RESOLUTION ADOPTED BY CITY COUNCIL APRIL 1, 2009

**R86-09** RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LONG BRANCH TO EXECUTE A GROUND LEASE BETWEEN THE CITY OF LONG BRANCH, AS LESSOR AND THE CITY OF LONG BRANCH HOUSING AUTHORITY AS LESSEE

RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LONG BRANCH TO EXECUTE A GROUND LEASE BETWEEN THE CITY OF LONG BRANCH, AS LESSOR AND THE CITY OF LONG BRANCH HOUSING AUTHORITY, AS LESSEE

**WHEREAS,** the City of Long Branch is the owner of property described as Block 313, Lots 34, 35, 36, 15 and 16.01 and Block 399, Lots 20.01 and 21 of the official Tax Map of the City of Long Branch (the "Property"); and

**WHEREAS,** the Long Branch Housing Authority ("Housing Authority") wishes to use and obtain access to Block 313, Lots 34, 35 and 36 for the purpose of demolishing the existing structure and the construction and operation of a community building; and

**WHEREAS,** the Long Branch Housing Authority wishes to use and obtain access to Block 313, Lots 15 and 16.01; and Block 399, Lots 20.01 and 21 for the purpose of subsequent phases of development with a specific and limited use for open space in compliance with all applicable laws, including without limitation, the New Jersey Department of Environmental Protection, Green Acres Program; and

**WHEREAS,** the parties have negotiated through the City Attorney's office of the City of Long Branch and counsel for the Housing Authority a Ground Lease to accomplish the needs of the Housing Authority and the requirements of the City of Long Branch; and

**WHEREAS,** the Ground Lease, which is the subject of this Resolution, is beneficial to the City of Long Branch, as well as to the Housing Authority of the City of Long Branch, will provide both affordable housing and open spaces within the City of Long Branch.

**NOW, THEREFORE BE IT RESOLVED,** by the Council of the City of Long Branch that the Mayor of the City of Long Branch be and is the same is hereby authorized to execute the Ground Lease between the City of Long Branch, as Lessor, and the City of Long Branch Housing Authority, as Lessee, pursuant to the terms of the Ground Lease, which is annexed hereto and made a part thereof, and

**BE IT FURTHER RESOLVED,** that the Mayor of the City of Long Branch, be and is hereby authorized to execute any documents necessary to meet the intent and purpose of this Resolution.

MOVED: CELLI

SECONDED: UNGER

AND ADOPTED UPON THE FOLLOWING ROLL CALL:

AYES: 3

NAYES: 0

ABSENT: 2 - BROWN, GIORDANO

ABSTAIN: 0

STATE OF NEW JERSEY
COUNTY OF MONMOUTH
CITY OF LONG BRANCH

I, IRENE A. JOLINE, CITY CLERK OF THE CITY OF LONG BRANCH, DO HEREBY CERTIFY THE FOREGOING TO BE A TRUE, COMPLETE AND CORRECT COPY OF RESOLUTION ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING HELD ON APRIL 1, 2009

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE CITY OF LONG BRANCH, MONMOUTH COUNTY, NEW JERSEY THIS 2nd DAY OF April 2009

Irene A. Joline
CITY CLERK, R.M.C.

# GROUND LEASE

# BETWEEN

# CITY OF LONG BRANCH,

**as lessor**

**and**

# CITY OF LONG BRANCH HOUSING AUTHORITY,

**as lessee**

**Portion of Block 313, Lots 34, 35, 36, 15 and 16.01; Block 399, Lots 20.01 and 21**

# GROUND LEASE

**THIS GROUND LEASE** (the "Lease") is entered into as of the ___ day of March, 2009 by and between the City of Long Branch, a municipal corporation of the State of New Jersey, having a principal business address at 344 Broadway, Long Branch, New Jersey 07740 ("Lessor") and City of Long Branch Housing Authority, a duly organized Housing Authority, having a principal business address at 1 Hope Lane, Long Branch, New Jersey 07740 ("Lessee").

## RECITALS:

**WHEREAS**, the public may be better served through innovative combinations of the resources of local government and other public and private enterprises;

**WHEREAS**, the Lessor is the registered owner of a property described as Block 313, Lots 34, 35, 36, 15 and 16.01; and Block 399, Lots 20.01 and 21, on the Official Tax Map of Long Branch, New Jersey, 07740 ("the Property"); and;

**WHEREAS**, the Lessee wishes to obtain access and use of the property, ie. Block 313, Lots 34, 35 and 36, for the purpose of demolishing the existing structure and the construction and operation of a community building; and

**WHEREAS**, the Lessee wishes to obtain access and use of the property, ie. Block 313, Lots 15 and 16.01; Block 399, Lots 20.01 and 21, for the purpose of subsequent phases of development with a specific and limited use for open space in compliance with all applicable laws, including without limitation, the New Jersey Department of Environmental Protection, Green Acres Program; and

**WHEREAS**, the parties desire to formalize the Lessee's aforesaid access and use on the Lessor's property; and

**WHEREAS**, in order to effectuate the purposes of the Lessee, Lessor intends to lease to Lessee, and Lessee intends to lease from Lessor, the Property.

**NOW THEREFORE**, for and in consideration of the foregoing premises, the sum of One and No/100 Dollars ($1.00), the covenants, representations, warranties and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby mutually agree as follows:

## ARTICLE 1

## DEFINITIONS

Section 1.1 Definitions. For the purposes of this Lease, the following defined terms shall have the meanings ascribed thereto in this Article 1:

Act: The United States Housing Act of 1937 (42 U.S.C. § 1437 *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

Applicable Public Housing Requirements: All requirements applicable to public housing, including, but not limited to, the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the Annual Contributions Contract, the Mixed Finance ACC Amendment, the HOPE VI grant agreement (if applicable), HUD notices (including any notice of fund availability under which Lessee received an award of HOPE VI funds for use in connection with the Project), the HUD-approved Declaration of Restrictive Covenants in favor of HUD, the Authority's admissions and occupancy policies applicable to the Project, as set forth in the Authority's approved PHA Plan under 24 CFR part 903, and all applicable Federal statutory, regulatory and executive order requirements, as those requirements may be amended from time to time. Notwithstanding anything to the contrary which may be construed hereunder, all Leasehold Mortgages, including the leasehold mortgages securing the Authority Loan, shall be subordinate in all respects to the Applicable Public Housing Requirements.

Casualty: As defined in Article 11 hereof.

City: The City of Long Branch, New Jersey.

Commencement Date: Shall mean the date hereof.

County. The County of Monmouth, New Jersey.

Delinquency Rate: The lesser of (a) the maximum amount of interest which may be lawfully charged under the laws of the State, or (b) the rate per annum equal to the "Prime Rate" of interest from time to time as such rate is specified in The Wall Street Journal or in any successor publication.

Event of Default: As described in Article 12 hereof.

Existing Buildings. Shall mean any existing buildings, structures and any other type of improvements, including without limitation aboveground and underground tanks, infrastructure, and piping, that is located on or under the Leased Premises, and shall specifically not include the Improvements.

Governmental Authority(ies): Any applicable federal, state or local governmental or quasi-governmental entities, subdivisions, agencies, authorities or instrumentalities having jurisdiction over the Leased Premises, the Improvements, Lessor or Lessee.

