as mortgagee, covering a leasehold estate in the Land and the fee interest in the Building and other Improvements (as hereinafter defined) now existing or to be constructed thereon (collectively, the “**Premises**”), including, without limitation, the portions of the Development comprising the Project. The Premises will be encumbered by the Mortgage at the time of the opening of the CHA Loan.

E. The Note is in the principal amount of Twelve Million One Hundred Sixty Thousand and 00/100 Dollars (\$12,160,000.00).

F. Pursuant to that certain Funding Loan Agreement, dated as of March 1, 2023, by and between the Construction Lender, as funding lender, and the City, as borrower, the Construction Lender has agreed to make a tax exempt loan (the “**Funding Loan**”) to the City in the maximum aggregate principal amount of Twenty-Six Million Eight Hundred Eight Thousand Seven Hundred Seventy-Eight and No/100 Dollars (\$26,808,778.00). To evidence the Funding Loan, the Funding Loan, the City has executed and delivered to Funding Lender its not to exceed \$26,808,778.00 City of Chicago Multi-Family Housing Revenue Note, Series 2023 (Westhaven Park IID), of even date herewith (the “**Governmental Lender Note**”). The proceeds of the Funding Loan are being loaned by City to Borrower (the “**Bond Loan**”) pursuant to that certain Borrower Loan Agreement, dated as of March 1, 2023 (the “**Bond Loan Agreement**”), between the City, as lender, and the Borrower, as borrower. The Borrower Loan is evidenced by the Promissory Note-Borrower Loan (Westhaven Park IID Project), dated as of March 31, 2023 (together with any amendments thereto or replacements thereof the “**Bond Loan Note**”) made by the Borrower to the order of the City, and secured by a leasehold mortgage on the Project, made by the Borrower in favor of the City. The Bond Loan Note and said leasehold mortgage securing the Bond Loan Note are being assigned by City to the Construction Lender as security for the Funding Loan. Pursuant to the terms of a Forward Purchase Agreement, dated as of March 1, 2023, by and among the Construction Lender, Permanent Lender and Borrower, the Permanent Lender has agreed to purchase the Governmental Lender Note upon satisfaction of the conditions to conversion set forth therein.

G. CHA is also making a Donation Tax Credit loan to Borrower in the original principal amount of One Million One Hundred Thirty-Two Thousand Five Hundred Ninety-Four and 00/100 Dollars (\$1,132,594.00) (the “**DTC Loan**”) with respect to the Premises pursuant to that certain Donation Tax Credit Loan Agreement of even date herewith between CHA and Borrower (the “**DTC Loan Agreement**”). CHA, in its capacity as lender of the DTC Loan, is referred to in this Agreement as “**DTC Lender**”.

H. In addition to the CHA Loan, the DTC Loan and the Bond Loan, the Borrower is obtaining the following additional sources of financing for the Development: (i) the Equity (as hereinafter defined); (ii) the City Loan Funds Loan (as hereinafter defined); (iii) the HOME Loan (as hereinafter defined); (iv) the Seller Loan (as hereinafter defined) and (v) the TIF Loan (as hereinafter defined).

I. BMH-I, LLC, an Illinois limited liability company (“**Westhaven Park IID Predevelopment Borrower**”) entered into a Predevelopment Loan Agreement for Westhaven Park Phase IID, dated as of November 12, 2020 (the Predevelopment Loan Agreement for Westhaven Park Phase IID and all further supplements and amendments thereto is herein referred to as the “**Predevelopment Loan Agreement**”), with CHA and evidencing indebtedness in the aggregate principal amount of One Million Twenty-Five Thousand and 00/100 Dollars (\$1,025,000.00) (the “**Predevelopment Loan**”). Westhaven Park IID Predevelopment Borrower made to the order of CHA, and delivered to CHA, a Non-Negotiable Predevelopment Loan Promissory Note for Westhaven Park Phase IID in the principal amount of \$1,025,000, dated as of November 12, 2020 (the Non-Negotiable Predevelopment Loan Promissory Note for Westhaven Park Phase IID together with all further supplements and amendments thereto is herein referred to as the “**Predevelopment Promissory Note**,” and together with the Predevelopment Loan Agreement shall be collectively referred to as the “**Predevelopment Loan Documents**”),

evidencing Westhaven Park IID Predevelopment Borrower's obligation to repay the Predevelopment Loan. Pursuant to that certain Assignment and Assumption of Predevelopment Loan Agreement and Non-Negotiable Predevelopment Loan Promissory Note for Westhaven Park Phase IID, dated as of January 31, 2023 ("**Assignment Agreement**"), Westhaven Park IID Predevelopment Borrower assigned, and Borrower assumed, the Predevelopment Loan Documents. At closing, the full Predevelopment Loan shall be deemed disbursed to Borrower, considered an initial advance of the CHA Loan, and included in the outstanding principal balance of the Note.

**NOW, THEREFORE**, in consideration of the mutual covenants 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 above recitals are incorporated herein and made a part hereof by reference.

**SECTION 2. DEFINITIONS.**

"**ACC**" shall mean whichever of the following is in effect from time to time with respect to the PHA-Assisted Units: (i) the Consolidated Annual Contributions Contract C-1014, dated December 11, 1995, between HUD and the Authority; or (ii) any successor Annual Contributions Contract; including any Mixed Finance Amendment to any of the foregoing.

"**Act**" shall mean the United States Housing Act of 1937 (42 USC § 1437, et seq.), as amended from time to time, any successor legislation and all implementing regulations issued thereunder or in furtherance thereof).

"**Affidavit**" shall mean a written declaration executed by or on behalf of Borrower or any related party thereto in connection with the CHA Loan.

"**All Applicable Public Housing Requirements**" shall have the meaning assigned to such term in the Regulatory and Operating Agreement.

"**Architect**" shall mean the architect identified on Exhibit A.

"**Assignment of Rents and Leases**" shall mean that certain Subordinate Assignment of Rents and Leases, dated of even date herewith, from Borrower, as assignor, to CHA, as assignee, as security for the CHA Loan, as from time to time supplemented, amended and restated.

"**Bond Land Use Restriction Agreement**" between the City of Chicago and the Borrower.

"**Bond Loan**" shall have the meaning given in Recital F.

"**Bond Loan Agreement**" shall have the meaning given in Recital F.

"**Bond Loan Documents**" shall mean, collectively, the Funding Loan Agreement, the Bond Loan Agreement, the Bond Loan Note, the mortgage securing the Bond Loan, and all other agreements, instruments and documents executed and delivered to Construction Lender or

Permanent Lender, as applicable, previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the Bond Loan.

“Bond Loan Note” shall have the meaning given in Recital F.

“Bond Loan Repayment Amount” means \$9,174,760.

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

“Borrower’s Liabilities” shall mean all obligations and liabilities of Borrower to CHA (including, without limitation, all debts, claims and indebtedness), whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable, however evidenced, created, incurred, acquired or owing, and however arising, whether under this CHA Loan Agreement or the other CHA Loan Documents.

“Building” shall have the meaning given in Recital B.

“Business Day” shall mean a day on which banks in the City are not authorized or required to remain closed, and which shall not be a public holiday under the laws of the State of Illinois or any ordinance or resolution of the City.

“CHA” shall mean the Chicago Housing Authority, an Illinois municipal corporation, and its permitted successors and assigns.

“CHA Funds” shall mean funds made available to CHA pursuant to CHA’s current Moving To Work Agreement.

“CHA Loan” shall have the meaning given to such term in Recital B.

“CHA Loan Agreement” shall mean this CHA Loan Agreement, as hereafter amended, supplemented and restated.

“CHA Loan Documents” shall mean, collectively, all agreements, instruments and documents executed and delivered to CHA previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the CHA Loan, including, but not limited to, this CHA Loan Agreement, the Mortgage, the Note, the Assignment of Rents and Leases, the Completion Guaranty, the Environmental Agreement and any additional documents required by CHA to be executed by Borrower.

“CHA Loan Term” shall mean the period from the Closing Date through and including the Maturity Date.

“Change Orders” shall mean all amendments or modifications to the Plans and Specifications or the Construction Contract.

“City” or “the City” shall mean the City of Chicago, an Illinois municipal corporation.

“City Funds” has the meaning assigned to such term in the TIF Redevelopment Agreement.

“City Loan Funds Loan” shall mean the loan made by the City in the principal amount of \$1,848,736, shall have a term of not less than 43 years, have an interest rate equal to zero percent (0.0%) per annum, payment of which will be deferred until maturity, and be secured by a mortgage lien on the Premises subordinate to the liens of the mortgages securing the Bond Loan, the CHA Loan and the HOME Loan.

“City Loan Funds Loan Documents” shall mean, collectively, all agreements, instruments and documents executed and delivered to the City previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the City Loan Funds Loan.

“Claims” shall mean any and all claims, demands, actions, notices, liens, suits, causes of action, complaints, enforcement actions, citations, and notices of violation, legal or administrative proceedings, warnings or inquiries.

“Closing Date” shall mean the date of recording of the Mortgage.

“Completion Guaranty” shall mean that certain Performance and Completion Guaranty Agreement with respect to the CHA Loan and the DTC Loan executed and delivered by Guarantors in favor of CHA.

“Construction Amount” means \$2,985,240.

“Construction Commencement Deadline” shall mean within forty-five (45) days after the Closing Date.

