

Unsubsidized



U. S. Department of Housing and Urban Development  
Multifamily Property Disposition  
307 W. 7th Street, Suite 1000  
Fort Worth, TX 76102

## FORECLOSURE SALE

**HUD INTENDS TO BID THE DEBT OWED ON THE PROPERTY**

The following property is offered for sale at foreclosure in the manner specified below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

No. of Units/Type: \_\_\_\_\_

Use Restrictions / Conditions of Foreclosure Sale:

Special Conditions/Announcements:

**Written bids** will be accepted no later than **two (2) business days** prior to the date of the Foreclosure Sale. Mail bids to: \_\_\_\_\_

by \_\_\_\_\_ 20\_\_\_\_, at \_\_\_\_\_ (local time).

**Oral Bids** will be accepted **on the day** of the foreclosure. The Foreclosure Sale will commence promptly at \_\_\_\_\_ (local time) on \_\_\_\_\_ 20\_\_\_\_, and located at:

\_\_\_\_\_  
\_\_\_\_\_.

Realty Specialist Contact Information:

## INVITATION TO BID

Consistent with and subject to the terms and conditions herein, there is an opportunity to make an offer to purchase the Project, more particularly described below. This document, titled Invitation to Bid, sometimes referred to herein as the “Invitation,” and commonly known as the “Bid Kit,” sets forth the terms and conditions for the submission of a bid to acquire the Project at the foreclosure sale of the Project. This Invitation also includes information concerning Previous Participation Certification requirements, terms, conditions, and a list of the forms necessary to submit a complete, responsive bid.

### DEFINITIONS

1. *Act*: The Multifamily Mortgage Foreclosure Act, 12 U.S.C. §3701-17, as amended.
2. *Acknowledgment*: The contract executed at the Foreclosure Sale by the High Bidder, obligating the High Bidder to the terms and conditions of the Foreclosure Sale. The form is attached to this Invitation as Attachment A.
3. *Affiliate*: An individual or entity as defined in 2 C.F.R. §180.905 - Affiliate. An individual or entity is an affiliate of each other if, directly or indirectly, when either one controls or has the power to control the other or a third person controls or has the power to control both. The ways HUD may determine control include, but are not limited to, (a) interlocking management or ownership; (b) identity of interests among family members; (c) shared facilities and equipment; (d) common use of employees; or (e) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person. Affiliates of the defaulting borrower are prohibited from being the High Bidder.
4. *Approved High Bidder*: The High Bidder who, after the Foreclosure Sale, submits the Post-Bid Documents, demonstrates its eligibility to purchase the Property, and is approved by HUD to proceed to Closing.
5. *Balance*: The amount of money the High Bidder must pay at Closing. Balance is calculated by taking the High Bid amount less the Earnest Money Deposit plus all initial deposits to escrows and/or reserve accounts HUD may require as a condition of sale, less the proration of any Extension Fees and any outstanding encumbrance that survived the Foreclosure. Funds shall be paid only in the form of certified funds or cashier's check made payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
6. *Bidder*: An individual or entity that meets the eligibility requirement of this Invitation and registers with the Foreclosure Commissioner.
7. *Bid*: A legal offer from a Bidder of a certain amount to purchase the Property, submitted to the Foreclosure Commissioner either; (1) in writing two business days prior to the sale, or (2) orally during the Foreclosure Sale. No offers submitted via email, facsimile, orally to HUD staff prior to, during, or after the Foreclosure Sale will be considered valid bids.
8. *Closing*: The date where the obligations of HUD and the High Bidder outlined in the Acknowledgment are completed, including the transfer of title to the Property and the personal property to the High Bidder, which shall take place at a time specified by HUD.
9. *Controlling Participants*: Any individual and entity HUD determines to exercise financial or operational control over the owner, operator, borrower, management agent, landlord, construction manager, and general contractor. See 24 CFR §200.212 and §200.216.
10. *Earnest Money Deposit*: The amount identified in Section III, Subsection 4, that a Bidder must provide during the Foreclosure Sale to be eligible to submit a Bid.

11. *Electronic Registration*: Electronic Registration refers to the Business Partner Registration system HUD uses to register all new partners we do business with. Through this system, a partner can register to do business with HUD, submit their Form HUD 2530, and obtain a WASS User ID to enable the processing and receipt of subsidies, including Section 8 vouchers for relocations. Please refer to Section II for additional information for Electronic Registration.
12. *Extension Fees*: A fee HUD assesses when the High Bidder requests an Extension Period for Closing. If authorized, the Approved High Bidder must pay for the entire Extension Period, the amount of which HUD determines, consistent with current policies and procedures.
13. *Extension Period*: An additional thirty (30) calendar day period that HUD may give for the Closing to occur.
14. *Foreclosure Commissioner*: An individual or entity HUD designates to conduct the Foreclosure Sale, pursuant to 12 U.S.C. §3704 and 24 C.F.R. §27.10. A Foreclosure Commissioner is designated for each sale due to varying circumstances.
15. *Foreclosure Deed*: A deed without warranty that gives the High Bidder title to the Property. Form of the deed must comply with the Act.
16. *Foreclosure Sale*: Sale of the Property pursuant to 12 U.S.C. §3710.
17. *Grantee*: Also known as the successful High Bidder, the buyer, or the new Owner.
18. *High Bid*: The highest responsive bid amount received by the Foreclosure Commissioner at the Foreclosure Sale.
19. *High Bidder*: The bidder at Foreclosure Sale that submits the highest responsive bid amount to the Foreclosure Commissioner.
20. *Invitation*: This Invitation to Bid including all the accompanying exhibits, sets forth the terms and conditions of the sale of the Property at the Foreclosure Sale and includes information about the documents and actions necessary to submit a complete and responsive bid and for HUD to approve a bidder as qualified.
21. *Letter of Credit (LOC)*: A document issued by a bank authorizing the bearer to draw a certain amount of money to cover repairs the bearer is contractually obligated to make.
22. *Owner*: The individual or entity that owns the Property after Closing. The terms Owner, High Bidder, and Approved High Bidder often refer to the same individual or entity but are used separately to designate the role at various times during the Foreclosure Sale process.
23. *Post-Bid Documents*: All documents, statements, and forms listed in the Invitation that must be submitted by the High Bidder and its principals and management company, if any, in order to be considered for HUD-approval.
24. *Previous Participation Certification*: This Certification is also referred to its form number, Form HUD-2530 or e-2530, is required pursuant to HUD Notice H 2016-15 Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants. It's used to disclose current and previous property ownership and management experience to HUD. Any Controlling Participant who is engaged to do business with HUD is required to submit this form, either electronically or paper copy, and receive an approval prior to conducting business with HUD.

25. *Post-Closing Repairs*: All HUD-required repair and/or rehabilitation work that the Approved High Bidder/Owner must perform after Closing in a workmanlike manner, and compliant with state and local codes, laws, ordinances, regulations, and HUD's Physical Condition Standards found in 24 C.F.R. § 5.703. If Post-Closing Repairs are required, this information will be disclosed in the attachments to this Invitation, with a list of HUD-required repairs on Form HUD-9552. HUD has estimated the cost of these repairs. Actual costs ultimately incurred by the Approved High Bidder/Owner may be more or less than the estimates.
26. *Principal*: (a) an officer, director, owner, partner, principal investigator, or other person within an entity with management or supervisory responsibilities related to a covered transaction; or (b) a consultant or other person, whether or not employed by the participant or paid with Federal funds, who (1) is in a position to handle Federal funds; (2) is in a position to influence or control the use of those funds; or, (3) occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction; or (c) a person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. For a complete definition, see 2 C.F.R. §180.995 – Principal, as supplemented by 2 C.F.R. §2424.995.
27. *Property (aka Project)*: The multifamily housing property for sale in this Invitation and all real and personal property appurtenant thereto.
28. *Property Summary*: Exhibit 3 to the Invitation that contains summarized information about the Property and contact information for the Realty Specialist. The information contained therein is intended to help Bidders perform due diligence and is the extent of information that HUD will give about the Property.
29. *Realty Specialist*: HUD staff member, identified on the cover page and the Property Summary, who can be contacted concerning the Property or the Foreclosure Sale.
30. *Second High Bidder*: The responsive Bidder with the second highest Bid at the Foreclosure Sale. If sale to the High Bidder is not completed, HUD may contact the Second High Bidder to accept its Bid.
31. *Use Agreement*: The Foreclosure Sale Use Agreement, if applicable, will be attached to this Invitation. The Approved High Bidder will execute at Closing, and which will run with the land to bind the Owner and any permitted successors and assigns, to purchase and/or manage the Property. This may be an addition to any deed restrictions.

## **SECTION I: INTRODUCTIONS AND GENERAL INFORMATION**

1. *All Cash, As-Is Sale*: The Foreclosure Sale is an "All Cash, As-Is" sale. All Bidders are expected to perform their own due diligence to reach their own conclusions as to physical condition, number and occupancy of revenue producing units, estimates of operating costs, repair costs (where applicable), and any other factors bearing on the valuation of the Property. While HUD has exercised care to provide accurate information, all information provided herein is solely for interested Bidders to determine whether or not the Property is of such type and general character to purchase. HUD makes no warranty as to the accuracy of this information. A Bidder's failure to be fully informed as to the conditions of the Property, including its value, or any conditions of the Foreclosure Sale do not constitute ground for any claim or demand against HUD or the adjustment or withdrawal of any Bid, including the High Bid. HUD shall consider all Bids to have been made with full knowledge of the terms, conditions, and requirements contained in this Invitation.



2. *Contingencies*: HUD will not consider Bids that are contingent upon a Bidder obtaining financing to purchase the Property or any other contingency. By signing the Acknowledgement, the High Bidder represents that its High Bid is assured.
3. *Modification to the Invitation*: Any oral modification by any HUD representative that changes or supplements this Invitation, or any conditions hereof, is unauthorized, unenforceable, and shall confer no right upon a Bidder, including the Approved High Bidder. All modifications to the Invitation will be in writing.
4. *Bid Acceptance or Rejection*: At any time prior to Closing and upon its sole discretion, HUD reserves the right to reject any and all Bids, and to reject the Bid of any Bidder HUD determines is ineligible, lacks the experience, ability, or financial responsibility necessary to own and manage the Property in a manner acceptable to HUD.
5. *Cancellation of Sale*: HUD reserves the unconditional right to cancel this Invitation and reject any and all Bids at any time prior to Closing without recourse to HUD. HUD is not liable for any expenses incurred by a Bidder or its related parties.

## **SECTION II: PRIOR TO THE FORECLOSURE SALE**

1. *General*: In accordance with the intent of the National Housing Act, participants of HUD's housing programs must be responsible individuals and organizations who honor their legal, financial, and contractual obligations. HUD will review and approve the Previous Participation Certification of High Bidder's Controlling Participants before Closing.
2. *Due Diligence*: Interested parties, their agents, and advisors should carefully review the information in this Invitation and any additional information HUD makes available prior to the Foreclosure Sale. As a general policy, HUD will not release the most current financial information for the Property other than what has been disclosed in this Invitation and the Property Summary. Bidders should undertake their own investigation to evaluate the Property and independently assess the benefits and risks associated with the Property. Bidders should be confident in their Bid amount and be prepared to follow through Closing. HUD will not negotiate to reduce any Bid amount after accepted at the Foreclosure Sale.
3. *Bidders Pre-Foreclosure Sale Conference Call*: HUD may decide to hold a conference call for all interested parties prior to the Foreclosure Sale. If a call is scheduled, information will be found on the Property Disposition website. On the call, HUD will discuss the Invitation, review the rules of the Foreclosure Sale, provide updates on the Property, and answer any questions interested parties may have. Following the conference call, all questions and answers will be posted to the same website to ensure that all interested parties receive the same information.
4. *Site Visit*: To give interested parties additional information and view portions of the Property, HUD may choose to conduct an Open House or a Virtual Tour. If a tour is available, information will be found on the Property Disposition website. HUD is not always in a position to provide a tour prior to a Foreclosure Sale. If an in-person tour is scheduled, a HUD representative will be present to walk through the Property. HUD will establish the scope of the site visit. Not all areas of the Property may be available for viewing. HUD will not accept Bids, nor provide information outside of this bid kit, during a Site Visit.

5. *Electronic Registration*: Registration in HUD's Business Partner Registration prior to the Foreclosure Sale is not mandatory to submit a Bid. **However, Electronic Registration will be required before Closing.** A Bidder may complete this step prior to the Foreclosure Sale to reduce the amount of time between the Foreclosure Sale and Closing. HUD can take up to two (2) weeks to process registration requests. While the High Bidder is the only Bidder required to complete the Previous Participation Certification (e-2530), every Bidder may register in the event they become the High Bidder.
- a. If a Bidder **has not previously conducted business with HUD**, the Bidder must first register with HUD's Business Partner Registration before submitting a Previous Participation Certification (e-2530) application. The Bidder should follow these steps:
    - i. A Bidder accesses HUD's [Business Partner Registration](#) to register a new entity with HUD. The buyer then waits twenty-four (24) hours to access the Secure Systems [Coordinator or User Registration link](#) to complete the registration for the individual that will have access to Secure Systems. The applicant will receive a Coordinator/User ID within two (2) weeks. With these credentials, a Bidder then complete the required Previous Participation Certification (e-2530) in the next step.
    - ii. A Bidder then completes a Previous Participation Certification (e-2530) application in HUD's single sign-on page and then selects [Active Partners Performance System \(APPS\)](#).
  - b. Bidders that **have previously conducted business with HUD** can complete the Previous Participation Certification (e-2530) application prior to the Foreclosure Sale by accessing [Active Partners Performance System \(APPS\)](#).
6. *Questions*: Please direct questions related to this Invitation and the Foreclosure Sale to the Realty Specialist identified in the Property Summary, after you have read this packet in its entirety. The Realty Specialist cannot provide information other than information in this Bid Kit or information posted on the Property Disposition Website.

### SECTION III: DURING THE FORECLOSURE SALE – REGISTERING AS A BIDDER AND SUBMITTING BIDS

1. *General*: The Foreclosure Sale is an oral, open bid sale that takes place at the date, time, and place as shown on the cover of this Invitation. HUD designated a Foreclosure Commissioner to conduct the Foreclosure Sale. The Foreclosure Commissioner is empowered with the authority to conduct the Foreclosure Sale in an appropriate manner, using the rules and guidelines herein as the framework for the Foreclosure Sale.
2. *Bidder Eligibility*: Pursuant to 24 CFR §27.20, the defaulting mortgagor or any Principal, successor, Affiliate, or assignee thereof on the multifamily mortgage being foreclosed is not eligible to bid or otherwise acquire the Property at this Foreclosure Sale. Additionally, the FHA-lender or any Principal, successor, affiliate, or assignee thereof on the multifamily mortgage being foreclosed is not eligible to Bid or otherwise acquire the Property.
3. *Bidder Enrollment*: At the Foreclosure Sale and prior to the commencement of bidding, a Bidder must enroll with the Foreclosure Commissioner. The Foreclosure Commissioner will ask for the name of the Bidder, the name of the individual representing the Bidder, and the Bidder's address and contact information. The Foreclosure Commissioner will also collect the Bidder's Earnest Money Deposit and assign each enrolling Bidder a unique number. The unique number will be used to identify each Bidder during the Foreclosure Sale. The Foreclosure Commissioner will commence the Foreclosure Sale when all Bidders in attendance are enrolled. Enrollment as a Bidder does not mean that Bidder is qualified to purchase the Property.

4. *Earnest Money Deposit:* The Foreclosure Commissioner must receive the Earnest Money Deposit before the Foreclosure Sale commences. The Earnest Money Deposit shall be paid only in the form of certified funds or cashier's check made payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. If a Bidder is a financial institution, the Earnest Money Deposit must be drawn from a different financial institution. Deposits will generally be set according to the following schedule:

<b>Project Size</b>	<b>Earnest Money Deposit</b>
200 units or more	\$100,000
100 to 199 units	\$75,000
50-99 units	\$50,000
25-49 units	\$25,000
5-24 units	\$10,000

5. *Bid Requirements:* A responsive Bid must meet all the terms of the Foreclosure Sale. Each Bid shall be firm, unconditional, and fixed in an amount certain. Special conditions, alterations, or deletions will render a Bid non-responsive. A Bidder must submit a Bid in one of two ways:
- Written Bids:* HUD will only accept a written Bid if received in a sealed envelope and accompanied with the Earnest Money Deposit. The Foreclosure Commissioner must receive a written Bid at least two (2) business days prior to the Foreclosure Sale; the date is stated on the cover page of this Invitation. There is no guarantee written Bids received by the Foreclosure Commissioner less than two (2) business days before the Foreclosure Sale will be accepted, even if the bid has the appropriate postmark. No delay will warrant an exception. If a Bidder desires to modify or alter a written bid after the Foreclosure Commissioner accepts, the Bidder must do so in writing at least twelve (12) hours prior to the time the Foreclosure Sale commences.
  - Oral Bids:* At the Foreclosure Sale and using the assigned number provided, a Bidder orally states a Bid. Oral Bids can be modified orally up until the Foreclosure Commissioner declares the High Bid.
  - Electronic Bids:* HUD will reject and will cause the Foreclosure Commissioner to reject bids and bid modifications received through e-mail, facsimile, or other electronic means. Electronic Bids are not valid bids. All bids must be submitted in accordance with this Invitation.
6. *Minimum Bid:* If HUD has a minimum Bid amount, HUD will disclose it in the cover page. If no minimum Bid is listed, HUD does not have a minimum Bid to purchase the property.
7. *High Bidder at the Foreclosure Sale:* After reviewing all Bids, the Foreclosure Commissioner concludes the Foreclosure Sale and orally notifies the High Bidder and Second High Bidder of their respective bidding positions. The Property will be sold to the High Bidder. The Foreclosure Commissioner will retain the Earnest Money Deposit for the High Bidder and immediately cause the High Bidder to execute the Acknowledgment. All collected Earnest Money Deposits from the other Bidders will be returned before the Bidder leaves the Foreclosure Sale. The Foreclosure Commissioner will return the Earnest Money Deposits received for written Bids within seven (7) business days.
8. *Continuance of Offers:* Even though the Earnest Money Deposit is returned to unsuccessful Bidders, HUD considers all received Bids at the Foreclosure Sale as continuing offers until Closing. HUD will keep the contact information of the Second High Bidder in the event that Closing with the High Bidder does not occur. HUD may contact the Second High Bidder to accept the previously submitted Bid.

## SECTION IV: AFTER FORECLOSURE SALE AND LEADING UP TO CLOSING

1. *Post-Bid Documents*: The High Bidder must submit the following items to the Realty Specialist within **Five (5) business** days of the Foreclosure Sale in order for HUD to begin its review process. The following documents must show the High Bidder's capacity to own and operate the Property. Based on the required information and documents set forth below, as well as any additional information independently obtained and verified by HUD, in its sole discretion, HUD will determine whether the High Bidder is eligible, has the requisite experience, qualification, and financial capacity to purchase the Property.

**FAILURE TO SUBMIT THE REQUIRED DOCUMENTS WITHIN THE INDICATED TIME FRAME MAY BE GROUNDS FOR HUD TO REJECT THE HIGH BID AND RETAIN THE HIGH BIDDER'S EARNEST MONEY DEPOSIT.**

- a. Previous Participation Certification (HUD 2530): Submit a Previous Participation Certification for the High Bidder and, if applicable, the intended Management Agent.
  - i. *Electronic Filers*: If the High Bidder has prior access to HUD's Secure Systems, after previously registering through HUD's Business Partner Registration as described in the Invitation, it should submit an electronic Previous Participation Form using the Active Partners System (APPS) and provide proof of the electronic submission to HUD.
  - ii. *Paper Filers*: If the High Bidder has not previously registered in APPS, the High Bidder should provide a completed paper HUD 2530 with original signatures. The High Bidder entity must have an established tax identification number (TIN) and each individual must list their social security number (SSN). High Bidder should transmit to HUD using an encrypted file. Additionally, High Bidder should include (1) an organizational chart for the ownership entity that shows each ownership tier and the roles of each Controlling Participant and each member with more than 25% ownership interest; and, (2) the ownership entity's organizational documents, include Articles of Incorporation, Certificate of Incorporation, Operating Agreement, Partnership Agreement, Charter, Bylaws, Agent Certification, and proof of TIN, as applicable.
- b. Certification of Substantial Compliance: The High Bidder must submit a complete and original Certification of Substantial Compliance, located in attachments to this Invitation. If HUD determines that properties disclosed by the High Bidder are not in substantial compliance with federal regulations and/or state and local codes, HUD may reject the High Bidder as not qualified to purchase the Property. The High Bidder may forfeit the Earnest Money Deposit as a result of such determination.
- c. Written Statement of Experience: The High Bidder must submit a written Statement of Experience that demonstrates at least five (5) years of experience successfully owning and managing properties similar to the Property. Please do not exceed five (5) pages per property and provide the following information for all properties owned by the High Bidder:

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- i. The location of other owned multifamily properties.
    - ii. The number of units and construction type (garden, walk-up, hi-rise, etc.) for each property.
    - iii. The type of management for each property.
    - iv. Whether the properties have government assistance (e.g., project-based or tenant-based assistance, tax-credit, municipal grants, etc.)
    - v. The physical, economic, and social needs of each property and how the High Bidder has addressed them.
    - vi. The High Bidder's plan to satisfy the conditions of the Foreclosure Sale; implement a sound financial and physical management program for the property; respond to the needs of the tenants; work cooperatively with resident organizations; provide organizational staff and financial resources; provide services, maintenance, and utilities to the Property.
  - d. Personal Financial and Credit Statement: The High Bidder must submit [Form HUD 92417](#) for each proposed Principal of the High Bidder.
2. *Acceptance of High Bid*: HUD does not fully accept the High Bid until the High Bidder submits all Post-Bid Documents, HUD reviews the Post-Bid Documents, and HUD, in its sole discretion, determines the eligibility of the High Bidder. HUD will notify the High Bidder of its determination in writing. Upon HUD's determination that the High Bidder is qualified, the High Bidder will be confirmed as the Approved High Bidder.
  3. *Rejection of High Bid*: After review of the Post-Bid Documents, HUD may determine that the High Bidder is not qualified to purchase the Property. HUD may reject the bid due to High Bidder's ineligibility, lack of qualifications, or failure to comply with the Invitation. HUD will notify the High Bidder of this determination in writing, as promptly as possible and generally, within thirty (30) days after the Foreclosure Sale. HUD may then contact the Second High Bidder.
  4. *Impact on Earnest Money Deposit*:
    - a. If HUD accepts the High Bid, the Approved High Bidder's Earnest Money Deposit will be credited toward the Purchase Price.
    - b. If HUD rejects the High Bid because the amount is unacceptable, HUD will refund Earnest Money Deposit will be refunded.
    - c. If HUD determines the High Bidder is not qualified to purchase the Property and the High Bidder has complied with the requirements of this Invitation, HUD will refund the Earnest Money Deposit.
    - d. If HUD finds that the High Bidder made misrepresentations or material omissions in its submission, or failed to comply with the Invitation, HUD will keep the Earnest Money Deposit.
  5. *Extensions*: The Approved High Bidder may request an additional thirty (30) calendar day period to allow more time for the Closing to occur. A written request clearly stating the reason for the Approved High Bidder's inability to close the sale, by the scheduled Closing date or by the end of any Extension Period, must be received within ten (10) days prior to the Closing date or the end of any Extension Period.
  6. *Post Bid Site Visit*: HUD will not grant any High Bidder's request to tour, visit, or otherwise have access to the Property prior to Closing. To this end, HUD encourages participation in the site visit before the Foreclosure Sale, if available.
  7. *Closing Date*: The time and place for the Closing will be determined by HUD. The Closing date will occur within the time specified in the Acknowledgment. HUD reserves the right to extend the Closing date or revise the location.

## SECTION V: CLOSING

1. *Conveyance:* In accordance with the Act, HUD will convey the Property to the Approved High Bidder through a Foreclosure Deed. The Foreclosure Deed will not contain any warranties of title. The Foreclosure Deed is not subject to a redemption period by the defaulting owner of the Property. When the Invitation indicates, the Approved High Bidder and HUD will execute the Use Agreement and record as part of the Foreclosure Deed.
2. *Amounts Due at Closing:* The Foreclosure Sale is an all-cash sale. HUD is not offering financing to purchase the Property. At Closing, the Approved High Bidder will pay the Balance. HUD will not proceed with the Closing without acceptable receipt of the Balance, which shall be paid only in the form of certified funds or cashier's check made payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
3. *Closing Expenses:* HUD will pay all recordation fees for the Foreclosure Deed, and if applicable, the Use Agreement. Irrespective of local custom, the Approved High Bidder shall pay all remaining expenses including, but not limited to, all documentary stamp taxes and any costs incurred in connection with a review of title or title insurance.
4. *Prorations:* Approved High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water, sewer, gas, electric, and any other encumbrances not extinguished by the Foreclosure Sale. These amounts will not be prorated from the High Bid or attributed to the Balance. If HUD received any rental payments from tenants living in the Property on the day of Closing, those rental payments will not be prorated nor credited toward the High Bid or attributed to the Balance.
5. *Extension Fees:* If Approved High Bidder paid Extension Fees and the Closing occurs prior to the expiration of an Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period will be credited toward the Balance at Closing. This is the only amount HUD will prorate.

*End of Invitation*

## EXHIBITS AND ATTACHMENTS

Exhibit 1: Legal Description

Exhibit 2: Property Photos

Exhibit 3: Property Summary

Exhibit 4: Declaration of Restrictive Covenants (CHA)

Exhibit 5: Ground Lease Agreement (CHA)

Attachment A: \_\_\_\_\_

Attachment B: \_\_\_\_\_

Attachment C: \_\_\_\_\_

Attachment D: \_\_\_\_\_

Attachment E: \_\_\_\_\_

Attachment F: \_\_\_\_\_

Attachment G: \_\_\_\_\_

Attachment H: \_\_\_\_\_

Attachment I: \_\_\_\_\_

Attachment J: \_\_\_\_\_

Attachment K: \_\_\_\_\_

Attachment L: \_\_\_\_\_

Attachment M: \_\_\_\_\_

## EXHIBIT 1

### Legal Description of Development

#### Parcel 1 (Site 1):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

Lot 24 (except from said Lot 24 so much thereof as has been taken or used and occupied for street purposes, being that part of said Lot 24 lying South of a straight line drawn from a point on the East line of said Lot 24, 15.38 feet North of the Southeast corner thereof, to a point on the West line of said Lot 24, 15.31 feet North of the Southwest corner thereof) in Block 2 in McKey's Addition to Hyde Park, being a subdivision made by Circuit Court Commissioners in partition of that part of the South 10 acres of the Northwest Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, lying West of the West line of Vincennes Avenue, together with Lots 13 to 23, inclusive, in Block 6 in Cleaverville Addition, a Subdivision in the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian.

Also,

Lot 11 (except the East 32.66 feet thereof, except the North 10 feet taken or used for alley and except that part thereof taken or used for 41st Street, being that part of said Lot 11 lying South of a straight line drawn from a point on the East line of said Lot 11, 15.57 feet North of the Southeast corner thereof, to a point on the West line of said Lot 11, 15.38 feet North of the Southwest corner thereof) in Block 6 of Cleaverville Addition, aforesaid, all in Cook County, Illinois.

P.I.N.: 20-03-210-046 and Part of 20-03-210-075

Old Address: 550 East 41st Street, Chicago, IL

New Address: 600 E. 41st Street, Chicago, IL

#### Parcel 2 (Site 2):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

Lots 5 to 8, inclusive, in T.M. Oviatt's Resubdivision of Lots 29 to 33, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-215-001, 002, 003, 004, 005 & 006



Old Address: 701-717 East 41st Street, Chicago, IL

New Address: 703 and 707 E. 41st Street, Chicago, IL

Parcel 3 (Site 3):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

The North Half of Lots 4, 5 and 6, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-219-021, 022 & 023

Old Address: 723-39 East Bowen St., Chicago, IL

New Address: 725, 729 and 735 E. Bowen Avenue, Chicago, IL

Parcel 4 (Sites 1, 2 & 3): All buildings and other improvements now or hereafter located on the property described in Parcels 1, 2 and 3 above.

Parcel 5 (Site 4):

Lot 5 (except the West 20 feet thereof) and the West 38 feet of Lot 6 in Parker's Subdivision of Lot 22 and the South Half of Lots 23 to 26, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-214-038, 039 and Part of 040

Old Address: 628-36 East Bowen St., Chicago, IL

New Address: 630 E. Bowen Avenue, Chicago, IL

Parcel 6 (Site 6):

Lot 1 in O.M. Well's Subdivision of Lots 26 to 38, inclusive, in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Also

Lots 39 and 40 in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of

the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-218-042, 043 & 044

Old Address: 630-634 East 42nd St., Chicago, IL

New Address: 632 E. 42nd Street, Chicago, IL

Parcel 7 (Site 7):

Lot 41 in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-218-045

Old Address: 636 East 42nd St., Chicago, IL

New Address: 638 E. 42nd Street, Chicago, IL

Parcel 8 (Site 9):

Lots 6 to 9, inclusive, in W. J. Anderson's Subdivision of Lot 32 in Margaret Johnston's Subdivision of the South Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-224-005, 006, 007, & 008

Old Address: 4207-13 South St. Lawrence, Chicago, IL

New Address: 4211 S. Lawrence, Chicago, IL

Parcel 9 (Site 10):

Lots 13 and 14 in George S. Bowen's Subdivision of that part of the South Half of the South Half of the Southwest Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, lying East of Vincennes Avenue, in Cook County, Illinois.