Hazardous Substances: (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder ("RCRA"); (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and the Superfund Amendments and Reauthorization Act of 1986, as amended from time to time, and regulations promulgated thereunder ("CERCLA"); (c) any other waste, substance or material designated or regulated in any way as

"toxic" or "hazardous" under RCRA, CERCLA, the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 3000(f) et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), or in any applicable environmental law of the State of New Jersey or any regulations promulgated thereunder, as each of said acts or regulations may be amended from time to time; (d) asbestos and asbestos containing materials; (e) polychlorinated biphenyls; (f) petroleum, petroleum byproducts or petroleum constituents; (g) any substance, the presence of which, by any governmental requirement, requires special handling in its collection, storage, treatment, transportation or disposal; provided, however, that the foregoing definition of "Hazardous Substances" shall not be deemed to include (i) such of the foregoing as may exist on or be brought upon the Leased Premises in amounts which do not constitute a violation of applicable Legal Requirements; (ii) the existence on the Leased Premises of standard cleaning and maintenance fluids, equipment and materials in normal quantities customarily used and in compliance with applicable Legal Requirements in connection with material or equipment of a type that would customarily be used by Lessee or the Tenants in connection with the development and operation of the Improvements; or (iii) oil and gasoline products in normal quantities customarily used in compliance with applicable Legal Requirements in connection with the development and operation of the Improvements.

Hazardous Substances Claims: As defined in Section 9.4 herein.

Hazardous Substances Contamination: (i) the contamination of any Improvements, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on or of the Leased Premises by Hazardous Substances, or (ii) the contamination of the buildings, facilities, soil, subsurface strata, ground water, ambient air, biota or other elements on, or of, any other property as a result of Hazardous Substances emanating from the Leased Premises.

Hazardous Substances Laws: All federal, state, and local laws, ordinances, regulations, orders and directives now existing or hereafter enacted pertaining to Hazardous Substances in, on or under the Leased Premises or any portion thereof.

HUD: The United States Department of Housing and Urban Development.

Impositions: All taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, license and permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any Governmental Authorities upon the Leased Premises or any part thereof, including the buildings or improvements now or hereafter located thereon; provided, however, that the term "Impositions" shall not include any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Lessor, or any franchise tax imposed upon any owner of the fee of the Leased Premises, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Lessor under this Lease by any Governmental Authorities.

Improvements: The demolition, construction, and operation of a redesigned community center including the related improvements, fixtures and other structures, now or hereafter constructed by Lessee on, under or across the Leased Premises, including, without limitation, roads, parking lots,

landscaping, drainage and other utility structures and facilities and other so-called "infrastructure" improvements.

Indemnified Parties. Shall mean as to each Party, that Party and its officers, directors, shareholders, partners, members, board members, agents, contractors and the successors and assigns of all of them.

Insurance Requirements: The requirements, whether now or hereafter in force, of any insurer or insurance carrier, any board of fire underwriters or any other company, bureau, organization or entity performing the same or similar functions, applicable to the Leased Premises and/or the Improvements, or any portion thereof, to the extent so applicable.

Lease Year: The calendar year or any portion thereof that occurs during the Term of this Lease.

Leased Premises: That certain tract and parcel of real property lying and being in the City of Long Branch, Monmouth County, New Jersey and known as a portion of Block 313, Lots 34, 35, 36, 15 and 16.01; Block 399, Lots 20.01 and 21.

Legal Requirements: All laws, statutes, codes, ordinances, orders, rules, regulations and requirements of all Governmental Authorities (including, without limitation, HUD) and the appropriate agencies, officers, departments, boards and commissions thereof, whether now or hereafter in force, applicable to Lessor, Lessee, the Leased Premises, the Improvements, or any portion thereof, to the extent so applicable.

Lessee's Estate: Lessee's leasehold interest in the Leased Premises acquired pursuant to this Lease together with its interest in the Improvements and any fee or other interest in the Leased Premises acquired by Lessee hereafter.

Lessor's Estate: Lessor's fee estate in the land underlying the Leased Premises.

Net Condemnation Award: The net amounts owed or paid to the Parties or to which either of the Parties may be or become entitled by reason of any Taking pursuant to any agreement with any condemning authority which has been made in settlement of any proceeding relating to a Taking, less any costs and expenses incurred by the Parties in collecting such award or payment.

NJDEP: The State of New Jersey, Department of Environmental Protection.

Party: Lessor or Lessee, as applicable. Lessor and Lessee shall be referred to collectively as the "Parties".

Person: An individual, partnership, corporation, limited liability company, trust, unincorporated association, or other entity or association.

Plans and Specifications: The plans and specifications created by Lessee.

Rent: As described in Section 4.1 hereof.

State: The State of New Jersey.

Taking: A taking during the Term hereof of all or any part of the Leased Premises and/or the Improvements, or any interest therein or right accruing thereto, as a result of the exercise of the right of condemnation or eminent domain or a change in grade affecting the Leased Premises or any part thereof. A conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain shall be considered a Taking. Any such Taking shall be deemed to have occurred upon the earlier to occur of (a) the date on which the property, right or interest so taken must be surrendered to the condemning authority, or (b) the date title vested in a condemning authority or other party pursuant to any Taking.

Tenant(s): Any tenant, sublessee, assignee or licensee of Lessee under any Tenant Lease(s).

Tenant Lease(s): Any lease, sublease, assignment, lease purchase agreement or license agreement entered into by Lessee with other entities or third parties.

Term: The period of time described in Section 2.2 hereof.

Transfer: Any sale, assignment, transfer, conveyance, encumbrance, mortgage, or hypothecation, in any manner or form or any agreement to do any of the foregoing.

## ARTICLE 2

## THE LEASE

Section 2.1 Leased Premises.

(a) Subject to the terms hereof and in consideration of the covenants of payment and performance stipulated herein, Lessor has leased, demised and let, and by these presents does hereby lease, demise and let unto Lessee, and Lessee hereby leases and takes from Lessor, the Leased Premises.

(b) Lessor shall be responsible to pay any and all realty transfer taxes due the County or State in connection with this Lease.

TO HAVE AND TO HOLD the Leased Premises unto Lessee, and its successors in interest, permitted Tenants and permitted assigns, for and during the Term hereinafter set forth.

Section 2.2 Term. This Lease shall be for a minimum term (i) commencing on the Commencement Date, and (ii) unless otherwise provided by law, terminating on the day immediately preceding the fiftieth (50th) anniversary of the Commencement Date. The term stated herein may be extended for another twenty-five (25) years from in accordance with N.J.S.A. 40A:12-15.

Section 2.3 Use. Subject to the provisions hereof Lessee shall throughout the Term continuously use and operate the Premises and the Improvements. Lessee is permitted to demolish, construct, or perform whatever services necessary to effectuate the building and operation of a new or redesigned community center.

Section 2.4 Possession. Lessor agrees to and shall provide possession of the Leased Premises to Lessee on the Commencement Date, and, as of the Commencement Date, the Leased Premises shall be free and clear of all rights to possession or use by any tenants or other individuals or entities other than Lessee and Lessor.

ARTICLE 3

THE IMPROVEMENTS

Section 3.1 Construction. Any and all Improvements constructed by Lessee shall be constructed in a good and workmanlike manner, in compliance with all applicable Legal Requirements.

Section 3.2 Lessor Cooperation. Lessor agrees to use reasonable efforts to assist Lessee in such manner as Lessee shall reasonably request (including by means of entering into required applications) to obtain the permits, licenses and approvals required by applicable Governmental Authorities with respect to any construction or other work to be performed on the Leased Premises. To the extent required to obtain same, Lessor shall apply for and prosecute, with reasonable diligence, all necessary approvals, permits and licenses required for the construction, development, use and occupation of the Improvements.

Section 3.3 No Liens. Lessee shall not have any right, authority or power to bind Lessor, Lessor's Estate or any other interest of Lessor in the Leased Premises, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto. Lessee shall not permit to remain any encumbrances except as otherwise described in Section 8.1 herein, without the prior written approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned. Notice is hereby given that the Lessor will not be liable for any labor, services, or materials furnished or to be furnished to the Lessee, or to anyone holding the Development or any part thereof through or under the Lessee, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of the Lessor in and to the Leased Premises.

Section 3.4 Title to Improvements.