“Construction Completion” shall mean all of the following have been accomplished: (1) the issuance of a certificate of substantial completion by each Architect, certifying that the portion of the Development for which said Architect is responsible for has been completed in accordance with the Plans and Specifications, except for minor “punch list” items, and delivery of a copy of such certificate to CHA (it being hereby agreed by Borrower that the separate certificates of substantial completion issued by each Architect must, when viewed as a whole, amount to a single certificate of substantial completion covering the entire Development); (2) the issuance of a temporary certificate of occupancy by the City for all buildings comprising the Development which permit occupancy of the residential units and delivery of a copy of each such certificate to the CHA; (3) the CHA or its designee shall issue or caused to be issued a Notification of Acceptance for Occupancy for all of the units designated as PHA-Assisted Units on Exhibit D to the Regulatory and Operating Agreement; (4) the Authority shall have received final “as-built” Plans for the buildings, which shall conform to the Plans and Specifications; (5) the final acceptance of the entire Development by the CHA, which shall not unreasonably be withheld and which shall be granted or denied (with the CHA’s reasons therefor) in writing within ten (10) business days after the receipt by the CHA of a written request for such acceptance from the Borrower or any Guarantor, which request shall not be submitted until the last of the items described in clauses (1), (2), (3) and (4) above have been delivered to the CHA; and (6) payment in full of all amounts due, if any, under the Completion Guaranty. If the CHA denies such

acceptance, all defects, deficiencies and incomplete items noted by the CHA shall be corrected and/or completed, as the case may be, and then a new request for such acceptance shall be submitted to the CHA by the Borrower or any Guarantor. CHA shall release the Completion Guaranty in accordance with the terms of the Completion Guaranty. Acceptance of the entire Development by the CHA: (i) shall only be for the purpose of determining that construction of the Development has been “completed” for purposes of this Agreement; (ii) shall not be deemed to be a determination or acknowledgment by the CHA that any of the work has been completed in accordance with the approved Plans and Specifications or complies with applicable requirements, including without limitation applicable accessibility requirements; (iii) shall not relieve the Borrower of any obligation with respect to the Development or any of the Units or other improvements comprising the Development; and (iv) shall not be deemed to be a waiver of any claim, cause of action, right or remedy that the CHA may have against the Borrower or any other party under any other agreement related to the Development.

“Construction Completion Deadline” shall mean January 21, 2025.

“Construction Contract” shall mean the contract for construction of the Development entered into by Borrower, as further identified on Exhibit A.

“Construction Escrow” shall mean the construction escrow established with the Construction Escrow Agent to process construction progress payments for the Development, pursuant to the Construction Escrow Agreement.

“Construction Escrow Agent” shall mean the Title Company, and its successors and assigns, in its capacity as escrow agent under the Construction Escrow Agreement.

“Construction Escrow Agreement” shall mean that certain Construction Escrow Agreement, relating to the Development, among CHA, Borrower, Construction Lender, Sponsor, the City and the Construction Escrow Agent, and acknowledged by the General Contractor, dated as of the date hereof, as from time to time amended, supplemented and restated.

“Construction Lender” shall mean BMO Harris Bank N.A., a national banking association.

“Costs” shall mean any and all costs, expenses, damages, judgments, obligations, contribution, cost recovery compensation, penalties, fines or fees (including attorneys’, experts’ and consulting fees and disbursements and expenses incurred in investigating, defending or prosecuting any Claim).

“Declaration” shall mean that certain Declaration of Restrictive Covenants executed by Borrower and CHA in favor of HUD relating to the PHA-Assisted Units and recorded against the Land with the Cook County Recorder of Deeds.

“Development” shall have the meaning given to such term in Recital C.

“Development Budget” shall mean the detailed budget, including the General Contractor’s Sworn Statement, of all Development Costs, along with the name of the funding source used to pay each such cost, which Development Budget shall be provided to and approved by CHA not

later than five (5) days prior to the Closing Date, and attached hereto as Exhibit D, together with any changes thereto as may be approved in writing by CHA and, to the extent applicable, HUD. At the request of the CHA, the Development Budget shall contain a detailed breakdown of Development Costs that are Eligible Costs.

“Development Costs” shall mean all costs, expenses and expenditures directly or indirectly incurred or anticipated to be incurred in completion of the Development as set forth in the Development Budget.

“Development Lenders” shall mean any party providing loan financing in connection with the Development, and includes, without limitation, Construction Lender, CHA, the Sponsor, the City, the Seller, and TIF Lender.

“Development Loan Documents” shall mean the Bond Loan Documents, the Bond Land Use Restriction Agreement, the CHA Loan Documents, the City Loan Funds Loan Documents, the HOME Loan Documents, the Seller Loan Documents, the TIF Loan Documents and the DTC Loan Documents, including any regulatory or land use restrictions agreements executed in connection therewith.

“Development Sources” means the sources of funds to pay or reimburse the Borrower for all Development Costs, including Equity and proceeds of the Bond Loan, the CHA Loan, the City Loan Funds Loan, the HOME Loan, the DTC Loan, the Seller Loan, and the TIF Loan.

“Disbursement” shall mean a disbursement of any of the proceeds of the CHA Loan made in accordance with this Agreement to or for the benefit of Borrower for or in connection with the Development.

“DTC Lender” shall mean CHA in its capacity as lender of the DTC Loan.

“DTC Loan” shall mean the DTC Loan in the principal amount of \$1,132,594.00, which shall be funded with the proceeds of the sale of Illinois Affordable Housing Tax Credits, have an interest rate of two and sixty-six hundredths percent (2.66%) per annum, have a term of not less than 43 years, payment of which will be deferred until maturity, and be secured by a mortgage lien on the Premises subordinate to the liens of the Bond Loan, the CHA Loan, the City Loan Funds Loan, and the HOME Loan, and which is otherwise governed by the DTC Loan Documents.

“DTC Loan Agreement” shall have the meaning given to such term in Recital G.

“DTC Loan Documents” shall mean, collectively, the DTC Loan Agreement and all agreements, instruments and documents executed and delivered to DTC Lender previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the DTC Loan.

“Eligible Costs” shall mean Development Costs for activities for which CHA Funds may be used, in the exclusive determination of HUD. The Eligible Costs shall be specifically identified and listed in the Development Budget and shall be subject to the approval of CHA and HUD.

“Environmental Agreement” shall mean that certain Environmental Indemnity Agreement among Borrower, Guarantors and CHA, in connection with the CHA Loan and the DTC Loan, as from time to time supplemented, amended and restated.

“Environmental Laws” shall have the meaning assigned to such term in the Environmental Agreement.

“Equipment” shall have the meaning given to such term in the Mortgage.

“Equity” shall have the meaning given to such term on Exhibit C hereto.

“Event of Default” shall have the meaning given to such term in Section 7 hereof.

“Extended Use Agreement” shall mean that certain Low Income Housing Tax Credit Regulatory Agreement, dated as of the date hereof, between the City and Borrower, as from time to time supplemented, amended and restated.

“Faircloth-to-RAD Conversion” shall mean the development of public housing units using HUD’s mixed-finance program followed by the conversion of the Development’s rental subsidy to long-term Section 8 subsidy using HUD’s Rental Assistance Demonstration program.

“Financial Statements” means the financial statements provided by Borrower and Guarantors as described herein.

“Funding Loan” shall have the meaning given in Recital F

“General Contractor” shall mean that certain general contractor identified on Exhibit A hereto.

“General Contractor’s Sworn Statement” shall mean, collectively, a consolidated sworn statement of the General Contractor reflecting the hard and soft construction costs for the entire Development.

“Governmental Lender Note” shall have the meaning given in Recital F.

“Ground Lease” shall mean that certain Ground Lease, dated of even date herewith, whereby CHA leased the Land to the Sponsor, which Ground Lease has been assigned to and assumed by Borrower pursuant to that certain Assignment and Assumption and Amendment of Ground Lease, dated of even date herewith, among the Sponsor, Borrower and CHA, as from time to time supplemented, amended and restated.

“Guarantors” shall mean The Michaels Development Company I, L.P., a New Jersey Limited Partnership, BMH-I, LLC, an Illinois limited liability company, Brinshore Development L.L.C., an Illinois limited liability company, and The Michaels Development Company, Inc., a New Jersey corporation.



“Hazardous Materials” shall have the meaning given to such term in the Environmental Agreement.

“HOME Loan” shall mean the loan made by the City in the principal amount of \$4,371,322, which shall be funded with the proceeds of a grant in such amount received by the Sponsor, shall have a term of not less than 43 years, have an interest rate equal to zero percent (0.0%) per annum, be repaid through cash flow, and shall be secured by a mortgage lien on the Premises subordinate to the liens of the mortgages securing the Bond Loan and the CHA Loan.

“HOME Loan Documents” shall mean, collectively, all agreements, instruments and documents executed and delivered to the City previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the HOME Loan.

“HUD” shall mean the United States Department of Housing and Urban Development.

“Improvements” shall have the meaning given to such term in the Mortgage.

“Investor” shall mean USA Institutional Westhaven Park LLC, a Delaware limited liability company, and its permitted successors and assigns.

“Land” has the meaning given to such term in Recital C.

“Losses” shall mean injuries, Costs, Claims, liabilities and taxes (of any character or nature whatsoever, regardless of by whom imposed), and losses of every conceivable kind, character and nature whatsoever arising out of, resulting from or in any way connected with Borrower, the Development, the Project, the Premises and/or the CHA Loan Documents, including, but not limited to: (i) Claims for loss or damage to any property or injury to or death of any person asserted by or on behalf of any person, firm, corporation, governmental authority or other entity arising out of, resulting from, or in any way connected with the Development, the Project or the Premises, or the condition, occupancy, use, possession, conduct or management of, or any work done in, about or involving the Development, the Project or the Premises; or (ii) any Claim arising out of any performance by CHA of any act required of it under any of the CHA Loan Documents or the DTC Loan Documents or requested by Borrower, but specifically excluding from the foregoing any injuries, cost, claims, liabilities and taxes, and losses resulting from the gross negligence or willful misconduct of CHA or any claimant suffering the applicable Loss.

“Managing Member” shall mean WHP-IID Manager, LLC, an Illinois limited liability company.

“Maturity Date” shall have the meaning given to that term on Exhibit A.

“Mixed-Finance Amendment” shall mean the certain Mixed-Finance Amendment to ACC.