P.I.N.: 20-03-223-009 & 010

Old Address: 519-23 East 42nd Place, Chicago, IL

New Address: 519-521 E. 42nd Place, Chicago, IL

Parcel 10 (Site 12):

Parcel 14 (Site 18):

Lots 1, 2, and 3 in Crawford's Subdivision of Lots 7 and 8 of Lot 3 in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-403-004, 005 & 006

Old Address: 4313-15 South St. Lawrence, Chicago, IL

New Address: Same

Parcel 15 (Site 19):

The South 68.5 feet (except the West 8.0 feet thereof taken or used for alley and except the East 33.0 feet thereof taken for street) of the East Half of Lot 10 in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: Part of 20-03-403-036, 037 & 038

Old Address: 4356-58 South Champlain, Chicago, IL

New Address: Same

Parcel 16 (Site 20):

The North 59 feet of that part of Lot 4 lying West of the East 133.75 feet thereof (except the West 33.0 feet thereof taken for street and except that part thereof lying Easterly of the Westerly line of the public alley as opened, said Westerly line being described as beginning at the intersection of the South line of the North 59.0 feet of said Lot 4 with a line 141.75 feet West of and parallel with the East line of said Lot 4; thence Northerly along said last described parallel line, 54.0 feet to a point 5.0 feet South of the intersection of said parallel line with the North line of said Lot 4; thence Northwesterly to a point on said North line of Lot 4, 5.0 feet West of the intersection of said North line with said line 141.75 feet West of and parallel with the East line of said Lot 4, said last described point being the terminus point of the Westerly line of said alley herein described) in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-404-006 & 007

Old Address: 4313-15 South Champlain, Chicago, IL

New Address: Same

Parcel 17 (Site 21):

Lots 1 to 5, inclusive, (except the South 6.0 feet of said Lots 1 and 5 taken or used for alley) in Belding's

Subdivision of Lot 2 (excluding that part taken for street) of Block 1 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-405-001, 002 & 003

Old Address: 701-727 East 43rd St., Chicago, IL

New Address: 705, 709, 713, 717 and 723 E. 43rd St., Chicago, IL



## Exhibit 2

### Property Photos



**600 E. 41st Street (Townhouse)**  
**4 Units (4 - 2 BR)**



**703-707 E. 41st Street**  
**8 Units (4 - 1 BR, 4 - 2 BR)**



**725, 729 and 735 E. Bowen Avenue**  
**12 Units (4 - 1 BR, 2 - 2 BR, 4 - 3 BR, 2 - 4 BR)**





**630 E. Bowen Avenue**  
4 Units (2 – 1 BR, 2 – 3 BR)



**632 E. 42nd Street**  
4 Units (2 – 2 BR, 2 – 4 BR)



**638 E. 42nd Street**  
3 Units (3 - 2 BR)







**4211 S. Lawrence Avenue  
4 Units (2 - 1 BR, 2 - 3 BR)**



**519-521 E. 42nd Place (Townhouse)  
6 Units (6 - 2 BR)**



**4239-4241 South St. Lawrence (Townhouse)  
6 Units (6 - 2 BR)**





**600-602 East 43rd St.  
6 Units (1 – 1 BR, 4 - 2 BR, 1 – 3 BR)**



**606-608 East 43rd St.  
6 Units (1 – 1 BR, 4 - 2 BR, 1 – 3 BR)**



**601-603 East 43rd St. (Townhouse)  
6 Units (1 – 1 BR, 4 - 2 BR, 1 – 3 BR)**





**4313-4315 South St. Lawrence (Townhouse)**  
**6 Units (6 - 2 BR)**



**4356-4358 South Champlain (Townhouse)**  
**6 Units (6 - 2 BR)**



**4313-4315 South Champlain (Townhouse)**  
**6 Units (6 - 2 BR)**



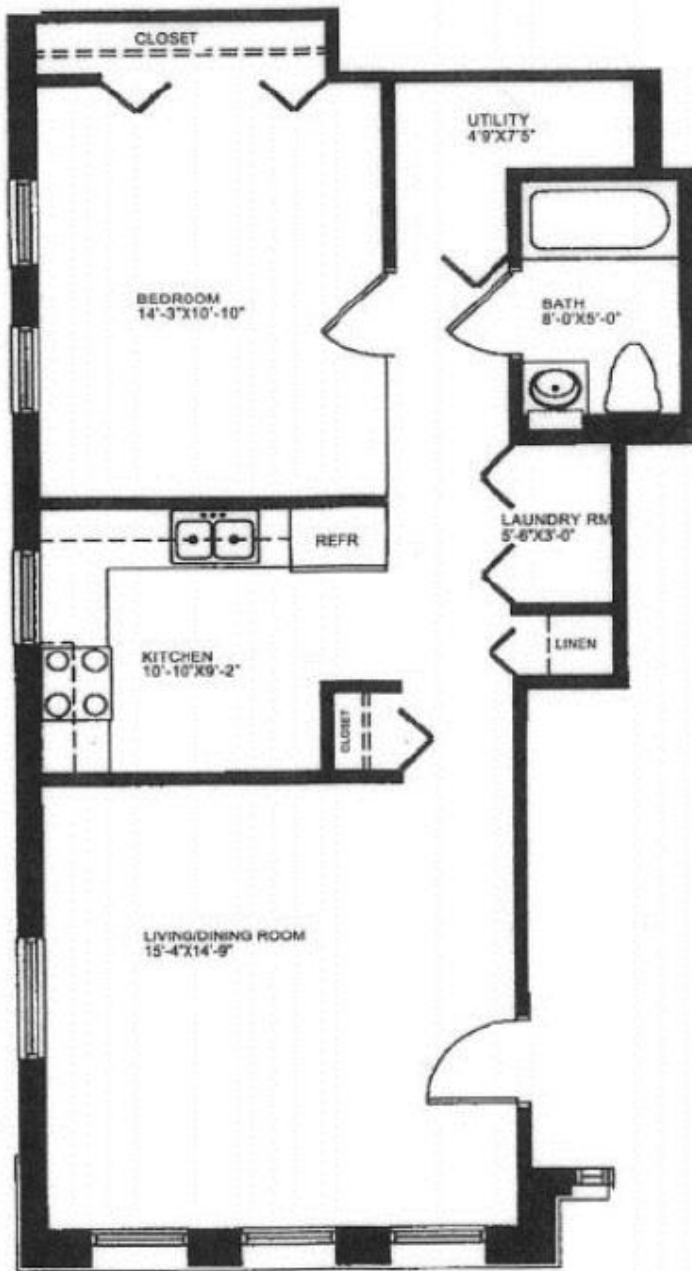


**705, 709, 713, 717 and 723 E. 43rd St.  
20 Units (8 - 1 BR, 2 - 2 BR, 6 -3 BR, 4 - 4 BR)**

# 1 Bedroom 1 Bath Unit Sample

700 SF

(May not apply to all buildings)



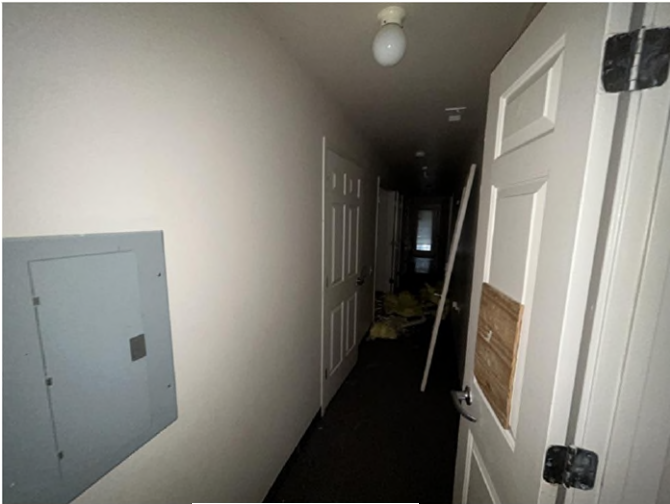
Bedroom



Bathroom



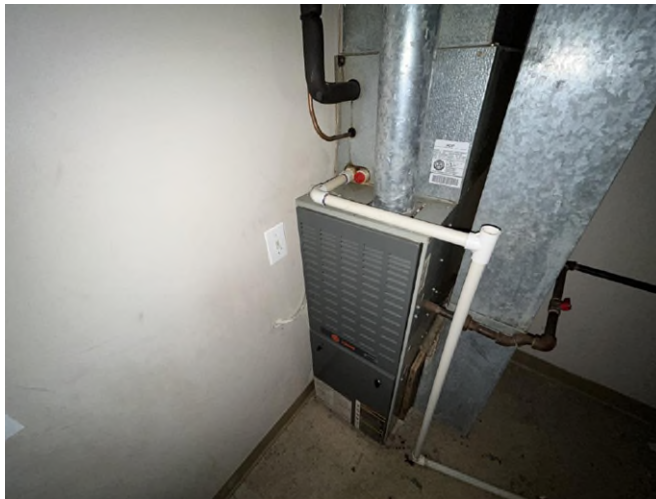
Kitchen



**Unit Hallway**



**Living Room**



**Mechanical Room**



# 2 Bedroom 1 Bath Unit Sample

936 SF

(May not apply to all buildings)



Dining Room/Kitchen



Bathroom



**Living Room**

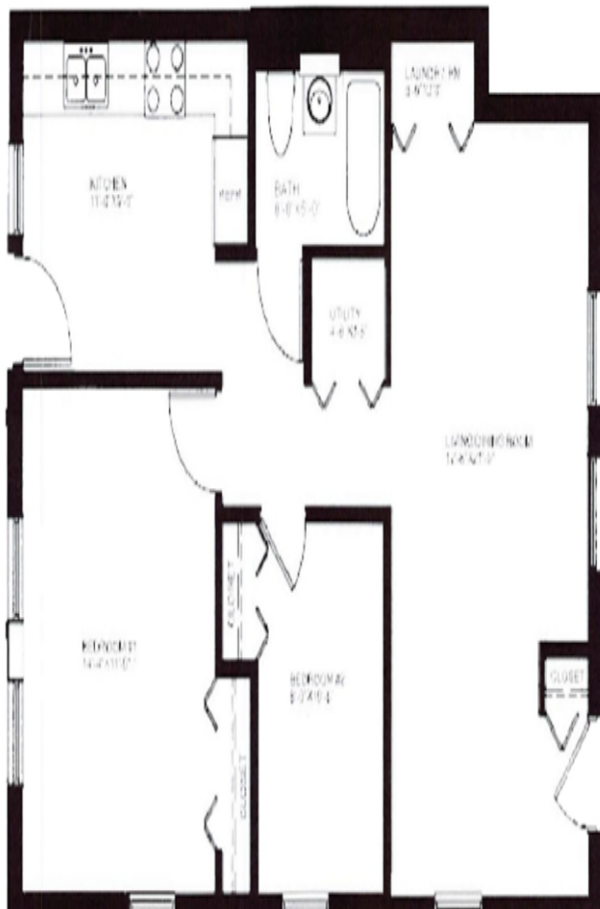


**Bedroom**

## **2 Bedroom 1 Bath Unit**

**936 SF**

(May not apply to all buildings)



**Living Room**



**Kitchen**



**Bedroom**



**Bathroom**



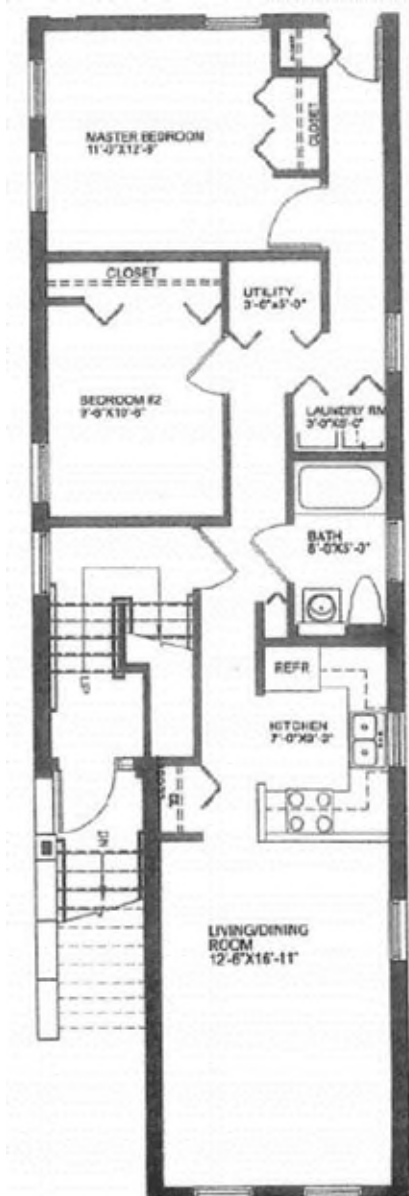
**Mechanical Room**



# 2 Bedroom 1 Bath Unit Sample

800 SF

(May not apply to all buildings)



Master Bedroom



Bathroom



Kitchen



Living Room



# 3 Bedroom 2 Bath Unit Sample

1,105 SF

(May not apply to all buildings)



**Kitchen**



**Bedroom**

**Hallway to Master Bedroom**



**Bathroom**

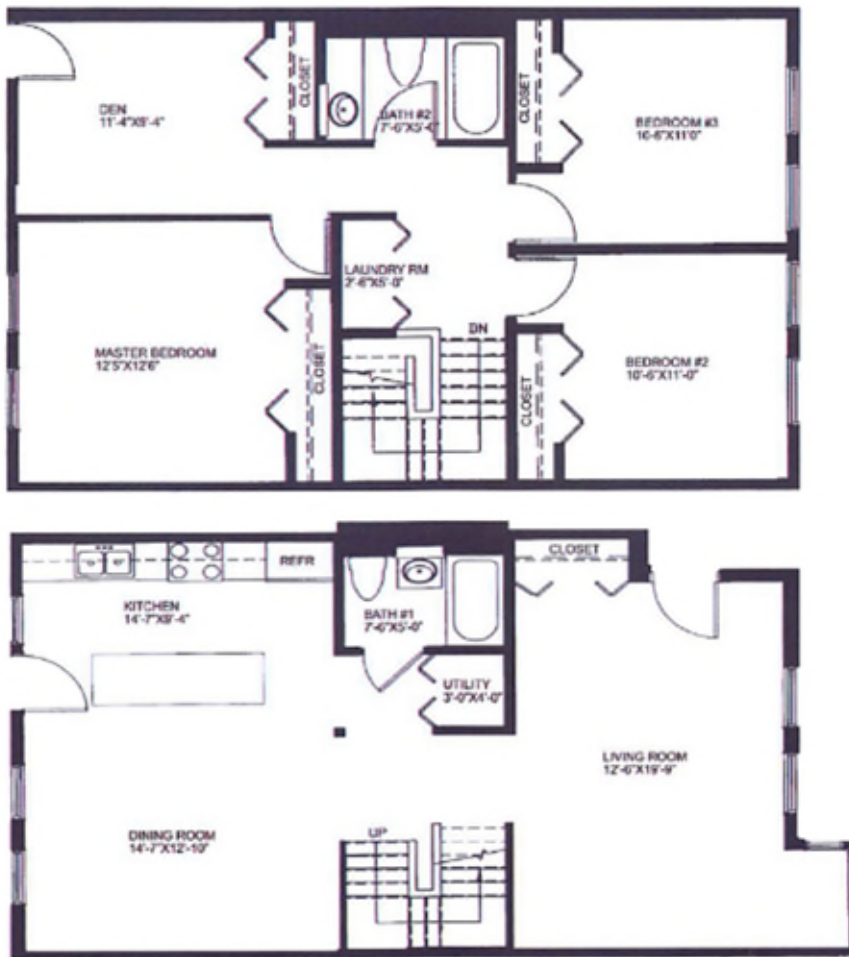
**Hallway from kitchen to living room**



# 3 Bedroom 2 Bath Unit Sample

1,548 SF

(May not apply to all buildings)



Dining Room

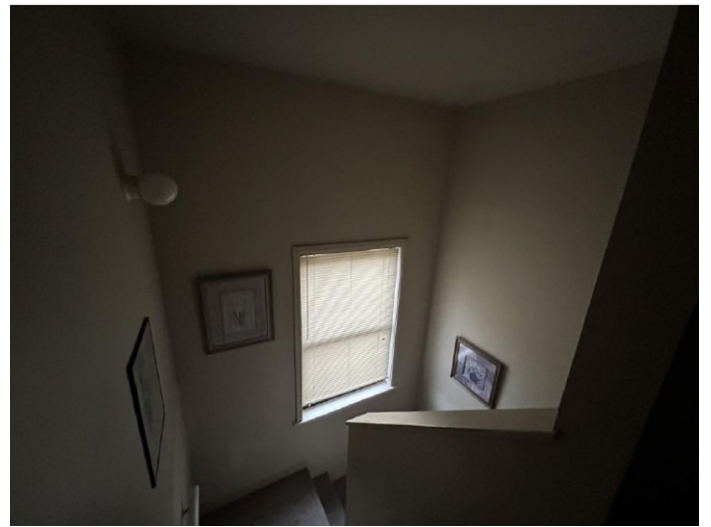


Living Room (standing at entry door)





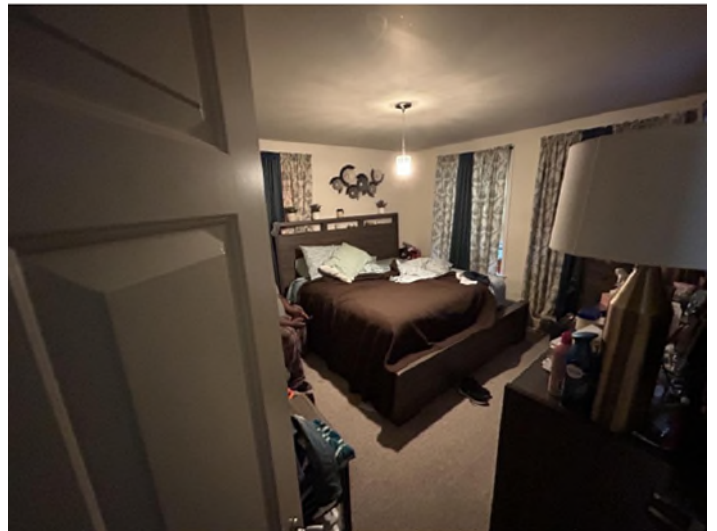
**Kitchen**



**Stairs**



**One of Three Bedrooms (upstairs)**



**One of Two Bathrooms (upstairs)**

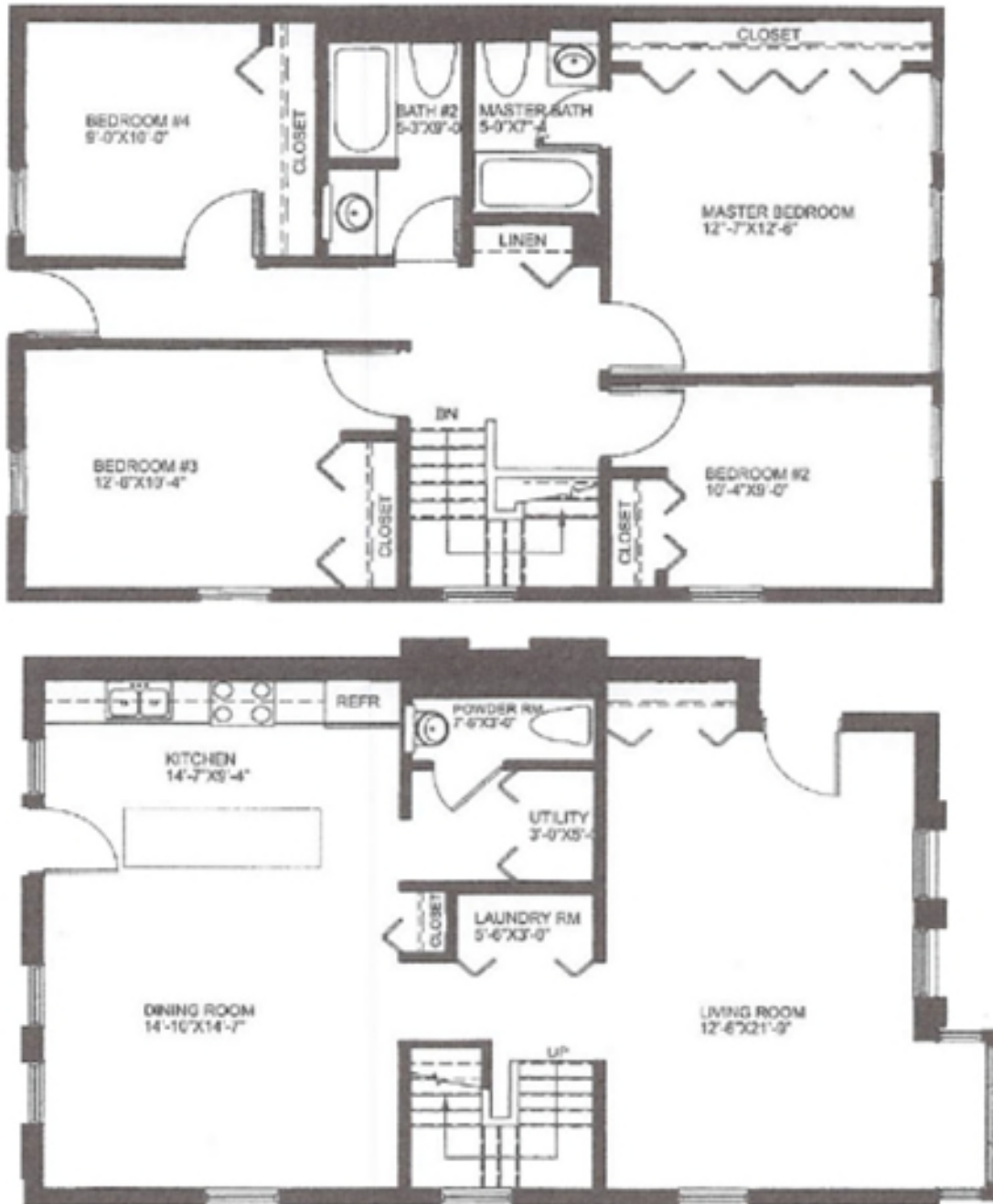


**Bathroom 2 different views**

# 4 Bedroom 2 Bath Unit Sample

1,649 SF

(May not apply to all buildings)





## Maintenance Office ~ Located at 600 E. 41st Street





## Exterior pictures throughout complex



Condensing units



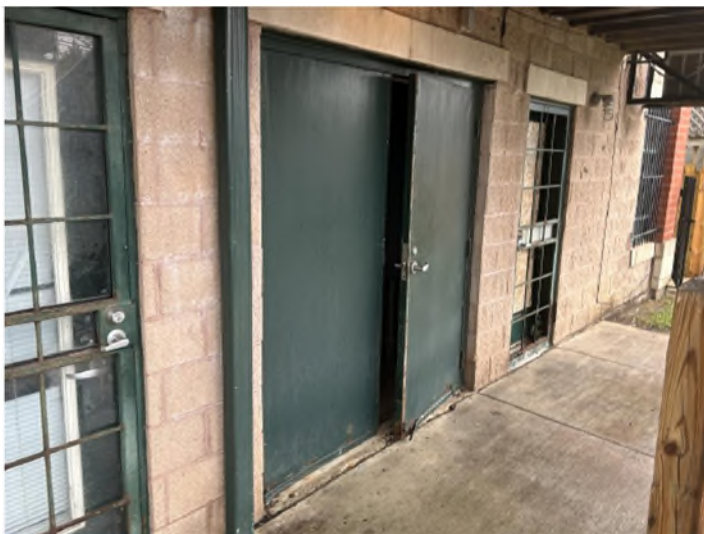
stall garage for property maintenance use



Exterior entry door



Gas meter bay



Electrical closet service door



Common corridor





**Common corridor and tenant mailboxes**



**Main entry – metal storefront**



**Fire & Light safety – Emergency exit sign**



**Electrical closet – switchgear and meter bay**



**Asphalt parking**



**Concrete stairs**



## Exhibit 3

### Property Summary

Property Name			
Address	City	State	Zip
County			
Resident Type			

#### Rentable Square Footage

Total Residential Units	Subsidized	No. Commercial Spaces
Revenue	Unsubsidized	Commercial Rentable Sqft
Non-Revenue		Total Rentable Sqft

#### Building Site

No. of Buildings	Approx. Site Acreage
Stories per Building	Foundation
Type of Building	Roof Type/Age
Elevator(s) per Building	Exterior
Year Built	Flooring
Rehabilitation Year	Type of Rehabilitation

#### Mechanical Systems

#### Utilities

#### Parking

Heating	Water	Assigned	Self Park
Air Conditioning	Sewer	Covered	Off-site
Hot Water	Garbage	Garage	<b>Total</b>

Apartment Features	Owner Expense	Resident Expense	Community Features
Air Conditioning			Laundry Room
Dishwasher			Parking Type
Microwave			Exercise Room
Garbage Disposal			Picnic Area
Range/Oven			Playground Equipment
Refrigerator			Swimming Pool
Blinds/Drapes			Jacuzzi/Comm Whirlpool
Patio/Balcony			Dog Park
Washer/Dryer (in unit)			Business Center
W/D Connection			Community Space
Fireplace			Gated Entry/Security System
Other:			Other:

**Historical Occupancy (if available)**

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg

**Historical Rents**

Type	No. of Units	Unit Sqft	Unit \$ Rent (per/mo)	Market Rent/Comps

**Historical Expenses** Aged Payables report shows a running balance of unpaid expenses, so historical amounts may not reflect actual figures.

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg

**Use Restrictions (if applicable)****Subsidy Contract Information (if applicable)****Contact Information:****HUD Realty Specialist****Foreclosure Commissioner (for written bids only)**

<b>Name:</b>	<b>Name:</b>
<b>Address:</b>	<b>Address:</b>
<b>City/State/Zip:</b>	<b>City/State/Zip:</b>
<b>Phone:</b>	<b>Phone:</b>
<b>Email:</b>	<b>Email:</b>

Building #	Address (per rent roll)	Parcel ID Number	Land Size (SF)
1	600 East 41st Street	20-03-210-046	13,747
		20-03-210-079	
2	703-707 East 41st Street	20-03-215-043	12,018
3	725-735 East Bowen Avenue	20-03-219-050	24,568
4	630 East Bowen Avenue	20-03-214-052	10,045
		20-03-214-053	
		20-03-214-054	
5	632 East 42nd Street	20-03-218-042	2,797
6	638 East 42nd Street	20-03-218-060	8,925
7	4211 South St. Lawrence	20-03-224-055	8,263
8	519-521 East 42nd Place	20-03-223-040	6,098
9	4239-4241 South St Lawrence	20-03-224-019	6,299
10	600-602 East 43rd Street	20-03-224-054	13,626
11	606-608 East 43rd Street	20-03-224-054	
12	601-603 East 43rd Street	20-03-403-001	7,087
13	4313-4315 South St. Lawrence	20-03-403-042	7,503
14	4356-4358 South Champlain	20-03-403-043	8,708
15	4313-4315 South Champlain	20-03-404-043	7,906
16	705-723 East 43rd Street	20-03-405-041	27,665
		<b>Total</b>	<b>165,255</b>

# DOCUMENT CERTIFICATION

· Certified to be a true and correct copy of that original

Declaration Of Trust And  
Restrictive Covenants

recorded December 20, 2000,

as Document # 01000563

in the office of the Recorder of Deeds,

Cook County, Illinois.

Date: December 20, 2000

Title Services, Inc.

by

W. H. Brown

3

After Recording Return

To: Office of the General Counsel  
Chicago Housing Authority  
200 W. Adams, Suite 2100  
Chicago, IL 60606

01000563

209341

DECLARATION OF TRUST  
AND RESTRICTIVE COVENANTS

THIS DECLARATION OF TRUST AND RESTRICTIVE COVENANTS (the "Declaration") is made and entered into as of this 1st day of December, 2000 by and between Chicago Housing Authority (the "Authority"), a public body corporate and politic, organized and existing under the laws of the State of Illinois, and Hearts United Phase II Limited Partnership (the "Owner"), an Illinois limited partnership, for the benefit of the UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT ("HUD").

WHEREAS, pursuant to the U.S. Housing Act of 1937, as amended, and any successor legislation (the "Act") the Authority and HUD have entered into Consolidated Annual Contributions Contract ("ACC") number: C-1014, dated June 13, 1972, as the same may be amended from time to time, which provides for grants and annual contributions to be made by HUD to assist the Authority in developing, maintaining, and operating its public housing units in accordance with all requirements applicable to public housing; and

WHEREAS, as of the date of execution of this Declaration, HUD and the Authority have entered into a certain Mixed Finance Amendment, Amendment No. 113 to the ACC ("Mixed Finance ACC Amendment"), adding the 27 public housing units and any associated appurtenances to the ACC under project number IL06-URD-002-I196 in the City of Chicago, County of Cook, in the State of Illinois (which, together with any fixtures and personalty related to such units and appurtenances shall hereafter collectively be referred to as

Box 430

the "**Project**"). The Project is part of a larger development known as The Quincy Apartments ("the **Development**").

WHEREAS, the Authority and the Owner have entered into a Regulatory and Operating Agreement, and other Agreements, whereby the Authority has agreed to provide the Owner with assistance obtained under the Mixed Finance ACC Amendment to pay a portion of the development costs of the Project, and with Operating Fund assistance as well as Capital Fund assistance as needed to assist in operating and maintaining the low income character of the public housing units in the Project;

WHEREAS, in return for the receipt of such assistance, the Owner has agreed to develop, operate and maintain the Project in accordance with all requirements applicable to public housing (including, without limitation, the ACC and all Federal statutory, executive order, and regulatory requirements, as those requirements now exist or as they may be amended from time to time) (hereafter collectively referred to as the "**Requirements**"), for the period of the low income use restrictions, as required by law and as further set forth below;

WHEREAS, as of the date of execution of this Declaration, title or leasehold interests to the Development is held by Owner; the Authority has entered into a ground lease with the Owner for three sites (being parcels 1, 2, and 3 in Exhibit A attached hereto and made a part hereof, hereinafter called the "Three Sites") on which a part of the Development is to be developed, and on which the Owner will construct and operate part of the Project."

NOW, THEREFORE, to assure HUD of the performance by the Authority and the Owner, and any successors in interest to the Authority and Owner, of the Requirements in connection with the development, operation and maintenance of the Project for the term of the low income use restrictions, the parties hereby acknowledge and agree:

1. The Owner does hereby acknowledge and declare that it is possessed of and holds title or leasehold interest to the Development in trust for the benefit of HUD, for the purposes hereinafter stated, the Development is to be located on the real property situated in the City of Chicago, County of Cook, in the State of Illinois, as more fully described in Exhibit A to this Declaration, and which is made a part hereof;
2. For the three sites that are subject to the ground lease, the Owner is possessed of and holds in trust for the benefit of HUD, for the purposes hereinafter stated, a leasehold interest in the Three Sites and all buildings and fixtures developed or to be developed thereon or appurtenant thereto, including all personalty related to the Project;
3. The Owner and Authority hereby declare and acknowledge that during the existence of the trust hereby created, the restrictive covenants set forth in this

Declaration shall be, and are, covenants running with the Project for the period of the low income use restrictions, and are binding upon the Owner and the Authority, and their successors and assigns, for such term and are not merely personal covenants of the Owner or the Authority;

4. The Authority shall cause the Owner to, and the Owner shall, develop, operate, and maintain the Project in compliance with the Requirements throughout the term of the low income use restrictions;
5. The Owner shall, pursuant to a Regulatory and Operating Agreement and Master Lease Agreement both dated December 1, 2000, for a 40-year period (or for such other period as may be required by law) maintain and operate the Project in accordance with the Requirements, which period may be extended for 10 years after the end of the period in which the public housing units in the Project receive Operating Fund assistance from the Authority (or as may be otherwise required by law);
6. The Owner shall not, without the prior written approval of HUD or as may otherwise be authorized by law, dispose of the Project by operating or maintaining the Project in a manner other than in accordance with the Requirements during and for ten years after the end of the period in which the Project receives Operating Fund assistance from the Authority;
7. The Owner shall remain seized of title (or maintain its leasehold interest) to the Development and shall refrain from transferring, conveying, assigning, leasing, mortgaging, pledging, or otherwise encumbering or permitting or suffering any transfer of any kind of the Project, or any part thereof, or any rent, revenues, income, or receipts therefrom or in connection therewith, or any of the benefits or contributions granted to it by or pursuant to the ACC, or any interest in any of the same, except to the extent approved in writing by HUD, as otherwise authorized by the ACC, or as authorized below:
  - A. Mortgages and financing arrangements (see attached Exhibit B) approved by HUD under the terms of the Mixed Finance ACC Amendment, and transfer of the Development to the mortgagee or beneficiary under any such approved loans, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser at a foreclosure sale, provided that any such transfer shall be subject to the terms of this Declaration;
  - B. Dwelling leases with eligible families in the Project;

- C. Conveyance or dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities; and
  - D. Normal uses and encumbrances associated with the operation of the Project, to the extent authorized by the ACC.
8. No transfer, conveyance, or assignment shall be made without the approval of HUD of: (A) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Owner; or (B) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (C) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest in the Owner, or in any partner or member thereof. HUD will not unreasonably withhold, delay, or condition a request by the Owner for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner or any of the partners, members or stockholders of the Owner.
  9. This Declaration shall not be amended, modified or released without the prior written consent of HUD.
  10. Upon expiration of the period during which the Project is required to be operated and maintained as public housing in accordance with the Requirements, HUD will release this Declaration by an instrument to be recorded in the appropriate land records. HUD shall provide the Owner with a recordable release of this Declaration upon its termination.