(a) During the Term. NOTWITHSTANDING ANY PROVISION IN THIS LEASE TO THE CONTRARY, THE IMPROVEMENTS AND ALL ALTERATIONS, ADDITIONS, EQUIPMENT AND FIXTURES BUILT, MADE OR INSTALLED BY THE LESSEE IN, ON, UNDER OR TO THE LEASED PREMISES AND TO THE IMPROVEMENTS SHALL BE THE SOLE PROPERTY OF THE LESSEE AND THE LESSEE SHALL HOLD TITLE TO ALL SUCH IMPROVEMENTS UNTIL THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.

(b) After the Term. Lessor agrees that Lessee, at any time prior to the forty- fifth (45th) day after the expiration or other termination of this Lease, may remove from the Leased Premises any and all office, maintenance, construction or similar equipment which Lessee has

furnished or installed together with all personal and other property in which the Lessee has an interest, provided that Lessee shall repair any physical damage to the Leased Premises caused by the removal of such equipment and property. Thereafter, the Improvements and all alterations, additions, equipment and fixtures thereto shall be deemed to be and shall automatically become the property of Lessor, without cost or charge to Lessor.

Section 3.5 Benefits of Improvements During Term. Lessor acknowledges and agrees that any and all depreciation, amortization, profits, losses, income, and tax credits for Federal or state tax purposes relating to the Improvements located on the Leased Premises and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted by or credited exclusively to Lessee during the Term.

Section 3.6 Dedication. Lessor shall, from time to time, upon written request of Lessee and/or any Leasehold Mortgagee, grant and convey or join with Lessee in granting and conveying any and all easements, interests and/or dedications which are necessary to transfer or dedicate any land or any utilities, streets, or other infrastructure now existing or hereafter constructed on, under or over the Leased Premises or serving the Leased Premises to appropriate public bodies, public authorities or utility companies or to otherwise obtain utility service, and will, from time to time, do such other things, take such other actions and enter into any and all agreements which are necessary in furtherance of the foregoing. Lessor shall cooperate with Lessee at Lessee's expense in Lessee's efforts to relocate existing easements if Lessee deems such relocation reasonably necessary to further development of the Leased Premises. Lessor agrees to respond as promptly as is practicable to each request by Lessee for such easements, interests and/or dedications.

Section 3.7 Use of Leased Material. From time to time during the Term hereof, various items of machinery, equipment, fixtures or furnishings to be used by Lessee or others in the use, occupancy and operation of buildings and other improvements on the Leased Premises may be the property of others leased to Lessee or others for use by the latter. Nothing contained in this Lease shall alter or adversely affect the right, title and interest of the owner of such property in and to the same, and Lessor shall not be entitled to and shall not acquire, by reason of any provisions of this Lease, any right, title or interest in or to such leased property. Although the foregoing waiver and release shall be self-operative, upon request from time to time, Lessor shall execute a Lessor's waiver in confirmation of the foregoing. Any Lessee or sublessee shall be allowed to remove trade fixtures, furniture and equipment used in connection with the business of such Lessee or sublessee conducted on the Leased Premises.

## ARTICLE 4

## RENTS

Section 4.1 Ground Rent. As of the Commencement Date, Lessee has paid to Lessor the sum of One Dollar ($1.00) as consideration for Lessor entering into this Lease. In addition, Lessee shall pay to Lessor on the Commencement Date of this Lease the Term rent in advance for the entire Term of the Lease ("Rent") in the amount of One Dollar ($1.00) per Term of the Lease. As of the date of this Lease, Lessor acknowledges receipt of the Rent due for the entire Term from the Lessee.

The Parties agree that the Rent is the fair market rent for the Leased Premises for its intended use and subject to the restrictions described in the Lease.

Section 4.2 Payments. All Rents or other sums, if any, due Lessor hereunder shall be paid by Lessee to Lessor at the address of Lessor set forth hereinafter for notices, or to such other Person and/or at such other address as Lessor may direct by written notice to Lessee, without notice or demand, and without abatement, deduction or set off, except as provided in Section 12.3(b) herein.

## ARTICLE 5

## TAXES AND OTHER IMPOSITIONS

Section 5.1 Payment of Impositions. As and when the same shall become due, Lessor will pay all of the Impositions.

Section 5.2 Lessor's Fee Estate. Notwithstanding anything contained in this Lease to the contrary, any and all Impositions for taxes and assessments charged against the value of Lessor's Estate, if any, shall be the sole responsibility and obligation of Lessor.

## ARTICLE 6

## INSURANCE; INDEMNIFICATION

Section 6.1 Lessee's Insurance. During the Term, both Lessor and Lessee shall keep and maintain in force, the following insurance, all of which shall be provided by companies and/or agencies reasonably satisfactory to the Parties:

(a) Property Insurance. "All risk" insurance covering all risks of physical loss or damage to any of the Improvements, with liability limits of not less than one hundred percent (100%) of the "full replacement value" thereof. Such policies shall be broad form and shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Perils customarily excluded from all risk insurance, e.g., earthquake, mold, asbestos, flood and terroristic acts, may be excluded. The term "full replacement value" shall exclude the cost of paving, excavation, foundations and footings, grading, site preparation, utilities and other "below-grade" improvements and installations.

(b) Public Liability Insurance. Comprehensive general public liability and automobile liability insurance, covering loss or damage resulting from accidents or occurrences on or about or in connection with the Improvements or any work, matters or things under, or in connection with, or related to this Lease, with personal injury, death and property damage combined single limit liability of not less than Three Million Dollars ($3,000,000.00) for each accident or occurrence. Coverage under any such comprehensive policy shall be broad form and shall include, but shall not be limited to, operations, contractual, owners and contractor's protective, and the use of all owned, non-owned and hired vehicles.

Section 6.2 General Requirements. All policies described in Section 6.1 shall contain: (a) the agreement of the insurer to the other Party, at least thirty (30) days' notice prior to cancellation

(including, without limitation, for non-payment of premium) or any material change in said policies; (b) an agreement that such policies are primary and non-contributing with any insurance that may be carried by a Party; (c) a provision that no act or omission of the Parties shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained; (d) a waiver by the insurer of all right of subrogation against the other Party and its authorized agents in connection with any loss or damage thereby insured against; and (e) terms providing that any loss covered by such insurance may be adjusted with the Lessor and Lessee, but shall be payable to the holder of any Leasehold Mortgage to the extent required under such mortgage who shall agree to receive and disburse all proceeds of such insurance.

Section 6.3 Evidence of Insurance. Initial certificates of insurance for all insurance required to be maintained by the Parties under this Article 6 shall be furnished by the Parties on or before the Commencement Date of this Lease. If requested by a Party, annually certificates of insurance evidencing the continuance of all required coverages shall be delivered at least thirty (30) days prior to the expiration date of any such policy. Upon a Party's written request, but no more frequently than annually, complete copies of all original policies and endorsements shall be furnished.

Section 6.4 Failure to Maintain. If either Lessor or Lessee fails to maintain such insurance after written notice and an opportunity to cure, Lessor or Lessee, at its election, may procure such insurance as may be necessary to comply with the above requirements and the delinquent Party agrees to repay the cost of such insurance, together with interest on the amount so paid by either Lessor or Lessee accruing at the Delinquency Rate from the date of payment for such insurance through the date of repayment thereof.

Section 6.5 Waiver of Subrogation. Lessor and Lessee hereby release the other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by fire or any of the extended coverage or supplementary contract casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's insurance policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. Lessor and Lessee agree that their policies will include such a clause or endorsement so long as the same shall be obtainable.

Section 6.6 Hold Harmless. Lessee agrees to and shall hold lessor harmless, defend and indemnify lessor from and against any and all claims, suits, etc. arising out of or in connection with the lessess's use of the premises from and after the effective date of this Ground Lease and for a period of two years following th termination or cancellation of this Ground Lease.

