

CONTRACT NO. ___12687___

**PRIVATE PROPERTY
MANAGEMENT AGREEMENT**

BETWEEN

CHICAGO HOUSING AUTHORITY

AND

THE HABITAT COMPANY LLC

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CONTRACT NO. _____

PRIVATE PROPERTY MANAGEMENT AGREEMENT

This **PRIVATE PROPERTY MANAGEMENT AGREEMENT** (this “Agreement”) is made effective as of September 1, 2021, between the **Chicago Housing Authority**, a municipal corporation organized under the laws of the State of Illinois and the Illinois Housing Authorities Act, 310 ILCS 10/1 et. seq (hereinafter “Owner”) and **The Habitat Company LLC**, an Illinois Limited Liability Company with its principal place of business at 350 West Hubbard Street, Suite 500, Chicago, Illinois 60654 (hereinafter “Manager”). Owner and Manager are hereafter referred to individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, the Chicago Housing Authority (“CHA”) is engaged in the development and operation of safe, decent and sanitary housing throughout the City of Chicago for low-income families in accordance with the United States Housing Act of 1937, 42 U.S.C. §1437 et seq.; regulations promulgated by the United States Department of Housing and Urban Development (“HUD”), and the Illinois Housing Authorities Act. 310 ILCS 10/1 et seq., as amended, and other applicable laws, regulations and ordinances;

WHEREAS, on December 21, 2020, the CHA released Request for Proposals Event No. 2831 (“RFP”), to competitively procure property management firms to rent, lease, operate and manage the property set forth in Exhibit A (“Property”);

WHEREAS, on or about February 1, 2021, Manager submitted its proposal in response to the RFP, indicating it is ready, willing and able to provide the services outlined therein; and

WHEREAS, the parties desire to enter into this Agreement for the provision of property management services as fully set forth herein.

NOW THEREFORE, in consideration of the mutual promises hereunder and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. INCORPORATION OF RECITALS AND DEFINITIONS

Section 1.1 Incorporation of Recitals

The recitals set forth above are incorporated by reference as if fully set forth herein.

Section 1.2 Definitions

- (a) “ACC” shall mean the Consolidated Annual Contributions Contract(s), including all relevant amendments, pursuant to which HUD provides funding to the CHA for the administration, management and operation of the Property.

- (b) “Act” shall mean 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.
- (c) “Agreement” shall mean this Private Property Management Agreement for the administration, management and operation of the Property, including (i) all Exhibits attached to it and incorporated by reference; (ii) all existing CHA policies and procedures effective during the term of the Agreement and incorporated by reference; and (iii) all subsequent amendments, modifications or revisions made in accordance with its terms.
- (d) “ACOP” shall mean the latest version of the CHA’s Admissions and Continued Occupancy Policy, which is the statement of CHA’s policies and procedures relating to the admission of and continued occupancy in its public housing program, as may be amended from time to time.
- (e) “Annual Plan” shall mean the plan prepared annually by the CHA pursuant to the Moving to Work (“MTW”) demonstration agreement by and between HUD and the CHA as it may be amended or extended, and in accordance with Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and any successor annual plan prepared in accordance with federal laws.
- (f) “Applicable Public Housing Requirements” shall mean the ACC, the Act, as revised and amended per the MTW agreement, any grants or agreements, the HOPE VI Grant Agreement, HUD notices (including any notices of fund availability under which the Public Housing Authority (PHA) received an award of HOPE VI funds for use in connection with the Property), the declaration of restrictive covenants, other written policies and procedures of HUD, the ACOP, and all pertinent Federal statutes, executive orders and regulatory requirements applicable to public housing, as those requirements may be amended from time to time.
- (g) “Claim” shall have the meaning set forth in Section 6.3 herein.
- (h) “Commencement Date” shall have the meaning set forth in Section 2.1 herein.
- (i) “Corrupt Activity” shall mean the commission, or attempted commission of bribery, theft, fraud, forgery, perjury, dishonesty or deceit under any local, state or federal law, including the conspiracy to engage in any of the aforementioned acts.
- (j) “Deliverables” shall have the meaning set forth in Section 3.7 herein.
- (k) “Depository Account” shall have the meaning set forth in Section 4.2 herein.
- (l) “Fiscal Year” shall mean calendar year unless specifically provided to the contrary herein.
- (m) “Governing Documents” shall mean those documents listed in Exhibit E that detail specific operating and compliance requirements for the Property.

- (n) “HUD” shall mean the United States Department of Housing and Urban Development.
- (o) “Lease” shall mean any lease in which Owner has agreed to lease and a Tenant has agreed to accept a residential dwelling unit of the Property or Non-dwelling unit of the Property identified in the lease in accordance with the terms of the lease.
- (p) “Lease Rider” shall mean a rider, as it may be modified from time to time by the Owner, which must be made part of each Lease as appropriate for tax credit units, Public Housing Units, Non-dwelling units and Section 8 assisted units.
- (q) “Management Fee” shall have the meaning set forth in Section 8.1 herein.
- (r) “Management Plan” shall mean Manager’s written description of the manner in which the Property shall be operated that has been approved by the Owner; the Management Plan may be modified from time to time upon written agreement of the Owner and must be strictly adhered to by Manager. The initial Management Plan is attached hereto as Exhibit D.
- (s) “Manager” shall mean the private property management company, authorized by this Agreement to manage the Property described herein.
- (t) “Non-dwelling” shall mean those units approved by CHA and HUD, if necessary, to be used for non-residential purposes.
- (u) “OIG” shall mean the CHA’s Office of the Inspector General.
- (v) “Operating Account” shall mean an account established by Owner to disburse funds to Manager to pay the normal and reasonable expenses for the operation and maintenance of the Property.
- (w) “Operating Budget” shall mean the annual operating budget currently approved by the CHA and attached hereto as Exhibit C, and any subsequent operating budget(s) approved by the CHA.
- (x) “Owner” shall mean the Chicago Housing Authority or “CHA.”
- (y) “Performance Standards” shall mean the standards or factors the CHA will use in evaluating the performance of Manager under this Agreement including the Public Housing Assessment System (“PHAS”) or such other systems as HUD may designate, as set forth in Exhibit M.
- (z) “Personal Property” shall mean the materials, equipment, tools and supplies owned, rented or used by Manager.
- (aa) “Project” or “Property” shall mean, collectively, the buildings, land and improvements, and all appurtenances and equipment located thereon, including all residential dwelling units, as described on and attached hereto as Exhibit A.