“Mortgage” shall mean that certain Subordinate Mortgage, Security Agreement and Financing Statement, dated of even date herewith, executed by Borrower, as mortgagor, to CHA, as mortgagee, as security for the CHA Loan, as from time to time supplemented, amended and restated.

“Note” shall mean the Note evidencing the CHA Loan (and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof), dated March 31, 2023, executed by Borrower and payable to CHA in the aggregate principal amount of the CHA Loan.

“Operating Agreement” shall mean the Operating Agreement of Borrower, dated of even date herewith, by and among Managing Member and Investor, as the same may be further amended, restated and supplemented from time to time with the prior written consent of CHA.

“Operating Reserve” shall mean that Borrower account described in the Operating Agreement.

“Owner’s Sworn Statement” shall mean an owner’s sworn statement of Borrower for the Development.

“Permanent Lender” shall mean JPMorgan Chase, N.A, a national banking association.

“Permitted Encumbrances” shall have the meaning given to such term in the Mortgage.

“Permitted Refinancing” shall mean a refinancing of the Bond Loan from a loan that satisfies the following conditions: (a) the principal amount does not exceed the principal amount of the Bond Loan at the time of refinancing (excluding any amounts having been advanced by Bond Loan for the protection of its security interest pursuant to the Bond Loan Documents); (b) the interest rate does not exceed the market rate of interest for comparable loans at the time of refinancing; (c) the repayment schedule is comparable to the remaining payment schedule of the applicable Bond Loan; and (d) complies with All Applicable Public Housing Requirements.

“PHA-Assisted Units” means the thirty-eight (38) units in the Development for use as “public housing” as defined in Section 3(b) of the Act which shall be operated and maintained in accordance with All Applicable Public Housing Requirements.

“Plans and Specifications” shall mean the final plans and specifications for the Development prepared by the Architect as approved by CHA prior to the Closing Date, and upon which building permits for the Development were or are to be issued, as amended by Change Orders.

“Premises” has the meaning given to such term in Recital D.

“Prohibited Transfer” shall mean any transfer of an interest in Borrower, any member of Borrower, the Premises or the Improvements prohibited by the Mortgage, Mixed Finance Amendment or the Regulatory and Operating Agreement.

“Project” has the meaning given to such term in Recital B.

“Regulatory and Operating Agreement” shall mean that certain Regulatory and Operating Agreement, dated of even date herewith, among Borrower and CHA with respect to the Premises, as from time to time supplemented, amended and restated.

“Remediation Agreement” shall mean the Remediation Agreement, dated of even date herewith, between CHA, BMH-I, LLC, an Illinois limited liability company, and the Borrower, relating to the Development.

“Replacement Reserve” shall mean that Borrower account described in the Operating Agreement.

“Right of First Refusal Agreement” shall mean that certain Chicago Housing Authority Right of First Refusal Agreement among CHA, Borrower and Managing Member, dated of even date herewith and consented to by the Investor, pertaining to the Project.

“Seller” shall mean the Sponsor, in its capacity as lender of the Seller Loan.

“Seller Loan” shall mean the seller loan made by the Seller in the principal amount of \$1,885,000.00, which shall have a term of not less than 43 years, have an initial interest rate equal to 3.74% per annum, payment of which will be deferred until maturity, and be secured by a mortgage lien on the Premises subordinate to the liens of the mortgages securing the Bond Loan, the CHA Loan, the HOME Loan, the City Loan Funds Loan, and the DTC Loan.

“Seller Loan Documents” shall mean, collectively, all agreements, instruments and documents executed and delivered to the Seller previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the Seller Loan.

“Sponsor” shall mean Michaels Community Services Corporation d/b/a Better Tomorrows, a New Jersey not-for-profit corporation, in its capacity as lender of the Seller Loan and the TIF Loan.

“Subcontract” shall mean any contract between the General Contractor or a Subcontractor and any Subcontractor for the equipping of any portion of the Development, or the furnishing of labor or materials for any portion of the Development.

“Subcontractor” shall mean any person or entity having a contract with the General Contractor or any Subcontractor for the construction, equipping or supplying of labor or materials by such Subcontractor for any portion of the Development.

“Subordination Agreement” shall mean (i) during the period in which the Construction Lender holds the Bond Loan Note, that certain Subordination Agreement by and among Construction Lender, as senior lender, CHA, as junior lender, and Borrower, dated of even date herewith, and recorded in the Official Records of Cook County on or around the Closing Date, and (ii) during the period in which the Permanent Lender holds the Bond Loan Note, that certain Subordination Agreement to be entered into by and among Permanent Lender, as senior lender, CHA, as junior lender, and Borrower and recorded in the Official Records of Cook County on or around the Closing Date.

“Tax Credit Documents” shall mean the Extended Use Agreement, the DTC Regulatory Agreement, and all other documents evidencing, securing or relating to the low-income housing

tax credits, and Illinois affordable housing tax credits allocated, issued and/or reserved for the Development.

“TIF Lender” shall mean the Sponsor, in its capacity as lender of the TIF Loan.

“TIF Loan” shall mean the loan from the TIF Lender to Borrower in the principal amount of \$10,000,000, comprised of City Funds payable to the TIF Lender under the TIF Redevelopment Agreement, shall have a term of not less than 43 years, have an initial interest rate equal to zero percent (0.0%) per annum, payment of which will be deferred until maturity, and be secured by a mortgage lien on the Premises subordinate to the liens of the mortgages securing the Bond Loan, the CHA Loan, the HOME Loan, the City Loan Funds Loan, the DTC Loan, and the Seller Loan.

“TIF Loan Documents” shall mean, collectively, all agreements, instruments and documents executed and delivered to TIF Lender previously, now or hereafter by, on behalf of or for the benefit of Borrower in connection with the TIF Loan.

“TIF Redevelopment Agreement” shall mean that certain WHP-IID, LLC Redevelopment Agreement, dated of even date herewith, by and among the City, the Borrower, and Sponsor.

“Title Company” shall mean that certain title insurance company identified on Exhibit A.

“UCC” shall mean the Uniform Commercial Code as adopted in Illinois.

“Unavoidable Delay” shall mean a delay beyond the reasonable control of Borrower and without the fault or negligence of Borrower, such as: (1) an act of God; (2) fire; (3) flood; (4) epidemic; (5) quarantine restriction; (6) civil disorder; (7) enemy action; (8) strike, lockout or other labor dispute; (9) unavailability of labor or materials; (10) freight embargo; (11) the act or failure to act of a contractor in the performance of a contract with CHA, as landlord under the Ground Lease; (12) the act or failure to act of any Governmental Authority; (13) injunctive relief or other legal proceedings of any court; (14) war; (15) terrorism; (16) delays caused by CHA (other than due to CHA exercising its rights under the CHA Loan Documents or Ground Lease) affecting the construction of the Project; and (17) unusually severe weather.

Capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Mortgage.

**SECTION 3. TERMS OF LOAN AND OTHER AGREEMENTS.** The CHA Loan shall be made upon the following terms and conditions:

**3.01.** The principal amount of the CHA Loan shall be not more than \$12,160,000.00.

**3.02.** Any Disbursements of CHA Loan proceeds for Development Costs shall be limited to payment or reimbursement of Eligible Costs. In no event, however, shall CHA be required to loan to Borrower more than the maximum principal amount of \$12,160,000.00.

**3.03.** Subject to Sections 3.04, 3.05 and 8.06 hereof, repayment of the CHA Loan shall be as specified on Exhibit A and in the Note, with the full amount due and payable on the Maturity Date, or such earlier date as the same may become due and payable because of acceleration or prepayment as provided in any of the CHA Loan Documents.

**3.04.** Subject to the terms of the Subordination Agreement, the CHA Loan may be prepaid by Borrower at any time, in whole or in part, without premium or penalty, at a price equal to 100% of the principal amount being prepaid plus accrued interest, if any, on such amount to the prepayment date. Prepayment of the CHA Loan shall not be deemed to release or terminate the Declaration or the Regulatory and Operating Agreement.

**3.05.** Subject to the terms of the Subordination Agreement, the CHA Loan may be prepaid, without premium or penalty, at the option of CHA, in the event CHA receives proceeds pursuant to the Assignment of Rents and Leases or the Mortgage, in amounts and at times determined by CHA and as provided in the Assignment of Rents and Leases or the Mortgage, respectively.

**3.06.** The Note shall evidence the CHA Loan. The Note shall be secured by the Mortgage, the Assignment of Rents and Leases and any other instruments under which Borrower has granted CHA a lien or security interest in all or any portion of the Premises or any personal property.

**3.07.** To repay the CHA Loan, Borrower agrees to make all payments when due of principal and interest on the Note, subject to the provisions of Section 8.06 hereof.

**3.08.** Subject to the provisions of Section 8.06 hereof, the obligations of Borrower to make the payments required hereunder and under any of the other CHA Loan Documents shall be absolute and unconditional, and shall be without defense (except payment) or set-off, to the extent permitted by law, by reason of any default by CHA under this CHA Loan Agreement or any other CHA Loan Document, or under any other agreement between Borrower and CHA, or for any other reason, including, without limitation, failure to complete the Development, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Premises, commercial frustration of purpose, any change in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State of Illinois or any political subdivision of either, or any failure of CHA to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this CHA Loan Agreement or any other CHA Loan Document, it being the intention of the parties hereto that the payments required hereunder and under the other CHA Loan Documents will be paid in full when due without any delay or diminution whatsoever.

**3.09.** If any payment of principal or interest, if any, due on the Note, or any other amounts due to CHA as required under the Note or the other CHA Loan Documents, shall not be paid on the date such payment is due (treating, for such purposes, a payment as not being paid when “due” only if such payment is not made following all applicable notice and grace periods with respect thereto, if any), Borrower shall pay CHA as liquidated damages and not as a penalty an additional “late charge” of five percent (5%) of such delinquent payment or the maximum permitted by law, whichever is less, in order to defray the increased cost of collection occasioned by any such late

payments. Further, any such delinquent payments (not including interest payments) shall bear interest from and after the date due at the lesser of the rate of ten percent (10%) per annum or the maximum rate permitted by law until so paid. Demand, presentment for payment, protest, notice of non-payment and notice of protest are hereby waived by Borrower.