IN WITNESS WHEREOF, the Authority by its duly authorized officers, and the Owner by its duly authorized partner have caused this Declaration to be executed for proper recording in the public records.

Chicago Housing Authority

By:   
Terry Peterson  
Chief Executive Officer

Hearts United Phase II Limited Partnership

By:   
Fred L. Bonner, President  
Bonheur Development Corporation  
Managing General Partner

STATE OF ILLINOIS       )  
                                  )  
COUNTY OF COOK       )       SS.

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Fred L. Bonner, personally known to me to be the President of Bonheur Development Corporation, Inc., an Illinois corporation, the general partner ("Manager") of Hearts United Phase II Limited Partnership, an Illinois limited Partnership, (the "Owner"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as President of such Manager, he signed and delivered the said instrument pursuant to authority given by the Partnership Agreement and as his free and voluntary act, and as the free and voluntary act and deed of the Owner for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 15<sup>th</sup> day of December 2000.

*Cheryl Miller*  
Notary Public

My Commission Expires: 9.28.2002



STATE OF ILLINOIS       )  
                                  )       SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Terry Peterson, personally known to me to be the Chief Executive Officer of Chicago Housing Authority (the "Authority"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Chief Executive Officer, he signed and delivered the said instrument pursuant to authority given by the CHA Board of Commissioners and as his free and voluntary act, and as the free and voluntary act and deed of the Authority for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 15<sup>th</sup> day of December, 2000.

[Signature]  
Notary Public

My Commission Expires:

December 3, 2003



## Exhibit A

### Legal Description of Development

#### Parcel 1 (Site 1):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

Lot 24 (except from said Lot 24 so much thereof as has been taken or used and occupied for street purposes, being that part of said Lot 24 lying South of a straight line drawn from a point on the East line of said Lot 24, 15.38 feet North of the Southeast corner thereof, to a point on the West line of said Lot 24, 15.31 feet North of the Southwest corner thereof) in Block 2 in McKey's Addition to Hyde Park, being a subdivision made by Circuit Court Commissioners in partition of that part of the South 10 acres of the Northwest Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, lying West of the West line of Vincennes Avenue, together with Lots 13 to 23, inclusive, in Block 6 in Cleaverville Addition, a Subdivision in the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian.

Also,

Lot 11 (except the East 32.66 feet thereof, except the North 10 feet taken or used for alley and except that part thereof taken or used for 41st Street, being that part of said Lot 11 lying South of a straight line drawn from a point on the East line of said Lot 11, 15.57 feet North of the Southeast corner thereof, to a point on the West line of said Lot 11, 15.38 feet North of the Southwest corner thereof) in Block 6 of Cleaverville Addition, aforesaid, all in Cook County, Illinois.

P.I.N.: 20-03-210-046 and Part of 20-03-210-075

Old Address: 550 East 41st Street, Chicago, IL

New Address: 600 E. 41st Street, Chicago, IL

#### Parcel 2 (Site 2):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

Lots 5 to 8, inclusive, in T.M. Oviatt's Resubdivision of Lots 29 to 33, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-215-001, 002, 003, 004, 005 & 006



Old Address: 701-717 East 41st Street, Chicago, IL

New Address: 703 and 707 E. 41st Street, Chicago, IL

Parcel 3 (Site 3):

The leasehold estate created by that certain Ground Lease Agreement, dated December 1, 2000, between the Chicago Housing Authority, as landlord, and Hearts United Phase II Limited Partnership, as tenant, relative to the following property:

The North Half of Lots 4, 5 and 6, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-219-021, 022 & 023

Old Address: 723-39 East Bowen St., Chicago, IL

New Address: 725, 729 and 735 E. Bowen Avenue, Chicago, IL

Parcel 4 (Sites 1, 2 & 3): All buildings and other improvements now or hereafter located on the property described in Parcels 1, 2 and 3 above.

Parcel 5 (Site 4):

Lot 5 (except the West 20 feet thereof) and the West 38 feet of Lot 6 in Parker's Subdivision of Lot 22 and the South Half of Lots 23 to 26, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-214-038, 039 and Part of 040

Old Address: 628-36 East Bowen St., Chicago, IL

New Address: 630 E. Bowen Avenue, Chicago, IL

Parcel 6 (Site 6):

Lot 1 in O.M. Well's Subdivision of Lots 26 to 38, inclusive, in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Also

Lots 39 and 40 in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of

the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-218-042, 043 & 044

Old Address: 630-634 East 42nd St., Chicago, IL

New Address: 632 E. 42nd Street, Chicago, IL

Parcel 7 (Site 7):

Lot 41 in Rice & Valentine's Subdivision of Lots 11 to 20, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-218-045

Old Address: 636 East 42nd St., Chicago, IL

New Address: 638 E. 42nd Street, Chicago, IL

Parcel 8 (Site 9):

Lots 6 to 9, inclusive, in W. J. Anderson's Subdivision of Lot 32 in Margaret Johnston's Subdivision of the South Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-224-005, 006, 007, & 008

Old Address: 4207-13 South St. Lawrence, Chicago, IL

New Address: 4211 S. Lawrence, Chicago, IL

Parcel 9 (Site 10):

Lots 13 and 14 in George S. Bowen's Subdivision of that part of the South Half of the South Half of the Southwest Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, lying East of Vincennes Avenue, in Cook County, Illinois.

P.I.N.: 20-03-223-009 & 010

Old Address: 519-23 East 42nd Place, Chicago, IL

New Address: 519-521 E. 42nd Place, Chicago, IL

Parcel 10 (Site 12):

The South 50 feet of Lot 30 (except the East 8 feet for alley) in Margaret Johnston's Subdivision of the South Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-224-019

Old Address: 4239-41 South St. Lawrence, Chicago, IL

New Address: Same

Parcel 11 (Site 13):

The South 125 feet of Lot 29 (except the East 81 feet thereof) in Margaret Johnston's Subdivision of the South Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-224-021

Old Address: 600-02 East 43rd St., Chicago, IL

New Address: Same

Parcel 12 (Site 14):

The South 125 feet of the West 56 feet of the East 81 feet of Lot 29 in Margaret Johnston's Subdivision of the South Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-224-022 & 023

Old Address: 606-08 East 43rd St., Chicago, IL

New Address: Same

Parcel 13 (Site 16):

The West 68.8 feet of Lot 2 (except the South 16 feet thereof taken for alley) in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-403-001

Old Address: 601-03 East 43rd St., Chicago, Illinois

New Address: Same

Parcel 14 (Site 18):

Lots 1, 2, and 3 in Crawford's Subdivision of Lots 7 and 8 of Lot 3 in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-403-004, 005 & 006

Old Address: 4313-15 South St. Lawrence, Chicago, IL

New Address: Same

Parcel 15 (Site 19):

The South 68.5 feet (except the West 8.0 feet thereof taken or used for alley and except the East 33.0 feet thereof taken for street) of the East Half of Lot 10 in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: Part of 20-03-403-036, 037 & 038

Old Address: 4356-58 South Champlain, Chicago, IL

New Address: Same

Parcel 16 (Site 20):

The North 59 feet of that part of Lot 4 lying West of the East 133.75 feet thereof (except the West 33.0 feet thereof taken for street and except that part thereof lying Easterly of the Westerly line of the public alley as opened, said Westerly line being described as beginning at the intersection of the South line of the North 59.0 feet of said Lot 4 with a line 141.75 feet West of and parallel with the East line of said Lot 4; thence Northerly along said last described parallel line, 54.0 feet to a point 5.0 feet South of the intersection of said parallel line with the North line of said Lot 4; thence Northwesterly to a point on said North line of Lot 4, 5.0 feet West of the intersection of said North line with said line 141.75 feet West of and parallel with the East line of said Lot 4, said last described point being the terminus point of the Westerly line of said alley herein described) in Block 2 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-404-006 & 007

Old Address: 4313-15 South Champlain, Chicago, IL

New Address: Same

Parcel 17 (Site 21):

Lots 1 to 5, inclusive, (except the South 6.0 feet of said Lots 1 and 5 taken or used for alley) in Belding's



Subdivision of Lot 2 (excluding that part taken for street) of Block 1 in Saltonstall & Russell's Subdivision of the North Half of the Northeast Quarter of the Southeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 20-03-405-001, 002 & 003

Old Address: 701-727 East 43rd St., Chicago, IL

New Address: 705, 709, 713, 717 and 723 E. 43rd St., Chicago, IL

## EXHIBIT B

### INITIAL LEASEHOLD MORTGAGEES

1. Prairie Mortgage Company in the amount of \$6,273,000.00 by a Mortgage, dated December 1, 2000.
2. City of Chicago in the amount of \$5,541,818.00 by a Second Mortgage, Security Agreement and Financing Statement dated December 1, 2000
3. Chicago Housing Authority Third Mortgage, Security Agreement and Financing Statement in the amount of \$2,749,905.00.

# DOCUMENT CERTIFICATION

· Certified to be a true and correct copy of that original

Ground Lease Agreement

recorded December 20, 2000,

as Document # 01000562

in the office of the Recorder of Deeds,

Cook County, Illinois.

Date: December 20, 2000

Title Services, Inc.

by Mary Andersson

(2)

01000562

This instrument prepared by and  
when recorded return to:  
Chicago Housing Authority  
Office of the General Counsel  
200 W. Adams St., Suite 2100  
Chicago, Illinois 60606  
Attn: Hearts United Phase II

### GROUND LEASE AGREEMENT

This Ground Lease Agreement (the "Ground Lease") is made as of the 1<sup>st</sup> day of December, 2000 by and between

Chicago Housing Authority, an Illinois municipal corporation ("Landlord"), having an office at 626 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60661

and

Hearts United Phase II Limited Partnership, an Illinois limited partnership having an office at 400 East 41st Street, Chicago, Illinois 60653 ("the Partnership"). Herein the Partnership in its capacity as tenant under this Ground Lease, together with its successors and assigns, is referred to as the "Tenant."

### RECITALS:

A. Landlord is the owner in fee simple title of a certain parcels of land located in the City of Chicago, Illinois, more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The parcels of land on Exhibit A, are herein referred to as the "Land". In accordance with appropriate resolutions adopted by the Landlord, the Landlord desires to facilitate the development on said land of residential apartment buildings containing, in part, approximately 24 dwelling units.

B. Landlord, as legal owner of fee simple interest in said Land, and the Tenant, as owner of the leasehold interest and developer, have agreed to enter into this Ground Lease in order to implement the development and construction of the Project (as defined below).



C. In order to facilitate the development of the Project and the financing thereof, the parties desire to enter into this Ground Lease on the terms and conditions herein provided.

**AGREEMENT:**

**ARTICLE 1**

**Ground Lease of Property-Term of Ground Lease**

1.01 Landlord, for and in consideration of the rents to be paid and of the covenants and agreements hereinafter contained to be kept and performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, all those certain parcels of Land situated in the City of Chicago, County of Cook, State of Illinois, and more fully described in Exhibit A attached hereto,

Together with all right, title and interest, if any, of Landlord in and to any Improvements, and in and to any sidewalks, alleys, streets and roads abutting to, or included within the Land;

Together with all right, title and interest of Landlord in, to and under all agreements, easements, rights of way, gores of land, sewer rights, water courses and water rights, all privileges, liberties, tenements, and appurtenances whatsoever in any way belonging, relating or appertaining to the Land or which hereafter shall in any way belong, relate or be appurtenant thereto whether now owned or hereafter acquired by Landlord, and the estate, rights, title, interest, property, possession, claims and demands whatsoever, at law or in equity of Landlord in and to the same, subject, however, to all agreements, easements, encumbrances and other charges or matters affecting the Land listed on Exhibit B attached hereto (the "Exceptions").

TO HAVE AND TO HOLD the same, subject to the Exceptions aforesaid, for a Term commencing on the date of this Ground Lease referenced on page 1 hereof (the "Commencement Date") and ending on December 31, 2099 (unless this Ground Lease shall sooner be terminated as hereinafter provided), or the expiration of the Extended Term as described in Section 1.02 below, upon and subject to the covenants, agreements, terms, provisions, conditions and limitations hereinafter set forth, all of which Tenant covenants and agrees to perform and observe.

1.02 Provided no Event of Default by Tenant has occurred and is continuing beyond any applicable notice and cure period under this Ground Lease, at and concurrent with the expiration of the stated Term of this Ground Lease on December 31, 2099, the Term of this Ground Lease may be extended, subject to the approval of the United States Department of Housing and Urban Development and the Landlord's Board of Commissioners for an additional period (the "Extended Term") unless Tenant shall elect to terminate this Ground Lease on December 31, 2099, by delivery not later than December 31, 2098 to Landlord of Tenant's written notice of such election to terminate this Ground Lease. The length of the Extended Term and the amount of Rent payable hereunder during the Extended Term shall be

negotiated in good faith during the period not sooner than December 1, 2095 through December 31, 2098. In the event the Rent payable during the Extended Term is not mutually agreed to by both Tenant and Landlord, either party may require that the issue of the amount of such Rent be submitted to mediation in accordance with the applicable industry Mediation Rules of the American Arbitration Association from the period December 31, 2098 through December 31, 2099, by sending a written demand for such mediation anytime during such period. If Landlord and Tenant have not agreed with the results of such mediation on or before December 31, 2099, either party may require that Rent during the Extended Term be submitted to binding arbitration in accordance with the applicable industry Arbitration Rules of the American Arbitration Association or Tenant may terminate. The determination of such arbitration shall be binding and enforceable against both Landlord and Tenant in the event Tenant does not terminate this Ground Lease as permitted above, and may be entered into any court having jurisdiction thereof. In the event the standards set forth above for either mediation or arbitration shall be discontinued, a comparable impartial standard of general applicability to dispute resolution may be required by either Landlord or Tenant by written notice to the other party. If the Extended Term shall be applicable to this Ground Lease, all references in this Ground Lease to the word "Term" shall include the "Extended Term."

## ARTICLE 2

### Definitions

2.01 The terms defined in this Section shall, for all purposes of this Ground Lease, have the meanings herein specified.

(a) "Affiliate" shall mean an entity which is owned by or owns, controls, is controlled by, or under common control with a specified party.

(a)(i) "City" shall mean the City of Chicago.

(b) "Default" shall mean any condition or event which constitutes or would, after notice or lapse of time, or both, constitute an Event of Default.

(b)(i) "Development" shall mean the Quincy Apartments development to be constructed on the Land and other real estate owned by Tenant.

(c) "Event of Default" shall have the meaning provided in Section 10.01.

(d) The words "this Ground Lease" shall refer to this Ground Lease, including amendments and extensions thereof, if any.

(e) "Ground Lease Year" shall mean each twelve (12) month period commencing on the Commencement Date and on each anniversary thereof during the Term.

(f) "The words "herein," "hereof" or "hereunder" and words of similar import refer to provisions contained in this Ground Lease as a whole and not to any particular section or subdivision thereof.

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(f)(i) "HUD" shall mean the United States Department of Housing and Urban Development.

(f)(ii) "HUD Leasehold Mortgagee" shall mean any Leasehold Mortgagee whose Leasehold Mortgage is insured by HUD; and it shall mean HUD if HUD becomes the owner or holder of any Leasehold Mortgage.

(f)(iii) "HUD Regulatory Agreement" shall mean the Regulatory Agreement for Multi-Family Housing Projects (HUD - 92466) entered into between Tenant and the Secretary of Housing and Urban Development.

(g) "Impositions" shall mean all taxes, assessments, special assessments, use and occupancy taxes, water and sewer charges, rates and rents, charges for public utilities, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or become payable out of or become a lien on the Project, or any part thereof, appurtenances thereto provided, however, that if at any time during the term of this Ground Lease the present method of taxation or assessment shall be so changed that there shall be substituted in whole or in part for the types of taxes, assessments, levies, assessed or imposed on real estate and the Improvements thereon a capital levy or other tax levied, assessed or imposed on the rents received by Landlord from said real estate or the rents reserved herein or any part thereof, then any such capital levy or other tax shall, to the extent that it is so substituted, be deemed to be included within the term "Impositions." Impositions affecting the Project shall be those attributable to the Improvements and the interest conveyed by this Ground Lease, and the fee simple ownership of the Land.

(h) "Improvements" shall mean the buildings and structures, including equipment, fixtures, furnishings and appurtenances now or at any time hereafter erected or located on the Land.

(i) "Land" shall mean the parcel of land described in Exhibit A, exclusive of the Improvements, and the appurtenant rights of the Landlord.

(j) "Landlord" shall mean the Chicago Housing Authority, or its successors in interest.

(k) "Lender" shall mean any commercial real estate lender, state or national bank, commercial or savings bank, pension fund, real estate investment trust, or governmental agency or instrumentality, or any Affiliate of the foregoing, and authorized to make loans secured by real property located in the State of Illinois.

(l) "Leasehold Mortgage" shall mean any mortgage, deed of trust, assignment of rents and leases, Uniform Commercial Code, security agreement and financing statement or similar security instrument created by Tenant pursuant to and in accordance with the provisions of Section 9.03 and which constitutes a lien on Tenant's leasehold interest hereunder and/or Tenant's interest in the Improvements.

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(m) "Leasehold Mortgagee" shall mean the owner or owners, holder or holders from time to time of any Leasehold Mortgage (including trustees under deeds of trust).

(n) "Master Lease Agreement" shall mean the CHA Master Lease Agreement, dated the same date as this Ground Lease, between the Landlord and Tenant, pursuant to which the Tenant has made available 27 dwelling units in the Development to be available for rental to public housing residents for a period of 40 years.

(n)(i) "Permissible Sources" shall mean: (a) during such time as the Project or any portion thereof is encumbered by a mortgage insured or held by HUD, Permissible Sources shall mean: (1) surplus cash, as defined in and determined in accordance with the HUD Regulatory Agreement, that is then distributable under the HUD Regulatory Agreement; (2) capital contributions of the partners of Tenant; and (3) net proceeds of the sale of the Project or any portion thereof, or the refinancing of any mortgage; and (b) at all other times Permissible Sources shall mean any available funds of Tenant with respect to the Property.

(o) "Project" shall mean the Improvements and all rights, title and interest of the Tenant under this Ground Lease.

(p) "Property" shall mean the Land and the Improvements.

(q) "Rent" shall have the meaning defined in Section 3.01.

(r) "Requirements" shall mean any and all present and future laws, statutes, ordinances, rules, regulations, orders or other requirements of any governmental, public or quasi public authority now existing or hereafter created and of any and all of their departments and bureaus and of any applicable fire rating bureau or other body exercising similar functions, applicable to or affecting the Property or any part thereof, including without limiting the generality of the foregoing, the ordinances of the City.

(s) "Surrender Fee" shall mean the fee of \$100.00 due and payable as provided in Section 14.03.

(t) Intentionally Deleted.

(u) "Subtenant" shall mean any subtenant or resident governed under the Master Lease Agreement (other than Tenant).

(v) "Tenant" shall mean the party named as Tenant herein. Provided, however, that whenever this Ground Lease and the leasehold estate hereby created shall be assigned or transferred in the manner specifically permitted herein, then from and after such assignment or transfer and until the next such assignment or transfer, the term "Tenant" shall mean the permitted assignee or transferee named therein, as if such transferee or assignee had been named herein as the Tenant, and the seller, transferor or assignor shall be and hereby are relieved of any continuing obligations hereunder.



(w) "Tenant Improvements" shall mean all buildings and structures including equipment, fixtures, furnishings and appurtenances erected or located on the Land subsequent to the Commencement Date of this Ground Lease including, without limitation, all such buildings, structures, equipment, fixtures, furnishings and appurtenances erected or located pursuant to and in conformity with the requirements of FHA Project No. 071-32136.

(x) "Term" shall mean the term of this Ground Lease described in Section 1.01 hereof.

(y) "TIF Redevelopment Agreement" shall mean the Redevelopment Agreement between the City and the Tenant.

(z) "Unavoidable Delay" shall mean a delay beyond the control of Tenant due to a strike, lock-out, act of God, unavailability of labor or materials, enemy action, civil disorder, action or inaction of Landlord, change order (as defined in the construction contract hereinafter referred to), or an injunctive relief or other legal proceedings of any court, or acts of any governmental body or agency having jurisdiction over the Project.

2.02 The terms enumerated in this Section shall have the meanings ascribed thereto in the indicated sections:

Code	Section 9.01(b)
Commencement Date	Section 1.01
Exceptions	Section 1.01 and Exhibit B
Full Insurable Value	Section 7.01(a)
Restoration	Section 8.01

### ARTICLE 3

#### Rent

3.01 Rent. From and after the Commencement Date through the Term, Tenant shall pay to Landlord at the place for which notices to Landlord are to be sent in accordance with Article 16 below, or to such other person, firm or corporation, or at such other place as shall be designated from time to time by written notice from Landlord to Tenant, fixed rent at the rate of Ten Dollar(s) (\$10.00) for each Ground Lease Year ("Rent"). Rent shall be payable in annual installments, in advance on the first day of each Ground Lease Year or for any period less than a full Ground Lease Year. Rent may be prepaid at any time and Landlord should provide an acknowledgment of receipt in recordable form.

3.02 No Partnership. Landlord and Tenant agree that they are not partners or joint venturers and that, except in respect to the proceeds of insurance and condemnation awards under the provisions of Articles 7 and 12 hereof, they do not stand in any fiduciary relationship to each other.

3.03 Payment of Rent. All payments of Rent, made to Landlord hereunder shall be in lawful money of the United States of America and shall be paid to Landlord, or to such

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other person and/or at such other place as Landlord may designate from time to time in writing.

3.04 Net Ground Lease. Tenant shall pay to Landlord throughout the term of this Ground Lease, all Rent, free of any charges, assessments, impositions or deductions of any kind and without abatement, deduction or set-off, and under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall Landlord be expected or required to make any payment of any kind whatsoever or be under any other obligation or liability hereunder except as otherwise expressly set forth herein.

3.05 No Abandonment. Except to the extent provided in the Master Lease Agreement, and in Section 8.01 of this Ground Lease, no happening, event, occurrence, or situation during the term of this Ground Lease, whether foreseen or unforeseen, and however extraordinary, shall, relieve Tenant from its liability to pay the full Rent, or relieve Tenant from any of its other obligations under this Ground Lease, and Tenant waives any rights now or hereafter conferred upon it by statute, proclamation, decree, or otherwise, or to claim any abatement, diminution, reduction or suspension of the Rent on account of any such event, happening, occurrence or situation. This Section 3.05 shall not apply to HUD or the City at any time either shall be Tenant under this Ground Lease.

3.06 Reimbursements to Landlord: Arrearages. Tenant shall reimburse Landlord, from and to the extent of Permissible Sources, for all reasonable expenditures, cost, expenses and fees, including reasonable attorneys' fees, made or incurred by Landlord in curing any Default of Tenant for which Landlord has given Tenant notice as provided in Section 10.01, such amounts are to become due upon delivery of written notice after the expiration of the cure period by Landlord stating the amount of such expenditures, costs, expenses and fees by Landlord; and Tenant shall also pay Landlord, from and to the extent of Permissible Sources, upon delivery of notice from Landlord, all amounts payable to Landlord as reimbursements or indemnities pursuant to Sections 6.03 and 6.04.

## ARTICLE 4

### Impositions

4.01 Payment. Throughout the Term, and subject to the provisions of Section 4.04 below, Tenant shall pay or cause to be paid, as and when the same become due, all Impositions, except that:

(a) All Impositions (other than an Imposition which is attributable on the accrual basis to a year, or other period) during only part of a year which this Ground Lease is in effect shall be apportioned; provided, however, that Tenant shall not be entitled to receive any apportionment if Landlord has terminated this Ground Lease by reason of an Event of Default; and

(b) where any Imposition is permitted by law to be paid in installments. Tenant may pay such Imposition in installments as and when each such installment becomes due.

#### 4.02 Deposit of Impositions

(a) Tenant shall timely pay all Impositions, and premiums on insurance required to be carried under Article 7 of this Ground Lease, as and when the same are ascertainable, billed, and due and payable without penalty or fine. Within thirty (30) days of Landlord's written request, Tenant shall deliver reasonable proof of such payment to Landlord.

(b) During the continuance of any Event of Default, Tenant agrees to deposit with Landlord on the first day of each and every month thereafter during the Term one-twelfth (1/12) of (a) all Impositions due and payable from Tenant during the next succeeding 12-month period based on the most recent ascertainable Impositions, plus (b) annual premiums on insurance policies required to be covered by Tenant under Article 7 of this Ground Lease. Further, upon such Event of Default, Tenant shall deposit, as least thirty (30) days prior to the due date of any Imposition, such additional amount as may be necessary to provide Landlord with sufficient funds in such deposit account to pay each such Imposition and annual insurance premium at least thirty (30) days in advance of the due date thereof. The rights granted hereunder to Landlord shall not be exclusive to Landlord's rights and remedies following an Event of Default by Tenant. Landlord shall hold any money so deposited in an interest-bearing account for the purpose of paying the charges for which such amount shall have been deposited. Tenant shall be entitled to all interest earned on said deposits and, so long as Landlord has not served Tenant with a notice of an Event of Default which has not been cured, Landlord, upon Tenant's request, shall make periodic disbursements of earned interest to Tenant. Landlord shall apply any such deposits for the purpose held not later than the last day on which any such charges may be paid without penalty or interest. If at any time the amount of any Imposition is increased or Landlord receives reliable information that Impositions will be increased, and if the monthly deposits then being made by Tenant for this purpose (if continued) would not produce a fund sufficient to pay such item thirty (30) days prior to its due date, said monthly deposits shall thereupon be increased and Tenant shall deposit immediately with Landlord, on demand by Landlord, additional sums to the monies then on hand for the payment of said item plus the increased one-twelfth (1/12) payments and such additional sums demanded shall be sufficient to pay such item at least thirty (30) days before the same becomes due and payable. For purposes of determining whether Landlord has on hand sufficient monies to pay any particular Imposition at least thirty (30) day prior to the due date therefore, deposits for each item shall be treated separately, it being the intention that Landlord shall not be obligated to use monies deposited for the payment of any item for the pay of another that is due and payable.

Tenant shall not be required to make any specific deposit required under this Section if a deposit for a similar purpose is made by Tenant to an escrow or otherwise to persons pursuant to a requirement by any Leasehold Mortgagee.

This Section 4.02(b) shall not apply to HUD or the City at any time either shall be Tenant under this Ground Lease.

4.03 Contest of Impositions. Tenant may, if it shall so desire, contest the validity or amount of any Imposition, in whole or in part, by an appropriate proceeding diligently conducted in good faith. Tenant shall only conduct such a contest after payment of the challenged Imposition unless Tenant shall, within fifteen (15) days after such Imposition shall have become due, have deposited in a segregated account of Tenant an amount sufficient to pay such contested Imposition, together with the interest and penalties thereon, which amount shall be applied to the payment of such Imposition when the amount thereof shall be finally fixed and determined. Nothing herein contained, however, shall be so construed as to allow such Imposition to remain unpaid for such length of time as shall permit the Property, or any part thereof, or the lien thereon created by such Imposition to be sold by a governmental, city or municipal authority for the nonpayment of the same. If the amount so deposited as aforesaid shall exceed the amount of such Imposition when finally fixed and determined, the excess (or the entire amount if no such payment is required) shall be released from the segregated account, or in case there shall be a deficiency, the amount of such deficiency shall be forthwith paid by Tenant. The provisions of the second and fourth sentences of this Section 4.03 shall not apply to HUD or the City at any time either shall be Tenant under this Ground Lease.

4.04 Reduction of Impositions. Subject to the TIF Redevelopment Agreement's restrictions on abatement of real estates taxes, Tenant, at its expense, may, if it shall so desire, endeavor at any time or times, upon prior written notice to Landlord, to obtain a lowering of the assessed valuation upon the Property for the purpose of reducing taxes thereon and, in such event. Landlord will offer no objection and, at the request of Tenant, will cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant shall be authorized to collect any tax refund payable as a result of any proceeding Tenant may institute for that purpose and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to the apportionment provisions contained in Section 4.01, after deducting from such refund the cost and expenses, including legal fees, incurred in connection with obtaining such refund.

4.05 Joinder of Landlord. Landlord shall not be required to join in any action or proceeding referred to in Sections 4.03 or 4.04 hereof unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event, any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord. For purpose of acting in the name of Landlord under this Section 4.05, Landlord hereby appoints Tenant its true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute and deliver documents, instruments, affidavits and certificates, and take such other actions as may be necessary or desirable to carry out the provisions of this Section 4.05. Tenant hereby agrees, from and to the extent of Permissible Sources, to indemnify and hold Landlord harmless from and against all costs, expenses, claims, loss or damage, including reasonable attorney's fees, by reason of, in connection with, on account of, growing out of, or resulting from, any such action or proceeding. The requirement to indemnify in the preceding sentence shall not apply to HUD or the City at any time either shall be Tenant under this Ground Lease.



## ARTICLE 5

### Improvements

5.01 Required Improvements. Tenant hereby covenants and agrees to commence and diligently pursue the construction of the Tenant Improvements on the Land, complete construction of the Tenant Improvements, and obtain certificates of occupancy from the City. This Section 5.01 shall not apply at any time while the City or HUD is Tenant under this Ground Lease.

5.02 Surrender of Improvements. Subject to Article 14 and Article 15 hereof, upon the expiration of the Term, all Improvements then located on the Land shall, with the Land, be vacated and surrendered by Tenant to Landlord and shall become the property of Landlord, as more fully provided in Section 14.01, and Tenant agrees to execute and deliver to Landlord such quit claim deeds, assignments or other instruments of conveyance, as Landlord may deem necessary to evidence such transfer of title to Landlord. Surrender and/or conveyance by Tenant shall be subject to all matters of record, including any Leasehold Mortgages, and the Exceptions, against the Project and the Land.

## ARTICLE 6

### Use, Maintenance, Alterations, Repairs, Etc.

6.01 Condition of Land and Property. Tenant has leased the Land after a full and complete examination thereof, as well as the title thereto and its present uses and restrictions, and Tenant accepts the same without any representation or warranty express or implied in fact or by law, by Landlord and, without recourse to Landlord, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Property or any part thereof may be put. Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Property, throughout the Term. Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the entire Property.

6.02 Use of Property. The Property shall be used and occupied only for multifamily residential uses and for uses incidental thereto, and for no other purpose, unless the Landlord has consented to such other use. The Landlord's consent will not be unreasonably withheld.