- (bb) “Public Housing Units” shall mean the units of public housing at the Property.
- (cc) “Rent” shall mean that monthly amount which Tenant is obligated to pay Owner pursuant to the terms of a Lease.
- (dd) “Request for Proposals” or “RFP” shall mean that certain Request for Proposal No. 2831 dated December 21, 2020.
- (ee) “Services” shall mean the administration, management and operation of the Property and all the work, services, duties and responsibilities described throughout this Agreement and attached as Exhibits and any and all work necessary to complete them in accordance with the performance standards required under this Agreement.
- (ff) “Tenant” shall mean a person, family or entity occupying a unit in a Property pursuant to a Lease.

ARTICLE 2. TERM OF AGREEMENT

Section 2.1 Term of Agreement

The initial term of this Agreement (“Initial Term”) is for the period of September 1, 2021 through August 31, 2024, or until the Agreement is terminated in accordance with its terms, whichever occurs first. The Initial Term may be extended pursuant to Section 2.2. The Initial Term, together with any extensions, is referred to herein as the “Term.” Manager shall commence performance under this Agreement on the date the Owner issues a notice to proceed (“Commencement Date”).

Section 2.2 Agreement Extension Options

The Owner may extend this Agreement for two (2) additional one-year option periods (each an “option period”), subject to the approval of the CHA Board of Commissioners and HUD, to the extent required. Each option period shall only be exercised individually, and prior to the expiration of the Initial Term or then-current option period. Any extension shall be under the same terms and conditions as this original Agreement. Any amendment to the Term of the Agreement, including the exercise of an option period, shall be done in accordance with Section 12.2. In the event the Term of the Agreement expires without a notice of termination or written extension, the Term shall automatically convert to month-to-month; provided, however, that the conversion of the Term under this Section shall not discharge any of Manager’s obligations hereunder.

ARTICLE 3. MANAGER’S DUTIES AND RESPONSIBILITIES

Section 3.1 Standard of Conduct

Manager represents that it is experienced in professional management of single family and multifamily real estate properties of a character and nature similar to the Property set forth in Exhibit A. Manager agrees to manage the Property in accordance with the highest professional standards for such properties and in accordance with the Owner approved Management Plan.

Section 3.2 Scope of Services and Statement of Work

Owner's focus shall be to provide oversight and guidance to Manager in coordinating the performance of Services at the Property. Where the overall Services to be performed under this Agreement remain Manager's responsibility, Owner may provide support in certain areas.

For example, Owner may centrally procure certain items to take advantage of economies of scale, but reserves the right to assign specific items to Manager for management and/or procurement, such as:

- (a) Annual UPCS inspection services
- (b) Armed and unarmed security services
- (c) Background screening services
- (d) Extermination services
- (e) Materials and Supplies
- (f) Scavenger services
- (g) Towing Services
- (h) Unit renovations
- (i) Others at CHA's discretion

The Services to be performed by Manager during the Term of the Agreement are more fully described in the Statement of Work set forth in Exhibit B, which is attached hereto and incorporated by reference herein.

Section 3.3 Familiarization with Property

As soon as practicable, Owner will furnish Manager with a complete set of general plans and specifications for the Property, if any, and copies of all guarantees and warranties pertinent to construction and fixtures and equipment for the Property. With the aid of this information and inspection by properly-licensed and competent personnel, Manager shall thoroughly familiarize itself with the character, construction, layout, and plans of the Property, including the electrical, heating, plumbing and ventilating systems and all other mechanical equipment in the Property.

Section 3.4 Manager's Internal Controls and Procedures

Manager shall, within thirty (30) days of the Commencement Date, submit internal control procedures and process flow for accounts payable, accounts receivable, month-end closing, procurements and any other item requested by Owner. Manager shall also maintain desk procedures for employees processing financial transactions.

Section 3.5 Initial Budgets

Within thirty (30) days of Owner providing the budget for the Property, Manager shall review and advise Owner of any modifications deemed necessary for the current operating year and provide Owner with a Management Plan.

Section 3.6 Annual Operating Budget

Manager shall prepare a proposed Operating Budget (See Exhibit C) and Management Plan (See Exhibit D) for each Fiscal Year during the Term of this Agreement and shall submit it to Owner at least one hundred twenty (120) days before the beginning of such Fiscal Year. The proposed Operating Budget for the Property for each Fiscal Year shall be subject to approval by Owner and comply with the CHA Budget Policies and Procedures Manual (See Exhibit E). Owner shall promptly inform Manager of all changes, if any, incorporated in the Operating Budget, and Manager shall make no expenditures in excess of the amounts set forth in the Operating Budget for each category of operation expense itemized without the prior written approval of Owner, except as permitted by Owner for emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any Services to the Property.

Section 3.7 Books, Records, Reporting and Procurement

Manager shall use the modified accrual basis of accounting to record its activity in CHA's system(s) of record. Manager shall keep full and adequate books for accounts and such other records reflecting the results of operation of the Property including, without limitation: all contracts, original leases, amendments, extensions and agreements relating to contracts and leases, files, correspondence with Tenants and prospective Tenants, computations of rental adjustments, Tenant income and other records required to verify satisfaction of property requirements, maintenance and preventative maintenance programs, schedules and logs; inventories of Manager's personal property; correspondence with vendors; job descriptions; correspondence with federal, state, county and municipal authorities; brochures and accounts held or maintained. Such books and records shall be stored in electronic form where feasible and maintained in accordance with generally accepted accounting principles and all the terms and conditions of the CHA Records Management Policy (See Exhibit E), and Applicable Public Housing Requirements.

- (a) Manager shall process and record all financial transactions related to the Property into the Owner's designated system of record (i.e. Yardi, SharePoint, Lawson, etc.).
- (b) Manager shall scan and attach all invoices and supporting documents to their respective payables in Owner's designated system of record (i.e., Yardi, Lawson).
- (c) Manager shall use the Private Managers Financial Procedures Manual (See Exhibit E) as a reference guideline but shall not be limited to this policy in processing financial transactions.
- (d) Manager shall be responsible for the issuance of IRS Form 1099's under Manager's corporate tax identification number for payments made to independent contractors under Manager's operation of the Property.