**3.10.** In any case where the date of payment of interest, if any, on or principal of the Note, or the date of payment of any other amount under the CHA Loan Documents, shall not be a Business Day, then payment of such amount need not be made on such date, but may be made on the next succeeding Business Day. If interest is charged with respect to any such delayed amount, then such amount shall continue to bear interest until such date of actual payment.

**3.11.** The interest rate, if any, on the CHA Loan shall be computed on the outstanding principal balances of the CHA Loan from time to time, and shall be in the amount specified on Exhibit A. Interest, if any, shall begin to accrue as of the respective dates of any disbursements of the CHA Loan. The interest rate, if any, shall be computed on the basis of a year consisting of 360 days and actual days elapsed.

**3.12.** Guarantors shall guaranty the lien-free completion of the construction of the Development pursuant to the Completion Guaranty.

#### **SECTION 4. CONDITIONS PRECEDENT**

**4.01. General.** CHA's obligations hereunder shall be subject to the compliance by Borrower with the provisions of this CHA Loan Agreement, which compliance, for purposes of making the CHA Loan, shall be determined by CHA in its sole discretion.

**4.02. Documents to be Provided Fifteen Days Prior to the Closing Date.** Not less than fifteen (15) days prior to the Closing Date (or within such lesser time as may be approved by CHA), Borrower shall provide (or cause to be provided on its behalf) to CHA, each in form and content satisfactory to CHA and its counsel, true and correct copies of the following documents with respect to the Development:

(a) a commitment for title insurance in the 2006 ALTA or equivalent form of mortgagee's policy in the principal amount of the CHA Loan and issued by the Title Company and containing such endorsements as CHA may require;

(b) copies of all documents of record (other than those arising from the Development Loan Documents) affecting the Premises or any portion thereof;

(c) two copies of an ALTA/NSPS Land Title Survey, with such optional Table A requirements as CHA shall require, dated within forty-five (45) days prior to the Closing Date, acceptable in form and content to the Title Company, prepared by a surveyor registered in the State of Illinois, certified to Borrower, CHA, the Title Company and any other party who may require it and certifying as to whether the Premises are in an area as identified by the Federal Emergency Management Agency as having special flood hazards;

(d) a standard form of Subcontract to be used by the General Contractor, and copies of any Subcontracts executed as of or prior to the fifteenth day prior to the Closing Date with respect to the Development or any portion thereof;

(e) the Plans and Specifications;

(f) the Development Budget;

(g) a critical path method construction schedule for the Development and the Project in such detail as may be acceptable to CHA (the “**Construction Schedule**”);

(h) an appraisal prepared for CHA (or a reliance letter with respect to an appraisal prepared for the benefit of Construction Lender), prepared by an appraiser who is approved by CHA, evidencing that the Premises will have, after completion of the Development, a fair market value acceptable to CHA, in its sole discretion; and

(i) an updated Section 3 utilization plan and MBE/WBE/DBE utilization plan that addresses construction activity for the Development and the Project, which plans must be acceptable to CHA.

**4.03. Documents to be Provided Five Days Prior to the Closing Date.** Not less than five (5) days prior to the Closing Date (or within such lesser time as may be approved by CHA), Borrower shall provide the following documents to CHA, each in form and content satisfactory to CHA and its counsel, with respect to the Project and the Development:

(a) an executed copy of the Construction Contract, certified by Borrower;

(b) all required foundation and/or building permits and governmental approvals for the Development (no Disbursement shall be made for a building or the foundation thereof for which all permits have not been issued);

(c) executed copies of the Owner’s Sworn Statement, setting forth a description of all contracts executed by Borrower with respect to the Development and the Project, detailing the total costs of the Development and the Project, including indirect costs incidental thereto;

(d) executed copies of the General Contractor’s Sworn Statement, setting forth a description of all contracts executed by the General Contractor with respect to the Development and the Project, the names and addresses of all Subcontractors under Subcontracts, the date of each such Subcontract and of any supplements or amendments thereto, the nature and scope of the work covered thereby, and the aggregate amounts theretofore paid and thereafter to be paid to each Subcontractor thereunder; and further stating whether said Subcontracts embrace all of the work required to be done and all of the material necessary for completion of the Development and the Project in accordance with the Plans and Specifications;

(e) (i) a performance and payment bond in the full amount of the Construction Contract, underwritten by a surety satisfactory to CHA, and naming CHA as co-obligee on such bond, or (ii) a letter of credit in an amount not less than twenty-five percent (25%) (or such lesser percentage as CHA and HUD shall approve) of the full amount of the Construction Contract or an amount satisfactory to CHA, from a bank satisfactory to CHA and naming CHA as a payee on such letter of credit;

(f) a copy of the final Operating Agreement (as amended to the Closing Date), certified by Managing Member (with a fully executed copy to be delivered on or prior to the Closing Date);

(g) evidence of the authority of Borrower and Managing Member to enter into the transactions contemplated by the Ground Lease and the CHA Loan Documents;

(h) evidence of searches of current financing statements, judgments, pending litigation, bankruptcy proceedings and federal and state tax liens showing no security interests, judgments, pending litigation, bankruptcies or federal or state tax liens on the Premises, or any portion thereof, or affecting Borrower, Managing Member or any Guarantor, other than Permitted Encumbrances and such pending litigation involving any Guarantor that CHA determines in its sole discretion will not materially adversely affect a Guarantor's ability to perform its obligations with respect to the Development or under the CHA Loan Documents to which it is a party; and

(i) Borrower shall secure and deliver to CHA a statement by the Architect that shall: (a) describe the architect's knowledge and training in the field of accessible design and (b) provide a certification as set forth in Exhibit F, that the Architect has reviewed the plans and that they include design specifications that comply with the requirements of the Fair Housing Act Amendments of 1988 (42 U.S.C. 3604(f)) and its implementing regulations at 24 C.F.R. 100.205 ("Fair Housing Act"), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 C.F.R. part 8) ("Rehabilitation Act"); the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and its implementing regulation at 28 C.F.R. part 36 ("ADA"); the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations issued pursuant thereto (24 C.F.R. part 40) ("Architectural Barriers Act"); the Environmental Barriers Act (410 ILCS 25) ("Environmental Barriers Act"); and the Illinois Accessibility Code (71 Ill. Admin Code 400) ("Accessibility Code"). At least 5.3% of the PHA-Assisted Units must be accessible (as defined in the Rehabilitation Act) for people with mobility impairments and 2.1% for people with hearing or vision impairments. No PHA-Assisted Units designated by Borrower to be either mobility or sensory impaired shall be accepted and transferred until the unit has been verified by CHA to meet such requirements. Borrower shall be responsible for ensuring that these requirements are satisfied.

**4.04. Documents to be Provided on the Closing Date.** On the Closing Date, Borrower shall provide the following documents to CHA, each in form and content satisfactory to CHA and its counsel:



(a) copies of each of the Development Loan Documents (other than the CHA Loan Documents), TIF Redevelopment Agreement and the Tax Credit Documents executed by all of the parties thereto;

(b) originals of each of the CHA Loan Documents, executed by all parties other than CHA;

(c) evidence that Equity in the amount required in the Construction Escrow Agreement has been, or concurrently is being, deposited in the Construction Escrow Account as defined by and pursuant to the Construction Escrow Agreement;

(d) policies, binders or certificates of insurance evidencing the coverages required by Section 4 of the Mortgage;

(e) an opinion of Borrower's counsel, substantially similar in form and content to the opinion attached hereto as Exhibit E;

(f) written agreement by all other lenders to give notice to CHA of any default, event of default or waiver thereof under any of the Development Loan Documents;

(g) a lender's title insurance policy (or at CHA's option, a marked up pro forma lender's title insurance policy) in the full amount of the CHA Loan, issued by the Title Company insuring the marketability of title to the Premises, indicating that the lien of the Mortgage constitutes a valid lien on the Premises, indicating that the Mixed Finance Amendment, the Declaration and Regulatory and Operating Agreement are not subordinate to any Tax Credit Documents or Development Loan Document and containing such endorsements as CHA may require;

(h) evidence of the recordation of all documents that need to be recorded and that all costs with respect thereto have been paid;

(i) copies of any Subcontracts executed by the General Contractor with respect to the Development after the fifteenth day prior to the Closing Date and not later than the Closing Date;

(j) a copy of the Owner's Sworn Statement and the General Contractor's Sworn Statement described in Sections 4.03(b) and 4.03(c) hereof, respectively, and dated as of the Closing Date;

(k) an original executed Architect's Certificate (Opening) from the Architect in the form thereof attached hereto as part of Exhibit F;

(l) an original Mixed Finance Amendment, Declaration, Regulatory and Operating Agreement, and the CHA Right of First Refusal Agreement, executed by all parties other than CHA;

- (m) fully executed copies of the Construction Escrow Agreement;
- (n) fully executed copies of the Development Loan Documents; and
- (o) such other documents, agreements, instruments, certificates and affidavits as CHA may require.