## ARTICLE 7

## MAINTENANCE, ALTERATIONS, REPAIRS AND REPLACEMENTS

Section 7.1 Maintenance of Leased Premises. During the Term, at Lessee's sole cost and expense, Lessee shall keep and maintain the Leased Premises, all Improvements hereafter developed, and all appurtenances thereunto belonging, in good and safe order, condition and repair. All such maintenance and repair shall conform to and comply with all Legal Requirements affecting the Leased Premises.

Section 7.2 Alterations to Leased Premises. Lessee may make any additions, alterations or changes (sometimes collectively referred to herein as "Alterations") in or to the Improvements subject, however, to the following conditions:

(a) No Alterations shall be made that would impair the structural soundness of the Improvements;

(b) No Alterations shall be undertaken until Lessee shall have procured, to the extent the same may be required from time to time, all permits and authorizations of all applicable Governmental Authorities and all required consents of any Leasehold Mortgagee. Lessor shall join in the application for such permits or authorizations whenever such action is necessary or helpful and is requested by Lessee, and shall use Lessor's reasonable efforts to obtain such permits or authorizations;

(c) Any Alterations shall be performed in good and workmanlike manner and in compliance with all applicable Legal Requirements and all applicable Insurance Requirements; and

Section 7.3 Signage. Lessee shall have the right to install any signage desired by Lessee on the Leased Premises in accordance with all Legal Requirements.

## ARTICLE 8

## PERMITTED MORTGAGES

Section 8.1 Right to Encumber. Lessee shall have the right during the Term to encumber, through one or more additional Leasehold Mortgages, all of Lessee's right, title and interest in the Leased Premises and the Improvements, subject to the provisions of this Lease, and not to exceed a a total value of Five Million ($5,000,000.00) Dollars in the aggregate; provided, however, that the same shall be in all respects subordinate and inferior to Lessor's right, title and interest as provided in this Lease, and that any such Leasehold Mortgagee shall be subject to all of the rights and obligations of Lessor herein contained in this Lease and shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld. At no time shall the Lessor's fee title in the Leased Premises or the Lessor's interest in this Lease be subordinated in any manner to the interest of any mortgagee or lienholder of the Lessee or any person claiming by or through the Lessee, unless Lessor consents thereto.

Section 8.2 Notice to Leasehold Mortgagee. During any period in which a Leasehold Mortgage is in place, Lessor shall give any such Leasehold Mortgagee of which Lessor has received written notice from Lessee pursuant to Section 8.8 herein a duplicate copy of all notices of default or Event of Default or other notices that Lessor may give to or serve in writing upon Lessee pursuant to the terms of this Lease. No notice by Lessor to Lessee under this Lease shall be effective unless and until a copy of such notice has been provided to each Leasehold Mortgagee identified to Lessor pursuant to Section 8.8 herein. The address of the Leasehold Mortgagee originally designated in the Leasehold Mortgage, or other documentation related thereto, may be changed upon written notice delivered to Lessor in the manner specified in Article 18.11 below. Lessee shall be required to provide Lessor, upon Lessee's receipt, of any notice of default given to Lessee by any Leasehold Mortgagee.

Section 8.3 Right of Leasehold Mortgagee to Cure. To the extent that Lessee may grant the right to any such Leasehold Mortgagee, such Leasehold Mortgagee, at its option, at any time within thirty (30) days following expiration of the right of Lessee to cure any default or Event of Default under this Lease, may pay any amount or do any act or thing required of Lessee by the terms of this Lease. All payments made and all acts performed by such Leasehold Mortgagee within such thirty (30) day period shall be effective to prevent a termination of the rights of Lessee hereunder to the same extent as if they had been performed by Lessee. At Lessee's option, any Leasehold Mortgage given by Lessee may provide that, as between the Leasehold Mortgagee and Lessee, such Leasehold Mortgagee, upon curing the default, shall be subrogated thereby to any and all of the rights of the person or persons to whom any payment is made by such Leasehold Mortgagee.

Section 8.4 Limitation on Liability of Leasehold Mortgagee. No Leasehold Mortgagee shall be or become liable to Lessor as an assignee of this Lease or otherwise unless it expressly assumes, by written instrument executed by Lessor and Leasehold Mortgagee, such liability (in which event the Leasehold Mortgagee's liability shall be limited to the period of time during which it is the owner of the Lessee's Estate created hereby) and no assumption shall be inferred from or result from foreclosure or other appropriate proceedings in the nature thereof or as the result of any other action or remedy provided for by such Leasehold Mortgage or other instrument or from a conveyance from Lessee pursuant to which the purchaser at foreclosure, or other grantee, shall acquire the rights and interest of Lessee under the terms of this Lease.

Section 8.5 Estoppel Certificates. Lessor and Lessee agree that at any time and from time to time upon not less than ten (10) days prior written notice by the other Party, or upon request from any Leasehold Mortgagee or a permitted assignee or other interested Person, Lessor or Lessee will execute, acknowledge and deliver to the other Party or to such Leasehold Mortgagee a statement in writing certifying (a) that this Lease is unmodified and in full force and effect; (b) the date through which the Rents have been paid; (c) that, to the knowledge of the certifier (if such be the case), there is no default, set-off, defense or other claim against Lessor or Lessee, as applicable, other than those, if any, so specified under the provisions of this Lease; and (d) as to such other matters as the requesting party may reasonably specify. It is intended that any such statement may be relied upon by any persons proposing to acquire the interest of Lessor, Lessee or any Leasehold Mortgagee, as the case may be, in this Lease or by any prospective Leasehold Mortgagee or assignee of any Leasehold Mortgage, or by the Investor or any assignee of the Investor.

Section 8.6 Mortgage of Lessor's Estate. Lessor agrees not to encumber or convey any interest in Lessor's Estate with any deed to secure debt, mortgage, deed of trust or other instrument in the nature thereof as security for any debt which is not expressly subordinate to Lessee's Estate under this Lease and to any Leasehold Mortgage, without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

Section 8.7 Registration of Leasehold Mortgages. Lessee shall provide written notice to Lessor of the name and address of each Leasehold Mortgagee under this Lease. In addition, Lessee shall provide Lessor upon request by Lessor with full and complete copies of all mortgage and related documents in connection with any Leasehold Mortgage entered into by Lessee.

## ARTICLE 9

## REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 9.1 Representations, Warranties and Covenants of Lessor. As an inducement to Lessee to enter into and proceed under this Agreement, Lessor warrants and represents to Lessee as follows, which warranties, representations and covenants shall be true and correct in all material respects as of the date of this Lease and during the Term:

(a) Lessor owns fee simple, good and marketable title to the Leased Premises, free and clear of all liens, charges, encumbrances, encroachments, easements, restrictions, leases, tenancies, occupancies or agreements and other matters affecting title.

(b) Lessor has full right, power and authority to make, execute, deliver and perform its obligations under this Lease. Lessor has obtained and received all required and necessary consents and approvals to enter into this Lease with Lessee. The entry by Lessor into this Lease with Lessee and the performance of all of the terms, provisions and conditions contained herein does not and will not violate or cause a breach or default under any agreement or obligation to which Lessor is a party or by which it is bound.

(c) There are no tenants, lessees or other occupants of the Leased Premises having any right or claim to possession or use of the Leased Premises.

(d) There are no unpaid special assessments of which Lessor has received notice for sewer, sidewalk, water, paving, gas, electrical or utility improvements or other capital expenditures, matured or unmatured, affecting the Leased Premises.

(e) Lessor is not obligated under any contract, lease or agreement, oral or written, with respect to the ownership, use, operation, management, maintenance, lease, sale or financing of the Leased Premises.

(f) No representation, statement or warranty by Lessor contained in this Lease contains or will contain any untrue statement or omits a material fact necessary to make the statement of fact therein recited not misleading.

(g) There is no action, suit, litigation or proceeding pending or, to Lessor's knowledge, threatened against Lessor or the Leased Premises which could prevent or impair Lessor's entry into this Lease and/or Lessor's or Lessee's performance of its obligations hereunder.