In carrying out its Services, Manager shall prepare data, reports and other Owner-required documents, (collectively "Deliverables"). The Owner, in its sole judgment, reserves the right to reject incomplete Deliverables. Deliverables must: (a) adequately represent the intended level of completion or standard of performance; (b) include relevant information or data as required by Owner; and (c) include all documents specified in this Agreement and/or those which are reasonably necessary for the purposes for which the Owner entered into this Agreement with

Manager. Partial or incomplete Deliverables may be accepted for review only when required for a specific purpose and when consented to in advance by the Owner. Such Deliverables may not be considered as satisfying the requirements of this Agreement, and partial or incomplete Deliverables shall never relieve Manager of its obligations hereunder to submit complete Deliverables.

The reports and submission dates shall be specified by Owner and adhered to by Manager. Such reports include, but are not limited to, the following reporting categories: capital, debt, financial, lease/unit, compliance and audit. A partial listing of required reports is attached as Exhibit F and will be modified, from time to time, at the Owner's sole discretion. The format of the reports will be determined by the Owner, and Manager will utilize Yardi, Lawson or any Owner-designated property management system as required by Owner. Sample copies of the required reporting forms are available through the CHA Property Department, CHA Department of Procurement and Contracts, and the CHA Comptroller's Office.

Manager shall use competitive purchasing procedures pursuant to 2 C.F.R. Part 200, HUD Procurement Handbook 7460.8 REV 2, (Procurement Handbook), CHA's Procurement Policy, 24 C.F.R. Part 135 and to the maximum extent possible, 24 C.F.R. Part 963 for procuring services, supplies, material and equipment for use by Manager in carrying out its responsibilities under this Agreement. The Owner reserves the right to monitor and review all purchases made for the Property for compliance with the requirements of the CHA Department of Procurement and Contracts.

Owner, including its accountants, attorneys and agents and CHA OIG, shall have the right to enter the Management Office to examine or inspect the books and records relating to the operation and maintenance of the Property at any time during the normal business hours. Books and records of the Property shall be stored electronically where feasible, and available at the Management Office or such other location as Manager and Owner may deem appropriate.

Section 3.8 Personnel

All on-site personnel shall be employees or subcontractors of Manager. Manager shall be solely responsible for hiring, supervision and termination of its personnel. Manager shall be solely responsible for paying all personnel and complying with all laws pertaining to employment. Owner shall reimburse Manager for wages, salaries, worker's compensation insurance premiums, social security taxes and other payroll taxes normally paid by employers of on-site personnel, pursuant to the approved Property budget.

It is understood by Manager and Owner that "advances" or "reimbursements" for personnel shall be limited to: a) customary reimbursements for Services provided for the Owner; and b) required Services that Manager does not and cannot render (i.e., temporary relocation costs for residents during emergency, etc.). Manager will not be reimbursed for expenses attributable to personnel who work in Manager's corporate or business office. Manager shall use reasonable care in its pre-employment screening of on-site personnel, which shall include, but not be limited to: fingerprint background checks, employment background checks, criminal background checks and drug testing for each potential new hire. Manager shall notify the Owner promptly of on-site

personnel changes or personnel action. The Owner reserves the right to review and approve Manager's selection of personnel.

Section 3.9 Section 3 and M/W/DBE Participation and Requirements

A. Section 3 – Compliance: The CHA has determined that this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, (Section 3), and Title 24 of Subchapter B, Part 135 – Economic Opportunities for Low- and Very Low-Income Persons, 24 CFR 135.3. Section 3 Compliance requires that any contract or subcontract entered into for the benefit of public housing residents shall require that, to the greatest extent feasible, economic opportunity in the form of training, employment, contracting, and other economic opportunities arising from the expenditure of public housing assistance for housing rehabilitation and housing construction be directed to low- and very low-income persons.

1. Section 3 - Clause

- i. The work to be performed under this contract¹ is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii. Contractor² agrees to send to each labor organization or representative of workers with which Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Contractor's commitments under this section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

¹ For purposes of Section 3.9, the term "contract" refers to this Agreement

² For purposes of Section 3.9, the term "Contractor" refers to the Manager under this Agreement

- iv. Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. Contractor will not subcontract with any subcontractor where Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v. Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent Contractor's obligations under 24 CFR Part 135.
- vi. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

2. Section 3 Compliance Goals

- i. Contractors and their subcontractors may demonstrate compliance by committing to employ Section 3 residents and by subcontracting with Section 3 business concerns in accordance with the requirements of 24 CFR Part 135.
A Section 3 Business concern is a business concern under HUD Regulations:
 - (a) 51 percent or more owned by Section 3 residents; or
 - (b) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
 - (c) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."
- ii. Contractor and sub-contractors may demonstrate compliance with the requirements for contracting with Section 3 Business Concerns by committing to award to Section 3 Business Concerns at least 10 percent of the total dollar amount of the contract awarded to Contractor for building trades work for maintenance, repair, modernization or development of public housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction and at least 3 percent of the total dollar amount of all other Section 3 covered contracts.

- iii. In evaluating compliance with 24 CFR Part 135, Contractors and their subcontractors have the burden of demonstrating to the greatest extent feasible their ability or inability to meet the goals set forth in 24 CFR Part 135 for providing training, employment and contracting opportunities to section 3 residents and section 3 business concerns.
- iv. Contractors and their subcontractors are also encouraged to provide other economic opportunities to train and employ section 3 residents including, but not limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies, and hiring section 3 residents in part-time positions (24 CFR 135.40).
- v. **Section 3 Hiring**

The Section 3 Regulations provide that Contractors and their subcontractors demonstrate compliance by employing Section 3 Residents as 30 percent of the aggregate number of New Hires. A Contractor or subcontractor is required to hire only when a New Hire is needed to perform the work.

 - (a) **CHA Preferences**

The hiring efforts of the CHA’s Contractors and subcontractors shall be directed to provide training and employment opportunities to Section 3 Residents in the following order of priority:

 1. Residents of the housing development or developments for which the Section 3 Covered Assistance is expended;
 2. Residents of other housing developments managed by the CHA;
 3. CHA Housing Choice Voucher Participants;
 4. Participants in HUD Youth Build Programs being carried out in the Chicago Metropolitan Area;
 5. Other Section 3 Residents.