**4.05. Advances During Construction.** At least five (5) Business Days prior to, and as a condition of CHA's approval of construction draws of the Construction Amount of the CHA Loan, Borrower shall furnish to CHA the following documents, each in form and content satisfactory to CHA, with respect to the Project and the Development:

(a) A written request for advance specifying the amount of the requested Disbursement. Delivery of such request shall, in addition to the items therein expressly set forth, constitute a certification to CHA (without waiving any rights or claims against any other person for latent defects or otherwise), as of the date of the applicable request for Disbursement, as applicable, that:

- (i) the aggregate amount of such request for a Disbursement and the requests for disbursement from all other Development Sources represents the actual amount payable to the General Contractor and/or Subcontractors who have performed work on the Development and indicating what payment requests, if any, have been received by Borrower from the General Contractor or the Subcontractors but have not yet been approved by Borrower for payment;
- (ii) 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 under this CHA Loan Agreement or any of the other CHA Loan Documents;
- (iii) the representations and warranties contained in this CHA Loan Agreement and in all other CHA Loan Documents are true and correct in all material respects;
- (iv) Borrower has received no notice and has no knowledge of any liens or claims of lien either filed or threatened against the Premises, or any portion thereof, except for Permitted Encumbrances, which have not been insured or bonded over;
- (v) all amounts shown as previous payments from all Development Sources on the current draw request have been paid to the parties entitled to such payment;
- (vi) Borrower has approved all work and materials for which a payment is then due and for which a draw is thereby requested;

- (vii) all Development Costs for which the advance of the CHA Loan requested by the Disbursement are Eligible Costs; and
- (viii) all work and materials theretofore furnished for the Development and the Project conform in all material respects with the Plans and Specifications;
- (b) a copy of the Owner's Sworn Statement and the General Contractor's Sworn Statement described in Sections 4.03(b) and 4.03(c) hereof, respectively, and updated as of such draw request;
- (c) waivers of lien from the General Contractor and all Subcontractors covering all work done with respect to the Development and the Project and paid for from sums disbursed from the previous draw, or otherwise paid for, and including the work to be paid for from the requested draw, all in compliance with the mechanics' lien laws of the State of Illinois and with the requirements of the Title Company (for issuance of interim title endorsements covering such draw), together with such invoices, contracts or other supporting data as the Title Company may require;
- (d) an endorsement to the lender's title insurance policy issued to CHA as of the Closing Date covering the date of the draw, insuring that nothing has intervened from the date of the issuance of such title insurance policy that would affect the validity or priority of the Mortgage, containing a mechanics' lien interim certification to cover the amount of the CHA Loan then disbursed (including the current Disbursement) and otherwise raising no new Schedule B title exceptions other than those initially set forth on such title insurance policy, or those approved by CHA, and the lien of general real property taxes not then delinquent;
- (e) an original executed Architect's Certificate (Interim) from the Architect in the form thereof attached hereto as part of Exhibit F, dated as of the date of such Disbursement;
- (f) such other documents as CHA may require under the provisions of this CHA Loan Agreement or any of the other CHA Loan Documents; and
- (g) such other papers and documents as the Title Company may require for the issuance of the required endorsements to CHA's lender's title insurance policy for each Disbursement.

**4.06. Approval of Final Draw Request.** In addition to the requirements for approval of draw requests contained in this Section 4, it shall be a condition to the approval of the final draw request of the Construction Amount of the CHA Loan that the following items have been satisfied to CHA's satisfaction:

- (a) the Architect has delivered an executed Architect's Certificate (Final) in the form and content thereof as set forth as part of Exhibit F hereto, stating, among other things, that the Development has been completed in accordance with the Plans and Specifications;

(b) the General Contractor and all Subcontractors have supplied the Title Company with final sworn statements and full and complete final waivers of all mechanics' lien claims with respect to the Development (or the Title Company has insured over any potential lien claims with respect to any missing or incomplete waivers by endorsement, the form and content of which are acceptable to CHA);

(c) CHA has received the appropriate endorsement to the lender's title insurance policy as described in Section 4.05(d) above, including an endorsement acknowledging that the amount of coverage under said policy has been increased to cover the entire amount of the CHA Loan) (it being acknowledged that such endorsement may be delivered to CHA concurrently with the final Disbursement);

(d) Borrower shall have delivered to CHA copies of all governmental licenses and permits required to use, occupy and operate the Development as contemplated from all appropriate governmental authorities;

(e) all fixtures and equipment required for the operation of the Development shall have been installed free and clear of all liens, title retention agreements and security interests except security interests granted to the Development Lenders; and

(f) CHA shall have received evidence confirming compliance with all other requirements of this CHA Loan Agreement and confirming that no Event of Default exists hereunder or under any of the other Development Loan Documents or the Tax Credit Documents.

**4.07. Advance of the Bond Loan Repayment Amount of the CHA Loan.** Contemporaneously with the final disbursement of the Construction Amount of the CHA Loan in accordance with Section 4.06, the CHA shall disburse the Bond Loan Repayment Amount of the CHA Loan to the Construction Lender pursuant to wire transfer instructions provided by the Construction Lender to be applied for the account of the Borrower as a partial repayment of the outstanding balance of the Bond Loan (and, correspondingly, the Funding Loan).

**4.08. Provisions Relative to the Title Company.** Borrower shall cause the Title Company to issue to CHA, concurrently with any disbursement of proceeds from the Construction Escrow Agreement, or accrued interest, the appropriate endorsement to the lender's title insurance policy as described in Section 4.05(d) above, including an endorsement acknowledging that the amount of coverage under said policy has been increased to cover the entire amount of the CHA Loan (it being acknowledged that such endorsement may be delivered to CHA concurrently with the final Disbursement).

**4.09. Use of Loan Proceeds.** Notwithstanding anything herein to the contrary contained, the proceeds of the CHA Loan shall be disbursed by CHA, and used by the Borrower, only for payment or reimbursement of Eligible Costs of the Development. The disbursement of the Bond Loan Repayment Amount of the CHA Loan to partially repay the Bond Loan in accordance with Section 4.07 shall be deemed to be a reimbursement to Borrower of Eligible Costs paid with the proceeds of the Bond Loan.

## **SECTION 5. WARRANTIES AND REPRESENTATIONS OF BORROWER**

**5.01.** Borrower warrants and represents to CHA as follows:

(a) all warranties and representations of Borrower contained in this CHA Loan Agreement and the other CHA Loan Documents are true, accurate and complete in all material respects at the time of Borrower's execution hereof and thereof, and shall be true, accurate and complete in all material respects at the time of each draw and each Disbursement, and shall survive the execution, delivery and acceptance hereof by the parties hereto for as long as the CHA Loan is outstanding;

(b) Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois;

(c) Managing Member is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois and each Guarantor is duly organized, validly existing and in good standing under the laws, of the State of its organization or incorporation, as applicable;

(d) Borrower has the right, power and authority to enter into, execute, deliver and perform this CHA Loan Agreement and the other CHA Loan Documents and the Declaration, the Regulatory and Operating Agreement and the CHA Right of First Refusal Agreement;

(e) the execution, delivery and performance by Borrower of this CHA Loan Agreement and the other CHA Loan Documents, the Mixed Finance Amendment, the Declaration, the Regulatory and Operating Agreement, and the CHA Right of First Refusal Agreement have been duly authorized by all necessary action of Borrower and Managing Member, and will not violate any provision of law (including any order, writ, injunction or decree binding upon Borrower or the Premises) or the Operating Agreement, or result in the breach of or constitute a default under or require any consent under, or result in the creation of any lien, charge or encumbrance (except for any lien, charge or encumbrance created by the Development Loan Documents), upon the Premises or any other property or assets of Borrower under any agreement, instrument, restriction or document to which Borrower is now or hereafter a party or by which Borrower or the Premises are or may become bound or affected;

(f) Borrower has good, indefeasible and merchantable title to the Premises (which is the leasehold estate in the Land under the Ground Lease and fee simple title to the Building and other Improvements), free and clear of all liens, charges and encumbrances except Permitted Encumbrances;

(g) Borrower shall operate the thirty-eight (38) housing units comprising the Project as PHA-Assisted Units under the terms of All Applicable Public Housing Requirements;

(h) Borrower is now solvent and able to pay its debts as they mature;

(i) Guarantors are now solvent and able to pay its debts as they mature;

(j) there are no actions or proceedings by or before any court or governmental commission, board, bureau or other administrative agency pending or, to Borrower's knowledge, overtly threatened, against or affecting Borrower which, if adversely determined, could materially and adversely affect Borrower's ability to perform under the CHA Loan Documents, the Declaration, the Regulatory and Operating Agreement and the CHA Right of First Refusal Agreement or which might result in any material, adverse change to Borrower's financial condition or may materially affect the Premises or Borrower's other property or assets;

(k) Borrower has obtained, or will obtain, and has been and is in compliance with, as applicable, any and all governmental notices, permits, certificates and consents (including, without limitation, all environmental permits and other authorizations) necessary to carry out and complete the Development;

(l) Borrower is not in default with respect to any indenture, loan agreement, mortgage, deed or other agreement or instrument relating to the borrowing of monies to which it is a party or by which it may be bound;

(m) No default exists under the Development Loan Documents, the Mixed Finance Amendment, the Regulatory and Operating Agreement, the Ground Lease, the TIF Redevelopment Agreement and the Tax Credit Documents and each of the Development Loan Documents, the Mixed Finance Amendment, the Regulatory and Operating Agreement, the Ground Lease, the TIF Redevelopment Agreement and the Tax Credit Documents are in full force and effect, enforceable in accordance with its terms;

(n) the Financial Statements were prepared by an independent public accountant in accordance with generally accepted accounting principles and practices consistently maintained throughout the periods involved and are complete and correct and fairly represent the financial condition of Borrower, Managing Member or Guarantors, as applicable;

(o) there has been no material adverse change in the financial condition of Borrower, Managing Member or any one or more of the Guarantors, as applicable, since the date of the Financial Statements;

(p) to Borrower's knowledge after due inquiry, no current member, official or employee or former CHA Board member, official or employee of CHA has any personal interest, direct or indirect, in Borrower's business;

(q) the statements, information, descriptions, estimates and assumptions contained in the Plans and Specifications, the Construction Schedule and the Development Budget are based upon the best information available to Borrower, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the statements, information, descriptions, estimates and assumptions contained therein, in light of the circumstances under which they were made, not misleading;

(r) the provisions of the Environmental Agreement and the Remediation Agreement shall govern all environmental matters between Borrower and CHA affecting the Project and the Development. The terms and provisions of the Environmental Agreement are incorporated herein by this reference, mutatis mutandis, as if fully set forth herein with respect to such relationship; and

(s) the Premises and the Development (to the best of Borrower's knowledge after due inquiry) are or after Construction Completion will be in compliance with all applicable federal, state and local laws, statutes, rules, regulations, executive orders, ordinances, codes, decrees and judgments, including any and all Environmental Laws, pertaining to or affecting the Premises, the Development or the Project and the use thereof and the conduct of any business or operations thereon.