(h) To the best of Lessor's information, knowledge and belief, no notice from any governmental authority or any person has ever been issued to Lessor, its agents or employees, claiming any violation of any Environmental Laws.

(i) The person signing this Lease on behalf of Lessor is duly and validly authorized to do so.

Section 9.2 Representations and Warranties of Lessee. As an inducement to Lessor to enter into and to proceed under this Agreement, Lessee warrants and represents to Lessor as follows, which warranties, representations and covenants shall be true and correct in all material respects as of the date of this Lease and during the Term:

(a) Lessee is a duly organized, lawfully existing housing authority and is in good standing under the laws of the State.

(b) Lessee has the full right, power and authority to make, execute, deliver and perform its obligations under this Lease.

(c) Lessee's execution and delivery of this Lease has been authorized by all requisite personnel on the part of Lessee, and the execution and delivery of this Lease by Lessee and the performance of its obligations hereunder will not violate or contravene any agreement or obligation to which Lessee is a party or by which it is bound.

(d) There is no action, suit, litigation or proceeding pending or, to Lessee's knowledge, threatened against Lessee which could prevent or impair Lessee's entry into this Lease and/or performance of its obligations hereunder.

(e) The person signing this Lease on behalf of Lessee is duly and validly authorized to do so.

Section 9.3 Environmental Provisions.

(a) Existing Environmental Conditions Prior to Commencement Date. To the extent there are existing environmental conditions affecting the Leased Premises prior to the Commencement Date, to the extent same were not caused or occasioned by Lessee's prior permitted use of the property, Lessee shall have no responsibility or liability in connection therewith and Lessor shall be solely responsible for environmental conditions affecting the Leased Premises existing prior to the Commencement Date.

(b) Environmental Conditions Subsequent to Commencement Date. To the extent any environmental condition first occurs from and after the Commencement Date and during the Term, and remediation is required pursuant to Hazardous Substances Laws then, to the extent its cause may be attributable to the Lessee, or the use of the Leased Premises and/or the improvements,

if any, Lessee shall perform such remediation as required by Hazardous Substances Laws, and shall be liable to the Lessor to the extent necessary to remediate the Leased Premises and Development in accordance with all Hazardous Substances Laws.

(c) Lessee's Environmental Covenants and Agreements. Lessee hereby covenants and agrees that, from and after the Commencement Date herein:

(i) Lessee shall not knowingly permit the Leased Premises or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Substances, except in such amounts as are ordinarily used, stored or generated in similar projects, or otherwise knowingly permit the presence of Hazardous Substances in, on or under the Leased Premises in material violation of any Hazardous Substances Laws; provided, however, that Lessee shall not be in default hereof with regard to any pre-existing condition relating to the Leased Premises or Hazardous Substances migrating from any adjoining property or premises.

(ii) Lessee shall keep and maintain the Leased Premises and each portion thereof in material compliance with, and shall not cause or permit the Leased Premises or any portion thereof to be in material violation of, any Hazardous Substances Laws.

(iii) Upon receiving actual knowledge of the same Lessee shall immediately advise the Lessor of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Lessor, Lessee, the Leased Premises pursuant to any applicable Hazardous Substances Laws; (B) any and all claims made or threatened by any third party against the Lessor, Lessee, or the Leased Premises relating to damage, contribution, cost recovery, natural resource damage, remediation, compensation, loss or injury to person or property resulting from any Hazardous Substances or Hazardous Substances Contamination (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter collectively referred to as "Hazardous Substances Claims"); (C) the presence of any Hazardous Substances or any Hazardous Substances Contamination in, on or under the Leased Premises in such quantities which require reporting to a Government Authority; or (D) Lessee's discovery of any Hazardous Substances on any real property adjoining or in the vicinity of the Leased Premises.

(d) Lessee Environmental Indemnity. From and after the Commencement Date, Lessee hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Lessor) the Lessor and the Lessor's Indemnified Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), arising directly out of any claim by a third party concerning: (1) the failure of Lessee or any employee, agent, contractor or subcontractor of Lessee to materially comply with any Hazardous Substances Laws relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Substances into, on, under or from the Leased Premises; or (2) any activity carried on or undertaken on or off the Leased Premises by Lessee or any employees, agents, contractors or subcontractors of Lessee, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances at any time located or present on or under the Leased

Premises. The provisions of this subsection shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising principally from the Lessor's activity, nor any claim arising from conditions existing on or under the Leased Premises prior to or on the Commencement Date, nor any claim arising principally from the migration of Hazardous Substances onto or under the particular Leased Premises without conduct by Lessee.

(c) Lessor Environmental Indemnity. From and after the Commencement Date, Lessor hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Lessee) the Lessee and the Lessee's Indemnified Parties from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney's fees and expenses), providing such is not caused or occasioned in any way by the Lessee after the commencement of this Agreement and/or prior permitted uses by Lessee prior to commencing this Agreement, arising directly out of any claim by a third party concerning: (1) the failure of Lessor any employee, agent, contractor or subcontractor of Lessee to materially comply with any Hazardous Substances Laws relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Substances into, on, under or from the Leased Premises; or (2) any activity carried on or undertaken on or off the Leased Premises by Lessor or any employees, agents, contractors or subcontractors of Lessor, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Substances at any time located or present on or under the Leased Premises. The provisions of this subsection shall survive expiration of the Term or other termination of this Lease, and shall remain in full force and effect. This indemnity obligation shall not extend to any claim arising principally from the Lessee's activity, nor any claim arising from conditions existing on or under the Leased Premises prior to or on the Commencement Date, nor any claim arising principally from the migration of Hazardous Substances onto or under the particular Leased Premises without conduct by Lessor.

(d) Environmental Insurance Policy. [Intentionally Omitted]

(e) Survival. The agreements, representations, indemnities and warranties of Lessor and Lessee, respectively, in this Section 9.3 shall survive the expiration or early termination of this Lease.

Section 9.4 Termination of Lease. Lessee shall have the right to terminate this Agreement at any time during the term in the event any environmental contamination is discovered and an acceptable remedial plan cannot be implemented by the Lessor which would enable Lessee to continue with the intended use of the property.

## ARTICLE 10

## EMINENT DOMAIN

Section 10.1 Termination of Lease. Lessor and Lessee agree that, in the event of a Taking such that Lessor and Lessee jointly reasonably determine that the Leased Premises cannot continue to be operated, at reasonable cost, for its then current use, then this Lease shall terminate as of the date of such Taking.

Section 10.2 Continuation of Lease. Lessor and Lessee agree that, in the event of a Taking that does not result in the termination of this Lease pursuant to Section 10.1 above, this Lease shall continue in effect as to the remainder of the Leased Premises, and the Net Condemnation Award will be disbursed in accordance with Section 10.4 below to Lessee and/or any Leasehold Mortgagee, if the terms of the applicable Leasehold Mortgage so require, and shall be used to restore the Development to the same status and condition, as nearly as reasonably possible, that existed prior to the Taking, subject to any applicable requirements of the Leasehold Mortgagee(s).

Section 10.3 Temporary Taking. If there shall be a temporary Taking with respect to all or any part of the Leased Premises or of Lessee's interest in this Lease, then the Term shall not be reduced and Lessee shall continue to pay in full all Rents, Impositions and other charges required herein, without reduction or abatement thereof at the times herein specified; provided, however, that Lessee shall not be required to perform such obligations that Lessee is prevented from performing by reason of such temporary Taking.