3. Documenting and Reporting

- i. Manager agrees to comply with the above Section 3 requirements in accordance with Manager’s Section 3 Utilization Plan, which shall be prepared by Manager and agreed to by CHA. CHA shall not be required to agree to Manager’s Utilization Plan until Manager meets its burden to establish that it will comply with 24 CFR Part 135 and otherwise comply with CHA’s Section 3 Policy (see RFP) as may be required. Manager’s Section 3 Utilization Plan is attached hereto as Exhibit G and is incorporated by reference herein.
- ii. Manager and its subcontractors shall provide all required compliance data with respect to Manager’s Section 3 requirements to the CHA via CHA’s electronic system available at <https://cha.diversitycompliance.com/>. Manager and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates and shall check the electronic system on a regular basis to manage contact information and contract records. **Manager shall also be responsible for ensuring that all subcontractors have completed**

all requested items with complete and accurate information and that their contact information is current.

4. This Section 3.9(A) of the Agreement shall flow down to each subcontract at every tier.

- B. M/W/DBE Compliance.** Manager agrees to comply with the CHA's Minority, Women Disadvantaged Business Enterprise ("M/W/DBE") requirements in accordance with Manager's M/W/DBE Utilization Plan, which is attached hereto as Exhibit H and incorporated by reference herein, and otherwise comply with the CHA's M/W/DBE Policy (set forth in the RFP).

Documenting and Reporting. Manager and its subcontractors shall provide all required compliance data with respect to Manager's M/W/DBE efforts to the CHA via CHA's electronic system available at <https://cha.diversitycompliance.com/>. Manager and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates and shall check the electronic system on a regular basis to manage contact information and contract records. **Manager shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.**

Section 3.10 Training and Certification

Pursuant to 24 C.F.R. §967.1 et seq. and to the extent applicable, Manager and its subcontractors shall attend CHA and/or HUD sponsored trainings and workshop programs designed to enhance the skills, safety awareness and capabilities of its employees and subcontractors. Manager shall also be required to annually certify the performance of background checks and completion of training for personnel located at the Property.

Section 3.11 Non-Discrimination

Manager shall comply with all federal, state and local non-discrimination laws, rules, regulations and ordinances including, but not limited to, The Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. (1989), as amended, and all regulations promulgated thereto. Manager shall particularly remain in compliance at all times with: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000 (e), as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1989); Rehabilitation Act of 1973, 29 U.S.C. § 793-794 (1988); Fair Housing Amendments Act, 42 U.S.C. § 3601 et seq. (1988); Americans with Disabilities Act of 1990, 42 U.S.C. 12101 and 41 C.F.R. Part 60 et seq. (1990). Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended, and regulations promulgated in accordance therewith, including but not limited to the Equal Employment Opportunity Clause, I11. Admin. Code Tit. 44 section 750 Appendix A, which is attached hereto as Exhibit I and incorporated by reference herein; Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq. as amended. Chicago Human Rights ordinance, s2-160-010 et seq. of the Municipal Code of Chicago, as amended; and the Chicago Fair Housing Regulations, s5-8-010 et seq. of the Municipal Code of Chicago, as

amended. In addition, Manager must furnish such reports and information as requested by the Chicago Commission on Human Relations.

Section 3.12 Religious Activities

In connection with the Services to be provided under this Agreement, Manager agrees that it shall not: (a) discriminate against any person on the basis of religion; (b) limit employment or give preference in employment to persons on the basis of religion; (c) discriminate when rendering the Services hereunder against any person on the basis of religion; or (d) limit such Services or give preference to persons on the basis of religion.

Section 3.13 Drug-Free Workplace

Manager and its employees shall comply with the federal Drug Free Workplace Act of 1988, 41 U.S.C. §§ 8101-8106 (1988), as amended, and HUD's implementing regulations thereunder. Further, Manager shall notify all employees of its policy for maintaining a drug-free workplace, and the penalties that may be imposed for drug abuse violations occurring in the workplace. Further, Manager shall notify the CHA if any of its employees are convicted of a criminal drug offense in the workplace no later than ten (10) days after such conviction.

Section 3.14 Management Office

Manager's Management Office shall be open, at a minimum, during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. unless otherwise approved in writing by Owner. In some instances, the Management Office shall be available on weekends. Manager's Management Office may observe the Holiday Schedule observed by the CHA, which may be modified from time to time (See Exhibit J). In the event of an emergency, the Owner, in its sole discretion, may require the Management Office to be open, at such times and/or on such dates as specified by Owner.

Manager shall maintain a twenty-four (24) emergency response system. Manager must maintain an after hour answering service staffed by a live person (not recording), prepared to forward emergencies to the assigned maintenance and/or management personnel on a 24-hour basis. The assigned staff must promptly respond to emergencies and notify the Owner of all emergencies and actions taken within seventy-two (72) hours of such event, and in accordance with CHA procedures.

Section 3.15 Compliance with Applicable Laws and Notification to Owner

Manager shall comply fully with all applicable federal, state, county, municipal, and special district laws, statutes, ordinances, rules, regulations and orders relative to the Services, including, but not limited to the marketing, renting, leasing, use, operation, repair and maintenance of the Property, the selection and treatment of Tenants, investigation of credit, collection of rents, disclosure of information to and about Tenants and prospective Tenants, and the eviction of Tenants.

Manager shall at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulation and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement, including but not limited to Section 6 of the Housing Act of 1937, 42 U.S.C. §1437, the Privacy Act of 1974, 5 U.S.C. §552(a), The Freedom of Information Act (“FOIA”), 5 U.S.C. §552, and Section 208 of the E-Government Act, and 24 C.F.R. Part 5 and all other applicable HUD regulations; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements contained in 2 C.F.R. Part 200, (2014), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 7401/et seq.); Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd “Anti-Lobbying” Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689). Additionally, Manager shall comply with the applicable provisions of OMB Circulars A-133, A-102, A-122, A-110 and A-87, as amended, succeeded or revised; and the Mandatory Standards and Policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Illinois Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

Manager shall promptly remedy any violation of any such law, ordinance, rule or regulation which it knows about and shall notify Owner by the end of the next business day after Manager receives written notice of any violation for which Owner may be subject to a penalty. Manager shall furnish whatever information is requested by Owner that would be necessary for Owner to determine whether Manager is acting in compliance with applicable laws and the terms and conditions of this Agreement.