## **SECTION 6. COVENANTS OF BORROWER**

### **6.01. Borrower covenants to CHA as follows:**

(a) Borrower shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, rules, regulations and executive orders as are now or may be in effect during the CHA Loan Term which are applicable to Borrower, the Development, the Premises or the Project, including, but not limited to, (i) the Davis-Bacon Act, 40 U.S.C. Section 276a et seq., (ii) the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. Section 4831(b), (iii) the Contract Work Hours and Safety Standards Act, 40 U.S.C. Section 327 et seq., as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 5, (iv) the Copeland "Anti-kickback" Act, 18 U.S.C. Section 874, as supplemented by U.S. Department of Labor regulations at 29 C.F.R. Part 3, (v) Section 104(g) of the Housing and Community Development Act of 1974, 42 U.S.C. Section 5301 et seq., and 24 C.F.R. Part 58, (vi) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794 and implementing regulations at 24 C.F.R. Part 8, Subpart C, (vii) 24 C.F.R. Part 24, (viii) the Americans with Disabilities Act of 1990, Public Law 101-336 dated July 26, 1990, (ix) the Fair Housing Amendments Act of 1988, Public Law 100-430 dated September 13, 1988, (x) the City of Chicago Landlord - Tenant Ordinance, Municipal Code of Chicago, Chapter 5-12; (xi) all Environmental Laws, and (xii) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 17010, and its implementing regulations at 24 C.F.R. Part 75.

(b) Borrower shall maintain good, indefeasible and merchantable title to the leasehold estate under the Ground Lease and fee simple title to the Building and other Improvements, free and clear of all liens, charges and encumbrances except Permitted Encumbrances;

(c) Borrower shall remain solvent and able to pay its debts as they mature;

(d) Borrower shall obtain and comply with, as applicable, all governmental notices, permits, certificates and consents (including, without limitation, all environmental permits and other authorizations) necessary to carry out, complete and operate the Development and the Project;

(e) Borrower shall immediately notify CHA of any and all events or actions which may materially adversely affect Borrower's ability to carry on its operations or perform all its obligations under the CHA Loan Documents or any other documents or agreements to which it is or may become a party, or by which it is or may become bound, as long as the CHA Loan remains outstanding;

(f) no board member, official or employee of CHA shall have any personal interest, direct or indirect, in Borrower's business or shall participate in any decision relating to Borrower's business which affects his/her personal interests or the interests of any corporation, partnership, limited liability company or association in which he/she is directly interested;

(g) subject to the provisions of Section 8 hereof, Borrower shall pay, indemnify and save CHA and its officers, employees and agents harmless of, from and against any and all Losses incurred by any such party in any Claim brought by reason of any such Loss, excluding, however, any Loss (1) arising out of CHA's gross negligence or willful misconduct, (2) arising after CHA's (or its successors', designees' or nominees') acquisition of title to or control of the Premises, including any loss arising after any recipient (including a Construction Lender) acquires title to or control of the Premises by a deed or assignment in lieu of foreclosure, and (3) related to any environmental matters, which shall be governed exclusively by the terms and provisions of the Environmental Agreement and Remediation Agreement. In the event that any Claim is brought against CHA or any of its officers, employees or agents by reason of any such Loss, Borrower, upon written notice from CHA, covenants to resist and defend such Claim on behalf of CHA and its officers, employees and agents. CHA shall have the right to employ separate counsel in any such Claim and to participate in the defense thereof. The reasonable fees and expenses of such counsel so incurred shall be at the expense of Borrower without regard to any authorization of such employment by Borrower;

(h) Borrower shall not enter into any transaction that would materially and adversely affect its ability to repay any of Borrower's Liabilities;

(i) Borrower shall maintain and provide to CHA, as provided in the Regulatory and Operating Agreement, at the earliest practicable date but no later than one hundred twenty (120) days following the end of its fiscal year, annual independently audited Financial Statements prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently maintained thereafter so long as the CHA Loan is outstanding. Borrower acknowledges that its fiscal year is a calendar year and Borrower shall not change its fiscal year to other than a calendar year without the prior written consent of CHA. Borrower's annual Financial Statements for each fiscal year shall include a detailed statement of income and expense and balance sheet for each such fiscal year, together with a calculation of the amount of Net Cash Flow (as defined in the Operating Agreement) for such fiscal year that is available for distribution pursuant to the Note. Borrower acknowledges that Borrower is obligated to distribute Net Cash Flow to the CHA to be applied by CHA as a partial payment of the balance of the CHA Loan in accordance with Section 11.01(a) of the Operating Agreement. Pursuant to the Note, the Borrower shall make distributions of Net Cash Flow for each fiscal year no later than June 1 of the calendar year immediately following the close of such fiscal year. In addition, within thirty (30) days following the Borrower's distribution of Net Cash Flow for any fiscal year, the Borrower



shall deliver to CHA a statement certified by an officer of the Borrower's managing member identifying all entities to whom distributions of Net Cash Flow were made and the amount of Net Cash Flow so distributed to each such entity;

(j) Borrower shall cause the construction of the Development and the Project to be commenced on or prior to the Construction Commencement Deadline and Borrower shall cause construction of the Development and the Project to be completed on or prior to the Construction Completion Deadline (subject to Unavoidable Delay), but in no event later than the latest date required by the other Development Loan Documents, Tax Credit Documents or any regulatory or use agreement encumbering the Development, in accordance with the provisions of this CHA Loan Agreement, the Construction Contract, the Construction Schedule and the Development Budget and in accordance with the Plans and Specifications, and any Change Orders shall be submitted to CHA for its express, written approval prior to the submission of any request for disbursement of the proceeds of any funding source for the Development and the Project;

(k) (i) The Development funded under this CHA Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("**Section 3**") and 24 CFR Part 75. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing. For purposes of this CHA Loan Agreement, Borrower shall, to the extent provided in the Section 3 Plan and pursuant to 24 CFR Part 75, hire Section 3 workers in the following priority: (1) To residents of the public housing projects for which the public housing financial assistance is expended; (2) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA; (3) To participants in YouthBuild programs; and (4) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(ii) Borrower agrees to comply with HUD's regulations in 24 CFR Part 75, which implements Section 3, and certifies that it is under no contractual or other impediment that would prevent it from complying with 24 CFR Part 75.

(iii) Borrower agrees to send to each labor organization or representative of workers with which Borrower has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Borrower's commitments under this clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, set forth the minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(iv) Borrower agrees to include this clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action as provided in an applicable provision of the subcontract or in this Section 3 clause upon a finding that the

subcontractor is in violation of 24 CFR Part 75. Borrower will not subcontract with any subcontractor where Borrower has notice or knowledge that the subcontractor has been found in violation of 24 CFR Part 75.

(v) Borrower will certify that any vacant employment positions, including training positions, that are filled (1) after Borrower is selected but before the CHA Loan Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent Borrower's obligations under 24 CFR Part 75.

(vi) Borrower will certify that Borrower shall meet or exceed the applicable Section 3 hours worked requirement as published in the Federal Register pursuant to 24 CFR §75.13(b) and shall report labor hours, as required for public housing financial assistance under 24 CFR §75.15.

(vii) Noncompliance with 24 CFR Part 75 may result in sanctions, termination of this CHA Loan Agreement for default, debarment or suspension from future CHA and HUD assisted contracts.

(viii) As set forth in Section 4.02(j), Borrower shall submit its Section 3 plan to CHA prior to the Closing Date. Borrower shall comply with such plans (unless otherwise required by law), and shall provide monthly compliance reports, or such other reports as may be required, to CHA (Attention: Compliance Department) or as otherwise directed. Borrower shall submit payroll or other reports required by the Davis-Bacon Act, and such other reports as may be reasonably requested by CHA to CHA (Attention: Compliance Department), or, if another governmental agency has been designated by HUD to monitor Davis-Bacon Act compliance for the Development, to such other governmental agency as directed by CHA.

(ix) In the event that Borrower shall receive any notice of non-compliance with the Davis-Bacon Act, Section 3 or other labor standards, or shall receive any notice, claim, petition, or complaint regarding non-compliance with the foregoing or with other applicable laws, Borrower shall promptly notify CHA (with a copy to the attention of the CHA Compliance Department), including a copy of such document, and shall furnish to CHA such other information as CHA may reasonably request.