Section 10.4 Apportionment of Award. Lessee shall have the right to control the adjustment of any Claim by the Parties regarding a Taking. If there is a Taking, whether whole or partial, Lessor and Lessee shall be entitled to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings, or as may be otherwise agreed, taking into consideration the fact that Lessor's interest in the Leased Premises is limited to the land (exclusive of the Improvements), as encumbered by this Lease, and a reversionary interest in the Leased Premises (including the Improvements) upon the expiration of the Term. If the Leased Premises shall be restored as is contemplated in Section 10.2 above, Lessee shall be entitled to recover the costs and expenses incurred in such restoration out of any Net Condemnation Award. Thereafter, if the condemning authority does not make separate awards, the Parties agree that any Net Condemnation Award will be allocated on a proportionate basis. If the Parties are unable to agree as to the exact amount of such allocation, then each Party shall select an independent M.A.I. real estate appraiser (an "Appraiser"). Each Appraiser shall separately determine the amount of the balance of the Net Condemnation Award that is to be allocated to the interests of each Party. If the percentage of the balance of the Net Condemnation Award each Appraiser allocates to Lessor (a) are within ten percent (10%) of each other, the two (2) allocations shall be averaged, and such average shall be the final allocation of the Net Condemnation Award, or (b) are not within ten percent (10%) of each other, the two Appraisers shall then select a third Appraiser, who shall independently allocate the Net Condemnation Award between Lessor and Lessee, and the middle of such three (3) allocations shall be the final allocation of the Net Condemnation Award.

Section 10.5 Joinder. If a Leasehold Mortgage exists, the Leasehold Mortgagee, to the extent permitted by law, shall be made a party to any Taking proceeding.

## ARTICLE 11

## DAMAGE OR DESTRUCTION

Section 11.1 Damage or Destruction to Leased Premises. Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Leased Premises, the Improvements or any portion thereof (hereinafter sometimes referred to as a "Casualty"). If, during the Term, the Improvements shall be damaged or destroyed by Casualty, Lessee shall promptly and diligently repair or restore the Improvements as soon as reasonably possible, so long as any applicable Leasehold Mortgagee with the right to control the disbursement of such proceeds has released such proceeds to Lessee for such restoration or repair. In the event the insurance proceeds are not sufficient to repair or restore the Improvements, Lessee shall provide to the extent available to Lessee from non-Lessee sources or cause to be provided sufficient additional funds which, when added to such insurance proceeds, will fully effect such repair or restoration. Upon the occurrence of any such Casualty, Lessee, promptly and with all due diligence, shall apply for and collect all applicable insurance proceeds recoverable with respect to such Casualty, and Lessee shall have the right in its discretion to settle any claim for insurance proceeds. In the event that Lessee shall reasonably determine, by notice to Lessor, given within thirty (30) days after receipt by Lessee of any such insurance proceeds, that it is not economically practical to restore the Improvements and/or the Leased Premises to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Lease as of a date that is not less than thirty (30) days after the date of such notice. If Lessee terminates this Lease pursuant to this Section 11.1, Lessee shall surrender possession of the Leased Premises to Lessor as of the effective date of such termination and shall assign to Lessor (or, if same has already been received by Lessee, pay to Lessor) all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Leased Premises, subject to the prior rights of any Leasehold Mortgagee therein, as referenced in Section 11.2 below.

Section 11.2 Distribution of Insurance Proceeds. In the event of a Casualty and subsequent termination of this Lease pursuant to Section 11.1 hereof, the insurance proceeds received as the result of such Casualty shall be distributed as follows: (a) first, if a Leasehold Mortgage is in place and requires distribution of proceeds to the Leasehold Mortgagee, to the Leasehold Mortgagee to the extent of any indebtedness then owed to such Leasehold Mortgagee (or, if more than one Leasehold Mortgage is in place, then to the respective Leasehold Mortgagees in their order of priority or as may be required by any intercreditor agreement or other written agreement entered into by and among such Leasehold Mortgagees, provided that the terms of such intercreditor agreement have been provided to Lessor); (b) second, to the Party entitled to receive the same following an apportionment made in accordance with the formula and procedure set forth in Section 10.4 above concerning a Net Condemnation Award.

Section 11.3 Lessee's Responsibilities on Termination. If Lessee terminates this Lease following a casualty in accordance with Section 11.1. Lessee shall surrender the Leased Premises to Lessor in accordance with the provisions of this Lease and, this Lease shall be terminated without

liability or further recourse to the parties hereto provided that any Rent payable under the terms of this Lease or indemnification obligations of Lessee under this Lease owed to Lessor as the date of such said termination shall be paid or otherwise carried out thereafter in full. The provisions of this Section 11.3 shall also be applicable in the event of a termination of this Lease following a partial taking or condemnation.

## ARTICLE 12

## EVENTS OF DEFAULT

Section 12.1 Events of Default. Each of the following shall be an "Event of Default" by Lessee hereunder:

(a) failure by Lessee to pay any Rent or Additional Rent when due or to pay or cause to be paid any Impositions, insurance premiums or other liquidated sums of money herein stipulated to be paid by Lessee, if such failure shall continue for a period of fifteen (15) days after written notice thereof has been given by Lessor to Lessee;

(b) failure by Lessee to perform or observe any of the provisions of this Lease (other than the provisions requiring the payment of Rent, Additional Rent, Impositions, insurance premiums or other liquidated sums of money) stipulated in this Lease to be observed and performed by Lessee which in Lessor's reasonable judgment have a material adverse on the Lease, Lessor or Lessee, if such failure shall continue for a period of thirty (30) days after notice thereof has been given by Lessor to Lessee; provided, however, that if any such failure cannot reasonably be cured within such thirty (30) day period, then Lessor shall not have the right to terminate this Lease or Lessee's right to possession hereunder so long as Lessee promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time;

(c) the subjection of any right or interest of Lessee in this Lease to attachment, execution or other levy, or to seizure under legal process, if not released within one hundred twenty (120) days; provided that the foreclosure of any Leasehold Mortgage shall not be construed as an Event of Default within the meaning of this Subsection 12.1(c);

(d) the appointment of a receiver to take possession of Lessee's Estate or of Lessee's operations on the Leased Premises for any reason, if such receivership is not terminated, stayed, dismissed or vacated within one hundred twenty (120) days after the appointment of the receiver.

Section 12.2 Rights and Remedies.

(a) At any time after the occurrence of an Event of Default hereunder, Lessor, subject in all respects to the provisions of this Lease with respect to Lessor's rights to cure defaults by Lessee and with respect to the rights of any Leasehold Mortgagee may terminate this Lease by giving Lessee written notice thereof (with a copy of such notice to each Leasehold Mortgagee), setting forth in such notice an effective date for termination which is not less than thirty (30) days

after the date of such notice, in which event this Lease and Lessee's Estate created hereby and all interest of Lessee and all parties claiming by, through or under Lessee shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, Lessor, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Leased Premises (including all buildings and other Improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or existing breaches of covenants; provided that Lessor shall not be entitled to disturb possession of any Tenants or others in possession pursuant to subleases so long as such Tenants or others are not in default thereunder and attorn to Lessor as their lessor.

(b) In the event of a breach by Lessee of any of the covenants or provisions hereof, Lessor shall have the right of injunction, specific performance and the right to invoke any other equitable remedy as if other remedies were not herein provided to Lessor. Notwithstanding anything to the contrary herein, the mention in this Lease or exercise by Lessor of any particular remedy shall not preclude Lessor from exercising any other remedies expressly provided in this Lease.

(c) Except as set forth in this Article 12, Lessee hereby expressly waives the service of notice of intention to re-enter or to institute legal proceedings to that end and any and all rights of redemption granted by or under any present or future laws in the event of Lessee being evicted or dispossessed for any cause, or in the event of Lessor obtaining possession of the Leased Premises by reason of the violation by Lessee of any of the covenants and conditions of this Lease. The words "re-enter" as used in this Lease are not restricted to their technical legal meaning.

(d) Lessee, for itself and its successors and assigns, hereby irrevocably constitutes and appoints Lessor as Lessee's agent to collect upon the occurrence of an Event of Default the rents due and to become due from all Tenants and sublessees and apply the same to the Rents due hereunder without in any way affecting Lessee's obligation to pay any unpaid balance of Rents due or to become due hereunder.