Section 3.16 Manager’s Duty to Report Litigation

Manager shall report promptly to Owner any criminal or civil litigation involving the Property and any such litigation involving Manager and Manager’s subcontractors that may result in liability for the Owner. Manager shall not enter into any settlement agreement involving the Property without the consent of the CHA’s Office of the General Counsel. Manager shall report promptly to Owner prior to conducting an internal investigation involving the Property, any subcontractor or the Owner that may negatively impact the Owner.

Section 3.17 CHA Inspector General

Manager and its subcontractors shall report, directly and without undue delay, to the CHA’s Inspector General, any information concerning conduct by any person which Manager or subcontractor knows or suspects to involve fraud or other Corrupt Activity. Manager’s or subcontractor’s intentional failure to report Corrupt Activity as required in this Section 3.17 shall constitute an event of default under this Agreement.

It is the duty of Manager and its subcontractors to cooperate with the CHA Inspector General in any investigations, audits, reviews, inspections or hearings undertaken. Premises associated with the Owner or doing business with or on behalf of the Owner shall be made available without undue delay including but not limited to equipment, personnel, books, records (in any form) and paper deemed relevant by the OIG. All of Manager's subcontracts must inform subcontractors of this provision and require agreement and compliance with the same.

Section 3.18 Coordination with CHA Resident Services

Manager and its employees shall have a duty to coordinate with CHA's Resident Services department and its respective programs and supportive services. A Manager's or subcontractor's intentional failure to collaborate with Resident Services on its programming shall constitute an event of default under this Agreement.

Section 3.19 Manager's Duty to Comply with CHA Governing Documents

Manager and its employees shall have a duty to comply with all CH Governing Documents described in Exhibit E, which are incorporated by reference as if fully set forth herein. Failure to comply with any CHA Governing Document as required in this Section 3.19 shall constitute an event of default under this Agreement.

Section 3.20 HUD's General Conditions for Non-Construction Contracts

HUD's General Conditions for Non-Construction Contracts (HUD form 5370-C (1/2014)) ("General Conditions"), are attached hereto as Exhibit K and incorporated by reference as if fully set forth herein. Manager agrees to fully comply with the General Conditions. In the event of a conflict between the terms and conditions of the General Conditions and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall control.

Section 3.21 Confidentiality

Manager agrees that all Deliverables, reports, documents, data or other information prepared or assembled by, or received or encountered by Manager, its employees, agents and subcontractors pursuant to this Agreement shall constitute the confidential information of the Owner ("Confidential Information") and shall be used by Manager, its employees, agents and subcontractors only in connection with the Services provided hereunder. Further, Manager agrees that such Confidential Information shall not be made available to any individual or organization other than the Owner, HUD or courts of competent jurisdiction or administrative agencies pursuant to a subpoena without the prior written approval of the CHA. In the event Manager is presented with a *subpoena* regarding such Confidential Information, which may be in Manager's possession by reason of this Agreement, Manager must immediately give notice to the CHA's Chief Executive Officer and General Counsel with the understanding that the CHA will have the opportunity to contest such process by any means available to it before the Confidential Information is submitted to a court or other third party. Manager, however, is not obligated to withhold the delivery of such Confidential Information beyond the time ordered by the court or administrative agency, unless

the subpoena or request is quashed or the time to produce is otherwise extended. Manager agrees that this Section 3.21 shall survive the termination of the Agreement.

ARTICLE 4. ESTABLISHMENT OF ACCOUNTS

All funds referenced hereunder shall be managed in accordance with the Governing Documents, HUD Cash Management Guidelines and the CHA Finance Division policy and procedures as it relates to property management fiscal activities. Manager agrees and acknowledges that it has a fiduciary obligation to the Owner when performing its fiscal duties on behalf of the Owner.

Section 4.1 Operating and Security Bank Accounts

Owner shall designate the financial institutions for which accounts are established through the HUD General Depository Agreement (See Exhibit E).

Manager shall make all requests for banking products and services through the CHA Treasury Department's designated contact in accordance with the CHA Treasury Department's Private Property Management Banking Procedures (See Exhibit E). The appropriate management approval shall be given by Manager for timely and accurate documentation as it relates to the following, including but not limited to: signature authorizations, electronic banking permissions and internet banking access.

Banking fees associated with the commercially reasonable activities of the property management accounts shall be the responsibility of the Owner. "Excess" banking fees shall be construed as those fees which are generated as a result of Manager's standard of care failure (i.e. writing NSF checks). Excess banking fees and similar charges may be deducted from Management Fees.

The CHA Treasury Department reserves the right to change designated financial institutions or banking services. However, such action will be performed in a manner which will ensure that the property management operational or financial activities of Manager will not be unreasonably hindered.

Section 4.2 Depository Account

Manager shall establish a "Depository Account" at a reputable financial institution authorized to do business in the State of Illinois, which shall be used for the deposit of all funds received as the Management Fee. The Depository Account shall be under the sole control of Manager.

Section 4.3 Management of Security Deposit Transactions

All transactions relating to security deposits are generated through the Operating Account. This account will be adjusted by the Owner based on Manager's monthly security deposit activity report in accordance with the Private Managers Financial Procedures Manual (See Exhibit E).

ARTICLE 5. DISPUTES

Section 5.1 Disputes

In the event of a dispute between the parties involving this Agreement, both parties will attempt to negotiate a resolution. If the parties cannot resolve the dispute through negotiation, either party shall, unless otherwise set forth herein, submit the dispute in writing to the Deputy Chief Procurement Officer of the CHA's Department of Procurement and Contracts for resolution. His/her decision shall be final and binding, subject to review by a court of competent jurisdiction. The parties agree that this is the sole remedy between the parties and that if review by a court is sought, no additional causes of action may be asserted. These dispute resolution obligations contained in this Agreement shall survive the termination of this Agreement.

In the event of a dispute between Manager and any of its subcontractors, Manager agrees to expeditiously address and seek resolution of the dispute.