(l) Borrower shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois limited liability company and shall not change its members, add additional members or otherwise modify its ownership, except as permitted pursuant to the Regulatory and Operating Agreement;

(m) Managing Member shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence as an Illinois limited liability company and shall not change its ownership or senior management except as permitted pursuant to the Regulatory and Operating Agreement;

(n) Borrower shall comply with all of the terms and provisions of the Regulatory and Operating Agreement, and shall provide to CHA such reports as shall be required therein;

(o) Borrower shall immediately advise CHA in writing of: (i) any notices received by Borrower from any federal, state or local governmental agency or regional office thereof of the violation or potential violation or of any inquiry regarding any such potential violation by Borrower of any applicable Environmental Laws; (ii) any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws; (iii) all Claims made or threatened by any third party against Borrower or the Premises relating to any Losses resulting from any Hazardous Materials (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter collectively referred to as "**Hazardous Materials Claims**"); and (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be subject to any Hazardous Materials Claims;

(p) Borrower will cause the General Contractor to maintain a payment and performance bond or a letter of credit, as described in Section 4.03(d) hereof, in full force and effect until completion of the Development;

(q) Borrower shall use the proceeds from the CHA Loan solely for Eligible Costs in connection with the Project and at the Premises;

(r) Borrower shall not disburse any funds from the Replacement Reserve without the prior written consent of CHA, which consent shall not be unreasonably withheld or delayed. Borrower shall notify CHA in writing of the amounts, if any, remaining in the Replacement Reserve upon the sale or refinancing of the Premises;

(s) Borrower and all employees, agents and other persons working on Borrower's behalf shall timely apply for and obtain all of the permits required to perform the necessary work, and Borrower shall be solely responsible for obtaining the proper permits and for producing proof of the required permits as required by the CHA Loan Documents or at the request of CHA;

(t) all construction will be done by licensed contractors; all work at or around the Premises shall meet or exceed the requirements of the Municipal Code of Chicago, as determined by the City Department of Buildings (or any successor department thereof); Borrower agrees that inspectors of the City shall be granted access to the Premises to conduct all inspections that may be necessary or desirable for such purposes;

(u) Borrower will not amend the Tax Credit Documents, the Development Loan Documents, the TIF Redevelopment Agreement, or the Operating Agreement in any material respect without the prior written consent of HUD and CHA (which CHA consent shall not be unreasonably withheld), except for (1) any amendments necessary to effectuate any permitted transfers under the Operating Agreement, and (2) corrections of scrivener's error(s);

(v) Borrower shall comply with all reporting requirements in connection with the CHA Funds.

(w) Borrower shall provide CHA, from time to time, upon request, copies (in digital format) of any professional photographs of the exterior or interior of the Development and the Units that Borrower or its property manager has obtained. Provided that CHA gives proper credit to the photographer, CHA shall have the right to use such photographs for CHA business-related purposes, including on the CHA website, as part of presentations to the CHA Board and to outside parties, etc.

(x) The Borrower agrees to provide prompt written notice to the CHA of any extension of the outside conversion date for the Bond Loan beyond March 30, 2026.

**SECTION 7. EVENTS OF DEFAULT** The following shall constitute events of default under this CHA Loan Agreement (each, an “**Event of Default**”):

(a) Borrower’s failure to pay (i) within five (5) days after notice from CHA any amount due to CHA under this CHA Loan Agreement, or (ii) when due, any amount coming due under the Note or any of the other CHA Loan Documents, and following the expiration of any applicable notice, cure, or grace period;

(b) Borrower’s default or failure to perform any other covenant hereunder within thirty (30) days after written notice from CHA, provided, however, that if any such default cannot reasonably be remedied within said 30-day period and if Borrower shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to sixty (60) days upon written request from Borrower to CHA delivered during such 30-day period, and upon further written request from Borrower to CHA delivered during said 60-day period, said 60-day period shall be extended to ninety (90) days (provided, however, that CHA shall not be precluded during any such periods from exercising any remedies available under this CHA Loan Agreement or any of the other CHA Loan Documents if its security becomes or is about to become materially jeopardized by any failure to cure a default within such period);

(c) Borrower or Managing Member or, during the term of the Completion Guaranty, any one or more of the Guarantors (prior to Construction Completion), becomes insolvent or the subject of any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships (“**Insolvency Proceeding**”), and as to any involuntary Insolvency Proceeding, it either (i) is consented to or (ii) has not been dismissed within ninety (90) days; provided however, (x) should any one or more of the Guarantors become insolvent or the subject of an Insolvency Proceeding, said occurrence shall not constitute an Event of Default if Borrower is able to obtain and provide a substitute Guarantor, that is acceptable to CHA in its sole discretion, within thirty (30) days of said occurrence and (y) that no Event of Default shall exist under this subsection (c) if Managing Member becomes subject to an Insolvency Proceeding, if in accordance with the Operating Agreement, the Managing Member is replaced with a new managing member within sixty (60) days after the date that any such Insolvency Proceeding is initiated and during such period the organizational standing and operation of Borrower is not impaired;

(d) the occurrence of any “Event of Default” as defined in the Mortgage;

(e) the occurrence of any default (provided such default was within Borrower's control) and the expiration of any applicable notice, cure or grace period under any of the Development Loan Documents or Tax Credit Documents;

(f) the occurrence of a default by Borrower under the Declaration, the TIF Redevelopment Agreement, or the Regulatory and Operating Agreement and the expiration of any applicable notice, cure or grace period thereunder;

(g) the occurrence of a default under the Ground Lease and the expiration of any applicable notice, cure or grace period thereunder;

(h) the occurrence of any default that continues beyond the expiration of any applicable notice, cure or grace period under any document by which Borrower has obtained financing for the Development, including without limitation, any permanent financing.

Notwithstanding anything to the contrary contained herein, CHA hereby agrees that any cure of any default made by one or more of Borrower's members shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made by Borrower.

## **SECTION 8. REMEDIES**

**8.01.** Upon, or at any time after, the occurrence of an Event of Default hereunder, CHA may elect to accelerate the maturity of the Note, and upon such election the principal sum remaining unpaid on the Note, together with all accrued interest thereon, if any, and any other amounts then due to CHA under any of the CHA Loan Documents, shall be immediately due and payable at the place of payment as aforesaid, without presentment, demand, protest or notice of any kind, and CHA may proceed to foreclose the Mortgage and to exercise any other rights and remedies available to CHA under this CHA Loan Agreement or any of the other CHA Loan Documents which CHA may have at law, in equity or otherwise. The provisions of this Section are not intended to effectuate a waiver by Borrower of any notice which Borrower is expressly entitled to receive pursuant to the provisions of any of the CHA Loan Documents.

**8.02.** Subject to Section 8.06 hereof, upon the occurrence of an Event of Default, CHA may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest, if any, on the Note and all other amounts due to CHA under the CHA Loan Documents, and to enforce and compel the performance of the duties and obligations of Borrower as herein set forth.

**8.03.** In case CHA shall have proceeded to enforce its rights under this CHA Loan Agreement and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to CHA, then and in every such case Borrower and CHA shall be restored respectively to their respective positions and rights hereunder, and all rights, remedies and powers of Borrower and CHA shall continue as though no such proceedings had been taken.

**8.04.** In the event Borrower defaults under any of the provisions of this CHA Loan Agreement or the other CHA Loan Documents and CHA should employ attorneys or incur other Costs for the collection of the payments due under this CHA Loan Agreement, the Note or the other CHA Loan Documents, or for the enforcement of performance or observance of any obligation or agreement on the part of Borrower herein or therein contained, Borrower agrees that it will, on demand therefor, pay to CHA reasonable fees of such attorneys and such other Costs so incurred by CHA.

**8.05.** The remedies of CHA, as provided in this CHA Loan Agreement or the other CHA Loan Documents, and as limited pursuant to Section 8.06 hereof, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of CHA, and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. Except as otherwise specifically required herein or therein, notice of the exercise of any right or remedy granted to CHA hereunder or by the Note or the other CHA Loan Documents is not required to be given.

**8.06.** (a) Subject to the terms of Paragraphs (b) and (c) of this Section and the Completion Guaranty, the indebtedness evidenced and secured by the CHA Loan Documents shall be non-recourse to Borrower and its members, and in the event of default hereunder or thereunder, CHA's sole source of satisfaction of repayment of the amounts due to CHA hereunder or under any of the other CHA Loan Documents (other than the Completion Guaranty) shall be limited to CHA's rights with respect to the collateral pledged and assigned under the CHA Loan Documents.

(b) Notwithstanding Paragraph (a) of this Section, nothing herein or in any of the CHA Loan Documents shall limit the rights of CHA, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Borrower, Managing Member and/or any one or more of the Guarantors for any and all Losses incurred by CHA arising from: (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Borrower, Managing Member and/or any one or more of the Guarantors; (ii) intentional or material waste to the Premises; (iii) use of proceeds of the CHA Loan for costs other than Eligible Costs; (iv) the occurrence of a Prohibited Transfer without CHA's prior written consent, to the extent such Prohibited Transfer results from the intentional, willful, voluntary and/or negligent acts or omissions of Borrower, Managing Member and/or any one or more of the Guarantors; (v) any breach of Borrower's representations, warranties or covenants regarding Hazardous Materials or Environmental Laws contained in any of the CHA Loan Documents (including, without limitation, the Environmental Agreement), provided, however, that the obligations of Borrower and/or Managing Member with respect to environmental matters shall be limited as provided in the Environmental Agreement; (vi) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the CHA Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the CHA Loan Documents; (vii) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the CHA Loan Documents; or (viii) any material inaccuracy in the statements in any Affidavit.

(c) CHA waives any and all right to seek or demand any personal deficiency judgment against Borrower or any of its members, in conjunction with a foreclosure proceeding, under or by reason of the non-recourse monetary obligations of Borrower; provided, however, that the foregoing shall not limit or affect CHA's right to sue or otherwise seek recourse against Borrower, Managing Member or any one or more of the Guarantors in any separate action or proceeding for all Losses incurred by CHA arising from any of the matters described in Sections 8.06(b) hereof.

## **SECTION 9. NO WAIVER**

**9.01.** CHA's failure to require strict performance by Borrower of any provision of this CHA Loan Agreement shall not waive, affect or diminish any right of CHA thereafter to demand strict compliance and performance herewith, nor shall any waiver by CHA of an Event of Default waive, suspend or affect any other Event of Default under this CHA Loan Agreement, whether the same is prior or subsequent thereto, or of the same or a different type.

**9.02.** Failure of CHA, for any period of time or on more than one occasion, to exercise any remedy available to CHA as described in Section 8 hereof shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of CHA, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by CHA and then only to the extent specifically recited therein.