6.03 Prohibited Use. Tenant shall not use or occupy the Property or permit the same to be used or occupied, nor do or permit anything to be done in, on or to the Property, in whole or in part, in a manner that would in any way (a) violate any construction permit or certificate of occupancy affecting the Property or any requirements, (b) make void or voidable any insurance then in force with respect thereto on the Property, or make it impossible to obtain fire or other insurance thereon required to be furnished by Tenant hereunder, (c) cause or be apt to cause structural injury to the Improvements, the Project, or any part thereof, or (d) violate any provision of this Ground Lease. Any act or omission of any resident of the Project who is not a subtenant under the Master Lease Agreement that materially violates any

material provision of this Ground Lease and is not being remedied by Tenant, shall, for the purpose hereof, be deemed to be a violation of such provision of this Ground Lease by Tenant, it being the intention and agreement of the parties that Tenant shall assume and be liable to Landlord for any and all acts and omissions of any and all residents of the Project who are not governed by the Master Lease Agreement. Landlord shall be liable to Tenant for Landlord's performance of its obligations under the Master Lease Agreement. Notwithstanding the foregoing, Tenant may, in good faith, upon prior written notice to Landlord (and where necessary in the name of, but without expense to, Landlord) and after having secured Landlord to its reasonable satisfaction by cash or by a surety company bond in an amount, with a company and in form and substance reasonably satisfactory to Landlord, against loss or damage, contest the validity of any Requirements and, pending the determination of such contest may postpone compliance therewith, provided that in no event shall such act or omission of Tenant subject Landlord to any fine or penalty or to prosecution for a crime, to cause the Property or any part thereof to be condemned or to be vacated or to cause any material interference with the operation of the Property for the purposes set forth in Section 6.02 hereof or the occupancy, use, benefit and enjoyment thereof by any resident of the Project. Tenant shall, from and to the extent of Permissible Sources, indemnify and hold harmless Landlord, its officials, agents and employees against any recovery of loss to which Landlord may be subject or which Landlord may sustain, including reasonable attorneys' fee and expenses incurred by Landlord arising from any breach of this covenant or by reason of any action or proceedings which may be brought against Landlord or against the Property, or any part thereof, by virtue of any such Requirements, which do not arise out of any negligence or willful misconduct of Landlord, or any Event of Default by Landlord hereunder. The Landlord shall provide notice to Tenant of any action brought against Landlord which affects the Property.

6.04 Maintenance of Property. Tenant shall take good care of the Improvements, make all repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Improvements in good order, repair and condition. Tenant covenants and agrees that throughout the term of this Ground Lease, (a) all building systems, facilities and equipment, including HVAC systems, common area lighting and the like, shall be maintained in good operating order and repair, and (b) the Property shall, at all times, have adequate means of ingress and egress to and from the abutting public streets, alleys, sidewalks and service roadways. Tenant shall, from and to the extent of Permissible Sources, indemnify and hold Landlord harmless of and from any and all claims and demands arising from the failure of Tenant to perform the covenants contained herein or arising from any accident, injury or damage to any person or property that shall or may happen in or upon the Property or any part thereof, or upon the sidewalks about the Property, however caused, other than Landlord's negligence or willful misconduct, and shall keep the Property free and clear of any and all mechanics' liens or other similar liens or charges incidental to work done or material supplied in or about the Property.

6.05 Waste. Tenant shall not do, permit or suffer any waste, damages, disfigurement or injury to or upon the Property or any part thereof without repairing the same within a reasonable period of time. Tenant shall have the right at any time and from time to time to sell or dispose of any equipment or fixtures subject to this Ground Lease that may have

become obsolete or unfit for use or that is no longer useful, necessary or profitable in the conduct of Tenant's business; provided, however, that Tenant shall have substituted or shall promptly substitute for the property so removed from the Property other equipment or fixtures at least of equal quality in the performance of the particular function in question as that of the property so removed unless, in Tenant's reasonable opinion set forth in written notice of Landlord, the property so removed was performing an obsolete function and replacement thereof is not necessary or appropriate to maintain the operation or character of the Project, its use and occupancy by subtenants and licensees or its overall value without impairment.

6.06 Compliance with Requirements. Tenant shall comply, at its own expense, with all Requirements during the Term and with the requests of any insurance company having policies outstanding with respect to the Property, whether or not such Requirements or requests require the making of structural alterations or the use or application of portions of the Property for compliance therewith, or interfere with the use and enjoyment of the Property, and shall, from and to the extent of Permissible Sources, protect, indemnify and hold harmless Landlord, its officials and employees, from and against all fines, penalties, claim or claims for damages of every kind and nature arising out of any failure to comply with any such Requirements and requests, the intentions of the parties being with respect thereto that Tenant during the Term shall discharge and perform all the obligations of Landlord, as well as all the obligation of Tenant, arising as aforesaid, and hold harmless Landlord there from, so that at all time the Rent shall be net to Landlord without deductions or expenses on account of any such Requirement or request whatever it maybe; provided, however, that Tenant may, in good faith upon prior written notice to Landlord (and wherever necessary, in the name of, but without expense to, Landlord), contest the validity of any such Requirement or request and, pending the determination of such contest, may postpone compliance therewith, but not so as to subject Landlord to any fine or penalty or to prosecution for a crime, to cause the Property or any part thereof to be condemned or to be vacated or to cause any material interference with the operation of the Property for the purposes set forth in Section 6.02 thereof. Notwithstanding anything in this Section 6.06 to the contrary, Tenant has no compliance responsibility or liability for matters existing prior to the commencement of the Term.

6.07 Exculpation of Landlord. Landlord shall not be responsible or liable for any destruction, damage or injury to any property or to any person or persons at any time on the Property resulting from any casualty, occurrence or condition, including without limitation, those from steam, gas or electricity, or from water, rain or snow, whether the same may leak into, issue or flow from any part of the Improvements on the Land or within the Project or from pipes or plumbing work of the same, or from any other place or quarter; nor shall Landlord be in any way responsible or liable in case of any accident or injury including death to any of Tenant's Subtenants, employees, agents, or to any person or persons in or about the Property or the streets, sidewalks or alleys adjacent thereto; and Tenant agrees that it will not hold Landlord in any way responsible or liable therefor and will further, from and to the extent of Permissible Sources, indemnify and hold Landlord harmless from and against any and all claims, liability, penalties, damages, expenses and judgments arising from injury to persons or property of any nature and also for any matter or thing arising out of or resulting as a direct or indirect consequence from the occupancy of the Property, or of the street, sidewalks or alleys adjacent thereto. Nothing herein contained shall be deemed to release the

Landlord from providing contracted services to Tenant and the Project, or from the consequences to Tenant and the Project for the Landlord's own fault or negligence or breach of its representations, warranties and covenants set forth herein or in the Master Lease Agreement.

6.08 Landlord's Right of Entry. Upon reasonable advance notice to Tenant and Subtenants, Landlord shall have the right, on any business day, to enter upon the Property, or any part thereof, for the purpose of ascertaining the condition thereof, or whether Tenant is observing and performing the obligations assumed by it under this Ground Lease, all without hindrance or molestation from Tenant, or anyone claiming by, through or under Tenant, whether as Subtenant or otherwise. The above mentioned rights of entry shall be exercisable at reasonable time, at reasonable hours and on reasonable advance notice. Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

6.09 No Liens. Notice is hereby given that Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and that no mechanics' or other lien, for any such labor or material shall attach to or affect the estate or interest of Landlord in and to the Property or any portion thereof.

6.10 Inapplicability to HUD and the City. Notwithstanding any provision of this Ground Lease to the contrary, none of the provisions or requirements of this Article 6 shall apply to the HUD Leasehold Mortgagee, HUD or the City in the event that the HUD Leasehold Mortgagee, HUD or the City becomes owner of the leasehold estate created hereby or of the Improvements, or otherwise becomes tenant of the Property or owner or tenant of the Improvements.

## ARTICLE 7

### Insurance

7.01 Maintenance of Insurance. Subject to Section 19.01(d)(i) of this Ground Lease, during the Term of this Ground Lease, Tenant shall, at its sole cost and expense, keep and maintain policies of:

- (a) insurance on the Improvement against loss or damage by fire and against loss or damage by other risks now embraced by the so-called broad extended coverage endorsement and from such other hazards as may be covered by a form of all risk insurance (including specifically insurance against loss or damage by sprinkler leakage, water damage and collapse) in amounts and at all times sufficient to prevent Landlord or Tenant from becoming a coinsurer under the terms of the applicable policies, but in any event in an amount not less than the greater of the unpaid principal balance of any Leasehold Mortgage or 90 percent of the then Full Insurable Value of the Improvements (exclusive of cost of excavation, foundations and footings) without deduction for depreciation. Such "Full Insurable Value" shall be determined from time

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to time (but not more frequently than annually) by one of the insurers or, at the option of Tenant, by an appraiser, engineer, architect or contractor and paid by Tenant; and

(b) general public liability insurance (containing the so-called "occurrence clause") protecting and indemnifying Tenant, and Landlord, its officials and employees, against any and all claims for damages to person or property or for loss of life or of property occurring upon in or about the Property and the adjoining streets, driveways, alleys and passageways, such insurance to afford immediate protection, to the combined single limit of not less than \$1,000,000 in respect of bodily injury, death and property damage.

Copies of such policies, certified by the carrier's agent, shall be held by Landlord or the holder(s) of any Leasehold Mortgage(s).

7.02 Form of Policies. Except as provided in Section 8.02, any policies of insurance of the character described in subsection (a) of Section 7.01 hereof, shall expressly provide that any losses thereunder shall be adjusted with Tenant, and all Leasehold Mortgagees as their interests may appear (or absent a Leasehold Mortgagee with the Landlord). All such insurance shall be carried in the name of Tenant and loss thereunder shall be payable to the Tenant and Leasehold Mortgagee(s), if any, as their respective interests may appear.

7.03 Evidence of Payment. Upon the execution and delivery of this Ground Lease, and thereafter not later than the expiration dates of the expiring policies theretofore furnished pursuant to this Article, duplicate originals or certified copies of the policies required by this Article 7, bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

7.04 Separate Insurance. Tenant shall not obtain separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished by or that may reasonably be required to be furnished by Tenant unless Landlord is included therein as an additional insured, with loss payable as in this Ground Lease. Tenant shall immediately notify Landlord of the obtaining of any such separate insurance and shall deliver the policy or policies so obtained as provided in Section 7.03 hereof.

7.05 Cancellation. Each policy of insurance delivered hereunder shall contain an agreement by the insurer that such policy shall not be cancelled or materially altered without at least ten (10) days' prior written notice given to Landlord and to each mortgagee named in such policy.

7.06 Inapplicability to HUD and the City. Notwithstanding any provision of this Ground Lease to the contrary, none of the provisions or requirements of this Article 7 shall apply to the HUD Leasehold Mortgagee, HUD or the City in the event that the HUD Leasehold Mortgagee, HUD or the City becomes owner of the leasehold estate created hereby or of the Improvements, or otherwise becomes tenant of the Property or owner or tenant of the Improvements.

## ARTICLE 8

### Damage and Restoration

8.01 Damage or Destruction. Subject to Section 8.05 of this Ground Lease, in case of any damage to or destruction of the Improvements during the term of this Ground Lease, Tenant shall give to Landlord immediate notice thereof and Tenant shall, from and to the extent of the insurance proceeds, promptly and diligently restore, replace, rebuild and repair the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Landlord shall in no event be called upon to restore, replace, rebuild or repair such Improvements, or any portion thereof, or to pay any of the costs or expenses thereof. All work in connection with such restoration, replacement, rebuilding and repairing, including all temporary repairs to the Improvements or repairs made for the protection of the Improvements pending the completion of the permanent restoration, replacement, rebuilding and repairing, is hereinafter collectively referred to as "Restoration." In the event of any such damage to the Improvements occurring during the Term, if the insurance proceeds are insufficient to accomplish the Restoration, Tenant shall have the right at its sole discretion to either (a) deposit with Landlord additional funds of the Tenant in an amount which is sufficient, with insurance proceeds, to complete the Restoration, or (b) with the prior written consent of all Leasehold Mortgagees and HUD, to terminate this Ground Lease at any time within ninety (90) days after such occurrence unless Landlord within such time shall commit to provide the additional funds required to complete such Restoration beyond the extent of the insurance proceeds. Landlord shall not be required to give such commitment. If this Ground Lease is terminated by the election of Tenant under clause (b) above, then Tenant shall demolish and/or remove Improvements placed on the Land at the sole cost and expense of Tenant provided all insurance proceeds shall be available to Tenant subject only to the interest of any Leasehold Mortgagee.

8.02 Disbursements. Adjustment of any insurance claim for \$100,000 or less may be negotiated by Tenant and Leasehold Mortgagee(s), if required by any Leasehold Mortgage. Adjustment of any claim in excess of \$100,000 shall be negotiated jointly by Tenant and Leasehold Mortgagee(s), and if permitted by any Leasehold Mortgage with the Landlord. All insurance proceeds shall be deposited in a special bank account controlled by the HUD Leasehold Mortgagees or if none, by the other Leasehold Mortgagees or if none, by the Tenant, and administered as hereinafter set forth. All insurance proceeds received by Landlord or Tenant on account of such damage or destruction, less the actual costs, expenses and fees, if any, incurred in connection with the adjustment of the loss, shall be applied in accordance with the terms of this Article 8 (and subject to the requirements of Section 5.02 in the case of any Improvements involving in the aggregate an estimated cost of more than \$100,000). Such insurance proceeds shall be paid out from time to time as such Restoration progresses.

8.03 Deficiencies. In the event the estimated cost of the Restoration is in excess of the net insurance proceeds, or in the event at any time the estimated cost to complete the Restoration is in excess of the net insurance proceeds plus any amount furnished by Tenant to defray any excess cost, Tenant may, at its election, before proceeding with the Restoration,

deposit with Landlord an amount equal to such excess cost, or deliver to Landlord a surety bond from a company and in a form satisfactory to Landlord and/or the Leasehold Mortgagee, if any, for such excess cost, the premium for which is to be paid by Tenant. Thereupon, Tenant may proceed with Restoration.

8.04 Landlord's Right to Complete. If Tenant shall fail to restore, replace, rebuild or repair promptly and diligently the Improvements or any portion thereof so damaged or destroyed, or having so commenced such Restoration shall fail to complete same promptly and diligently in accordance with this Ground Lease, Landlord, after first giving all Leasehold Mortgagee(s) written notice and at least 60 days thereafter to commence such Restoration, and thereafter promptly and diligently complete such Restoration, may complete the same and apply the insurance proceeds to the cost and expense of Restoration.

8.05 Leasehold Mortgages. Application of insurance proceeds shall be subject to the priority of the Leasehold Mortgagees and terms of the Leasehold Mortgages, including Leasehold Mortgagees' rights, if any, to apply proceeds of insurance to the payment of outstanding debt owed by Tenant to such Leasehold Mortgagees in lieu of Restoration. In such an event, however, Landlord and Tenant shall adjust the balance of insurance proceeds as their respective interests may be affected by such damage or destruction, and this Ground Lease shall terminate. For so long as the Leasehold Mortgages to Prairie Mortgage Company and the City are outstanding, only the terms of those two mortgages and the rights of those two Leasehold Mortgagees shall control such insurance proceeds.

## ARTICLE 9

### Title and Ownership-Leasehold Mortgage

#### 9.01 Restrictions on Transfer.

(a) Except as specifically permitted under this Ground Lease, Tenant shall not at any time without the prior written consent of Landlord sell, assign, transfer, or convey (i) all or any part of its interest under this Ground Lease, or (ii) all or any part of any structure or other improvement located on the Land, nor sublet all or any part of the Property except for subletting to users of the apartments. The Landlord's consent will not be unreasonably withheld, and may not be conditioned on an extension of the Declaration of Restrictive Covenants. This Section 9.01(a) shall not apply to the City or HUD if either becomes Tenant under this Ground Lease.

(b) Tenant is specifically authorized and permitted to sell, assign, transfer or otherwise convey the leasehold interest in the Property and its ownership of the Improvements to any person or entity, without the consent of Landlord, so long as the transferee or assignee enters into an assumption agreement by which it assumes all of the Tenant's rights and obligations herein set forth. Upon the consummation of the transfer of the Property as set forth above, the transferee or assignee shall succeed to all rights and obligations of the Tenant herein contained, and shall be deemed a permitted assignee of Tenant, and Tenant making such sale, assignment, transfer or

other conveyance shall be and hereby is relieved of any continuing obligations hereunder. The Landlord acknowledges that Tenant and/or the Affiliate intend the Improvements, or a portion thereof, to qualify for housing "low income families" and/or "very low income families," for the initial forty-two year period, as defined under Section 42 of the Internal Revenue Code (the "Code"), and further, Tenant and/or the Affiliate may subject the Improvements, or portion thereof, to qualify for other state and/or federal assistance, including, but not limited to, financing arranged through the United States Department of Housing and Urban Development. As a condition to such qualification, and as may be required under Article 15 hereof Tenant shall be required, and hereby are authorized enter into restrictive covenants encumbering the Property pertaining to use of the Property. Landlord agrees to enter into a subordination agreement for this Ground Lease as to such restrictive covenants as may be required to obtain and maintain such qualifications.

(c) Landlord shall not, without the prior written consent of Tenant, HUD and the City, sell, assign, transfer, or convey (i) all or any part of the Land, or (ii) all or any part of its interest in this Ground Lease or any structure or Improvement located on the Land.

9.02 Liens. Other than the Exceptions, as listed on Exhibit B and the Encumbrances listed on Exhibit D, Tenant shall not create or permit to be created or to remain, and shall promptly discharge, any lien (including but not limited to any mechanic's, contractor's, subcontractor's or materialman's lien or any lien, encumbrance or charge arising out of any Imposition, conditional sale, title retention agreement, chattel mortgage, security agreement, financing statement or otherwise, but exclusive of the lien of, or any security interest created by, any Leasehold Mortgage) upon the Property or any part thereof or the income therefrom, and Tenant shall not suffer any matter or thing whereby the estate, rights and interests of Landlord in the Property or any part thereof will be impaired. Notwithstanding the foregoing prohibitions, Tenant shall have the right to contest any such lien upon compliance with the same conditions as are applicable to the contest of any Imposition under Section 4.03. If Tenant shall fail to cause any such matter to be discharged of record or contested in the foregoing manner, then Landlord may in addition to any other right or remedy, but shall not be obligated to, discharge such lien at any time after delivery of notice to Tenant, either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bonding proceedings, and in any such event Landlord shall be entitled, if it so elects, to compel the prosecution of an action for foreclosure of such lien by the lien or and to pay the amount of judgment in favor of the lien or with interest, costs and allowances. Any amount so paid by Landlord and all costs, expenses and fees incurred by Landlord in connection therewith shall be reimbursed by Tenant to Landlord from and to the extent of Permitted Sources. This Ground Lease shall constitute notice that Landlord shall not be liable for any work performed or to be performed, or any materials furnished or to be furnished, at the Land for Tenant or any Subtenant upon credit, and that no mechanic's or other lien for such work or materials shall attach to or affect the estate or interest of Landlord in and to the Land, unless specifically ordered by Landlord in writing.



### 9.03 Leasehold Mortgage.

(a) In order to enable Tenant to finance a portion of the cost of acquisition and construction of the Project and the Development, Tenant shall have the right, at or prior to commencement of construction of the Improvements required under Section 5.01, to mortgage its leasehold estate created by this Ground Lease, together with its ownership interest in the Improvements, and execute and record a Leasehold Mortgage or Mortgages with respect to both such estates, respectively (collectively, the "Initial Leasehold Mortgage"), to secure the repayment of a loan or loans made to Tenant by a Lender or Lenders (collectively, the "Initial Leasehold Mortgagee") in an aggregate amount not to exceed the estimated cost of the Development, or such other amount as is approved by Landlord. The Initial Leasehold Mortgage and the loan or loans it, or they, secure, shall be term loans on the Development, as a whole. The Initial Leasehold Mortgagees are listed on Exhibit C. Their addresses are listed in Article 16.

Tenant covenants and agrees to observe and perform all of the covenants, agreements, and terms contained in any Leasehold Mortgage. Landlord's interest in this Ground Lease shall at no time be encumbered by and shall at no time be subject or subordinate to any Leasehold Mortgage, except as to rights granted to any Leasehold Mortgagee as set forth in this Ground Lease.

(b) In addition to the Initial Leasehold Mortgagees identified in Article 16 and Exhibit C, if Landlord shall be notified in writing of the existence of any other Leasehold Mortgage, and provided the Leasehold Mortgagee shall have designated in a written notice to Landlord the address of the Leasehold Mortgagee for the service of notices, then notice of Tenant's Event of Default in the performance of the covenants of this Ground Lease shall simultaneously be given to such Leasehold Mortgagee and such Leasehold Mortgagee shall have the right within the respective periods as prescribed in paragraph (e) hereof to take such action or to make such payments as may be necessary to cure any such default to the same extent and with the same effect as though done by Tenant.

(c) Intentionally Deleted.

(d) Intentionally Deleted.

(e) If there shall be an Event of Default by Tenant under this Ground Lease, Landlord agrees that it will not terminate this Ground Lease or invoke its right to take possession of the Property if (i) any Leasehold Mortgagee shall cure the default within 180 days after expiration of the time for Tenant to cure said default, or if such default cannot reasonably be cured within said 180-day period, and any Leasehold Mortgagee in good faith commences to prosecute with all due diligence all actions required to cure such default, or (ii) within 180 days after notice of such default by Landlord to Leasehold Mortgagee, the Leasehold Mortgagee commences legal proceedings (herein called "foreclosure proceedings") to foreclose the lien of the Leasehold Mortgage and if such Leasehold Mortgagee diligently proceeds with its foreclosure proceedings

(including seeking to be put in possession as mortgagee-in-possession or seeking to obtain the appointment of a receiver in such foreclosure proceedings; provided however, neither HUD nor the City shall be required to seek mortgagee-in-possession status or seek to obtain appointment of a receiver), subject to any stay in any bankruptcy or insolvency proceedings filed by or against Tenant, and seeks to cure or cause to be cured all defaults under this Ground Lease other than defaults which cannot reasonably be cured until Leasehold Mortgagee completes such foreclosure proceedings or other than defaults which having once occurred are not reasonably capable of being cured either by the payment of money or taking affirmative action; provided, however, that notwithstanding the preceding provisions of this sentence, Landlord may invoke any or all of its remedies under this Ground Lease, including the remedy of termination, if such Leasehold Mortgagee fails to commence and prosecute either curative action or foreclosure proceedings as provided above. In the event the purchaser at foreclosure sale or the assignee of such purchaser acquires the leasehold estate hereunder and Tenant's interest in the Improvements, such purchaser or assignee shall thereupon become Tenant under this Ground Lease and hereby agrees to assume and perform each and all of Tenant's obligations and covenants hereunder.

(f) In the event there is a Leasehold Mortgage listed on Exhibit C or a Leasehold Mortgage of which Landlord has received notice as provided in Paragraph (b) hereof, Landlord agrees that it will not accept a surrender of the Property or a cancellation of this Ground Lease from Tenant prior to the termination of this Ground Lease and will not make an amendment of this Ground lease without in each case the prior written consent of each such Leasehold Mortgagee.

(g) If Landlord shall terminate this Ground Lease, or if this Ground Lease shall be terminated by reason of the rejection of this Ground Lease by a debtor in possession or a trustee or receiver appointed by a court of competent jurisdiction in bankruptcy or insolvency proceedings involving Tenant, and if in either such event the rights of the HUD Mortgagee, HUD or the City to take a new lease as provided in Articles 19 and 20 of this Ground Lease shall have terminated without any of said parties taking a new lease, then and in either such event Landlord will make and enter into a new lease with any such Leasehold Mortgagee (or the nominee of Leasehold Mortgagee designated by such mortgagee by written notice to Landlord) provided that:

(i) Leasehold Mortgagee shall make written request of Landlord for a new lease within the ninety (90) days next following the date of termination of all rights under Articles 19 and 20 of this Ground Lease aforesaid;

(ii) At the time of termination of this Ground Lease, and at the time of Leasehold Mortgagee's written request for a new lease and at the time of execution and delivery of such new lease by and between Landlord and Leasehold Mortgagee (or the nominee of Leasehold Mortgagee, as the case may be), Leasehold Mortgagee shall have cured all defaults of Tenant under this Ground Lease that can reasonably be cured by Leasehold Mortgagee or shall be proceeding in accordance with Section 9.03(e) hereof, however, none of the

provisions of this Section 9.03 (g) (ii), shall apply in the event that HUD or the City become owners of the Project, and

(iii) Concurrently with the execution and delivery of the new Ground Lease, Leasehold Mortgagee shall surrender Tenant's duplicate original of this Ground Lease for cancellation by Landlord, if Leasehold Mortgagee has such duplicate original in its possession. In any event, this Ground Lease shall be deemed to have terminated concurrently with the execution and delivery of a new Ground Lease by the Landlord and the Leasehold Mortgagee.

(h) Leasehold Mortgagee, by accepting its Leasehold Mortgage, agrees for the benefit of Landlord that such mortgagee will use its reasonable efforts to give to Landlord notice of all events of default declared by Leasehold Mortgagee with respect to such Leasehold Mortgage which give Leasehold Mortgagee the right of acceleration, concurrent with or promptly after the time notice thereof is given to Tenant.

## ARTICLE 10

### Tenant Default: Rights and Remedies of Landlord

10.01 Tenant's Event of Default. Each of the following events shall be an "Event of Default" by Tenant under this Ground Lease:

(a) Tenant's failure to pay any installment of Rent, or any other payment of money to be paid by Tenant under this Ground Lease, when due, and such failure shall continue for a period of 15 days after written notice from the Landlord specifying such failure;

(b) Tenant shall be in default under Section 9.01(a) of this Ground Lease;

(c) Tenant shall fail to perform any other material obligation to Landlord under this Ground Lease and such failure shall continue beyond ninety (90) days from written notice received by Tenant from Landlord specifying such Events of Defaults, however, if Tenant in good faith commences to prosecute with all due diligence all actions required to cure such default, Tenant shall be allowed a reasonable period to continue its efforts to cure; and

(d) If a petition in bankruptcy is filed by or against Tenant, or if Tenant makes a general assignment for the benefit of creditors or is adjudged insolvent by any state or federal court, except in the case of any such involuntary petition, action or proceeding not initiated by Tenant which is not dismissed or stayed within 90 days of the commencement of such petition, action or proceeding.

Notwithstanding the foregoing occurrence of an Event of Default (i) if the Master Lease Agreement permits or allows a longer notice or cure period for any occurrence constituting an Event of Default, the notice and cure period of the Master Lease Agreement

shall control and supersede the notice and cure period specified in this Section 10.01; and (ii) Tenant shall have all of its rights set forth in Section 6.4 of the Master Lease Agreement.

Tenant shall be excused in its performance of any obligation herein set forth during any period that Landlord shall be in default under the Master Lease Agreement which default adversely affects, directly or indirectly, Tenant's ability to perform its obligations hereunder.

10.02 Termination. Subject to Section 9.03 hereof, if an Event of Default shall occur, Landlord may at its option at any time thereafter during the continuance of such Event of Default give to Tenant a notice of termination of this Ground Lease, and upon the date specified in such notice, which date shall be after all cure periods and foreclosure proceeding periods without a cure or foreclosure being effected, then this Ground Lease and the term hereby demised and all Tenant's rights under this Ground Lease shall expire and terminate as if that date were the date herein originally fixed for the expiration of the term of this Ground Lease, and on the date so specified, Tenant shall quit and surrender the Property to Landlord.

10.03 Transfer of Deposits, etc. In the event of any termination of this Ground Lease under Section 10.02, all unearned insurance premiums, all deposits theretofore made by Tenant with utility companies, any claims for refund of any Imposition, any pending claims for insurance proceeds or condemnation awards, which are subject to the rights of the Leasehold Mortgagees and all fuel and supplies on the Property shall be deemed to be and are hereby assigned to and transferred to Landlord to be applied in payment of Tenant's liability under this Ground Lease.

10.04 Re-entry. In the event of termination of this Ground Lease under Section 10.02 or by operation of law or otherwise, Landlord may without further notice re-enter and repossess the Property.

10.05 Injunctive Relief. In the event of any breach or threatened breach by Tenant of any of the covenants, agreements, terms or conditions contained in this Ground Lease, Landlord shall be entitled to enjoin such breach or threatened breach, and shall have the right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings and other remedies were not provided for in this Ground Lease.

10.06 Re-letting by Landlord. If Landlord has terminated this Ground Lease in accordance with Section 10.02, Landlord may re-let the Property or any part thereof and receive the rent therefor, whether such rent is in the aggregate greater than or less than the Rent payable hereunder. Landlord shall not be responsible or liable in any way for failure to re-let the Property or any part thereof or for failure to collect any rent due on such re-letting except as required by law to mitigate Landlord's damages. Tenant gives Landlord the full right to re-enter and re-possess the Premises as above provided in Section 10.04 in order to consummate any such re-letting.

10.07 Intentionally Deleted.

10.08 No Implied Waivers. Landlord's granting of a consent under this Ground Lease, or Landlord's failure to object to an action taken by Tenant without Landlord's consent under this Ground Lease, shall not be deemed a waiver by Landlord of its right to require such consent for any further similar act of Tenant. No waiver of Landlord of any breach of any of the conditions, covenants or agreements of this Ground Lease shall be construed, taken or held to be a waiver of any other breach or be a waiver, acquiescence in or consent to any further or succeeding breach of the same term, condition, covenant or agreement. None of Tenant's covenants, agreements, obligations or undertakings under this Ground Lease, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord.

10.09 Remedies Not Exclusive. Subject to provisions of Article 18 hereof, no right, power or remedy conferred upon or reserved to Landlord under this Ground Lease or under law shall be considered exclusive of any other right, power or remedy, but such rights, powers and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute or otherwise, and every right, power and remedy given by this Ground Lease to Landlord may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, without precluding Landlord's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Landlord to exercise any right, power or remedy arising from any Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

10.10 Intentionally Deleted.

10.11 Suits for Damages. Suit or suits for damages or deficiencies, or for a sum equal to any installments of Rent, Impositions and other charges and payments hereunder shall be subject to the provisions of Article 18 hereof.

10.12 Bankruptcy. Nothing in this Article contained shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by a statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount be greater, equal to or less than the amount of the damages referred to any of the preceding Sections.

10.13 Leasehold Mortgagee's Rights. Notwithstanding the remedies afforded to Landlord under this Article 10, such remedies shall be subject to and subordinate to the Leasehold Mortgagees' rights granted herein.

## ARTICLE 11

### Additional Rights and Remedies of Landlord

11.01 Performance by Landlord. If Tenant shall at any time fail to make any payment or perform any act to be made or performed by Tenant under this Ground Lease beyond any



applicable grace period, or under any Leasehold Mortgage (provided, in the latter case, a notice of default is required to be and has been given by the Leasehold Mortgagee), Landlord may at its option (but shall not be required to), after 30 days written notice to Tenant, make any such payment or perform any such act, and for such purpose Landlord may enter upon the Property and take all such action thereon as may be deemed by Landlord necessary or desirable therefor.

#### 11.02 Tenant to Provide Indemnification.

(a) Unless arising from Landlord's negligence or intentional misconduct or a breach of Landlord's obligations under this Ground Lease, or until Landlord shall have re-entered the Property upon expiration of this Ground Lease, Tenant agrees, from and to the extent of Permissible Sources, to indemnify, defend and save Landlord harmless against and from all liabilities, claims, suits, fines, penalties, damages, losses, charges, costs, expenses and fees (including attorney's fees) which may be imposed upon, incurred by or asserted against Landlord by reason of:

(i) any use, non-use, possession, occupation, condition, operation, repair, maintenance or management of the Property or any part thereof or any occurrence of any of the same;

(ii) any action or omission on the part of Tenant or any subtenant or licensee, or any of its or their agents, contractors, servants, employees, licensees or invitees;

(iii) any accident, injury (including death) or damage, regardless of the cause thereof, to any person or property occurring in, on or about the Property or any part thereof;

(iv) any contest permitted pursuant to the provisions of Section 4.03 and 6.06; or

(v) any litigation or proceeding to which Landlord becomes or is made a party without fault on its part, whether commenced by or against Tenant, or (provided that Landlord prevails in such litigation or proceeding) which may be incurred by Landlord in enforcing any of the covenants, agreements, terms and conditions of this Ground Lease; and

(b) The Tenant shall have the right, but no the obligation, to defend claims to which a right of indemnification is claimed. As to claims for which Tenant does not receive notice, there shall be no obligation of the Tenant to indemnify.