ARTICLE 6. RISK MANAGEMENT

Section 6.1 Insurance

Manager agrees to comply with and meet or exceed all of Owner's insurance requirements that are set forth in Exhibit L, which is attached hereto and incorporated by reference as if fully set forth herein.

Section 6.2 Indemnification of Owner

To the maximum extent permitted by law, Manager agrees to defend, indemnify, and hold harmless Owner, CHA, their respective officers, commissioners, employees, agents (collectively "Owner"), and other Managers from all claims, suits, liabilities, damages, costs, company obligations, expenses (including reasonable attorneys' fees) of any nature whatsoever arising from or relating to, in whole or part (i) Manager's breach of its obligations, representations or warranties under this Agreement, (ii) the failure of Manager, its employees, subcontractors, or agents to comply with the Governing Documents, (iii) violation by Manager, its employees, subcontractors, or agents of any federal, state or local law, regulation or ordinance applicable to Manager's activities under this Agreement, (iv) Manager's contracts for goods and services regarding the Property to which the Owner is not a party, or (v) the negligence, willful or wanton conduct, intentional tort or criminal activity of Manager, its employees, subcontractors, or agents. Provided, however, that Manager shall have no obligation to indemnify Owner or other Managers for claims, suits, liabilities, damages, costs, expenses arising from the negligent act or omission or willful misconduct of Owner or other Managers as applicable.

Further, as to general liability negligence claims by third parties, *e.g.*, for personal injuries related to premises liability matters, that arise from Manager's activities which fall within the scope of Manager's duties under the Agreement and do not constitute willful or wanton conduct, intentional tort, or criminal activity of Manager or its employees, Manager's liability for its duty to defend, indemnify, and hold harmless Owner and other Managers is limited to a deductible of \$5,000 per claim pursuant to CHA's Property Managers' Insurance

Program for general liability claims. This limitation does not apply to any claims that arise from or relate to alleged acts or inaction of Manager's subcontractors or agents.

Manager expressly agrees to defend, indemnify, and hold harmless Owner and other Managers for amounts paid for claims, suits, liabilities, damages, costs, company obligations, expenses (including reasonable attorneys' fees) of any nature arising from or relating to, in whole or part, (i) Manager's failure to abate/mitigate a dangerous condition within twenty-four hours of notice of such condition as required by the Uniform Physical Condition Standard (UPCS) inspection protocol developed by the U.S. Department of Housing and Urban Development's (HUD) Real Estate Assessment Center (REAC), (ii) Manager's failure to report a claim or loss within twenty-four hours of Manager receiving notice of such claim or loss, (iii) Manager's failure to properly secure and execute a subcontract, including but not limited to Manager's failure to ensure that Manager and Owner have been named and endorsed as additional insureds on the subcontractor's liability insurance policies (and that such insurance has been endorsed as primary and non-contributory with any other insurance available to Manager and Owner), and/or (iv) Manager is otherwise negligent in the performance of its duties under this Agreement.

Manager also shall specifically defend, indemnify and hold harmless Owner and other Managers for and against all actions, claims, demands, liabilities, taxes, losses, costs, fees (including reasonable attorney's fees) and expenses suffered or incurred by or imposed upon or instituted against Owner directly or indirectly in connection with Section 9.7 of this Agreement.

Section 6.3 Indemnification Procedure

- (a) Promptly after receipt by an indemnified party of notice of any suit, proceeding, claim, demand or action that falls under the scope of this Article 6 and that the indemnified party intends to seek indemnification therefore (collectively, the "Claim"), such indemnified party will deliver to the indemnifying party a written notice of the Claim and the indemnifying party shall assume the defense thereof with counsel mutually satisfactory to the parties.
- (b) The indemnified party shall reasonably cooperate with the indemnifying party in connection with the defense of the Claim including, without limitation, by making available to the indemnifying party all relevant information material to the defense of the Claim. The indemnified party shall be entitled to participate in the settlement or defense of the Claim and to approve any proposed settlement that would impose any obligation or duty on the indemnified party, which approval may, in the sole discretion of the indemnified party, be withheld. The indemnified party shall have the right to pay or settle any Claim at any time, provided that in such event it waives the right to indemnification therefore by the indemnifying party.
- (c) If the indemnifying party fails to contest the Claim or undertake or approve settlement in good faith and with reasonable diligence, the indemnified party shall thereafter have the right to contest, settle or compromise the Claim in its sole discretion, at the risk and expense of the indemnifying party, and the indemnifying party will thereby waive any claim, defense or argument that the indemnified

party's settlement or defense of such Claim is in any respect inadequate or unreasonable.

- (d) If the indemnification provided for in this Article 6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Claim, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense, including reasonable attorneys' fees.

Section 6.4 Survival of Indemnity Obligations

The indemnity obligations outlined in this Section 6 shall survive the termination or expiration of this Agreement.

ARTICLE 7. AUDIT RESPONSIBILITIES AND OBLIGATIONS

Section 7.1 Manager's Obligation to Audit

Manager is required to establish a process for its audit of Tenant files, subject to Owner's approval, which maximizes accuracy in rent calculations and compliance with the Owner's "Perfect File Folder" format as defined in the Property Management Procedural Manual (See Exhibit E). Manager shall inspect 100% of units in accordance with all Applicable Public Housing Requirements. Manager's audit of Tenant files shall not be financed from the Operating Budget.

Section 7.2 Owner's Right to Audit

Owner reserves the right to conduct or to appoint others to conduct examinations, without notification, including but not limited to, the books and records (in any form), equipment and personnel maintained for Owner by Manager and to perform any and all additional audit tests relating to Manager's activities hereunder.

Section 7.3 Correction of Discrepancies

In accordance with Article 9, should Owner or Owner's appointees discover either deficiencies in internal control or errors in record keeping, Manager may be deemed in default of the terms and conditions of the Agreement and shall correct such discrepancies either upon discovery or no more than thirty (30) calendar days from written notice of such discrepancy. Manager shall inform Owner in writing of the action(s) taken to correct such audit discrepancies.