(e) Upon the exercise of Lessor's remedies pursuant to this Section 12.2, Lessee shall execute such releases, deeds and other instruments in recordable form as Lessor shall reasonably request in order to accurately set forth of record the then current status of the Lessee's Estate and Lessee's rights hereunder.

Section 12.3 Lease Default by Lessor.

(a) Lease Events of Default. Lessor shall be in default of this Lease if it fails to perform any provision of this Lease that it is obligated to perform or if any of Lessor's representations or warranties is untrue or becomes untrue in any material respect, and if the failure to perform or the failure of such representation or warranty to be true is not cured within thirty (30) days after written notice of the default has been given to Lessor by Lessee. If the default cannot reasonably be cured within thirty (30) days, Lessor shall not be in default of this Lease if Lessor

commences to cure the default within such thirty-day period and diligently and in good faith continues to cure the default until completion, provided the same is capable of being cured by Lessor.

(b) Right to Cure; Lessee's Remedies. Subject to Section 12.5 below, if Lessor shall have failed to cure a default under this Section 12.3 after expiration of the applicable time for cure of a particular default, Lessee, at its election, but without obligation therefor (i) may seek specific performance of any obligation of Lessor, after which Lessee shall retain, and may exercise and enforce, any and all rights that Lessee may have against Lessor as a result of such default, (ii) from time to time without releasing Lessor in whole or in part from the obligations to be performed by Lessor hereunder, may cure the default at Lessor's cost (and may offset any costs so incurred against any indebtedness owed by Lessee to Lessor), (iii) may terminate this Lease, and/or (iv) may exercise any other remedy given hereunder or now or hereafter existing at law or in equity. Any reasonable costs incurred by Lessee in order to cure such a default by Lessor shall be due immediately from Lessor.

Section 12.4 Excusable Delays. Lessee's rights hereunder shall not be terminated and Lessee shall not be in default under this Lease if a delay in Lessee's performance of its obligations hereunder arises from unforeseeable causes beyond the reasonable control or without the fault or negligence of Lessee. Examples of such causes include (a) acts of God, public enemy or terroristic acts, (b) acts or failure to act of Lessor, HUD, or other governmental entity in either its sovereign or contractual capacity, (c) acts or failure to act of another contractor in the performance of a contract with Lessor, (d) fires, (e) floods, (f) epidemics, (g) quarantine restrictions, (h) strikes or labor disputes, (i) freight embargoes, (j) unusually severe weather, (k) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of Lessee or the subcontractors or suppliers, (l) delays caused by litigation, and (m) unusual disruptions in financial markets.

Section 12.5 Notices of Default. Notices of default given by Lessor or by Lessee hereunder shall specify the alleged default and the applicable Lease provisions, and shall demand that Lessee or Lessor, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

## ARTICLE 13

## QUIET ENJOYMENT AND POSSESSION; INSPECTIONS

Section 13.1 Quiet Enjoyment. Lessor covenants and warrants that Lessee, upon payment of all sums herein provided and upon performance and observance of all of its covenants herein contained, shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, the Leased Premises during the Term, subject only to the provisions of this Lease and all applicable Legal Requirements. Lessor agrees to warrant and forever defend the title to the Leased Premises against the claims of any and all persons whomsoever lawfully claiming a right thereto, subject only to the provisions of this Lease and all applicable Legal Requirements.

## ARTICLE 14

## VACATION OF LEASED PREMISES

Lessee covenants that upon any termination of this Lease, whether by lapse of time or because of any of the conditions or provisions contained herein, Lessee will peaceably and quietly yield and surrender possession of the Leased Premises and Improvements to Lessor. The foregoing, however, will be subject to the rights of Tenants or others in possession pursuant to Tenant Leases with Lessee, provided that such Tenants are not in default thereunder and attorn to Lessor as their lessor. An action of forcible detainer shall lie if Lessee holds over after a demand for possession is made by Lessor.

## ARTICLE 15

## NON-MERGER

There shall be no merger of either this Lease or Lessee's Estate created hereunder with the fee estate of the Leased Premises or any part thereof by reason of the fact that the same person (including, without limitation, Lessor) may acquire, own or hold, directly or indirectly, (x) this Lease, Lessee's Estate created hereunder or any interest in this Lease or Lessee's Estate (including the Improvements), and (y) the fee estate in the Leased Premises or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of Lessor, having an interest in (1) this Lease or Lessee's Estate created hereunder, and (2) the fee estate in the Leased Premises or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

## ARTICLE 16

## TRANSFERS

Section 16.1 Transfer by Lessee.

(a) Transfers Generally. Except as provided in this Article 16, and subject to the approval of HUD and all statutory and regulatory requirements applicable to the transfer of the Leased Premises, Lessee shall have the right to Transfer any legal or beneficial interest in the Leased Premises without Lessor's prior written consent.

(b) Upon the Transfer by Lessee, this Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective heirs, successors, assigns, legal representatives, Leasehold Mortgagees and other transferees, and, upon assumption by an assignee of all of the rights and obligations of the assignor as lessee under this Lease, the assignor shall be released from any liability hereunder from and after the date of such Transfer. Upon request of such assignor, Lessor shall execute and deliver to the assignor a release agreement in a form reasonably acceptable to the assignor to evidence such release.

Section 16.2 Transfer by Lessor.

(a) Lessor shall not Transfer all or any portion of its interest in Lessor's Estate without the prior written consent of any Leasehold Mortgagee then in existence and, in any event, Lessor shall not transfer all or any portion of its interest in Lessor's Estate if the same would cause a violation or breach of (i) any Legal Requirement, (ii) any agreement or contract to which Lessor is a party or by which Lessor is bound, or (iii) any Applicable Public Housing Requirement.

(b) In the event that Lessor is permitted to encumber or mortgage the Lessor's Estate, then Lessor shall provide a Non-Disturbance Agreement in form and substance satisfactory to Lessee ensuring Lessee's right to Quiet Enjoyment of the Leased Premises.

## ARTICLE 17

## RIGHT OF FIRST OFFER AND RIGHT OF FIRST REFUSAL

Section 17.1 Lessor's Intent to Market Lessor's Estate. If Lessor, in its sole discretion (but subject to the restrictions set forth in Article 16 hereof and any applicable HUD requirements relating to disposition), decides to sell the Lessor's Estate (other than to (a) a government agency, or (b) an affiliate or successor nonprofit corporation whose primary purpose is to encourage low-income housing), in accordance with and to the extent permitted by all applicable laws governing the disposition of public property, Lessor shall give written notice of such intent to Lessee, and any Leasehold Mortgagee setting the terms and conditions thereof ("Sales Notice"). Lessee shall have sixty (60) days thereafter within which to notify Lessor of its intent to purchase the Lessor's Estate offered for sale upon such terms and conditions as are set forth in the Sales Notice. If such Sales Notice is timely given, the closing thereunder shall be ninety (90) days thereafter. The status of title to be delivered and the instruments to be executed pursuant thereto shall be as stated in the Sales Notice and the amount of earnest money that Lessee shall be required to deposit with the notification of intent to purchase by matching the offer shall be as stated in the Sales Notice. Failure of Lessee to so notify Lessor in a timely manner shall be deemed an election not to purchase. In the event Lessee does not so timely notify Lessor of its intent to purchase the offered property upon the terms and conditions stated in the Sales Notice, Lessor shall be free to market such property on its own or through a broker and thereafter may sell the property subject to all of the terms and conditions of the Lease; provided that Lessor may not sell the Lessor's Estate on terms and conditions that are materially different from those contained in any Sales Notice received by Lessee without first offering Lessee the same opportunity once again to purchase the Lessor's Estate in accordance with this Section 17.1 upon such materially different terms, and conditions which Lessor bases its offer of sale. Should Lessor sell Lessor's Estate, the purchaser shall take title to Lessor's Estate subject to this Lease and with respect to the Project subject to all Applicable Public Housing Requirements.