**SECTION 10. COSTS AND EXPENSES** Borrower shall pay all Costs related to the CHA Loan, including, but not limited to, survey costs, title charges (including endorsements), premiums, escrow expenses, recording fees, filing fees, taxes, opinions of counsel to Borrower rendered as required by CHA, and all Costs associated with any subsequent amendments, substitutions or modifications to the CHA Loan Documents.

## **SECTION 11. MAINTAINING RECORDS/RIGHTS TO INSPECT**

**11.01.** Borrower shall keep and maintain, until the fifth (5<sup>th</sup>) anniversary of the date of repayment of the CHA Loan in full, such books, records and other documents as shall be required by CHA and HUD to reflect and disclose fully the amount and disposition of the total cost of activities paid for in whole or in part, with proceeds from the CHA Loan, and the nature of all activities of Borrower in connection with the Premises which are supplied or to be supplied by other sources. All such books, records and other documents shall be available at the offices of Borrower for inspection, copying (including excerpts and transcriptions), audit and examination at all reasonable times by any authorized representatives of CHA and HUD.

**11.02.** Any authorized representative of CHA or of HUD shall, at all reasonable times during business hours and after giving reasonable prior notice, except in emergencies, when no such notice requirements or time limits shall apply, have access to all portions of the Premises, subject to the rights of occupying tenants.

**11.03.** The rights of access and inspection provided in this Section 11 shall continue until the fifth (5th) anniversary of the date of repayment of the CHA Loan in full.

**SECTION 12. HEADINGS** The headings and titles of this CHA Loan Agreement are for convenience only and shall not influence the construction or interpretation of this CHA Loan Agreement.

**SECTION 13. DISCLAIMER OF RELATIONSHIP** Nothing contained in this CHA Loan Agreement, nor any act of CHA, shall 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 CHA.

**SECTION 14. LIMITATION OF LIABILITY** Borrower expressly agrees that no member, official, employee or agent of CHA shall be individually or personally liable to Borrower or its respective successors or assigns in the event of any default or breach by CHA under this CHA Loan Agreement.

**SECTION 15. ASSIGNMENT**

**15.01.** Borrower may not sell, assign or transfer this CHA Loan Agreement or any of the other CHA Loan Documents without the prior written consent of CHA.

**15.02.** Borrower hereby consents to CHA's sale, assignment, transfer or other disposition of this CHA Loan Agreement and the other CHA Loan Documents at any time in whole or in part.

**SECTION 16. SIGNS**

Borrower agrees upon request to obtain, erect and maintain a sign, in a conspicuous location on the Premises during the period of construction and rent-up of the Project indicating that financing of the Development has been provided in part by CHA.

**SECTION 17. NOTICES**

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) confirmed facsimile; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

If to CHA: Chicago Housing Authority  
60 East Van Buren Street  
Chicago, Illinois 60605  
Attn: Chief Executive Officer

With copies to: Chicago Housing Authority  
60 East Van Buren Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attn: General Counsel



United States Department of Housing  
and Urban Development  
77 West Jackson Boulevard, 26<sup>th</sup> Floor  
Chicago, Illinois 60604  
Attn: Regional Counsel

If to Borrower: WHP-IID, LLC  
c/o Brinshore Development, L.L.C.  
1603 Orrington, Suite 450  
Evanston, Illinois 60201  
Attention: Richard J. Sciortino

And: WHP-IID, LLC  
c/o The Michaels Organizations  
P.O. Box 90708  
Camden, New Jersey 08101  
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

With copies to: 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

c/o The Richman Group Affordable Housing Corporation  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attention: Jason Wilber

JDF, LLC  
777 West Putnam Avenue  
Greenwich, CT 06830  
Attention: John W. Behre, Jr.

Griffith & Carlucci

761 Asbury Avenue, Suite 201  
Ocean City, New Jersey 08226  
Attention: Gary R. Griffith

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 either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier, and any notice, demand or request sent pursuant to clause (d) above shall be deemed received three (3) Business Days following deposit in the mail.

**SECTION 18. MODIFICATION** This CHA Loan Agreement may not be altered, modified or amended except by a written instrument signed by all the parties hereto.

**SECTION 19. INVALIDATION** If any provision of this CHA Loan Agreement is held invalid or unenforceable by any court of competent jurisdiction, such provision shall be deemed severed from this CHA Loan Agreement to the extent of such invalidity or unenforceability, and the remainder hereof will not be affected thereby, each of the provisions hereof being severable in any such instance.

**SECTION 20. GOVERNING LAW** This CHA Loan Agreement and the other CHA Loan Documents shall be governed by and construed in accordance with the internal law of the State of Illinois without regard to its conflict of law principles.

**SECTION 21. APPROVAL** Wherever in this CHA Loan Agreement provision is made for the approval or consent of CHA, or any matter is to be to CHA's satisfaction, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction or the like shall be made, given or determined by CHA in its sole discretion.

**SECTION 22. TERM OF LOAN AGREEMENT** This CHA Loan Agreement shall be in full force and effect during the CHA Loan Term. The covenants contained in Section 6.01(g) hereof and the rights described in Section 11 hereof shall survive the termination of this CHA Loan Agreement.

**SECTION 23. BINDING EFFECT** This CHA Loan Agreement shall inure to the benefit of and shall be binding upon CHA, Borrower and CHA's successors and assigns. This CHA Loan Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and the successors and assigns of CHA.

**SECTION 24. CONSTRUCTION OF WORDS** The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the masculine, feminine and neuter pronouns for any word herein shall be fully interchangeable.

**SECTION 25. COUNTERPARTS** This CHA Loan Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**SECTION 26. INCONSISTENCIES** If there shall be any inconsistency between this CHA Loan Agreement and any of the other CHA Loan Documents, this CHA Loan Agreement shall prevail.

**SECTION 27. REFERENCES TO STATUTES, ETC.** All references herein to statutes, regulations, rules, executive orders, ordinances, resolutions or notices or circulars issued by any governmental body shall be deemed to include any and all amendments, supplements and restatements from time to time to or of such statutes, regulations, rules, executive orders, ordinances, resolutions, notices and circulars.

**SECTION 28. DISCLAIMER OF THIRD-PARTY BENEFICIARIES.** Borrower hereby acknowledges that any loan or transfer of funds provided to CHA by HUD shall not be or be deemed to be an assignment of such funds, and no party shall succeed to any rights or benefits of CHA under applicable grant or funding agreements between CHA and HUD, or attain any privileges, authorities, interests, or rights in or under applicable grant or funding agreements between CHA and HUD. Nothing contained in this CHA Loan Agreement, nor any act of HUD or CHA shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD, except between HUD and CHA as provided by the terms of applicable grant agreements. In addition, there are otherwise no third-party beneficiaries of this CHA Loan Agreement and no third party shall have any rights under this CHA Loan Agreement.

**SECTION 29. CONFLICTS WITH ALL APPLICABLE PUBLIC HOUSING REQUIREMENTS.** It is hereby agreed that in the event of a conflict or inconsistency between the All Applicable Public Housing Requirements and any requirement set forth in this CHA Loan Agreement or in any of the other CHA Loan Documents, the All Applicable Public Housing Requirements shall in all instances be controlling.

**SECTION 30. FAIRCLOTH TO RAD CONVERSION.** Borrower and Lender acknowledge that the 38 PHA-Assisted Units may be subject to the Faircloth-to-RAD Conversion process. Borrower acknowledges that the Lender shall have the right to review and approve all documentation relating to the Faircloth-to-RAD Conversion process and agrees to execute and deliver any modifications and amendments to this Agreement and the other Loan Documents and any additional or supplemental documents and certifications as Lender may reasonably require to preserve Lender's interest in any collateral, including any housing assistance payments and Lender's rights under this Agreement and the other Loan Documents.

**SECTION 30 PRIORITY OF REPAYMENT.** Lender acknowledges the table set forth in the Priority of Repayment below (the "**Priority of Repayment Table**"), specifically that (i) the Construction Lender, the Permanent Lender, pursuant to their respective loan documents, has a right of repayment from Borrower that is senior to the right of repayment from Borrower of the DTC Loan; and further, (ii) Lender, pursuant to the loan documents for this Loan, has a right of repayment from Borrower that is senior to the right of repayment held by the City, Seller and TIF

Lender, pursuant to their respective loan documents, and the right to be paid the delivery assurance fee held by the Permanent Lender (the “**Delivery Assurance Fee**”), pursuant to the delivery assurance documents.

First priority	Bond Loan
Second priority	CHA Loan
Third priority	HOME Loan
Fourth priority	City Loan Funds Loan
Fifth priority	DTC Loan
Sixth priority	Seller Loan
Seventh priority	TIF Loan
Eighth priority	Delivery Assurance Fee

[Signatures Appear on Following Pages]

[FIRST SIGNATURE PAGE TO CHA LOAN AGREEMENT]

**IN WITNESS WHEREOF**, CHA and Borrower have caused this CHA Loan Agreement to be duly executed and delivered as of the date first above written.

**CHA:**

**CHICAGO HOUSING AUTHORITY,**  
an Illinois municipal corporation

By:   
\_\_\_\_\_  
Tracey Scott  
Chief Executive Officer

[SECOND SIGNATURE PAGE TO CHA LOAN AGREEMENT]

**BORROWER:**

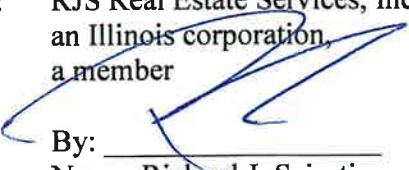
**WHP-IID, LLC,**  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
an Illinois limited liability company,  
its managing member

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

**BORROWER:**

**WHP-IID, LLC,**  
an Illinois limited liability company

By: WHP-IID Manager, LLC,  
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an Illinois limited liability company,  
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Name: Richard J. Sciortino  
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an Illinois limited liability company,  
a member

By:   
Name: John J. O'Donnell  
Title: President