ARTICLE 8. COMPENSATION

Section 8.1 Compensation

The total compensation for this Agreement is comprised of a Management Fee ("Management Fee"). During the base term of the Agreement, the annual Management Fee payable to Manager for its satisfactory performance under this Agreement shall be Seven Hundred

Fourteen Thousand Seven Hundred Sixty-Six and 33/100 (\$714,766.33), and an aggregate three-year base term compensation total of Two Million One Hundred Forty-Four Thousand Two Hundred Ninety-Nine and 00/100 Dollars (\$2,144,299.00). The annual Management Fee shall be paid in twelve equal monthly installments, paid by Owner into a Depository Account held by Manager within 30 days of receipt of invoice.

Section 8.2 Performance Standards

The Management Fee set forth in Section 8.1 shall be subject to the Performance Standards and Adjustments to Compensation set forth in Exhibit M.

Section 8.3 Non-Appropriation

Funding for this Agreement is subject to (a) availability of Federal funds from HUD, (b) actual receipt of the Owner's operating funds from HUD, and (c) appropriations by the CHA's Board of Commissioners. No payments shall be made or due to Manager under this Agreement beyond those amounts appropriated and budgeted by the Owner to fund payments hereunder.

**ARTICLE 9. EVENTS OF DEFAULT, REMEDIES,
TERMINATION AND RIGHT TO OFFSET**

Section 9.1 Events of Default Defined

Each of the following shall constitute an event of default:

- (a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Manager to the Owner.
- (b) Manager's failure to perform any of its obligations under this Agreement including, but not limited to, the following:
 - 1. Failure to perform the Services with sufficient personnel or with sufficient resources to ensure the performance of the Services or failure to perform due to a reason or circumstance within Manager's control;
 - 2. Failure to meet any of the performance standards set forth in this Agreement (See Exhibit M);
 - 3. Failure to perform the Services in a manner reasonably satisfactory to the Owner or inability to perform the Services satisfactorily as a result of the occurrence of any event set forth in Section 9.1(d) to 9.1(f);
 - 4. Failure to promptly cure or re-perform within a reasonable time Services or Deliverables that were rejected as erroneous or unsatisfactory;
 - 5. Discontinuance of the Services for reasons or circumstances not beyond Manager's control;

6. Failure to comply with a material term of this Agreement, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination;
 7. Any other acts specifically and expressly stated in this Agreement as constituting an event of default;
 8. Failure to cooperate with the CHA Inspector General in any investigations, audits, reviews, inspections or hearing;
 9. Failure to report fraud or other Corrupt Activity to the CHA Inspector General.
- (c) Any change in majority ownership control of Manager to a new member who is not currently a member of Manager without the prior written approval of the Owner, for which written approval shall not be unreasonably withheld, conditioned or delayed.
- (d) The filing of a voluntary petition of bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Manager;
- (e) The consent to an involuntary petition in bankruptcy or the failure by Manager to have vacated within ninety (90) days from the date of entry thereof any order approving an involuntary petition;
- (f) The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either Owner or Manager a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for a period of one hundred twenty (120) consecutive days;
- (g) Manager's default under any other agreement it may presently have or may enter into with the Owner during the Term of this Agreement. Manager acknowledges and agrees that in the event of default under this Agreement the Owner may also declare a default under any such other agreements.

Section 9.2 Default Notice and Remedies

Within five (5) business days after Manager has been provided written notice from Owner of the occurrence of each default, Manager shall provide a statement setting forth details of such default, the action(s) that Manager has taken and/or proposes to take with respect to curing the default, and an estimated time period within which Manager will be able to cure the default.

Absent an agreed-upon time frame to cure an event of default, Manager shall be given thirty (30) calendar days to cure each event of default following Owner's notice. If Manager fails to commence, or continue diligent efforts to cure such default, following thirty (30) calendar days,

the Owner may, at its sole option, declare Manager in default of this Agreement and/or sanction Manager with fines up to \$1,000 per instance. Minimum Performance Requirements are set forth in Exhibit M.

Whether to declare Manager in default is within the sole discretion of the Owner and neither that decision nor the factual basis for it is subject to review or challenge under the disputes provision of this Agreement. Written notification of the default, issuance of sanction and any intention of the Owner to terminate the Agreement, shall be provided to Manager and such decision shall be final and effective upon Manager's receipt of such notice pursuant to Article 11. Upon issuing a default determination notice, the Owner may invoke any or all of the following remedies:

- (a) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time period specified by the Owner.
- (b) The right to pursue any and all remedies, legal and/or equitable, available to the Owner.
- (c) The right to withhold all or any part of Manager's Management Fee hereunder with respect to Services not completed in accordance with the terms hereof prior to the termination of this Agreement.
- (d) The right to deem Manager non-responsible in future contracts to be awarded by the Owner.
- (e) The right to perform the Services on Manager's behalf, as agent for Manager, either directly or through others, and without waiving Owner's rights under this Agreement at law or in equity, and without releasing.

If the Owner considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the Owner and that if Owner permits Manager to continue providing the Services despite one or more events of default, Manager shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Owner be considered to have waived or relinquished any of its rights hereunder.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.3 Termination Upon Damage or Sale

This Agreement shall be terminated automatically and immediately upon destruction, condemnation, sale, exchange or other disposition of the Property.

Section 9.4 Termination for Convenience

The Owner may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by written notice from the Owner to Manager when the Agreement may be deemed to be no longer in the best interest of the Owner. If the Owner elects to terminate the Agreement in full, all Services to be provided hereunder shall cease at least sixty (60) days after the date written notice was provided, or a date mutually agreed upon between the parties. Manager shall continue to render the Services until the effective date of termination. No cost incurred by Manager after the effective date of termination shall be allowed. Subject to performance within the requisite performance standards and audits of invoices as set forth above, the Owner shall pay to Manager on a pro-rata basis, cost incurred for Services rendered through the date of termination.

Section 9.5 Termination by Manager

Manager may terminate this Agreement by giving one hundred twenty (120) days written notice to the Owner if the Owner defaults in its obligations under this Agreement. If Manager elects to terminate the Agreement, all services to be performed hereunder shall cease one hundred twenty (120) days after the date of receipt of the notice in accordance with notice provisions of this Agreement, or a date mutually agreed upon between the parties. In no event shall Manager be permitted to abandon the Property or terminate the Services prior to expiration of the notice period.