Section 17.2 Right of First Refusal. If Lessor is not marketing the Lessor's Estate as provided in Section 17.1 above, but receives a written offer in acceptable form from an unrelated third party that Lessor is willing to accept for the purchase of the Lessor's Estate (a "Sales Offer") (other than to (a) a government agency, or (b) an affiliate or successor nonprofit corporation whose primary purpose is to encourage low-income housing), in accordance with and to the extent permitted by all applicable laws governing the disposition of public property, Lessor shall notify

Lessee, and any Leasehold Mortgagee of the terms and conditions of such Sales Offer. Lessee shall then have sixty (60) days within which to notify Lessor of its intent to purchase the Lessor's Estate by matching said Sales Offer and any contingencies in said Sales Offer, and in the event of such timely response, the closing of the purchase and sale of the Lessor's Estate shall be in accordance with the terms of such Sales Offer. In the event that timely notice is not given by Lessee to Lessor, Lessee shall be deemed to have elected not to match said Sales Offer, and Lessor shall be free to sell the Lessor's Estate to such unrelated third party on the terms and conditions set forth in the Sales Offer, subject, however, to all the terms and conditions of the Sales Offer and Lessor shall complete settlement hereunder to such unrelated third party within one hundred eighty (180) days, and if settlement does not occur within such 180 day period, the right of first refusal created in this Section 17.2 shall be revived and again shall be enforceable by Lessee in accordance with HUD requirements. Should Lessor sell Lessor's Estate, the purchaser shall take title to Lessor's Estate subject to this Lease and all Applicable Public Housing Requirements.

## ARTICLE 18

## MISCELLANEOUS PROVISIONS

Section 18.1 Entire Agreement; Modifications. This Lease supersedes all prior discussions and agreements between the Parties with respect to the leasing of the Leased Premises. This Lease contains the sole and entire understanding between the Parties with respect to the transactions contemplated by this Lease, and all promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the Parties, if any, are merged into this Lease. This Lease shall not be modified or amended in any respect, except by written instrument specifically referencing such a modification or amendment which is executed by or on behalf of the Parties in the same manner as this Lease is executed and to which each Leasehold Mortgagee and HUD (if HUD consent is required) shall have furnished its prior written consent thereto, and provided that no amendment shall impair the obligations of the Lessee.

Section 18.2 Governing Law. This Lease, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the substantive laws of, without reference to the choice of law rules of, the State of New Jersey.

Section 18.3 Binding Effect. This Lease shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, administrators, executors and permitted assigns.

Section 18.4 Severability. In the event any provision or portion of this Lease is held by any court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

Section 18.5 Further Assurances. From and after the date of this Lease, Lessor and Lessee, at the request of the other Party, shall make, execute and deliver or obtain and deliver all such affidavits, deeds, certificates, resolutions and other instruments and documents, and shall do or cause

to be done all such other things that either Party may reasonably require in order to effectuate the provisions and the intention of this Lease.

Section 18.6 Captions. All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this Lease, shall not supplement, limit or otherwise vary the text of this Lease in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular articles, sections, subsections, paragraphs and subparagraphs by number refer to the text of such items as so numbered in this Lease.

Section 18.7 Gender. Words of any gender used in this Lease shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

Section 18.8 Exhibits. Each and every exhibit referred to or otherwise mentioned in this Lease is attached to this Lease and is and shall be construed to be made a part of this Lease by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to and otherwise mentioned.

Section 18.9 References. All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraph of this Lease. Unless otherwise specified in this Lease, the terms "herein,", "hereof," "hereinafter," "hereunder" and other terms of like or similar import, shall be deemed to refer to this Lease as a whole, and not to any particular paragraph or subparagraph hereof.

Section 18.10 Rights Cumulative. Except as expressly limited by the terms of this Lease, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

Section 18.11 Notices. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) telecopier, with an original sent via first class mail, (iii) sent by overnight express delivery, or (iv) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party):

If to Lessor, to:
City of Long Branch
344 Broadway
Long Branch, New Jersey 07740

If to the Lessee, to:
City of Long Branch Housing Authority
Garfield Court
P.O. Box 337
Long Branch, New Jersey 07740
Attn: Tyrone Garrett, JD, PHM

and a copy to: Florio Perrucci Steinhardt & Fader, LLC
218 Route 17 North
Rochelle Park, NJ 07662
Attention: Lester E. Taylor, III, Esquire
Telecopier No.: 201-843-5877

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, telecopy transmission, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of telecopy, upon receipt of electronic confirmation thereof or, if not a business day, then the first business day following receipt of electronic confirmation thereof, (iii) in the case of delivery by overnight courier or express delivery service, on the next business day following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party, from time to time, may change its address for notices hereunder. Legal counsel for the respective Parties may send to the other Party any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

Section 18.12 Counterparts. This lease may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same agreement.

Section 18.13 Time of Essence. Time is and shall be of the essence in this Lease.

Section 18.14 Relationship of Parties; No Third Party Beneficiary. No relationship is created hereunder between Lessor and Lessee other than landlord and tenant. The parties hereto expressly declare that, in connection with the activities and operations contemplated by this Lease, they are neither partners nor joint venturers, nor does a debtor-creditor, principal-agent or any other relationship except as aforesaid, exist between them. Nothing contained in the Annual Contributions Contract, or in any agreement or contract between the Parties hereto, nor any act of HUD, Lessor or Lessee will be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture or any association or relationship involving HUD. Except as otherwise expressly set forth in Article 8 (relating to Leasehold Mortgagees) of this Lease to the contrary, no party is intended to be a third party beneficiary or any of the terms of this Lease.

Section 18.15 Limitation of Liability. Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the Parties, or any act or course of conduct hereunder, the obligations and indemnifications of the Lessee set forth herein shall solely be those of the Lessee entity named in the first paragraph of this Lease, and no officer, director, shareholder, partner, member, employee or agent of the Lessee shall have any personal liability whatsoever under this Lease, it being understood and agreed that Lessor shall look solely to the interest of Lessee in the Leased Premises and the Improvements for recourse hereunder.

Section 18.16 Memorandum of Lease. Lessor and Lessee shall execute and record (at Lessee's expense) a Memorandum of Lease against the Leased Premises evidencing the terms of this Lease. Upon expiration or earlier termination of this Lease, Lessee shall execute a Termination of Memorandum of Lease in the form prepared by Lessor.

Section 18.17 Forum and Jurisdiction. Any action or proceeding arising hereunder shall be brought only in the United States District Court for the District of New Jersey or the Superior Court for Monmouth County.

Section 18.18 No Brokers. Neither Lessor nor Lessee has dealt with any broker or finder with regard to the Leased Premises or this Lease. Both Lessor and Lessee will indemnify, defend and hold the other harmless from and against any loss, liability and expense (including reasonable attorneys' fees and court costs) arising out of claims for fees or commissions in connection with this Lease by any party claiming to have dealt with the indemnifying party. This provision shall survive the expiration or termination of this Lease.

Section 18.19 Performance Under Protest. In the event of a dispute or difference between Lessor and Lessee as to any obligation which either may assert the other is obligated to perform or do under this Lease, then the Party against whom such obligation is asserted shall have the right and privilege to carry out and perform the obligation so asserted against it without being considered a volunteer or deemed to have admitted the correctness of the claim, and shall have the right to bring an appropriate action at law, equity or otherwise against the other for the recovery of any sums expended in the performance thereof and in any such action, the successful Party shall be entitled to recover in addition to all other recoveries such reasonable attorneys' fees as may be awarded by the court.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Lease is made and entered by the parties hereto, intending to be legally bound, on the day and year first above written.

Witness:

Lessor:

**CITY OF LONG BRANCH**

By: _____
Name:
Title:

Witness:

Lessee:

**CITY OF LONG BRANCH HOUSING AUTHORITY**

_____

By: _____
Name: Tyrone Garrett
Title: Executive Director