11.03 Landlord to Provide Indemnification. Unless arising from Tenant's negligence or intentional misconduct or a breach of Tenant's obligations under this Ground Lease, Landlord agrees to indemnify, defend and save Tenant harmless against and from all liabilities, claims, suits, fines penalties, damages, losses, charges, costs, expenses and fees

(including attorneys' fees) which may be imposed upon, incurred by or assessed against Tenant by reason of:

(i) any action or omission on the part of Landlord or any of its officials, agents, or employees; or

(ii) any litigation or proceeding to which Tenant becomes or is made a party without fault on its part, whether commenced by or against Landlord, or (provided Tenant prevails in such litigation or proceeding) which may be incurred by Tenant in enforcing any of Landlord's covenants and agreements contained herein:

11.04 Landlord's Right of Inspection. Landlord, upon not less than 48 hours advance notice, oral or written, to Tenant, shall have the right during usual business hours, during the Term of this Ground Lease to enter the Property for purposes of inspection to determine Tenant's compliance with this Ground Lease. Landlord's rights under this Section 11.03 may be exercised on its behalf by any authorized representatives designated in writing by Landlord.

11.05 Inapplicability to HUD and the City. Notwithstanding any provision of this Ground Lease to the contrary, none of the provisions or requirements of this Article 11 shall apply to the HUD Leasehold Mortgagee, HUD or the City in the event that the HUD Leasehold Mortgagee, HUD or the City becomes owner of the leasehold estate created hereby or of the Improvements, or otherwise becomes tenant of the Property or owner or tenant of the Improvements.

## ARTICLE 12

### Eminent Domain

12.01 Total Taking. Subject to Articles 19 and 20, if, during the Term of this Ground Lease, the entire Property or such substantial portion of the Property as shall in the good faith judgment of the Tenant make it economically unfeasible to continue to operate the remaining portion for the purposes herein stated, shall be taken by the exercise of the power of eminent domain, this Ground Lease shall terminate on the date of vesting of title in the condemnor under such eminent domain proceedings, and all Rent and other sums payable by Tenant hereunder shall be prorated to the date of such vesting, and thereafter Tenant shall be relieved of all obligations to pay the Rent and to otherwise perform its agreements, obligations and undertakings under this Ground Lease. The award granted with respect to such eminent domain proceedings shall be divided between Landlord and Tenant in the following order:

(a) To all and any Leasehold Mortgagees, as their interests appear, an amount sufficient to obtain a release and satisfaction of the Leasehold Mortgages,

(b) To Tenant, an amount equal to the greater of (i) the fair market value of the Improvements and the fair market value of the unexpired leasehold estate, reduced by the amount if any paid under the proceeding above (a), and (ii) replacement costs of

the Improvements and the fair market value of the unexpired leasehold estate, reduced by the amount, if any, paid under the preceding clause (a), and

(c) The balance, if any, shall be paid to Landlord.

12.02 Partial Taking. If, during the Term of this Ground Lease, less than the entire Property shall be taken by the exercise of the power of eminent domain, and in the good faith judgment of the Tenant it is economically feasible to continue to operate the remaining portion of the Property for the purposes herein stated, this Ground Lease shall not terminate but shall continue in full force and effect for the remainder of said term subject to the provisions hereof. The amount of damages resulting to Landlord and Tenant, respectively, and to their respective interests in and to the Property and in, to and under this Ground Lease, by reason of such exercise and partial taking under such eminent domain proceedings shall be separately determined and computed by the court having jurisdiction of such proceedings and separate awards and judgments with respect to such damages to Landlord and Tenant shall be made and entered, and said awards shall be paid to Landlord and Tenant, respectively, in accordance therewith; provided that Tenant shall receive that portion of the award made as consequential damages to the Improvements located on the remaining portion of the Property and Tenant at its costs shall forthwith restore the remaining portion of the Improvements to substantially the same condition as existing prior to such taking (to the extent such restoration is possible, taking into account the extent to which a portion of the Improvements have been removed as a result of the taking), using such part of the award received by Tenant in said eminent domain proceeds as may be necessary therefor and, if the amount of such award is not sufficient, Tenant may, but shall not be required to provide additional funds required.

12.03 Temporary Taking. In the event of a taking for a temporary use, this Ground Lease and the Term shall continue and the Rent thereafter due and payable shall be reduced or abated. Tenant shall continue to perform and observe all of the other covenants, agreements, terms and conditions of this Ground Lease. The entire amount of any proceeds with respect to such temporary taking, shall be paid to Tenant.

12.04 Other Governmental Action. In the case of any governmental action not resulting in the taking of any portion of the Property but creating a right to compensation therefor, this Ground Lease shall continue in full force and effect without reduction or abatement of any Rent thereafter due and payable. If such governmental action results in any damage to the Improvements located on the Land, Tenant shall be entitled to receive such portion of the proceeds (or all of the proceeds, if required for the purpose) estimated to be necessary to remedy any such damage, and Tenant shall proceed with reasonable diligence to make all repairs, replacements, restorations and improvements necessary so to remedy such damage to the extent economically feasible, and if the amount of such proceeds is not sufficient. Tenant shall have the right, but not the obligation, to provide the additional funds required. Any balance remaining from such proceeds, or if no damage is involved then all of such proceeds, shall be divided between Landlord and Tenant as their respective interests may appear.

12.05 Leasehold Mortgagees. Landlord's rights granted under this Article 12 shall be subject to the rights and interests of the Leasehold Mortgagees under the Leasehold Mortgages.

### ARTICLE 13

#### Estoppel Certificates

Upon written request by either party or any Leasehold Mortgagee, the party to whom the request was made will certify promptly to the requesting person or entity, or to any proposed assignee or grantee or mortgagee or trustee under deed of trust or trust deed or the proposed assignee of such mortgagee, deed of trust or trust deed, whether or not this Ground Lease is valid and subsisting, whether or not it has been modified (and if there are modifications, stating them) and whether or not the party executing the certificate knows of any default or breach by the other party under any of the terms of this Ground Lease (and if any exists, stating them). If the party to whom a written request is directed under the preceding sentence shall fail to furnish the requested certificate within 20 days after the making of such request, then by such failure such party shall be deemed to have certified to the requesting person or entity and to any proposed assignee or grantee or mortgagee or trustee under a deed of trust or trust deed, that this Ground Lease is valid and subsisting and that there are no defaults or breaches by the other party under the terms of this Ground Lease or any modifications since the original date of the request date. Upon the issuance of a certificate of occupancy for the Project by the City in its municipal capacity following completion of the construction of the Improvements. The Landlord shall give to Tenant an estoppel certificate (in recordable form) certifying all obligations set forth in Section 5.01 of this Ground Lease have been satisfied, and Tenant shall cause such certificate to be recorded.

### ARTICLE 14

#### Surrender at End of Term: Title to Improvements

14.01 Surrender at End of Term. On the last day of the Term and subject to the provisions of Section 14.02, Tenant shall well and truly surrender and deliver up to Landlord the Project without fraud or delay free and clear of all lettings, occupancies, and licenses, and free and clear of all liens and encumbrances other than the liens and encumbrances permitted hereunder, including the Exceptions, Encumbrances and the rights of tenants in possession under leases, and those, if any, existing at the date hereof, or created by Landlord, without any payment or allowance whatever by Landlord, other than the Surrender Fee, on account of or for any Improvements erected or maintained on the Land at the time of the surrender or for the contents thereof, or fixtures, or articles of personal property or equipment therein or appurtenances thereto, whether or not the same or any party thereof shall have been constructed by, paid for, or purchased by Tenant. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Property at any such termination date.

14.02 Title to Improvements. Landlord recognizes and agrees that through the Term of this Ground Lease and until expiration or any termination of this Ground Lease, title to all

Tenant Improvements, shall be in Tenant's name and that Tenant has, and shall be entitled to, all rights and privileges of ownership of such Tenant Improvements including the right to transfer such Tenant Improvements in accordance with the terms of this Ground Lease and to remove such Tenant Improvements at any time during or upon the expiration of the Term.

14.03 Surrender Fee. Landlord shall be obligated to pay to Tenant a Surrender Fee as consideration for the Tenant's vacation of the Property and transfer of title to the Improvements under any circumstance except as may arise under the Landlord's exercise of its rights under Article 10 hereof.

## ARTICLE 15

### Other Landlord Obligations, Landlord Defaults

15.01 Use as Public Housing. Landlord and Tenant acknowledge and agree that the Project is being partly developed, constructed, owned, operated and managed to carry out the programs, services and other requirements as set forth in the U.S. Housing Act of 1937, as amended ("the Act") and its Regulations promulgated therefrom. Tenant and Landlord shall be required to join into, any restrictive covenants regulating the use, occupancy and disposition of the Project as may be necessary to carry out the intents and purposes of the Act and its Regulations.

15.02 Master Lease Agreement. Tenant is hereby authorized to enter into a Master Lease Agreement for certain of the dwelling units in the Development with the Landlord, or any Affiliate of Landlord, for dwelling units to be leased by Tenant to certain Public Housing Eligible families on such terms as the Tenant may agree will govern such units. The Master Lease Agreement shall, in part, reflect the goals and intents of the Act and its accompanying regulations. In each and every respect, the Landlord shall be and remain liable under the Master Lease Agreement with Tenant. To the extent that the contracting party under the Master Lease Agreement is the Landlord, or any Affiliate of Landlord, any breach of the Master Lease Agreement shall constitute a default by Landlord under the terms of this Ground Lease and entitle Tenant to the right of offset, counterclaim and other legal or equitable defenses in regards to this Ground Lease, in addition to all other rights and remedies as may be available to Tenant at law or in equity.

15.03 Landlord's Default. Each of the following events shall be an event of default by Landlord under this Ground Lease:

(a) Landlord's failure to pay, when due, any amounts required to be paid by Landlord hereunder, or under the Master Lease Agreement, within thirty (30) days of receipt of Tenant's written notice of such failure;

(b) Landlord's failure to convey by this Ground Lease, all of the parcels of the land to constitute the Project, as a whole.



(c) Landlord's failure to provide the services and programs as may be required under the Master Lease Agreement prior to the expiration of any applicable grace or notice period therein set forth;

(d) A breach of any representation or warranty made by Landlord hereunder or under the Master Lease Agreement;

(e) Landlord's breach or default under any other term or provision to be performed by Landlord under this Ground Lease, or the Master Lease Agreement, not otherwise described in subsections (a) through (d) hereof, not cured by Landlord within any applicable grace or notice period as may be specified in each of the respective documents.

Upon an event of default by Landlord hereunder, Tenant shall have all of the rights and remedies afforded at law or in equity.

Upon any event of default by Landlord under this Section 15.04, Tenant shall be entitled to enjoin such breach or threatened breach, and shall have the right of specific performance, it being the agreement of the parties hereto that in certain circumstances of Landlord's event of default, Tenant's remedies at law may be inadequate to afford it the practical realization of the agreements herein made by the parties:

No right, power or remedy conferred upon or reserved to Tenant under this Ground Lease, or under law, shall be considered exclusive of any other right, power or remedy, but such rights, power and remedies shall be cumulative and shall be in addition to every other right, power and remedy given hereunder, or now or hereafter existing at law or in equity, or by statute, or otherwise given by the Master Lease Agreement. Every right, power and remedy given by this Ground Lease may be exercised from time to time and as often as occasion may arise or may be deemed expedient, without precluding Tenant's simultaneous or later exercise of any or all other rights, powers or remedies. No delay or omission of Tenant to exercise any right, power or remedy arising from Landlord's event of default shall impair any such right, power or remedy or shall be construed to be a waiver of any such default or an acquiescence therein.

None of Landlord's covenants, agreements, obligations or undertakings, and no events of default thereof shall be waived, altered, or modified except by a written instrument executed by Tenant.

## ARTICLE 16

### Notices

All notices or demands under this Ground Lease shall be in writing and shall be served and given by personal delivery or by certified mail, return receipt requested, addressed (i) if to Landlord, to such person and at such address as Landlord may by notice in writing designate to Tenant, and in the absence of such designation, to Chicago Housing Authority, 626 West Jackson Boulevard, 7th Floor, Chicago, Illinois 60661, Attention: Chief Executive Officer

with a copy to Chicago Housing Authority, Office of the General Counsel, 200 West Adams Street, Suite 2100, Chicago, Illinois 60606, Attention: General Counsel, and (ii) if to Tenant to the address designated by Tenant in writing to Landlord, and in the absence of any such designation then

Hearts United Phase II Limited Partnership  
400 East 41st Street  
Chicago, Illinois 60653

with a copy to:

Foley & Lardner  
One IBM Plaza  
330 North Wabash, Suite 3300  
Chicago, Illinois 60611  
Attention: C. Richard Johnson

In addition, concurrently with the giving of any notice or demand by Landlord to Tenant, or by Tenant to Landlord, Landlord or Tenant, as the case may be, shall furnish a copy of such notice to HUD and any Leasehold Mortgagee, including the following:

United States Department of Housing and Urban Development  
77 West Jackson Boulevard, 26th Floor  
Chicago, Illinois 60604  
Attention: General Counsel  
FHA Project #071-32136

United States Department of Housing and Urban Development  
77 West Jackson Boulevard, 24<sup>th</sup> Floor  
Chicago, Illinois 60604  
Attention: Director of Public Housing

Prairie Mortgage Company  
819 South Wabash Avenue, Suite 508  
Chicago, Illinois 60605  
Attention: President

City of Chicago Department of Housing  
318 South Michigan Avenue, 7th Floor  
Chicago, Illinois 60604  
Attention: Commissioner of Housing

City of Chicago, Department of Law  
Finance and Economic Development Division  
Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602

with a copy to: Bank One Community Development Corporation  
One Bank One Plaza  
Chicago, Illinois 60602

By written notice served in the foregoing manner, any party entitled to receive notices shall have the right to designate another person and another address to which notices and demands shall thereafter be sent. Each such notice or demand, when given by mail, shall be deemed served, given and received on the third business day after the postmark date which it bears.

## ARTICLE 17

### Miscellaneous

17.01 Covenants Running With Land. All terms, provisions, conditions, covenants, agreements, obligations and undertakings contained in this Ground Lease shall, except as herein specifically limited or otherwise provided, extend and inure to be binding upon Landlord's successors and assigns and Tenant's successors and assigns as if such successors and assigns were in each case specifically named, and shall be construed as covenants running with the land. Wherever reference is made in this Ground Lease to either party, it shall be held to include and apply to such successors and assigns.

17.02 Amendments in Writing. In no event shall this Ground Lease or any terms, provisions or conditions hereof be deemed to be amended, modified or changed in any manner whatsoever, except and unless set forth and provided for in writing executed by Landlord and Tenant, respectively.

17.03 Quiet Possession. Landlord represents and warrants that it has full right and power to execute and perform this Ground Lease and to convey the rights and interest demised hereby. Landlord agrees that during the Term and so long as Tenant performs Tenant's agreements, obligations and undertakings hereunder, Tenant shall and may peaceably and quietly have, hold and enjoy the Property demised hereby without molestation or disturbance by or from Landlord and free of any encumbrance created or suffered by Landlord except those expressly described herein to which this Ground Lease is made subject and subordinate.

17.04 Time of Essence. Time is of essence of this Ground Lease and of the performance of the respective obligations, covenants and agreements of Landlord and Tenant hereunder. If the day for the performance of any obligation hereunder occurs on a calendar day other than a business day, the time for such performance shall be extended to the next business day.

17.05 Approvals. All approvals or consents required under the provisions hereof shall be in writing. Unless herein expressly otherwise provided, any approval or consent of the Landlord shall be sufficiently give if signed by the Landlord's Chief Executive Officer. All disapprovals or the withholding of consent by Landlord shall be only upon a reasonable basis, given in writing with sufficient rationale as to enable Tenant to formulate an alternative response or to contest.

17.06 Condition of Property. Landlord has made no warranties or representations whatever with respect to the Property and Tenant accepts the Property "as is".

17.07 Captions. The table of contents and captions of this Ground Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Ground Lease nor in any way affect this Ground Lease.

17.08 Partial Invalidity. If any term, provision or condition of this Ground Lease or its application to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Ground Lease of the application of such term, provision or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, provision and condition of this Ground Lease shall be valid and be enforced to the fullest extent permitted by law.

17.09 Applicable Law. This Ground Lease shall be construed and enforced in accordance with the laws of the State of Illinois.

17.10 Recording of Ground Lease. This Ground Lease shall be recorded in its entirety.

17.11 Anti-Merger. In the event that Tenant becomes the owner of fee title to the Land, this Ground Lease shall not terminate for so long as a Leasehold Mortgage is in effect.

17.12 Third-Party Beneficiaries. HUD, the HUD Mortgagee and the City are intended to be third-party beneficiaries of this Ground Lease and, as such, shall be entitled to directly enforce the provisions hereof against Landlord and Tenant, at law and in equity, without the necessity of execution hereof.

## ARTICLE 18

### Exculpatory Provisions

18.01 Exculpatory Provision - Landlord. It is expressly understood and agreed by Tenant that none of Landlord's covenants, undertakings or agreements herein set forth are made or intended as personal covenants, undertakings or agreements of Landlord, but are for the purpose of binding the premises demised hereby, and liability or damage for breach for nonperformance by Landlord shall be collectible only out of the Land demised hereby and no personal liability is assumed by nor at any time may be asserted or enforced against Landlord or any of its officials, employees or agents or any of its or their heirs, legal representatives, successors or assigns, all such personal liability, if any, being expressly waived and released by Tenant. Nothing contained in this Section 18.01, however, shall in any way or manner limit the full recourse of Tenant against the Landlord under the Master Lease Agreement or under any non-monetary remedy granted Tenant in Section 15.04. This Section 18.01 shall not apply to the City or HUD if either is the Tenant under this Ground Lease.

18.02 Exculpatory Provision - Tenant. Neither the Tenant nor, or any partner, officer, director, shareholder, member or employee of any partner, shall be personally liable

for payment or performance under this Ground Lease, it being acknowledged that the Landlord's exclusive rights and remedies hereunder shall be limited to Tenant's interest in the Property and the Improvements and shall, to the extent provided for in Section 10.2 of this Ground Lease, for the termination of this Ground Lease and re-entry and possession of the Property.

18.03 Partnership's Rights. Upon the consummation of the transfer of the Property from the Partnership to a transferee or assignee, the transferee or assignee shall succeed to all rights and obligations of the Partnership herein contained, and as set forth in the Development Agreement (as defined in the Owner's partnership agreement), and shall be deemed a permitted assignee of the Partnership and the transferee or assignee shall be entitled to all rights and privileges, and exculpation contained in this Ground Lease and made a party hereof by this reference.

## ARTICLE 19

### HUD Regulations

19.01 HUD Requirements. Notwithstanding any other provisions of this Ground Lease, in the event of any conflict, inconsistency or ambiguity between the provisions of this Article 19 and the provisions of any other article, section or provision of this Ground Lease, the provisions of this Article 19 shall prevail and control. So long as the HUD insured Leasehold Mortgage in the original principal amount of \$6,273,000 (the "HUD Mortgage") is in effect and not released, or there is any Leasehold Mortgage or mortgage of Improvements which is insured or held by HUD or the Land or any of the Improvements or the leasehold estate created by this Ground Lease (this "Leasehold"), this Ground Lease (this "Leasehold"), is acquired by HUD, then in any such event, the following provisions as applicable shall be in full force and effect:

- (a) Tenant is authorized to obtain a loan, the repayment of which is secured by a HUD Mortgage. Tenant is further authorized to execute a Mortgage on this Leasehold and otherwise to comply with the requirements of HUD for obtaining such HUD Mortgage.
- (b) In the event that HUD acquires title to this Leasehold or otherwise acquires title to Tenant's interest herein or becomes a tenant under Section 19.01 (f) below, HUD shall have the option to purchase good and marketable fee title to the Land and Landlord's interest, if any, in the Improvements, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within eighteen (18) months after HUD so acquires such Leasehold or Tenant's interest, for the fair market value of the fee title to the Land and any such Improvements unencumbered by this Ground Lease, as determined by an appraiser who is an MAI appraiser selected by HUD and Landlord, payable in cash, or by Treasury check, provided all rents are paid to date of transfer of title. HUD shall, within said eighteen (18) months, give written notice of its election to exercise said option to purchase to the Landlord



and Landlord shall thereupon execute and deliver to HUD, a deed of conveyance to the said fee and Landlord's interest, containing a covenant against the grantor's acts, but excepting therefrom such acts of the Tenant and those claiming by, through or under the Tenant. In the event that HUD and Landlord cannot agree on an appraiser, both HUD and the Landlord shall select an MAI appraiser and such appraisers jointly shall select a third MAI appraiser. Each of the three appraisers shall make an appraisal and the average price for the fee shall govern. Each such appraisal shall state the separate fair market value of the Land and of the Landlord's interest in the Improvements, if any. The balance due under the HUD Mortgage shall be applied as a set off to the purchase price of Landlord's interest in the Improvements. Nothing in this option shall require the Landlord to pay any taxes or assessments which were due and payable by the Tenant. HUD and Landlord shall each pay one-half of the fee and charges of such appraiser or appraisers, as the case may be. Notwithstanding any other provision hereof, HUD may cancel and terminate its election to exercise its option to purchase by giving written notice of such cancellation and termination to Landlord within sixty (60) days after HUD's receipt of the appraisal or all three appraisals aforesaid. The transaction and conveyance shall close within ninety (90) days after HUD's receipt of said appraisal or all three appraisals as the case may be unless such closing date is extended by mutual agreement of HUD and the Landlord.

- (c) If approved by HUD, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest created by this Ground Lease and its interest in the Improvements without the need for approval or consent by any person or entity other than HUD. Notwithstanding the foregoing, for so long as the City's mortgage ("City Mortgage") is outstanding, the City's right of approval contained in the "HUD Required Provisions Rider" attached to said Mortgage shall apply to any such conveyance, assignment, transfer or sale.
- (d)
  - (i) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the Mortgagee, its successors and assigns, under the HUD Mortgage and/or HUD.
  - (ii) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to the HUD Mortgagee. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant to the HUD Mortgagee.
- (e)
  - (i) If all or any part of the Land or the Improvements or the Leasehold shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the

Leasehold shall be paid to the HUD Mortgagee or otherwise disposed of as may be provided in the HUD Mortgage. Any portion of the award attributable solely to the taking of the Land shall be paid to the Landlord. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the Land as established by the amount HUD would be required to pay upon acquisition of the fee as set out in paragraph (b) of this Article 19 of the Ground Lease;

- (ii) In the event of a negotiated sale of all or portion of the Land or Improvements in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation, but the approval of HUD and the HUD Mortgagee shall be required as to the amount and division of the payment to be received.
- (f) Upon termination of this Ground Lease pursuant to Article 10 herein or pursuant to a rejection as described in Section 9.03(g) of this Ground Lease, Landlord shall immediately seek to obtain possession of the Land and Improvements. Upon acquiring such possession, Landlord shall notify HUD and the HUD Mortgagee. The HUD Mortgagee and HUD shall have six (6) months from the date of such notice of acquisition to elect to take a new lease on the Land and on the Improvements. Such new lease shall have a term equal to the unexpired portion of the Term of this Ground Lease (including the Extended Term) and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this Ground Lease, including without limitation, the option to purchase set forth under Article 19.01(b) above, except that HUD Mortgagee's or HUD's liability for Rent shall not extend beyond its occupancy under such lease. The Landlord shall tender such new lease to the HUD Mortgagee or HUD within thirty (30) days after a request for such lease and shall deliver possession of the Land and Improvements immediately upon execution of the new lease. Upon executing a new lease, the HUD Mortgagee or HUD shall pay to Landlord any unpaid Rent due or that would have become due under this Ground Lease to the date of the execution of the new lease, including any taxes which were liens on the Land or the Improvements and which were paid by Landlord, less any net rentals or other income which Landlord may have received on account of the Land and Improvements since the date of default under this Ground Lease.
- (g) Notwithstanding anything to the contrary in this Ground Lease or in any document referred to herein with respect to Leasehold Mortgages or any future mortgages, nothing contained herein shall be interpreted or construed to cancel, amend or affect in any way the HUD contract of mortgage insurance by which HUD insures the HUD Mortgage, against loss under the HUD Mortgage, the GNMA guaranty backed by the HUD Mortgage, or the rights and duties of the HUD Mortgagee thereunder. Further, the Landlord specifically authorizes the

HUD Mortgagee to take any action required by HUD with respect to the HUD Mortgage, the Land, or the Improvements.

- (h) The Landlord agrees that, within ten (10) days after receipt of written request from HUD Mortgagee, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the HUD Mortgagee may do under this Ground Lease, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected upon those premises; and if, at the expiration of such ten (10) days' period, the Landlord shall not have joined in any such application, or grants for easements, the HUD Mortgagee shall have the right to execute such application and grants in the name of the Landlord, and, for that purpose, the Landlord irrevocably appoints the HUD Mortgagee as its Attorney-in-fact to execute such papers on behalf of the Landlord.
- (i) Nothing in this Ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the Rent payable by the Tenant under this Ground Lease.

## ARTICLE 20

20.01 Rights of the City. Notwithstanding any other provisions of this Lease other than Article 19 hereof, in the event of any conflict, inconsistency or ambiguity between the provisions of this Article 20 and the provisions of any other section (not including Article 19), the provisions of this Article 20 shall prevail and control. In the event of any conflict, inconsistency or ambiguity between the provisions of this Article 20 and the provisions of Article 19, the provisions of Article 19, if then in effect, shall prevail and control. During the term of the City's Mortgage the following provisions shall be in full force and effect:

- (a) Upon the expiration of the purchase option granted to HUD in Article 19 hereof, the City and any successor or assignee thereof shall have the same option for a like period after such expiration exercisable in the same manner as granted to HUD under Article 19.
- (b) If approved by the City, Tenant may assign, transfer, encumber, mortgage or sell its leasehold interest in the Property.
- (c) Insurance policies shall be in an amount, and in such company or companies and in such form, and against such risks and hazards, as shall be approved by the City.
- (d) (i) If all or any part of the Property or the Improvements or the Leasehold Estate shall be taken or damaged by condemnation, that portion of any

award attributable to the Improvements or the Tenant's interest in the Leasehold Estate or damage to the Improvements or the Tenant's interest in the Leasehold Estate shall be, subject to any then existing prior rights of the HUD mortgagee or HUD, paid to the City or otherwise disposed of as may be provided in the City Mortgage. After the date of taking, the annual ground rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the Property as established by the amount HUD would be required to pay upon acquisition of the fee as set out in paragraph (b) of Article 19.01 of this Ground Lease.

- (ii) In the event of a negotiated sale of all or a portion of the Property or Improvements in lieu of condemnation, the proceeds shall be distributed and Rent reduced as provided in cases of condemnation, but the approval of the City shall be required as to the amount and division of the payment to be received. Notwithstanding the foregoing, however, while Article 19 hereof is in effect, in the event of any conflict between the City and the HUD mortgagee or HUD as to the approved amount and division of such payment to be received, the decision of the HUD mortgagee or HUD, as applicable, shall control.
- (e) Upon termination of this Lease pursuant to Section 10.02 hereof, the Landlord shall immediately seek to obtain possession of the Property and the Improvements. Upon acquiring such possession, the Landlord shall notify the City. Upon expiration of any then existing option or right granted to HUD or the HUD mortgagee under Article 19 hereof, the City shall have the same rights and options for a like period, commencing from the date the Landlord notifies the City in writing of such expiration, and exercisable in the same manner as provided herein.
- (f) The Landlord agrees that, within ten (10) days after receipt of written request from the City, it will join in any and all applications for permits, licenses or other authorizations required by any governmental or other body claiming jurisdiction in connection with any work which the City may do under this Ground Lease, and will also join in any grants for easements for electric, telephone, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the demised premises or of any improvements that may be erected upon those premises; and if, at the expiration of such ten (10) days' period, the Landlord shall not have joined in any such application, or grants for easements, the City shall have the right to execute such application and grants in the name of the Landlord, and, for that purpose, the Landlord irrevocably appoints the City as its Attorney-in-fact to execute such papers on behalf of the Landlord.
- (g) Nothing in this Ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord, or

any income, excess profits or revenue tax, or any other tax, assessment, charge or levy upon the Rent payable by the Tenant under this Ground Lease.

## **ARTICLE 21**

21.01 Regulatory Agreements. In connection herewith, Tenant has entered into (a) that certain Land Use Restriction Agreement, dated as of December 1, 2000, among Tenant, the City and Seaway National Bank of Chicago, as trustee (the "Bond Regulatory Agreement"), and (b) that certain Regulatory Agreement, dated as of December 1, 2000, between Tenant and the City (the "Credit Regulatory Agreement;" the Bond Regulatory Agreement and the Credit Regulatory Agreement being collectively hereinafter referred to as the "Regulatory Agreements"). Notwithstanding any other provision of this Ground Lease, Landlord agrees that (i) in the event that Landlord acts to perform any covenants of Tenant under this Ground Lease pursuant to Section 11.01, it will not take any action inconsistent with the obligations of Tenant under the Regulatory Agreements, and (ii) in the event that Landlord terminates this Ground Lease pursuant to Section 10.02, Landlord will operate (and cause any assignee, lessee or purchaser of the Improvements to operate) the Improvements in a manner consistent with the terms of the Regulatory Agreements if such Regulatory Agreements are then extant pursuant to their terms. The provisions of this Section 21.01 shall survive any termination of this Ground Lease. Nothing in this Section 21.01 shall be deemed to extend the provisions of the Regulatory Agreements beyond their stated terms or to impose greater obligations upon Landlord (or any assignee, lessee or purchaser of the Improvements) under the Regulatory Agreements than are imposed by such documents in accordance with their stated terms.



**IN WITNESS WHEREOF**, this Ground Lease is executed as of the date first written above by the duly authorized officers or representatives of the parties hereto.

**LANDLORD:**

CHICAGO HOUSING AUTHORITY,  
an Illinois municipal corporation

By:



Terry Peterson  
Chief Executive Officer

**TENANT:**

HEARTS UNITED PHASE II LIMITED  
PARTNERSHIP, an Illinois limited  
partnership

By:

Bonheur Development Corporation,  
an Illinois Corporation, its  
managing general partner

  
Fred L. Bonner, President

STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Fred L. Bonner, personally known to me to be the President of Bonheur Development Corporation, Inc., an Illinois corporation, a general partner of Hearts United Phase II Limited Partnership, an Illinois limited partnership, (the "Owner"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President of Bonheur Development Corporation, he signed and delivered the said instrument pursuant to authority given by the Partnership Agreement and as his free and voluntary act, and as the free and voluntary act and deed of the Tenant for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 15<sup>th</sup> day of December, 2000.

*Cheryl Miller*  
Notary Public

My Commission Expires: 9-28-2002

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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Terry Peterson, personally known to me to be the Chief Executive Officer of Chicago Housing Authority (the "Authority"), and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Chief Executive Officer, he signed and delivered the said instrument pursuant to authority given by the CHA Board of Commissioners and as his free and voluntary act, and as the free and voluntary act and deed of the Authority for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 19<sup>th</sup> day of December, 2000.

Jean B. Guzik  
Notary Public

My Commission Expires:

7/02/02

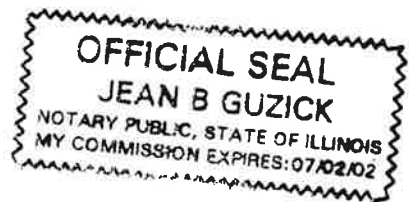


EXHIBIT A  
Legal Description  
Hearts United Apartments Phase II

Parcel 1:

Lot 24 (except from said Lot 24 so much thereof as has been taken or used and occupied for street purposes, being that part of said Lot 24 lying South of a straight line drawn from a point on the East line of said Lot 24, 15.38 feet North of the Southeast corner thereof, to a point on the West line of said Lot 24, 15.31 feet North of the Southwest corner thereof) in Block 2 in McKey's Addition to Hyde Park, being a subdivision made by Circuit Court Commissioners in partition of that part of the South 10 acres of the Northwest Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, lying West of the West line of Vincennes Avenue, together with Lots 13 to 23, inclusive, in Block 6 in Cleaverville Addition, a Subdivision in the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian.

Also,

Lot 11 (except the East 32.66 feet thereof, except the North 10 feet taken or used for alley and except that part thereof taken or used for 41st Street, being that part of said Lot 11 lying South of a straight line drawn from a point on the East line of said Lot 11, 15.57 feet North of the Southeast corner thereof, to a point on the West line of said Lot 11, 15.38 feet North of the Southwest corner thereof) in Block 6 of Cleaverville Addition, aforesaid, all in Cook County, Illinois.

P.I.N.: 20-03-210-046 and Part of 20-03-210-075

Old Address: 550 East 41st Street, Chicago, IL

New Address: 600 E. 41st Street, Chicago, IL

Parcel 2:

Lots 5 to 8, inclusive, in T.M. Oviatt's Resubdivision of Lots 29 to 33, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-215-001, 002, 003, 004, 005 & 006

Old Address: 701-717 East 41st Street, Chicago, IL

New Address: 703 and 707 E. 41st Street, Chicago, IL

Parcel 3:

The North Half of Lots 4, 5 and 6, inclusive, in Dobbin's Subdivision of the North Half of the Southeast Quarter of the Northeast Quarter of Section 3, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N.: 20-03-219-021, 022 & 023

Old Address: 723-39 East Bowen St., Chicago, IL

New Address: 725, 729 and 735 E. Bowen Avenue, Chicago, IL



**EXHIBIT B**

**EXCEPTIONS**

None.

EXHIBIT C

**INITIAL LEASEHOLD MORTGAGEES**

1. Prairie Mortgage Company in the amount of \$6,273,000.00 by a Mortgage, dated 1, 2000.
2. City of Chicago in the amount of \$4,541,818.00 secured by a Second Mortgage, Security Agreement and Financing Statement dated 1, 2000.
3. Chicago Housing Authority Third Mortgage, Security Agreement and Financing Statement in the amount of \$2,749,905.00 dated 1, 2000.

## EXHIBIT D

### ENCUMBRANCES

- (1) Mortgage from Hearts United Phase II Limited Partnership ("HU II") to Prairie Mortgage Company
- (2) Regulatory Agreement between HU II and HUD
- (3) UCC Financing Statements from HU II to Prairie Mortgage Company
- (4) Mortgage from HU II to the City of Chicago ("City")
- (5) Assignment of Rents and Leases from HU II to the City
- (6) UCC Financing Statements from HU II to the City
- (7) Regulatory Agreement between HU II and the City
- (8) TIF Redevelopment Agreement
- (9) CHA Regulatory and Operating Agreement
- (10) CHA Declaration of Restrictive Covenants
- (11) CHA Memorandum of Lease
- (12) Land Use Restriction Agreement

Attachment A  
**Acknowledgement by Bidder**  
**Terms and Requirements of Foreclosure Sale**

**I. TERMS OF BID**

- A. The undersigned, \_\_\_\_\_, (the “High Bidder”) submitted a bid of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) (the “Bid”) at the Foreclosure Sale to purchase \_\_\_\_\_ (the “Property”) held at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_ at \_\_\_\_\_ (AM/PM).

The legal description for the Property is included as Exhibit A. The Bid shall be calculated as follows:

1. EARNEST MONEY: \$ \_\_\_\_\_ in the form of a money order, certified funds, or cashier’s check (the “Earnest Money Deposit”) has been collected at the Foreclosure Sale by the Foreclosure Commissioner, and which shall not earn interest, and
2. BALANCE OF THE BID: The High Bidder will pay the difference between the Bid and the Earnest Money Deposit, a sum of \$ \_\_\_\_\_, (the “Balance”) at Closing, in the form of a money order, certified funds, or cashier’s check as provided in the Acknowledgment.

**II. HIGH BIDDER REPRESENTATIONS AND WARRANTIES.** The High Bidder hereby represents and warrants to HUD, that as of the execution date of this Acknowledgement and as of the date of the Closing, the following:

- A. High Bidder has full knowledge of all the terms, conditions, and requirements of the Foreclosure Sale contained herein. High Bidder affirms that they are required to follow the terms of the Invitation, including by reference, which are incorporated by reference from the Invitation.
- B. High Bidder has the power and authority to execute, deliver and perform this Acknowledgement and all transactions contemplated herein. High Bidder has taken or will take all actions necessary to perform its obligations under this Acknowledgment and to consummate the Foreclosure Sale. This Acknowledgement and all of the other instruments and agreements executed and delivered by High Bidder in connection with the Foreclosure Sale prior to the Closing Date have been or will be duly executed and delivered by High Bidder to HUD and constitute or will constitute legal, valid and binding obligations of High Bidder. These terms are enforceable against High Bidder, except as such enforcement may be limited law and by general principles of equity (whether considered in a proceeding at law or in equity). The execution, delivery and performance of this Acknowledgement by High Bidder does not violate any provisions of any existing federal, state, or local law or regulation applicable to High Bidder, or violate or contravene any judgment, injunction or decree binding upon High Bidder, or violate, contravene or constitute a default under any provision of the organizational documents, if any, governing High Bidder, or of any agreement, contract or other instrument binding upon High Bidder.
- C. High Bidder will accept the Property “AS IS” and understands HUD makes no representations or warranties concerning the physical condition of the Property.

**III. HUD REPRESENTATIONS AND WARRANTIES.** HUD makes no representations and warranties concerning the physical condition of the Property. HUD does not represent or warrant the occupancy of revenue producing units or any other factor bearing upon the value of the Property.

**IV. HIGH BIDDER OBLIGATIONS BEFORE CLOSING**

A. Post Bid Document Submission **within Five (5) Days of Foreclosure Sale:** The High Bidder must submit the following items to HUD within the listed business days of the Foreclosure Sale in order for HUD to begin its review process. The following documents must illustrate the High Bidder's capacity to own and operate the Property:

1. Previous Participation Certification (HUD 2530). Submit one (1) HUD 2530 for the High Bidder and one (1) separate HUD 2530 for any Management Agent.
  - i. Electronic Filers: If the High Bidder has prior access to HUD's Secure Systems, after previously registering through HUD's Business Partner Registration as described in the Invitation, it should submit an electronic Previous Participation Form using the Active Partners System (APPS) and provide proof of the electronic submission to HUD.
  - ii. Paper Filers: If the High Bidder has not previously registered in APPS, the High Bidder should provide a completed paper HUD 2530 with original signatures. The High Bidder entity must have an established tax identification number (TIN) and each individual must list their social security number (SSN). High Bidder should transmit to HUD using an encrypted file. Additionally, High Bidder should include (1) an organizational chart for the ownership entity that shows each ownership tier, the roles of each controlling participant and each member with more than 25% ownership interest; and, (2) the ownership entity's organizational documents, include Articles of Incorporation, Certificate of Incorporation, Operating Agreement, Partnership Agreement, Charter, Bylaws, Agent Certification, and proof of TIN, as applicable.
2. Certification of Substantial Compliance. The High Bidder must submit a complete and original Certification of Substantial Compliance, located in attachments to this Invitation. If HUD determines that properties disclosed by the High Bidder are not in substantial compliance with federal regulations and/or state and local codes, HUD may reject the High Bidder as not qualified to purchase the Property. The High Bidder may forfeit the Earnest Money Deposit as a result of such determination.
3. Written Statement of Experience. The High Bidder must submit a written Statement of Experience ("Statement"). The Statement must demonstrate approximately five (5) years of experience successfully owning and managing properties similar to the Property and must address future management of the Property. High Bidder shall not exceed five (5) pages per property when providing the following information for each property:
  - i. The location of other owned multifamily properties.
  - ii. The number of units and construction type (garden, walk-up, high-rise, etc.) for each property.
  - iii. Identify type of management for each property.
  - iv. Identify properties that have government assistance and type of assistance, i.e., project-based, tenant-based, etc.
  - v. Identify the initial physical needs of each property and how they were addressed.
  - vi. Identify the social needs of each property and how they were addressed.
  - vii. Identify the economic needs of each property and how they were addressed.

- viii. How, based on experience, the High Bidder will satisfy conditions of the sale, i.e.,
- ix. Post-Closing Repairs, income and rent restrictions, etc.
- x. How High Bidder will implement a sound financial and physical management Program for the Property.
- xi. How High Bidder plans to respond to the needs of the tenants and work cooperatively with resident organizations.
- xii. How High Bidder will provide adequate organizational staff and financial resources to the Property.
- xiii. How High Bidder will provide services, maintenance and utilities to the Property.
- 4. Personal Financial and Credit Statement. The High Bidder must submit Form HUD-92417 for each of its controlling Principal(s).
- 5. Previous Participation Certification for Management Agent, if applicable.
- 6. Additional Documents Required for HUD Subsidized Properties:
  - i. Management Agent Resume
  - ii. Affirmative Fair Housing Marketing Plan (Form HUD-935.2A)
  - iii. Management Entity Profile (Form HUD-9832).
  - iv. Project Owner's/Management Agent's Certification Form HUD [9839-A](#), [9839-B](#) or [9839-C](#). Must choose applicable version.
- B. Changes within five (5) Days to the High Bidder or Management Agent. If the High Bidder, the Management Agent, or any controlling participant thereof changes, the individual or entity shall resubmit a corrected Previous Participation Certification within five (5) days of any such change.
- C. The High Bidder shall ensure compliance with submissions as required herein. Failure to comply with all requirements may result in High Bidder declared ineligible to purchase the Property. In such case, the High Bidder shall forfeit the Earnest Money Deposit and Extension Fees paid.

## **V. HUD'S REVIEW OF POST-BID SUBMISSION**

- A. Before HUD can schedule the Closing, HUD must complete the review of the submitted documents and approve the High Bidder.
- B. HUD will provide a response to the High Bidder, and Management Agent if applicable, within fifteen (15) days of receipt.
- C. Acceptance of High Bid. HUD does not fully accept the High Bid until the High Bidder submits all Post-Bid Documents, HUD reviews the Post-Bid Documents, and HUD, in its sole discretion, determines the eligibility of the High Bidder. HUD will notify the High Bidder of its determination in writing. Upon HUD's determination that the High Bidder is qualified, the High Bidder will be confirmed as the Approved High Bidder.
- D. Rejection of High Bid. After review of the Post-Bid Documents, HUD may determine that the High Bidder is not qualified to purchase the Property. HUD may reject the bid due to High Bidder's ineligibility, lack of qualifications, or failure to comply with the Invitation. HUD will notify the High Bidder of this determination in writing, as promptly as possible and generally within thirty (30) days after the Foreclosure Sale. HUD may then contact the Second High Bidder.



## VI. CLOSING

- A. Time is of the essence.
- B. If HUD confirms the High Bidder is qualified to purchase the Property, HUD will notify the High Bidder in writing. The transfer of title to the Property (the "Closing") shall be within thirty (30) calendar days of approval unless the High Bidder requests and HUD grants an Extension Period.
- C. The Closing date and place will be determined by the Foreclosure Commissioner and/or HUD and will occur within thirty (30) days of HUD approval of the High Bidder. HUD and/or the Foreclosure Commissioner will notify the High Bidder of the Closing.
- D. At Closing, the High Bidder will shall assume all responsibilities and obligations as owner of the Property arising on or after the Closing. After the Closing, HUD shall have no further responsibilities or obligations with respect to the Property.
- E. High Bidder shall pay the Balance at Closing in the form of a money order, certified funds, or cashier's check made payable to: THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVLEOPMENT.
- F. CLOSING COSTS, DEPOSITS, REPAIR ESCROW: In addition to the Balance, the High Bidder will be required to pay all Closing costs, regardless of local custom, and, where applicable, fund deposits to reserve accounts and obtain any Letter(s) of Credit for the Repair Escrow. However, HUD will pay fees for recording the Foreclosure Deed and Use Agreement, if any.
- G. EXECUTION OF USE AGREEMENT: Without limiting the foregoing, at Closing, High Bidder will execute the Use Agreement and required exhibits as contained in the Invitation. The Use Agreement will control the use of the Property for the specified period, be recorded as part of the Foreclosure Deed, and will run with the land.
- H. EXTENSION OF CLOSING DATE
  - 1. High Bidder may request an additional thirty (30) calendar day period (the "Extension Period") for the Closing to occur. High Bidder must submit a written request, which clearly states the reason for the High Bidder's inability to close the sale on or before the Closing date, or within any Extension Period. HUD must receive any extension request no less than ten (10) days prior to the Closing date. The request must be accompanied by the payment of the required Extension Fees and sent to the following address:

Multifamily Property Disposition  
ATTN: Jovanna M. Morales, Director  
307 W. 7<sup>th</sup> Street, Suite 1000  
Fort Worth, TX 76102

- 2. All payments for an Extension Period must be in the form or a cashier's check or certified check made payable to: The U.S. Department of Housing and Urban Development
- 3. HUD will notify the High Bidder in writing of all approved Extension Periods. HUD will grant an Extension in accordance with the following conditions:
  - i. Extension Fees shall be equal to \$\_\_\_\_\_ per unit in the Project per calendar day, or one and one-half percent (1.5%) of the Bid, which ever amount is greater.
  - ii. Extension Fees will not be credited against the Balance. However, if the Closing is held prior to the end of the Extension Period, the prorated amount of the Extension Fees for the unused portion of the Extension Period shall be credited toward the Balance.

- iii. HUD shall not be obligated to grant any additional Extension Period because it has previously granted one or more Extension Period.
- iv. If High Bidder does not submit any HUD-required for within sufficient time for HUD's review, and such delay necessitates an Extension Period, Extension Fees shall be paid for this time.

## **VII. PRORATIONS**

- A. **TAXES AND FEES:** High Bidder is responsible for paying all taxes, assessments, liens, and utility bills including, but not limited to, water, sewer, gas, electric, and any other encumbrances not extinguished by the Foreclosure Sale. Any amounts paid will not be prorated to the Balance or used to offset the Bid amount in any way. HUD is responsible for payment of taxes before the closing date.
- B. **PROPERTY RENTS:** Regardless of the Closing Date, rent collected by HUD, if any, will not be prorated toward the Balance.
- C. **EXTENSION FEE:** In the event High Bidder pays Extension Fees, and the Closing occurs before the expiration of the Extension Period, a prorated amount of the unused portion of the Extension Fees shall be credited toward the Balance.

## **VIII. BREACH**

- A. The High Bidder agrees that any breach of these terms shall result in the forfeiture of the Earnest Money Deposit, and the payment of any expenses incurred HUD by in managing the property, including taxes, and utilities, until transfer of ownership in a Closing, as liquidated damages, not a penalty.
  - 1. Failure to pay these funds shall result in a debt to the federal government.
  - 2. Failure to pay these funds may result in the High Bidder being prevented from participation in future HUD foreclosure sales.
- B. Breach by the High Bidder includes withdrawing their bid after signing this document, and any other actions or inactions by the High Bidder that result in failure to close on the sale.
- C. If actions by HUD result in failure to close on the sale, High Bidder's sole remedy shall be the return of any amounts paid by High Bidder pursuant to this Agreement. Without limiting the generality of the foregoing, High Bidder hereby waives any claim for damages (other than amounts paid by High Bidder pursuant to this Agreement) and any right to seek specific performance or other equitable relief.
- D. Upon the failure or refusal of the High Bidder to comply with any of the requirements in this Acknowledgement, HUD may declare the High Bidder ineligible to purchase the Property, in which case the High Bidder shall forfeit the Earnest Money Deposit and any Extension Fees paid.

## **IX. MISCELLANEOUS**

- A. **RISK OF LOSS AND RIGHTS OF RECISSION:** In the event of any substantial damage to the Property prior to Closing by any cause, including but not limited to fire, flood, hurricane, earthquake, tornado, or significant vandalism, HUD, in its sole discretion, may renegotiate with the High Bidder for a reduction in the Bid corresponding to the estimated amount of damages. Such amount shall be added to the Post-Closing Repair amount, if applicable. If the Bid reduction cannot be negotiated or if the High Bidder and HUD are unable to agree on the amount by which

the Bid should be reduced, or on the amendment to any Post-Closing Repair requirements, High Bidder may withdraw the Bid. In such case, HUD will retain the Earnest Money Deposit and any Extension Fees paid.

- B. EXISTING SECURITY DEPOSITS: Any security deposits collected from tenants and paid to HUD or in HUD's control prior to Closing shall be assigned to High Bidder within fifteen (15) business days of Closing. In no event shall HUD deliver security deposits forfeited by a tenant in accordance with the terms of the tenant's lease. Notwithstanding state and local law, HUD will not transfer any other security deposit collected from tenants. HUD has no other liability under state and local law with respect to security deposits. High Bidder agrees to assume all responsibility and liability under state and local law with respect to the collection, application, and return of tenant's security deposits.
- C. SEVERABILITY: If, for any reason, one or more of the provisions contained in the Invitation, including this Acknowledgment, the Use Agreement, or any other attachments or exhibits thereto, shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision(s) of the Invitation, but the Invitation shall be construed as if such invalid, illegal, or unenforceable provision(s) had never been included therein.
- D. LIMITATION OF LIABILITY: In no event shall HUD's liability exceed the Earnest Money Deposit and any Extension Fees paid.
- E. ASSIGNMENT: High Bidder may not assign its rights and responsibilities under this Acknowledgment without the prior written consent of HUD.
- F. CONFLICTING TERMS: If there are terms or conditions herein that conflict with the terms or conditions contained in the Invitation incorporated herein by reference, the terms or conditions of this Acknowledgment shall control.
- G. REQUIRED FORMS: The High Bidder acknowledge the receipt of the Use Agreement as a term and condition of the Foreclosure Sale and the inclusion of the riders attached to the Use Agreement in the Invitation.

*Signature Page Follows*

Unsubsidized

By signature below, High Bidder acknowledges and agrees to the terms and conditions of the Foreclosure Sale. In the case where an agent or representative of the High Bidder submitted the Bid, the signatory attests to be duly authorized to submit the bid on behalf of the High Bidder and to execute this Acknowledgement.

I/We, the undersigned, certify under penalty of perjury that the information provided above is true and correct. WARNING: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012, 1014; 31 U.S.C. §3729, 3802).

Executed by the High Bidder on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Witness Signature:

By:

Printed Name:

Printed Name:

Address:

Address:

City, State, Zip:

City, State, Zip:

ATTACHMENT C  
**FORECLOSURE SALE USE AGREEMENT**

This Agreement is entered into by \_\_\_\_\_ ("Grantee") and the Secretary of Housing and Urban Development ("Secretary" or "HUD").

WHEREAS, pursuant to the provisions of the Multifamily Mortgage Foreclosure Act, 12 U.S.C. Sections 3701 et seq. (the "Act"), and the Department of Housing and Urban Development's regulations thereunder at 24 C.F.R. Part 27, the Secretary has elected to exercise the nonjudicial power of sale provided under the Act, or pursuant to a judicial foreclosure the Secretary has elected to apply Section 367(b) of the Act, with respect to \_\_\_\_\_ HUD Project No. \_\_\_\_\_ ("Project") a legal description of which is attached as Exhibit "A"; **and**

WHEREAS, pursuant to the Act and to provisions of 12 U.S.C. Section 1715z-11a, the Secretary has authority to impose certain use restrictions, as set forth in this Agreement, on the Project subject to a mortgage held by the Secretary that is sold at foreclosure to a purchaser other than HUD; **and**

WHEREAS, by Deed executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Project has been conveyed to the Grantee; **and**

NOW THEREFORE, in consideration of the mutual promises set forth herein and in further consideration of the sale of the Project to the Grantee, the parties agree as follows:

1. **TERM OF AGREEMENT:** This Agreement shall be in effect for twenty (20) years from the date of this Agreement (the "Restricted Period".) During the Restricted Period the Project must be maintained as rental housing.
2. **CONVEYANCE:** During the term of this Agreement, any Conveyance of the Project must have the prior written approval of HUD, or such Conveyance will be deemed to be null and void, and a default will exist under this Agreement. Conveyance is defined as any sale, assignment, transfer, creation of a leasehold estate in excess of one (1) year, or any other legal or equitable conveyance or transfer of the Project or an interest therein, or any legal or equitable transfer of an interest in the Grantee or any entities that may comprise the Grantee. Without limiting the foregoing and not intending to be all inclusive, a merger, conversion, share exchange, or exchange of corporate or partnership interests is deemed to be a Conveyance, which requires the prior written approval from HUD.

The preceding provisions shall be applicable and in full force and effect notwithstanding that any applicable statutory law or case decision provides that any such merger or conversion or share (or interest) exchange, or leasehold estate transaction or other type of Conveyance does not constitute or involve the occurrence of a "transfer" or "assignment" of the Project, any of the assets related thereto, or an interest in the Grantee

Any request for HUD's approval of Conveyance must include the entity and all principals obtaining Previous Participation Certification approval (clearance), submission of a signed Certification of Substantial Compliance, and a signed Agreement to Abide by Deed Restrictions. HUD's approval of a Conveyance will be based on information provided in written statements of how the Grantee, or any subsequent Grantee, in consideration of any and all existing use restrictions, will:

- a. Implement and/or continue to comply with all existing use restrictions;
- b. implement sound financial and physical management program;
- c. respond to the needs of the residents and work cooperatively with resident organizations;
- d. provide adequate organizational staff and resources to manage the Project; and
- e. provide evidence of a minimum of five (5) years substantive experience owning and managing multifamily rental properties of a similar size, type and complexity as the Project.

The approval of a Conveyance is within the sole discretion of HUD.

3. **CONDITION OF UNITS FOR RENTAL HOUSING:** The Grantee shall comply the Physical Condition Standards and inspection requirements of 24 CFR Part 5, Subpart G, including any changes in the regulation and related Directives. In addition, the Grantee shall comply with HUD's Physical Condition Standards of Multifamily Property of 24 CFR Part 200, Subpart P, including any changes in the regulation and related Directives.

4. **PROJECT MANAGEMENT:** HUD reserves the right to approve management for the Project during the term of this Agreement. Any proposed property manager must demonstrate a minimum of five (5) years substantive experience managing multifamily properties of similar size and complexity. If the Project has project-based Section 8 assistance, any proposed property manager must demonstrate a minimum of five (5) years experience managing multifamily properties with project-based Section 8 assistance.
6. **SUBJECT TO EXAMINATION:** The Project shall at all times:
  - a. Be maintained in decent, safe and sanitary condition and in good repair to the greatest extent possible,
  - b. Maintain full occupancy to the greatest extent possible,
  - c. Be maintained as rental housing for the term of this Agreement,
  - d. Be subjected to periodic HUD inspections or inspections under REAC protocol (24 C.F.R. parts 5 and 200).
  - e. The Owner will be obligated to provide audited annual financial statements to HUD (24 C.F.R. parts 5 and 200.)
  - f. At the request of the Secretary, Grantee must supply evidence by means of occupancy reports, physical condition reports, reports on operations, or any evidence as requested to ensure that the above requirements are being met.
7. **UNIT NUMBER OR USE CHANGE:** Changes to the use, number, size, or configuration of residential units in the Project, e.g., apartment units, beds in a care facility, from the use as of the date of this Agreement, must receive the written prior approval of HUD.
8. **NON-DISCRIMINATION REQUIREMENTS:** The Grantee will comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing.
9. **HAZARD INSURANCE:** Hazard insurance shall be maintained in an amount to ensure that the Grantee is able to restore the Project so that it meets the rental housing requirements described in this Agreement after restoration.
10. **DESTRUCTION OF PROJECT:** In the event that any, or all, of the Project is destroyed or damaged by fire or other casualty, the money derived from any insurance on the Project shall be applied to rebuild or replace the Project destroyed or damaged, unless the Secretary gives written approval to use insurance proceeds for other purposes.
11. **DEMOLITION OF PROJECT:** The Grantee will not demolish any part of the Project or withdraw any part of the Project from use (except as temporarily necessary for routine repairs), without the prior written approval of HUD.
12. **REMEDIES FOR NONCOMPLIANCE:** Upon any violation of any provision of this Agreement by the Grantee, HUD may give written notice thereof to the Grantee by registered or certified mail, to the address stated in this Agreement, or such other address as subsequently, upon appropriate written notice thereof to the Secretary, may be designated by the Grantee as its legal business address. If such violation is not corrected to the satisfaction of the Secretary within thirty (30) calendar days after the date such notice is mailed or within such further time as HUD reasonably determines is necessary to correct the violation, without further notice, HUD may declare a default under this Agreement and may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement, and/or such other relief as may be appropriate, since the injury to the Secretary arising from a default of the terms of the Agreement would be irreparable and the amount of damage would be difficult to ascertain. The availability of any remedy under the Agreement shall not preclude the exercise of any other remedy available under any provision of the law, nor shall any action taken in the exercise of any remedy be considered a waiver of any other rights or remedies. Failure to exercise any right or remedy shall not be construed as a waiver of the right to exercise that or any other right or remedy at any time.



- 13. CONTRADICTORY AGREEMENTS:** The Grantee certifies that it has not, and agrees that it will not, execute any other Agreement with provisions contradictory of, or in opposition to, the provisions of this agreement, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth herein and supersede any other provisions or requirements in conflict with this Agreement.
- 14. SEPARABILITY:** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions hereof.
- 15. AMENDMENT:** This Agreement may be amended by the mutual written consent of the parties, except those provisions required by statute.
- 16. RIDERS TO THE USE AGREEMENT:** The Riders initialed by the parties are attached to and incorporated into this Use Agreement and will be placed in the Deed to run with the land. Capitalized terms used but not defined in a Rider shall have the meaning ascribed to such term in this Agreement. The use of the term Grantee in a Rider shall be deemed to mean the Purchaser.
- 17. PRIORITY:** This Agreement shall be recorded against the Project in a superior position to any post foreclosure liens or mortgage debts.

IN WITNESS WHEREOF:

The Grantee has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

GRANTEE:

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

Street Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_

The U.S. Department of Housing and Urban Development (HUD) has executed this Use Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

\_\_\_\_\_  
\_\_\_\_\_

FOR: The Secretary of the Department of  
Housing and Urban Development

\_\_\_\_\_  
Official's Signature

\_\_\_\_\_  
Official's Typed Name and Title

**RIDER 1 OF 8**  
**RIDER OF ENFORCEMENT**

The Use Agreement shall contain the following provision:

1. The restrictive covenants set forth in this Agreement shall run with the land hereby conveyed and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by HUD and any/all successors in interest.
2. Without limiting any other rights and remedies available to HUD, the HUD shall be entitled to:
  - a. Institute legal action to enforce performance and observance of these covenants,
  - b. Enjoin any acts which violate these covenants,
  - c. Exercise any other legal or equitable right or remedy with respect to these covenants.
3. In addition, the restrictive covenants, if any, set forth in this Use Agreement relating to Section 8 assistance shall be enforceable by any tenant or applicant eligible for assistance under the Section 8 program.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_

**RIDER 2 OF 8**  
**TWO-YEAR RENT PROTECTION FOR PRE-EXISTING VERY LOW-INCOME TENANTS**

The Use Agreement shall contain the following provision:

1. The Grantee agrees that, for any unassisted, very low-income family (as defined in 24 CFR 5.603) which is a pre-existing tenant of a project and who, after the acquisition would be required to pay rent in an amount in excess of thirty percent (30%) of the adjusted income (as defined in 24 C.F.R. 5.611) of the family, the rent for the unit occupied by the family may not be increased above the rent charged immediately before the acquisition. The rent protection will be enforceable for a period of two (2) years beginning upon the date of acquisition of the Property by the Grantee.
2. On the date of acquisition, the Grantee must provide notice to all tenants residing in unassisted units that they may qualify for the two-year rent protection.
3. Grantee shall conduct an initial income certification for all tenants within thirty (30) calendar days of the acquisition.
4. For all tenants covered by these provisions, Grantee must include in the lease(s) the terms and conditions of the two (2) year rent protection including a provision for an initial tenant income certification and not more than one (1) tenant income certification a year, except upon reduction of tenant income or upon tenant request.
5. Grantee shall provide to HUD a list of all tenants who are covered by this provision within sixty (60) calendar days of the date of this Use Agreement. The list should include the name of the lease holder, unit type, number of family members residing in the unit, and the amount of rent paid by the tenant. If the income certification is not complete within the sixty (60) calendar days, Grantee must report the progress of the certifications and provide a completion date. Upon completion of the income certifications, Grantee must submit the report in the required format and continue to submit this report quarterly, for a period of two (2) years from the date of Closing, to show protection of the tenants has occurred for two (2) years.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_

HUD \_\_\_\_

**RIDER 3 OF 8**  
**NONDISCRIMINATION AGAINST SECTION 8**  
**CERTIFICATE HOLDERS AND VOUCHER HOLDERS**

The Use Agreement shall contain the following provision:

1. In order to comply with Section 204 of the Housing and Community Development Amendments of 1978, 12 USC §1701z-12, as amended, the Grantee, for self, successors and assigns, shall not unreasonably refuse to lease a dwelling unit offered for rent, refuse to offer or sell cooperative stock, or otherwise discriminate in the terms of tenancy or cooperative purchase and sale because any tenant or purchaser is the holder of a Certificate of Family Participation or a Voucher under Section 8 of the United States Housing Act of 1937 (42 USC §1437f), or any successor legislation hereinafter referred to as "Section 8". This provision is limited in application, for tenants or applicants with Section 8 Certificates or Vouchers, to those units, which rent for an amount not greater than one-hundred and twenty percent (120%) of the Section 8 fair market rent for a comparable unit in the area as determined by HUD.
2. This restriction shall bind the Grantee, any/all successors, assigns and Grantees for value, for a period equal to the Restricted Period, which is twenty (20) years from the date of this Use Agreement. In the event of a breach or a threatened breach of this covenant, HUD, any/all successors in office and/or one or more third-party beneficiaries, shall be entitled to institute legal action to enforce performance and observance of such covenant and to enjoin any acts which are in violation of such covenant. For the purposes of this restriction, a third-party beneficiary shall be any person who holds a Certificate of Family Participation or a Voucher under Section 8 or any equivalent document under successor legislation.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_

## **RIDER 4 OF 8 AFFORDABILITY**

The Use Agreement shall contain the following provision:

1. Declaration of Restrictive Covenants Requirements
  - a. Per the attached Declaration of Trust and Restrictive Covenants ("DORC") recorded December 20, 2000, in the office of the Recorder of Deeds, Cook County, Illinois, which continues to restrict the property, 17 units shall be treated as Public Housing, as defined by HUD. As a result, these 17 units will be subject to the Mixed Finance Annual Contribution Contracts ("ACC") between HUD and the Chicago Housing Authority.
  - b. HUD defines Public Housing as housing assisted under the provisions of the U.S. Housing Act of 1937 or under a state or local program having the same general purposes as the federal program. Distinguished from privately financed housing, regardless of whether federal subsidies or mortgage insurance are features of such housing development.
  - c. These 17 units must be located on the three properties subject to a ground lease with the Chicago Housing Authority.
    - i. The addresses of these properties are:
      1. 600 E. 41st St (Executed Instrument PIN 20-03-210-075 Assessors PIN 20-03-210-046 and 20-03-210-079)
      2. 703-707 E 41st St (Executed Instrument PIN 20-03-405-001/002/003; Assessors PIN 20-03-215-043)
      3. 725-735 E Bowen Ave (Executed Instrument PIN 20-03-219-021/022/023; Assessors PIN 20-03-219-050)
  - d. This restriction shall remain in effect until at least December 20, 2040.
  - e. In the event anything in this rider conflicts with the record DORC, the DORC shall control. Any restrictions, requirements, or enforcement mechanisms in the DORC not listed are hereby incorporated by reference.
2. Affordability Requirements for Non-Public Housing Units
  - a. For a period of \_\_\_\_ years beginning on the date of closing, the following restrictions apply to the units not treated as public housing:
    - i. No less than 60% of units shall be rented to families or individuals whose income is at 60% or less of the Median Family Income ("MFI") or Area Median Income ("AMI"), respectively, for Chicago-Naperville-Joliet, IL HUD Metro FMR Area as defined by HUD.
    - ii. The remaining non-public units may be rented in the following proportions:
      1. No more than 20% may be rented at market rate.
      2. No more than 20% may be rented to families or individuals whose income is at 80% of the MFI or AMI, respectively, for Chicago-Naperville-Joliet, IL HUD Metro FMR Area as defined by HUD.
  - b. Grantee shall review HUD's calculated AMI/FMI annually and make any necessary adjustments in coordination with the local HUD office.
  - c. Should Grantee be unable to meet these requirements for more than 60 days, Grantee shall inform the local HUD Office and request HUD's approval to use a higher percentage of AMI.
  - d. Grantee shall certify to HUD annually, beginning one year after the date of closing, that the affordability requirements have been met.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement

Grantee\_\_\_\_\_

HUD\_\_\_\_\_

## RIDER 5 OF 8 ENVIRONMENTAL HAZARDS

The Use Agreement shall contain the following provision:

**Grantee covenants to:**

1. Investigate and test the Property for substances, chemicals and waste (collectively "Hazardous Substances") and perform cleanup, remedial, removal or restoration work required by any governmental authority ("Inspect and Remediate Requirements").
2. Certify to HUD, in a form acceptable to HUD, that the Inspect and Remediate Requirements have been performed in accordance with this provision.
3. Indemnify, defend, and hold HUD harmless from any liability arising from Grantee's failure to satisfactorily perform the Inspect and Remediate Requirements. Grantee acknowledges that HUD's acceptance of the work is not a warranty that all Hazardous Substances have been eliminated from the Property and does not relieve Grantee of its ongoing responsibility to comply with appropriate governmental authorities.

**Grantee shall comply with Inspect and Remediate Requirements WYWYX and any additional Hazardous Substances it becomes aware of concerning:**

ASBESTOS: 29 CFR 1926 and any subsequent regulations(s) including, but not limited to, all federal, state and local laws regarding detection, abatement, containment and removal of asbestos containing materials. ~~AA~~  
LEAD-BASED PAINT: 42 USC 4821-4886 and the regulations thereunder, 24 CFR Part 35. Grantee shall inspect, test and abate any lead-based paint. Grantee shall comply with Section 35.88 "Disclosure Requirements for Sellers and Lessors" and Section 35.92 "Certification and Acknowledgment of Disclosure" of 24 CFR, *Lead Based Paint Poisoning Prevention in Certain Residential Structures*.

RADON: All federal, state and local laws, and Environmental Protection Agency (EPA) guidelines regarding detection and abatement of radon. ~~AA~~

MOLD: All federal, state and local laws, and EPA guidelines regarding detection and abatement of mold. ~~AA~~

TOXIC AND HAZARDOUS SUBSTANCES: 29 CFR 1926 subpart Z (where a list of applicable substances can be found).

**Operations and Maintenance Plan:**

1. Grantee shall develop and maintain on the site at all times an Operations and Maintenance Plan (O&M Plan) that complies with EPA guidelines for Operations and Maintenance Programs. The O&M Plan shall:
  - a. Identify areas where Hazards exist;
  - b. Establish guidelines for maintenance work and repairs and employee training;
  - c. Establish tenant notification systems; and
  - d. Establish monitoring, job-site controls, work practices, record keeping, and worker protection.
2. Grantee shall submit a copy of the O&M Plan for HUD review and approval within thirty (30) Calendar days after the date of this Use Agreement.

**Remedies:**

1. If Grantee fails to comply with this provision, HUD may exercise one or more of the remedies Listed below:
  - a. Enter and terminate the estate hereby conveyed,
  - b. Cash Grantee's Letter of Credit (LOC)
  - c. Request payment and performance under any Payment and Performance Bonds provided to HUD.
2. If HUD cashes the Grantee's LOC(s) or files a claim with the surety company as a remedy for the Grantee's default under this provision, HUD may apply the funds to perform the Inspect and Remediate Requirements, retain the funds as liquidated damages, or for such other project purposes as HUD deems appropriate.
3. HUD shall not exercise its available remedies if any lender holding a lien or security interest on the Property:
  - a. Gives written notice to HUD within the period provided for repairs, that it intends to complete the Inspect and Remediate Requirements, and
  - b. Completes the Inspect and Remediate Requirements within thirty (30) calendar days of the notice or within such extended period that HUD may approve in writing.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_



**RIDER 6 OF 8**  
**REQUIRED REPAIRS AND REHABILITATION**

The Use Agreement shall contain the following provision:

1. REQUIRED REPAIRS: All property and property improvement must meet or surpass, at a minimum, all state and local codes and ordinances, the Uniform Federal Accessibility Standards (UFAS), HUD's Physical Condition Standards pursuant to 24 CFR Part 5, the General Repair and Property Standards (listed below), the Post-Closing Repair Requirements (attached), and the Environmental Hazards provision (collectively the "Repairs").
  - a. General Repair and Property Standards
    - i. Exterior:
      - Any trip hazards (deviations of  $\frac{1}{2}$  in or greater) on all surfaces of the property must be mitigated.
      - Repair and/or replace any loose, damaged or deteriorated facade, trim, posts, and cornice.
      - All exterior paint must be fully intact, mold and rust free.
      - All drainage, water diversion, roofing, and water proofing systems must be performing as originally intended to ensure positive drainage and minimize pooling.
      - All windows and exterior doors must be operable, lockable, draft free and water tight.
    - ii. Interior/Mechanical, Electrical and Plumbing (MEP):
      - All mechanical, plumbing, plumbing fixtures, electrical fixtures, electrical devices, appliances and HVAC (Heating, Ventilation, and Air Conditioning) must be in "Good" operating condition and hazard free.
      - All fire protection devices and systems must be working as originally intended.
      - All ventilation systems must be working as originally intended.
      - All interior painted surfaces and millwork must be fully intact, free of excessive grease and dirt.
      - All floor coverings must be fully attached, free of holes, chips, frays and excessive dirt.
      - All interior doors, locks, closures and stops must be operating as originally intended.
    - iii. Workmanship and Materials:
      - All work shall be performed in a workmanlike manner and in accordance with generally accepted practices and procedures.
      - Materials installed shall be of such kind and quality to ensure that the dwelling will provide acceptable durability for the duration of the Restricted Period.
      - All repair/rehabilitation work must be performed in a manner compliant with the essential and material requirements of all state codes, local codes, laws, ordinances, regulations, Physical Conditions Standards pursuant to 24 CFR Part 5.
      - All long and short lived building components must be performing as originally designed or intended.
  - b. Post-Closing Repair Requirements (attached) describes additional, specific required Repairs. It is probable that not all units were surveyed. However, units not surveyed must also be rehabilitated to the same level as those units that were surveyed.
  - c. All Repairs required by this provision will not be considered complete until such time as HUD or its designee has inspected the Repairs and HUD has accepted the Repairs.

2. REPAIR PERIOD: The Repair Period begins at Closing and expires thirty-six (36) months from the date of this Use Agreement. The Grantee covenants that the Repairs will be completed within Repair Period.
3. EXTENSION OF THE REPAIR PERIOD: If the Grantee cannot complete the Repairs within the Repair Period, Grantee shall submit a written request for an extension to HUD stating the reason(s) for Grantee's inability to complete the Repairs. Grantee's request must be received not less than thirty (30) calendar days prior to the expiration of the Repair Period.
  - a. In the event an extension for completion of repairs is granted, the Grantee shall extend expiration of the LOCs, or Payment and Performance Bonds accordingly,
  - b. Extensions of time to complete Repairs are within HUD's sole and absolute discretion, and
  - c. The granting of one or more extensions shall not obligate HUD to grant additional extensions.
4. REPAIR ESCROW: To ensure completion of the Repairs by the Grantee, at Closing the Grantee shall deliver to HUD:
  - a. Letter(s) of Credit (LOCs): A minimum of one (1), and a maximum of four (4) unconditional, irrevocable and non-documentary Letters of Credit (LOCs):
    - i. which total \$\_\_\_\_\_ [25% of total cost Repairs], and
    - ii. which shall remain in effect and may be drawn on by HUD for at six (6) months beyond the Repair Period as stated above), **and**
    - iii. LOCs may be returned or amended as the Grantee completes Repairs and HUD has inspected and accepted the Repairs.
  - b. Payment and Performance Bond: **After Closing, and with prior approval by HUD**, the LOC may be replaced with a 100% Payment and Performance Bond:
    - i. Grantee must use HUD Form-92452 for the payment bond and a form for the performance bond that is acceptable to HUD. Evidence of the existence of payment and performance bonds each in the amount of \$\_\_\_\_\_ (the total cost of Repairs) must be provided to HUD.
    - ii. Provide HUD with a fully executed copy of the approved The Plans and Specifications and Construction Contract which specifically address items, quantities and timelines specified in paragraphs 1 and 2 of this provision, and the Use Agreement or Deed, as applicable to the sale of the Project prior to the release of the LOC.
    - iii. Grantee must ensure the bonds comply with the following requirements:
      - (a) The surety entity issuing the bonds must be included on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1 of each year;
      - (b) The payment and performance bonds must not exceed limits listed in the Circular;
      - (c) The payment and performance bonds must show HUD as an Obligee.
    - iv. This Required Repair and Rehabilitation Rider and the Repair List (Form HUD 9552 and/ or Cost Estimate Repair Summary) must be attached to and referenced in article 9.1.7 of the construction contract (AIA A101).

This obligation will be deemed satisfied by the Letter(s) of Credit, or a 100% Payment and Performance Bonds provided by the Contractor to the Owner with HUD listed as Obligee, all in a form prescribed by HUD.

5. **REPORTING:** HUD will monitor the progress of the Repairs using reports from the Grantee and inspections performed by HUD or a designee.
- a. Quarterly Reports: Grantee must submit quarterly reports (Post-Closing Repair Report) to HUD on the status of Repairs. The first report is due 90 days after Closing and must include:
- i. the number and type of units completed,
  - ii. a list of major Repairs and percentage completed, and a narrative describing:
    - (a) the status of the planned rehabilitation, i.e. are repairs ahead of, on schedule, or behind on the original rehabilitation schedule,
    - (b) any special circumstances which may, or have delayed the repairs.
- b. Additional Reports: Upon request, Grantee must submit reports, in addition to the Quarterly Reports, to HUD. The frequency and content of these reports will be provided to the Grantee by HUD.

HUD may perform periodic inspections to ascertain the status of the Repairs. If, at any time, HUD determines the Grantee is failing to make adequate progress toward completion of the required Repairs or that the Repairs completed are not acceptable to HUD, Grantee may be required to provide a plan with milestones to show that acceptable Repairs can be completed within the Repair Period. Failure to meet milestones without adequate justification is a reason for Noncompliance as explained below.

6. **RENTS:** The Grantee covenants not to increase the rent for any unit, from the rent HUD is requiring a tenant to pay on the Closing date, until such unit meets all the requirements set forth in paragraph 1, above. Rents for units to be covered by a Housing Assistance Payment Contract may be increased only pursuant to and following execution of such Contract.
7. **RELOCATION:** If temporary or permanent relocation is necessary because of Repairs required under this provision, Grantee covenants to comply with the Relocation Rider of this Use Agreement.
8. **NONCOMPLIANCE:** If Grantee fails to complete the required Repairs within the Repair Period and no extension by written agreement has been granted by HUD, HUD and any/all successors in office, in its sole discretion, shall be entitled to:
- a. Enter and terminate the estate hereby conveyed, or
  - b. Cash any LOC or request performance under any payment and/or performance bond, and seek remedies provided in the Enforcement provision of this Use Agreement, as HUD deems appropriate.

If HUD cashes the Grantee's LOC(s), HUD will NOT apply the funds to complete the Repairs. HUD will retain the funds as liquidated damages or for any other purposes as HUD deems appropriate. In the event that HUD cashes the Grantee's LOC(s) for failure to successfully complete the Repairs, the Grantee is still responsible for completion of the Repairs in order to prevent HUD from initiating further sanctions.

These rights and remedies may be exercised separately or in combination with the rights and remedies set forth in the Enforcement provision of this Use Agreement.

9. LENDER OR SECURITY INTEREST: If the Grantee fails to repair the Property in accordance with this Use Agreement, HUD will not exercise the remedies as described in paragraph 8 above, if any lender holding a lien or security interest on the Property:

- a. Gives written notice to HUD within the period provided for repairs that it intends to complete the repairs, and
- b. Completes such repairs within thirty (30) calendar days of the notice or within such longer periods as HUD may approve in writing.

However, HUD is under no obligation to notify any lender or security interest of its intent to cash any LOCs.

10. ACCESSIBILITY: Grantee shall ensure that five percent (5%) of the repaired units are accessible, including units accessible for hearing and vision impaired, in accordance with the Uniform Federal Accessibility Standards.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_

## **RIDER 7 OF 8 RELOCATION**

The Use Agreement shall contain the following provision:

1. Grantee covenants that it shall comply with Section 203(f) of the Housing and Community Development Amendments of 1978, as amended, 12 USC §1701z-11(j), and any subsequent legislation affecting relocation of tenants. Additionally, Grantee covenants it will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 USC §4601, and the regulations thereunder, 49 C.F.R. Part 24, when Project-based Section 8 assistance is provided by HUD (collectively the "Act and Regulations"). Grantee shall comply with the Act and Regulations, notwithstanding any contractual obligations with third parties to comply with the Act and Regulations. Grantee shall provide a report on a quarterly basis to HUD which demonstrates compliance with the Acts and Regulations throughout the Repair or Redevelopment Period.
2. Grantee covenants that if the Use Agreement requires rehabilitation or hazard remediation such work shall be performed in accordance with all applicable federal, state and local laws, codes, ordinances and regulations, and HUD's Physical Condition Standards ("PCS").
3. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee covenants that it will provide advance written notice of the expected displacement to the tenants. The notice shall be provided as soon as feasible, describe the assistance and the procedures for obtaining the assistance, and contain the name, address and phone number of an official responsible for providing the assistance.
4. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee covenants that it will assist tenants in locating a decent, safe and sanitary dwelling/housing unit which, to the extent feasible, shall be in a location not generally less desirable than the Property, and reimburse tenants for:
  - a. Expenses of moving and any net increase in monthly housing cost (rent and reasonable utility costs) during the temporary displacement period; and
  - b. Expenses of returning to a repaired unit at the Property.

HUD will not provide Grantee with any funds or subsidy with which to make the payments required by this paragraph.

5. If temporary or permanent relocation is necessary because of such rehabilitation and/or hazard remediation, if required, Grantee covenants that it will provide assistance, as described below, to tenants, as may be appropriate:
  - a. Advisory services necessary to locate decent, safe and sanitary and affordable replacement housing which, to the extent feasible, shall be in a location not generally less desirable than the Property; and
  - b. Reimbursement for reasonable moving expenses, which need not exceed an amount determined by HUD to be reasonable considering the size of the household and the circumstances surrounding the move.

HUD will not provide Grantee with any funds or subsidy with which to make the payments required by this paragraph.

6. Grantee covenants not to increase the rent for any unit, from the rent the tenant pays on the Closing date, until such unit meets all the rehabilitation and/or hazard remediation requirements of this Use Agreement are completed by Grantee and inspected and accepted by HUD. In addition, rents for units to be covered by a Housing Assistance Payment (HAP) Contract may be increased only pursuant to and following execution of such HAP Contract.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee \_\_\_\_\_

HUD \_\_\_\_\_

**RIDER 8 OF 8**  
**TENANT ENGAGEMENT IN REDEVELOPMENT**

1. The Grantee shall, within 30 days of the date of closing, create and submit to HUD a plan for receiving and considering tenant feedback.
2. If HUD does not approve Grantee's plan, HUD shall provide feedback within a reasonable time period, describing its objections.
  - a. Upon receiving HUD's feedback, Grantee will have five days to resubmit a plan.
3. Grantee will follow the plan for a period of five years from the date of HUD's approval.

By initialing hereunder the parties acknowledge that this Rider is incorporated into and is part of the Use Agreement.

Grantee\_\_\_\_\_

HUD\_\_\_\_\_



**ATTACHMENT D**  
**LETTER OF CREDIT (LOC) SAMPLE**

(ISSUING BANK'S LETTERHEAD)

IRREVOCABLE UNCONDITIONAL LETTER OF CREDIT NO.

Office of General Counsel, MFH Property Disposition Division  
U.S. Department of Housing and Urban Development  
307 W. 7th Street, Suite 1000  
Ft. Worth, TX 76102

DATE

Attention: Sakeena Adams

Dear Sir/Madam:

For the account of \_\_\_\_\_  
(name of account party/customer)

we hereby authorize you to draw on us at sight up to an aggregate amount of U.S. \$ \_\_\_\_\_ ,  
effective immediately and expiring on \_\_\_\_\_, 20\_\_\_\_\_.

This Letter of Credit is irrevocable and unconditional.

Funds under this Credit are available to you against your sight draft(s) on us, substantially in the form attached as Exhibit A, for all or any part of this Credit.

This Letter of Credit sets forth in full the terms of our obligations to you, and such undertaking shall not in any way be modified or amplified by any agreement in which this letter is referred to or to which this letter of credit relates, and any such reference shall not be deemed to incorporate herein by reference any agreement.

We will promptly honor all drafts in compliance with the terms of this credit if received on or before the expiration date at

\_\_\_\_\_  
(bank's address)

This Credit is governed by the laws of \_\_\_\_\_ .

Sincerely,

(Issuing Bank)

By:

**SAMPLE SIGHT DRAFT**

(HUD LETTERHEAD)

(Name and address of bank)

(City, State)

DATE

Pay to the order of the U.S. Department of Housing and Urban Development the sum of

\$ \_\_\_\_\_ . This draft is drawn under your Irrevocable Letter of  
Credit No.

U.S. Department of Housing and Urban Development

By: -----

# Attachment E Post-Closing Repair Requirements

U. S. Department of Housing and Urban Development  
Office of Housing - Federal Housing Commissioner

Project Name <b>Hearts United II (The Quincy)</b>	Project Number	Location <b>Chicago, Illinois</b>
--	----------------	--------------------------------------

The Purchaser must repair the property to meet the following requirements within the time frame noted in the Contract of Sale or Terms and Requirements of Foreclosure Sale - Acknowledgment by Bidder:

☒ Applicable State and local Codes    ☒ Housing Quality Standards (HQS) as set forth in 24 CFR 886, Subpart C    ☒ Additional repairs required by HUD

HUD will monitor to ensure compliance. Repairs shall be considered complete only after: (1) Purchaser provides written certification that repairs are completed; (2) Purchaser requests final inspection by HUD; and (3) HUD verifies in writing completion and compliance with the requirements stated herein.

Trade Item Cost Breakdown: HUD's estimate of repairs is broken out by trade item. Detailed descriptions of repairs are stated in exhibits to this form. Unless checked as **Mandatory** on this form, repairs may begin upon conveyance. For repair items listed in this form as **Mandatory**, the Purchaser, prior to beginning work, must submit specifications for approval to the HUD office with jurisdiction over this project.

The repairs listed herein represent HUD's estimate of the property's repair needs. These repairs may not represent all repairs needed to satisfy HUD's requirements and/or requirements other than HUD's. HUD does **not** warrant that the list is either comprehensive or sufficient. The Purchaser accepts responsibility for: (1) developing his/her own repair cost estimate, (2) determining what, if any, repairs are needed in excess of those listed herein, and (3) providing funding for such repairs.

Item	Mandatory	Estimated Cost	Item	Mandatory	Estimated Cost
<b>Repairs to Residential Structures</b> (including commercial areas)					
1. Concrete	<input checked="" type="checkbox"/>	\$8,000	17. Wood Flooring	<input type="checkbox"/>	
2. Masonry	<input checked="" type="checkbox"/>	\$56,000	18. Resilient Flooring	<input type="checkbox"/>	
3. Metals	<input checked="" type="checkbox"/>	\$12,000	19. Painting and Decorating	<input checked="" type="checkbox"/>	\$14,000
4. Rough Carpentry	<input type="checkbox"/>		20. Specialties	<input checked="" type="checkbox"/>	\$15,000 (Fire Building #11)
5. Finish Carpentry	<input type="checkbox"/>		21. Special Equipment	<input type="checkbox"/>	
6. Waterproofing	<input type="checkbox"/>		22. Cabinets	<input checked="" type="checkbox"/>	\$267,500
7. Insulation	<input type="checkbox"/>		23. Appliances	<input checked="" type="checkbox"/>	\$160,500
8. Roofing	<input checked="" type="checkbox"/>	\$218,000	24. Blinds and Shades	<input type="checkbox"/>	
9. Sheet Metal	<input type="checkbox"/>		25. Carpets	<input checked="" type="checkbox"/>	\$99,600
10. Doors	<input checked="" type="checkbox"/>	\$85,150	26. Special Construction	<input checked="" type="checkbox"/>	\$31,500 (UFAS)
11. Windows	<input checked="" type="checkbox"/>	\$267,500	27. Elevators	<input type="checkbox"/>	
12. Glass	<input type="checkbox"/>		28. Plumbing and Hot Water	<input checked="" type="checkbox"/>	\$85,600
13. Lath and Plaster	<input type="checkbox"/>		29. Heat and Ventilation	<input checked="" type="checkbox"/>	\$133,750
14. Drywall	<input type="checkbox"/>		30. Air Conditioning	<input checked="" type="checkbox"/>	\$133,750
15. Tile Work	<input checked="" type="checkbox"/>	\$97,750	31. Electrical	<input checked="" type="checkbox"/>	\$188,500
16. Acoustical	<input type="checkbox"/>		<b>Residential Structures Subtotal</b>		\$ 1,874,100
<b>Repairs to Accessory Structures</b> (community, maintenance, mechanical, garages, carports, etc.)					
32. Accessory Structure	<input type="checkbox"/>		34. Exterior Fencing	<input checked="" type="checkbox"/>	\$4,000
33. Wood Stairs/Deck	<input checked="" type="checkbox"/>	\$33,000	<b>Accessory Structures Subtotal</b>		\$ 37,000
<b>Site Work</b>					
35. Earth Work	<input type="checkbox"/>		39. Lawns and Planting	<input checked="" type="checkbox"/>	\$8,000
36. Site Work	<input type="checkbox"/>		40. Unusual Site Conditions	<input type="checkbox"/>	
37. Roads and Walks	<input checked="" type="checkbox"/>	\$26,125	41. Landscape Stair Bldg. 16	<input checked="" type="checkbox"/>	\$2,500
38. Site Improvements	<input type="checkbox"/>		<b>Site Work Subtotal</b>		\$ 36,625
<b>Environmental Mitigation</b>					
42. Lead-Based Paint	<input type="checkbox"/>		44.	<input type="checkbox"/>	
43.	<input type="checkbox"/>		<b>Environmental Mitigation Subtotal</b>		\$ 0

<b>Totals</b>		
Estimated Total Hard Cost	\$	\$1,947,725
Contingency = Hard Cost X <u>10%</u> =	\$	\$194,772
Overhead/General Requirements = Hard Cost X <u>10%</u> =	\$	\$194,772
<b>Estimated Total Repair Cost</b>	\$	\$2,337,269

Attachment G  
**Certificate of Substantial Compliance**

TO: The United States Department of Housing and Urban Development

FROM:

I certify to HUD that any and all project(s) that are owned by \_\_\_\_\_, or its affiliates, and located in \_\_\_\_\_ (City or Town where project being purchased is located) is/are in substantial compliance with applicable state and/or local housing statutes, regulations, ordinances and codes and are listed on Schedule A attached hereto.

WARNING: It is a crime to knowingly make false statements to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code, Section 1001 and Section 1010.

By:

Signature

\_\_\_\_\_

Grantee Name

\_\_\_\_\_

Title

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

Date

\_\_\_\_\_

STATE OF: \_\_\_\_\_ )  
COUNTY OF: \_\_\_\_\_ )

Came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_. Notary Seal.

**Schedule A**

All projects owned by \_\_\_\_\_ or affiliates.

List each project name	List name of principal or affiliate with ownership of project.	List project address

Attachment H  
**PROTECTING TENANTS AT FORECLOSURE ACT**

Applicable to all foreclosure sales.

In the case of foreclosure involving any multifamily residential dwelling, the purchaser at foreclosure shall be subject to the following:

1. Any bona fide tenant occupying a unit as of the date of the notice of foreclosure must be given 90 calendar days prior notice to vacate the unit.
2. Any tenant retains all its rights as of the date of the notice of foreclosure. These rights include:
  - (a) Any tenant who, on or after the date of the notice of foreclosure, is under a lease agreement entitling the tenant to occupy the premises until the end of the remaining term of the lease, will continue to maintain his/her rights under the lease agreement, except that a purchaser at foreclosure *who will occupy a unit as a primary residence* may, terminate a tenant's lease for that unit, effective on the date of sale, by issuing notice of the termination of tenancy to the tenant at least 90 calendar days prior to the effective date of the notice.
  - (b) Any tenant who is a tenant at will under state law or occupies the unit without a lease retains all of its rights regarding occupancy of the unit, except such tenant may be required by a purchaser at foreclosure to vacate the unit provided that the tenant is given 90 calendar days prior notice by the purchaser at foreclosure.
  - (c) Nothing contained in paragraphs 1 and 2 herein shall affect the requirements for termination of any federal or state subsidized tenancy or of any state or local law that provides longer time periods or additional protections for tenants, those rights will be retained by the tenant.
3. If the tenant holds a Section 8 voucher and has a lease agreement, the purchaser at foreclosure may terminate the tenancy effective as of the date of the transfer of ownership to the purchaser if (1) the purchaser will occupy the unit as a primary residence and (2) provides the tenant with a notice to vacate at least 90 calendar days before the effective date of the notice.
4. The purchaser at foreclosure will assume its interest in the property subject to: (1) the existing leases between the prior owner and the current tenants; and (2) the existing Housing Assistance Payments contract between the prior owner and the public housing agency for any occupied unit, except that requirements contained in this paragraph 4 and in paragraph 3 shall not affect any state or local law that provides longer time periods or other additional protections for tenants.

Attachment K  
**Post-Closing Repair Report**

Property:		Repair Expenditures to Date: \$
Address:		Date Repairs Began:

Number of HAP Units:                      Number of HAP Units repaired/meeting PCS:  
Number of Units:                      Number of Units repaired/meeting PCS:  
List major repairs as required by Form HUD-9552 and provide status of those repairs:

Major Repair	Work Completed
Ex. Replace roof on 5 buildings (80%)	Ex: Roof replaced for 3 buildings (60%)


Provide a narrative describing special circumstances beyond your control which may, or have delayed the repairs:

Provide narrative describing the status of the planned rehabilitation. Your narrative should include whether you are ahead of, on schedule, or behind on your original rehabilitation schedule:

Date of Report:

Report completed by: \_\_\_\_\_ Title \_\_\_\_\_

Please fax a completed version of this report to the Property Disposition Construction Analyst at (817) 978-6018.  
Reports are due quarterly and to be continued until the repairs are complete.



Attachments:

1. Attach a minimum of 4 photographs depicting repaired conditions.
2. Attach additional pages as necessary to provide a thorough explanation of status of repairs.

Attachment L

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION  
AND CERTIFICATION (PCS INSPECTION CHECKLIST)**

Instructions: Owner must complete this report for each unit receiving Project-Based Section 8 funding. The report is to be received in the Property Disposition Center no later than ten (10) days prior to the date for the PCS inspection ordered by HUD. If the Owner chooses to have the unit(s) inspected by a Certified Property Inspector, a copy of the Inspector's certification must accompany the Owner's report.

Property Name: \_\_\_\_\_ Address: \_\_\_\_\_

Inspection Number: \_\_\_\_\_

Building Number:								
Unit Number:								
Number of Bedrooms:								
Number of Bathrooms:								
Occupied (O) or Vacant (V):								

**F=Fail P=Pass I=Inconclusive Y=Yes N= No N/A=Not applicable**

<b>Unit Number:</b>																					
<b>1. Living Room</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
1.1 Living Room Present (Y or N)																					
1.2 Electricity																					
1.3 Electrical Hazards																					
1.4 Security																					
1.5 Window Condition																					
1.6 Ceiling Condition																					
1.7 Wall Condition																					
1.8 Floor Condition																					
1.9 Lead-Based Paint Hazard																					
Additional Comments/Findings on separate page (Y/N)																					

[illegible]

Unit Number:																					
3. Bathroom	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I
3.1 Bathroom Present (Y or N)																					
3.2 Electricity																					
3.3 Electrical Hazards																					
3.4 Security																					
3.5 Window Condition																					
3.6 Ceiling Condition																					
3.7 Wall Condition																					
3.8 Floor Condition																					
3.9 Lead-Based Paint Hazard																					
3.10 Flush Toilet																					
3.11 Fixed Wash Basin/Lavatory																					
3.12 Tub or Shower																					
3.13 Ventilation																					
Additional Comments/Findings on separate page (Y/N)																					

[illegible][illegible]

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
(PCS INSPECTION CHECKLIST)**

4.7 Wall Condition																			
4.8 Floor Condition																			
4.9 Lead-based Paint Hazard																			
4.10 Smoke Detectors																			
Additional Comments/Findings on separate page (Y/N)																			

**5. All secondary rooms: not used for living: See instructions under Category 5.**

<b>Unit Number:</b>																			
<b>Description:</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P
5.1 Security																			
5.2 Electrical Hazards																			
5.3 Other potential hazards																			
Additional Comments/Findings on separate page (Y/N)																			

<b>Unit Number:</b>																			
<b>6. Heating and Plumbing</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P
6.1 Adequacy of Heating Equipment																			
6.2 Safety of Heating Equipment																			
6.3 Ventilation/Cooling System																			
6.4 Water Heater																			
6.5 Water Supply																			
6.6 Plumbing																			
6.7 Sewer Connections																			
Additional Comments/Findings on separate page (Y/N)																			

<b>Unit Number:</b>																			
<b>7. General Health and Safety</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P
7.1 Access to Unit																			
7.2 Exits																			
7.3 Evidence of Infestation																			
7.4 Garbage and Debris																			
7.5 Refuse Removal																			
7.6 Interior Stairs/Common Halls																			
7.7 Other Interior Hazards																			
7.8 Interior Air Quality																			
Additional Comments/Findings on separate page (Y/N)																			

<b>Unit Number:</b>																			
<b>8. Decision of Inspector</b>	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P	F	I	P
Indicate Pass or Fail for each unit																			

**WARNING:** It is a crime to knowingly make false statement(s) to the United States in this document or any other document related to this sale. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U. S. Code, Section 1001 and Section 1010.

I, \_\_\_\_\_, the Owner of the Property, hereby certify that these units were inspected on this date of \_\_\_\_\_. Furthermore, I certify that the inspection was conducted according to the Instructions of this report by my signature below:

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Date

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
(PCS INSPECTION CHECKLIST)**

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I hereby certify, as the Inspector performing the PCS inspection, that this Property was inspected as indicated by my signature below. This Property ☐ Passes ☐ Fails the PCS inspection.

\_\_\_\_\_  
Signature of Individual Performing Inspection

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Print name of Inspector)

\*Attach Inspector's Certification if performed by a third party.

**OWNER'S PCS INSPECTION INSTRUCTIONS:**

To ensure that each unit and inspection is correctly identified, please complete the top portion as follows:

**Property Name:** is the name of the apartment complex.

**Property Address:** is the physical location of the property, i.e., usually the site office address

**Number of Inspections:** the number of inspections as completed by the Owner. (This may not be the first PCS inspection, if so indicate the number of times an inspection of the physical conditions standards has been held for the property.

**Building Number:** is the building number for the units being inspected.

**Unit Number:** is the unit number, e.g., Unit 1. If the units are not numbered, but have separate identifying addresses, then use the address for the unit.

**Number of bedrooms:** self explanatory

**Number of baths:** self explanatory

**Unit is Occupied/Vacant:** self explanatory

**Grading:** The decision of the Inspector can be either: "Pass", "Fail", or "Inconclusive." You may use a check mark and an "x" to indicate your decision.

"N/A" may be used in for lead-based paint inspection. See Section 1.9 for more information.

"Yes" and/or "No" are used to indicate the presence of a room and the attachment of comments/findings.

**Comments/Findings:** In each Section, an area is provided to indicate if you have attachments which include comments or findings. If you encounter a condition that requires you to provide "comments/findings," indicate that you will be attaching additional pages to the inspection by entering a "Y" in the area provided (highlighted above in red.) Be sure to mark any comments/findings with the unit number or address of the unit to ensure that the reviewer understands to which unit the comments/findings apply. If there are no comments/findings to be attached, then indicate that by marking with "N." EXAMPLE:

Additional comments/findings on separate page (Y/N)	N					
---	---	--	--	--	--	--

**NOTE: HUD will allow vouchering for HAP payments only for occupied units covered under the HAP Contract. All HAP units must be inspected.**

**1. Living Room**

**1.1 Living Room Present**

**Is there a living room?**

Note: If the unit is an efficiency apartment, consider the living room present.

**1.2 Electricity**

**Are there at least two working outlets or one working outlet and one working light fixture?**

In order to qualify, the outlets must be present and properly installed in the baseboard, wall or floor of the room. Do not count a single duplex receptacle as two outlets, i.e., there must be **two** of these in the room, or **one** of these **plus a permanently installed ceiling or wall light fixture**. Both the outlets and/or the light must be working. Usually, a room will have sufficient lights or electrical appliances plugged into outlets to determine workability. Be sure light fixture does not fail just because the bulb is

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
(PCS INSPECTION CHECKLIST)**

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burned out. Do not count any of the following items or fixtures as outlets/fixtures: Table or floor lamps (these are **not** permanent light fixtures); ceiling lamps plugged into socket; extension cords. If the electric service to the unit has been temporarily turned off, enter "Inconclusive" and provide your comments/findings. Contact owner or manager after inspection to verify that electricity functions properly when service is turned on.

### **1.3 Electrical Hazards**

#### **Is the room free from electrical hazards?**

Examples of what this means: broken wiring; non-insulated wiring; frayed wiring; improper types of wiring, connections or insulation; wires lying in or located near standing water or other unsafe places; light fixture hanging from electric wiring without other firm support or fixture; missing cover plates on switches or outlets; badly cracked outlets; exposed fuse box connections; overloaded circuits evidenced by frequently "blown" fuses (ask the tenant). If you are uncertain about severity of the problem seek expert advice. Mark "Inconclusive" and provide your comments/findings.

### **1.4 Security**

#### **Are all windows and doors that are accessible from the outside lockable?**

"Accessible to outside" means: doors open to the outside or to a common public hall; windows accessible from the outside (e.g. basement and first floor); windows or doors leading onto a fire escape, porch or other outside place that can be reached from the ground. "Lockable" means: the window or door has a properly working lock, or is nailed shut, or the window is not designed to be opened. A storm window lock that is working properly is acceptable. Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.

### **1.5 Window Condition**

#### **Is there at least one window, and are all windows free of signs of severe deterioration of missing or broken out panes?**

Rate the windows in the room (including windows in doors). "Severe deterioration" means that the window no longer has the capacity to keep out the wind and the rain or is a cutting hazard. Examples are: missing or broken-out panes; dangerously loose cracked panes; windows that will not close; windows that, when closed, do not form a reasonably tight seal. If there is only "moderate deterioration" of the windows the item should "Pass." "Moderate deterioration" means windows which are reasonably weather-tight, but show evidence of some aging, abuse, or lack of repair. Signs of deterioration are: minor crack in window pane; splintered sill; signs of some minor rotting in the window frame or the window itself; window panes loose because of missing window putty. Also for deteriorated and peeling paint see 1.9. If more than one window is in this condition, provide your comments/findings.

### **1.6 Ceiling Condition**

#### **Is the ceiling sound and free from hazardous defects?**

"Unsound or hazardous" means: the presence of such serious defects that either a potential exists for structural collapse or that large cracks or holes allow significant drafts to enter the unit. The condition includes: severe bulging or buckling; large holes; missing parts; falling or in danger of falling loose surface materials (other than paper or paint). Pass ceilings that are basically sound but have some nonhazardous defects, including: small holes or cracks; missing or broken ceiling tiles; water stains; soiled surfaces; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

### **1.7 Wall Condition**

#### **Is the wall sound and free from hazardous defects?**

"Unsound or hazardous" includes: serious defects such that the structural safety of the building is threatened, such as severe buckling, bulging or leaning; damaged or loose structural members; large holes; air infiltration. Pass walls that are basically sound but have some non hazardous defects, including: small or shallow holes; cracks; loose or missing parts; unpainted surfaces; peeling paint (for peeling paint see item 1.9).

### **1.8 Floor Condition**

#### **Is the floor sound and free from hazardous defects?**

"Unsound or hazardous" means the presence of such serious defects that a potential exists for structural collapse or other threats to safety (e.g., stripping) or large cracks or holes allow substantial drafts from below the floor. The condition includes: severe buckling or major movements under walking stress; damaged or missing parts. Pass floors that are basically sound but have some nonhazardous defects, including: heavily worn or damaged floor surface (for ex-ample, scratches or gouges in surface, missing portions of tile or linoleum, previous water damage). If there is a floor covering, also note the condition, especially if badly worn or soiled. If there is a floor covering, including paint or sealant, also note the

**OWNER'S PHYSICAL CONDITIONS STANDARDS INSPECTION AND CERTIFICATION  
(PCS INSPECTION CHECKLIST)**

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conditions in your comments/findings, especially if badly worn, soiled or peeling (for peeling paint, see 1.9).

### **1.9 Lead-Based Paint**

**Are all painted surfaces free of deteriorated paint? If no, do deteriorated surfaces exceed two square feet and/or more than 10% of a component?**

If the unit was built January 1, 1978, or after, no child under age six will occupy or currently occupies it, is a 0-BR, elderly or handicapped unit with no children under age six on the lease or expected, has been certified lead based paint free by a certified lead-based paint inspector (no lead based paint present or no lead-based paint present after removal of lead-based paint.), mark "N/A" and do not inspect painted surfaces. This requirement applies to all painted surfaces (building components) within the unit. (Do not include tenant belongings). Surfaces to receive a visual assessment for deteriorated paint include walls, floors, ceilings, built in cabinets (sink bases), baseboards, doors, door frames, windows systems including mullions, sills, or frames and any other painted building component within the unit. Deteriorated paint includes any painted surface that is peeling, chipping, chalking, cracking, damaged or otherwise separated from the substrate. All deteriorated paint surfaces **more than 2 sq. ft. in any one interior room or space, or more than 10% of the total surface area of an interior type of component with a small surface area (i.e., window sills, baseboards, and trim)** must be stabilized (corrected) in accordance with all safe work practice requirements and clearance is required. **If the deteriorated painted surface is less than 2 sq. ft. or less than 10% of the component, only stabilization is required.**

**Clearance testing is not required.** Stabilization means removal of deteriorated paint, repair of the substrate, and application of a new protective coating or paint. Lead-Based Paint Owner Certification is required following stabilization activities, except for *de minimis* level repairs.

## **2. Kitchen**

### **2.1 Kitchen Area Present**

**Is there a kitchen present?**

Note: A kitchen is an area used for preparation of meals. It may be either a separate room or an area of a larger room (for example, a kitchen area in an efficiency apartment).

**2.2 - 2.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:**

### **2.2 Electricity**

**Are there at least one working outlet and one working, permanently installed light fixture?**

Note: The requirement is that at least one outlet and one permanent light fixture are present and working.

### **2.5 Window Condition**

Note: The absence of a window does not fail this item in the kitchen. If there is no window, check "Pass."

### **2.10 Stove or Range with Oven**

**Is there a working oven, and a stove (or range) with top burners that work? If no oven and stove (or range) are present, is there a microwave oven and, if microwave oven is owner-supplied, do other tenants have microwaves instead of an oven and stove (or range)?**

Both an oven and a stove (or range) with top burners must be present and working. If either is missing and you know that the owner is responsible for supplying these appliances, mark "Fail." Mark "Inconclusive" if the tenant is responsible for supplying the appliances and has not yet moved in. Contact tenant or prospective tenant to gain verification that facility will be supplied and is in working condition. Hot plates are not acceptable substitutes for these facilities. An oven is not working if it will not heat up. To be working a stove or range must have all burners working and knobs to turn them off and on. Under "working condition," also look for hazardous gas hook-ups evidenced by strong gas smells; these should fail. (Be sure that this condition is not confused with an unlit pilot light – a condition that should be noted, but does not fail.) If both an oven and a stove or range is present, but the gas or electricity is turned off, mark "Inconclusive." Contact owner or manager to get verification that facility works when gas is turned on. If both an oven and a stove or range are present and working, but defects exist, mark "Pass" and note these in your comments/findings. Possible defects are marked, dented, or scratched surfaces; cracked burner ring; limited size relative to family needs.

### **2.11 Refrigerator**

**If there a refrigerator that works and maintains a temperature low enough so that food does not spoil over a period of time?**

If no refrigerator is present, use the same criteria for marking either "Fail" or "Inconclusive" as were used for the oven and stove or range. A refrigerator is not working if it will not maintain a temperature low enough to keep food from spoiling over a reasonable period of time. If the electricity is turned off, mark



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"Inconclusive." Contact the owner (or tenant if unit is occupied) to get verification of working condition. If the refrigerator is present and working but defects exist, note these in your comments/findings. Possible minor defects include: broken or missing interior shelving; dented or scratched interior or exterior surfaces; minor deterioration of door seal; loose door handle.

### **2.12 Sink**

#### **Is there a kitchen sink that works with hot and cold running water?**

If a permanently attached kitchen sink is not present in the kitchen or kitchen area, mark "Fail." A sink in a bathroom or a portable basin will not satisfy this requirement. A sink is not working unless it has running hot and cold water from the faucets and a properly connected and properly working drain (with a "gas trap"). In a vacant apartment, the hot water may have been turned off and there will be no hot water. Mark this "Inconclusive." Check with owner or manager to verify that hot water is available when service is turned on. If a working sink has defects, note this in your comments/findings. Possible minor defects include: dripping faucet; marked, dented, or scratched surface; slow drain; missing or broken drain stopper.

### **2.13 Space for Storage, Preparation, and Serving of Food**

#### **Is there space to store, prepare, and serve food?**

Some space must be available for the storage, preparation, and serving of food. If there is no built-in space for food storage and preparation, a table used for food preparation and a portable storage cabinet will satisfy the requirement. If there is no built-in space, and no room for a table and portable cabinet, mark "Inconclusive" and discuss with the tenant. The tenant makes the final determination as to whether or not this space is acceptable. If there are some minor defects, mark "Pass" and indicate this in your comments/findings. Possible defects include: marked, dented, or scratched surfaces; broken shelving or cabinet doors; broken drawers or cabinet hardware; limited size relative to family needs.

## **3. Bathroom**

### **3.1 Bathroom Present**

#### **Is there a bathroom?**

Most units have easily identifiable bathrooms (i.e., a separate room with toilet, washbasin and tub or shower). In some cases, however, you will encounter units with scattered bathroom facilities (i.e., toilet, washbasin and tub or shower located in separate parts of the unit). At a minimum, there must be an enclosure around the toilet. In this case, count the enclosure around the toilet as the bathroom and proceed with 3.2-3.9 below, with respect to this enclosure. If there is more than one bathroom that is normally used, rate the one that is in best condition for Part 3. If there is a second bathroom that is also used, complete Part 4 of the checklist for this room.

#### **3.2 - 3.9 Explanation for these items is the same as that provided for "Living Room" with the following modifications:**

### **3.2 Electricity**

Note: The requirement is that at least one permanent light fixture is present and working.

### **3.3 Electrical Hazards**

Note: In addition to the previously mentioned hazards, non-GFCI outlets that are located within 6 feet of a water source are considered to be an electrical hazard.

### **3.5 Window Condition**

Note: The absence of a window does not fail this item in the bathroom (see item 3.13, Ventilation, for relevance of window with respect to ventilation). If there is no window, but a working vent system is present, mark "Pass."

### **3.7 Wall Condition**

Note: Include under nonhazardous defects (that would pass, but should be noted in your comments/findings) the following: broken or loose tile; deteriorated grouting at tub/wall and tub/floor joints, or tiled surfaces; water stains.

### **3.8 Floor Condition**

Note: Include under nonhazardous defects (that would pass, but should be noted in your comments/findings) the following: missing floor tiles; water stains.

### **3.10 Flush Toilet in Enclosed Room in Unit**

#### **Is there a working toilet in the unit for the exclusive private use of the tenant?**

The toilet must be contained within the unit, be in proper operating condition, and be available for the exclusive use of the occupants of the unit (i.e., outhouses or facilities shared by occupants of other units are not acceptable). It must allow for privacy. Not working means: the toilet is not connected to a water supply; it is not connected to a sewer drain; it is clogged; it does not have a trap; the connections, vents

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or traps are faulty to the extent that severe leakage of water or escape of gases occurs; the flushing mechanism does not function properly. If the water to the unit has been turned off, mark "Inconclusive." Obtain verification from owner or manager that facility works properly when water is turned on. If the toilet is "present, exclusive, and working," but has the following types of defects: constant running; chipped or broken porcelain; slow draining, note this in your comments/findings. If drain blockage is more serious and occurs further in the sewer line, causing backup, check item 5.6, "Fail," under the plumbing and heating part of the checklist. A sign of serious sewer blockage is the presence of numerous backed-up drains.

### **3.11 Fixed Wash Basin or Lavatory in Unit**

#### **Is there a working, permanently installed wash basin with hot and cold running water in the unit?**

The wash basin must be permanently installed (i.e., a portable wash basin does not satisfy the requirement). Also, a kitchen sink used to pass the requirements under Part 2 of the checklist (kitchen facilities) cannot also serve as the bathroom wash basin. The wash basin may be located separate from the other bathroom facilities (i.e. in a hallway). Not working means: the wash basin is not connected to a system that will deliver hot and cold running water; it is not connected to a properly operating drain; the connectors (or vents or traps) are faulty to the extent that severe leakage of water or escape of sewer gases occurs. If the water to the unit or the hot water unit has been turned off, mark "Inconclusive." Obtain verification from owner or manager that the system is in working condition. If the wash basin is "present and working," but has the following types of minor defects: insufficient water pressure; dripping faucets; minor leaks; cracked or chipped porcelain; slow drain (see discussion above at 3.10), note this in your comments/findings.

### **3.12 Tub or Shower in Unit**

#### **Is there a working tub or shower with hot and cold running water in the unit?**

Not present means that neither a tub nor shower is present in the unit. Again, these facilities need not be in the same room with the rest of the bathroom facilities. They must, however, be private. Not working covers the same requirements detailed above for wash basin (3.11). If the tub or shower is present and working, but has the following types of defects: dripping faucet; minor leaks; cracked porcelain; slow drain (see discussion under 3.10); absent or broken support rod for shower curtain, note this in your comments/findings.

### **3.13 Ventilation**

#### **Are there operable windows or a working vent system?**

Working vent systems include: ventilation shafts (non –mechanical vents) and electric fans. Electric vent fans must function when switch is turned on. (Make sure that any malfunctions are not due to the fan not being plugged in.) If electric current to the unit has not been turned on (and there is no operable window), mark "Inconclusive." Obtain verification from owner or manager that system works. Note: exhaust vents must be vented to the outside, attic, or crawlspace.

### **4. Other Room(s) Used for Living and Halls**

Complete an "Other Room" checklist for as many "other rooms used for living" as are present in the unit and not already noted in Parts 1, 2, and 3 of the checklist. See the discussion below for definition of "used for living." Also complete an "Other Room" checklist for all entrance halls, corridors, and staircases that are located within the unit and are part of the area used for living. If a hall, entry and/or stairway are contiguous, rate them as a whole (i.e., as part of one space). Additional forms for rating "Other Rooms" are provided in the check-list. Definition of "used for living." Rooms "used for living" are areas of the unit that are walked through or lived in on a regular basis. Do not include rooms or other areas that have been permanently, or near permanently, closed off or areas that are infrequently entered. For example, do not include a utility room, attached shed, attached closed-in porch, basement, or garage if they are closed off from the main living area or are infrequently entered. Do include any of these areas if they are frequently used (e.g., a finished basement/play-room, a closed-in porch that is used as a bedroom during summer months). Occasional use of a washer or dryer in an otherwise unused room does not constitute regular use. If the unit is vacant and you do not know the eventual use of a particular room, complete an "Other Room" checklist if there is any chance that the room will be used on a regular basis. If there is no chance that the room will be used on a regular basis, do not include it (e.g., an unfinished basement) since it will be checked under Part 5, All Secondary Rooms (Rooms not used for living).

### **4.1 Room Code and Room Location**

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Enter the appropriate room code given below:

**Room Codes:**

- 1 = Bedroom or any other room used for sleeping (regardless of type of room)
- 2 = Dining Room or Dining Area
- 3 = Second Living Room, Family Room, Den, Playroom, TV Room
- 4 = Entrance Halls, Corridors, Halls, Staircases
- 5 = Additional Bathroom (also check presence of sink trap and clogged toilet)
- 6 = Other

**Room Location:** Write on the line provided the location of the room with respect to the unit's width, length and floor level as if you were standing outside the unit facing the entrance to the unit:  
right/left/center: record whether the room is situated to the right, left, or center of the unit.  
front/rear/center: record whether the room is situated to the back, front or center of the unit.  
floor level: identify the floor level on which the room is located.

If the unit is vacant, you may have some difficulty predicting the eventual use of a room. Before giving any room a code of 1 (bedroom), the room must meet all of the requirements for a "room used for sleeping" (see items 4.2 and 4.5).

**4.2 - 4.9 Explanations of these items are the same as those provided for "Living Room" with the following modifications:**

**4.2 Electricity/Illumination**

**If room code is "1", are there at least two working outlets or one working outlet and one working, permanently installed light fixture?**

**If room code is not a "1", is there a means of illumination?**

If the room code is not a "1," the room must have a means of natural or artificial illumination such as a permanent light fixture, wall outlet present, or light from a window in the room or near the room. If any required item is missing, mark "Fail." If the electricity is turned off, mark "Inconclusive."

**4.5 Window Condition**

**If room code is "1", is there at least one window? And, regardless of room code, are all windows free of signs of severe deterioration or missing or broken-out panes?**

Any room used for sleeping must have at least one window. If the windows in sleeping rooms are designed to be opened, at least one window must be operable. The minimum standards do not require a window in "other rooms." Therefore, if there is no window in another room not used for sleeping, mark "Pass," and note "no window" in your comments/findings.

**4.6 Smoke Detectors**

**Is there a working smoke detector on each level?**

**Do the smoke detectors meet the requirements of NFPA 74?**

**In units occupied by the hearing impaired, is there an alarm system connected to the smoke detector?**

At least one battery-operated or hard-wired smoke detector must be present and working on each level of the unit, including the basement, but not the crawl spaces and unfinished attic. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system designed for hearing-impaired persons as specified in NFPA 74 (or successor standards). If the unit was under HAP contract prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992 (57 F R 33846), will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit). In this case, mark "Pass" and note in your comments/findings.

**Additional Notes**

For staircases, the adequacy of light and condition of the stair rails and railings is covered under Part 7 of the checklist (General Health and Safety)

**5. All Secondary Rooms (Rooms not used for living)**

If any room in the unit did not meet the requirements for "other room used for living" in Part 4, it is to be considered a "secondary room (not used for living)." Rate all of these rooms together (i.e., a single Part 5 checklist for all secondary rooms in the unit). Inspection is required of the following two items since hazardous defects under these items could jeopardize the rest of the unit, even if present in rooms not

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used for living: 5. 2 Security, 5. 3 Electrical Hazards. Also, be observant of any other potentially hazardous features in these rooms and record under 5.4. If there are no "Secondary Rooms (rooms not used for living)," mark "None" under "Description" and go on to Part 6.

**5.1 - 5.3 Explanations of these items is the same as those provided for "Living Room."**

**Additional Note**

In recording "other potentially hazardous features," note (in your comments/findings) the means of access to the room with the hazard and mark "Inconclusive." Discuss the hazard with the HA inspection supervisor to determine "Pass" or "Fail." Include defects like: large holes in floor, walls or ceilings; evidence of structural collapse; windows in condition of severe deterioration; and deteriorated paint surfaces.

**6. Heating and Plumbing**

**6.1 Adequacy of Heating Equipment**

**Is the heating system capable of providing adequate heat (either directly or indirectly) to all rooms used for living?**

"Adequate heat" means that the heating system is capable of delivering enough heat to assure a healthy environment in the unit (appropriate to the climate). The HA is responsible for defining what constitutes a healthy living environment in the area of the country in which it operates. Local codes (city or state codes) should be instructive in arriving at a reasonable local definition. For example, for heat adequacy, local codes often require that the unit's heating facility be capable of maintaining a given temperature level during a designated time period. Portable electric room heaters or kitchen stoves or ranges with a built-in heat unit are not acceptable as a primary source of heat for units located in areas where climate conditions require regular heating. "Directly or indirectly to all rooms used for living" means: "Directly" means that each room used for living has a heat source (e.g., working radiator; working hot air register; baseboard heat) "indirectly" means that, if there is no heat source present in the room, heat can enter the room easily from a heated adjacent room (e.g. a dining room may not have a radiator, but would receive heat from the heated living room through a large open archway). If the heating system in the unit works, but there is some question whether a room without a heat source would receive adequate indirect heat, mark "Inconclusive" and verify adequacy from tenant or owner (e.g., unheated bedroom at the end of a long hallway). How to determine the capability of the heating system: If the unit is occupied, usually the quickest way to determine the capability of the heating system over time is to question the tenant. If the unit is not occupied, or the tenant has not lived in the unit during the months when heat would be needed, mark "Inclusive." It will be necessary to question the owner on this point after the inspection has been completed and, if possible, to question other tenants (if it is a multi-unit structure) about the adequacy of heat provided. Under some circumstances, the adequacy of heat can be determined by a simple comparison of the size of the heating system to the area to be heated. For example, a small permanently installed space heater in a living room is probably inadequate for heating anything larger than a relatively small apartment.

**6.2 Safety of Heating Equipment**

**Is the unit free from unvented fuel burning space heaters or any other types of unsafe heating conditions?**

Examples of "unvented fuel burning space heaters" are: portable kerosene units; unvented open flame portable units. "Other unsafe conditions" include: breakage or damage to heating system such that there is a potential for fire or other threats to safety; improper connection of flues allowing exhaust gases to enter the living area; improper installation of equipment (e.g., proximity of fuel tank to heat source, absence of safety devices); indications of improper use of equipment (e.g., evidence of heavy build-up of soot, creosote, or other substance in the chimney); disintegrating equipment; combustible materials near heat source or flue. If you are unable to gain access to primary heating systems the unit mark "Inconclusive." Contact the owner or manager for verification of safety of the system. If the system has passed a recent local inspection, mark "Pass." This applies especially to units in which heat is provided by a large scale, complex central heating system that serves multiple units (e.g., a boiler in the basement of a large apartment building). In most cases, a large scale heating system for a multi-unit building will be subject to periodic safety inspections by a local public agency. Check with the owner or manager to determine the date and outcome of the last such inspection, or look for a posted inspection certificate.

**6.3 Ventilation and Adequacy of Cooling**

**Does the unit have adequate ventilation and cooling by means of openable windows or a working cooling system?**

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If the tenant is present and has occupied the unit during the summer months, inquire about the adequacy of air flow. If the tenant is not present or has not occupied the unit during the summer months, test a sample of windows to see that they open. Equipment includes: central (fan) ventilation system; evaporative cooling system; room or central air conditioning. Mark "Inconclusive" if there are no operable windows and it is impossible, or inappropriate, to test whether a cooling system works. Check with other tenants in the building (in a multi-unit structure) and with the owner or manager for verification of the adequacy of ventilation and cooling.

#### **6.4 Water Heater**

##### **Is the water heater located, equipped, and installed in a safe manner?**

"Location presents hazard" means that the gas or oil water heater is located in living areas or closets where safety hazards may exist (e.g., water heater located in a cluttered closet with cloth and paper items stacked against it). Gas water heaters in bedrooms or other living areas must have safety dividers or shields. Water heaters must have a temperature-pressure relief valve and discharge line (directed toward the floor or outside of the living area) as a safeguard against build up of steam if the water heater malfunctions. If not, they are not properly equipped and shall fail. To pass, gas or oil fired water heaters must be vented into a properly installed chimney or flue leading outside. Electric water heaters do not require venting. If it is impossible to view the water heater, mark "Inconclusive." Obtain verification of safety of system from owner or manager. Mark "Pass" if the water heater has passed a local inspection. This applies primarily to hot water that is supplied by a large scale complex water heating system that serves multiple units (e.g., water heating system in large apartment building). Check in the same manner described for heating system safety, item 7.2, above.

#### **6.5 Water Supply**

##### **Is the unit served by an approvable public or private sanitary water supply?**

If the structure is connected to a city or town water system, mark "Pass." If the structure has a private water supply (usually in rural areas) inquire into the nature of the supply (probably from the owner) and check with owner or manager for verification of adequacy.

#### **6.6 Plumbing**

##### **Is plumbing free from major leaks or corrosion that causes serious and persistent levels of rust or contamination of the drinking water?**

"Major leaks" means that main water drain and feed pipes (often located in the basement) are seriously leaking. (Leaks present at specific facilities have already been evaluated under the checklist items for Bathroom and Kitchen.) Leaks causing serious and persistent levels of rust or contamination in the drinking water can be determined by observing the color of the drinking water at several taps. Badly corroded pipes will produce noticeably brownish water. If the tenant is currently occupying the unit, he or she should be able to provide information about the persistence of this condition. (Make sure that the "rusty water" is not a temporary condition caused by city or town maintenance of main water lines.) See general note under 6.5.

#### **6.7 Sewer Connection**

##### **Is plumbing connected to an approvable public or private disposal system, and is it free from sewer back-up?**

If the structure is connected to the city or town sewer system, mark "Pass." If the structure has its own private disposal system (e.g., septic field), inquire into the nature of the system and determine whether this type of system can meet appropriate health and safety regulations. The following conditions constitute "evidence of sewer back up": strong sewer gas smell in the basement or outside of unit; numerous clogged or very slow drains; marshy areas outside of unit above septic field.

### **7. General Health and Safety**

#### **7.1 Access to Unit**

##### **Can the unit be entered without having to go through another unit?**

"Through another unit" means that access to the unit is only possible by means of passage through another dwelling unit.

#### **7.2 Exits**

##### **Is there an acceptable fire exit from this building that is not blocked?**

Is there an acceptable fire exit from this building that is not blocked? "Acceptable fire exit" means that the building must have an alternative means of exit that meets local or state regulations in case of fire; this could include: An openable window if the unit is on the first floor or second floor or easily accessible to the ground; A back door opening on to a porch with a stairway leading to the ground; Fire escape, fire ladder, or fire stairs. "Blocked" means that the exit is not useable due to conditions such as debris,

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storage, door or window nailed shut, broken lock. Important note: HUD/or the HA has the final responsibility for deciding whether the type of emergency exit is acceptable, although the tenant should assist in making the decision.

**7.3 Evidence of Infestation**

**Is the unit free from rats or severe infestation by mice or vermin?**

"Presence of rats" or severe infestation by mice or vermin" (such as roaches) is evidenced by: rat holes; droppings; rat runs; numerous settings of rat poison. If the unit is occupied, ask the tenant.

**7.4 Garbage and Debris**

**Is the unit free from heavy accumulation of garbage or debris inside and outside?**

"Heavy accumulation" means large piles of trash and garbage, discarded furniture, and other debris (not temporarily stored awaiting removal) that might harbor rodents. This may occur inside the unit, in common areas, or outside. It usually means a level of accumulation beyond the capacity of an individual to pick up within an hour or two.

**7.5 Refuse Disposal**

**Are there adequate covered facilities for temporary storage and disposal of food wastes, and are they approvable by a local agency?**

"Adequate covered facilities" includes: trash cans with covers, garbage chutes, "dumpsters" (i.e., large scale refuse boxes with lids); trash bags (if approvable by local public agency). "Approvable by local public agency" means that the local Health and Sanitation Department (city, town or county) approves the type of facility in use. Note: During the period when the HA is setting up its inspection program, it will check with the local health and sanitation department to determine which types of facilities are acceptable and include this in the inspection requirements. If the unit is vacant and there are no adequate covered facilities present, mark "Inconclusive." Contact the owner or manager for verification of facilities provided when the unit is occupied.

**7.6 Interior Stairs and Common Halls**

**Are interior stairs and common halls free from hazards to the occupant because of loose, broken, or missing steps on stairways; absent or insecure railings; inadequate lighting; or other hazards?**

"Loose, broken, or missing steps" should fail if they present a serious risk of tripping or falling. A handrail is required on extended sections of stairs (generally four or more consecutive steps). A railing is required on unprotected heights such as around stairwells. "Other hazards" would be conditions such as bare electrical wires and tripping hazards.

**7.7 Other Interior Hazards**

**Is the interior of the unit free from any other hazard not specifically identified previously?**

Examples of other hazards might be: a broken bathroom fixture with a sharp edge in a location where it represents a hazard; a protruding nail in a doorway.

**7.8 Interior Air Quality**

**Is the unit free from abnormally high levels of air pollution from vehicular exhaust, sewer gas, fuel gas, dust, or other pollutants?**

If the inspector has any questions about whether an existing poor air quality condition should be considered dangerous, he or she should check with the local Health and Safety Department (city, town or county).

**8. Decision of Inspector:** While it is HUD's position that, if any one unit fails, the Property fails. However, to make future inspections easier, we are requiring that the Inspector indicate the grade (i.e., Pass or Fail) for each unit individually.

**Be sure to submit all pages of the inspection report, including any/all comment/finding pages. Do not include the instructions with your submission. HUD will not accept any inspection report that is not signed and dated by any party to the inspection.**