Section 9.6 Effect of Termination

Upon termination pursuant to this Article 9, Manager and Owner shall have no further duties and obligations to one another, except as otherwise provided in this Agreement. Manager shall turn all books and records, outstanding bills, current receipts and bank accounts (other than the Depository Account), and Tenant ledgers over to Owner immediately. Owner shall pay all accrued Management Fees due to Manager under the Agreement within one hundred twenty (120) days of final termination. Manager shall, on or before the effective termination date, reconcile its Management Fee balance and make any monetary adjustments required by Owner.

Section 9.7 Duties Upon Termination

Upon termination of this Agreement for any reason:

- (a) Manager shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;
- (b) Manager will immediately deliver to Owner, at no cost to Owner, all Books and Records (as herein defined) maintained by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;
- (c) Manager shall render to Owner an accounting of all funds of Owner held by Manager relating to the Property and shall immediately cause such funds to be paid to Owner;

- (d) Manager shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination, including year-end IRS Form 1099 processing under its tax identification number; and
- (e) Manager shall be responsible for losses incurred by Owner as a result of Manager's failure to maintain or provide records required to be maintained under this Agreement.
- (f) Manager shall use best efforts to transition to any successor property management company, all contracts, leases or other agreements Manager entered into under or pursuant to the terms of this Agreement. The responsibility of such transition belongs solely to Manager and Manager agrees that it will not attempt to hold the Owner accountable for any contracts, leases or other agreements that Manager entered into for any reason. Manager further accepts responsibility for paying all of Owner's costs, including reasonable attorney's fees, for any action that arises against the Owner regarding the contracts, leases or agreements entered into by Manager under this Agreement.
- (g) Manager shall flow down terms of this Section 9.7 to all of its contracts associated with the Property and shall assure no interruption of Services at the Property.

Section 9.8 Right to Offset

To the extent permitted by applicable law:

- (a) In connection with performance under the Agreement, the Owner may offset any incremental costs and other damages the CHA incurs in any and all of the following circumstances.
 1. If the Owner terminates the Agreement for default or pursuant to any other termination right hereunder arising from Manager's performance or non-performance;
 2. If the Owner exercises any of its remedies under Section 9.2 of the Agreement;
 3. If the Owner has any credits due under any agreement entered into pursuant to the terms of this Agreement or has made any overpayments under the Agreement.

The Owner may offset such incremental costs and any other damages by use of any payment due for Services completed before the Owner terminated the Agreement or before the it exercised any remedies. If the amount offset is insufficient to cover those incremental cost and other damages, Manager shall be liable for and must promptly remit to Owner the balance upon written demand. The right to offset is in addition to and not a limitation of any other remedies available to Owner.

- (b) Without breaching this Agreement, Owner may set off a portion of the Management Fee due under this Agreement in an amount equal to the amount of any liquidated or unliquidated damages or claims that Owner has against Manager arising out of any other agreements between the parties or otherwise unrelated to this Agreement. If and when the Owner's claims against Manager are finally adjudicated in a court of competent jurisdiction or otherwise resolved, Owner will reimburse Manager to the extent of the amount Owner has offset against this Agreement inconsistently with the determination or resolution.

ARTICLE 10. WARRANTIES, REPRESENTATIONS AND SPECIAL CONDITIONS

Section 10.1 Warranties, Representations and Covenants

In connection with the execution of this Agreement, Manager warrants and represents to the Owner:

- (a) That Manager is financially solvent; and that it and each of its employees or agents of any tier is competent to perform the Services required under this Agreement and possesses all licenses required to perform the Services; and that Manager is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein.
- (b) That no officer, agent or employee of Owner is employed by Manager or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by Owner and HUD, and that no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of Manager to any employee of Owner; and Manager further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to Owner.
- (c) That Manager and its subcontractors, if any, are not in default at the time of the execution of this Agreement or determined by the CHA's Department of Procurement and Contracts to have been, within the last five (5) years, in default on any contract awarded by the CHA.
- (d) That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by Owner, its officials, officers, agents, or employees, has induced Manager to enter into this Agreement or has been relied upon by Manager.
- (e) That Manager has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;

- (f) That Manager acknowledges that the CHA, in its selection of Manager to perform the Services hereunder, materially relied upon Manager's Proposal, that the Proposal was accurate at the time it was made and that no material changes in it have been nor will be made without the express consent of the CHA;
- (g) That Manager and, to the best of its knowledge, its subcontractors are not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended (See Exhibit E) and during the term of the Agreement will not violate the provisions of such laws and policies.
- (h) That Manager has disclosed any and all relevant information to Owner, and Manager understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.
- (i) That Manager is a duly organized and validly existing entity under the laws of the State of Illinois and has and will continue to have at all times during the term of this Agreement, all licenses and permits necessary to render the Services required hereunder.
- (j) That Manager has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of Manager.

Section 10.2 Joint and Several Liability

In the event that Manager, or its successors or assigns, if any, is comprised of a legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Manager shall be the joint and several obligations or undertakings of each legal entity.

Section 10.3 Business Documents and Manager's Affidavit

Manager shall provide to Owner evidence of its authority to conduct business in the State of Illinois, including without limitation, registrations of assumed names and certifications of good standing with the Office of the Secretary of the State of Illinois. Manager's Affidavit, Manager's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C) and Equal Opportunity Certificate are attached hereto as Exhibit N and incorporated by reference as if fully set forth herein. Manager shall at all times comply with, and be in compliance with Manager's Affidavit, Manager's Certifications and Representations of Offerors – Non-Construction Contracts (HUD Form 5369-C) and Equal Opportunity Certificate.

Section 10.4 Conflict of Interest

- (a) No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be entitled to any share or part of this Agreement or to any financial benefit to arise from it.
- (b) Manager covenants that it and its employees, or subcontractors, presently have no interest and shall acquire no interest, direct or indirect, in any other agreement which would conflict in any manner or degree with the performance of the Services hereunder. Manager further covenants that during the performance of this Agreement, no person having any such interest shall be employed. Manager agrees that if the Owner determines that any of Manager's services for others conflict with the Services that Manager is to render for Owner under this Agreement; Manager shall terminate such other services immediately upon Owner's request.
- (c) Additionally, pursuant to the conflict of interest provisions in 2 C.F.R. §200.318 (c), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the HUD activity, or have an interest in any other contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.
- (d) Furthermore, Manager represents that it currently is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

Section 10.5 Non-Liability of Public Officials

No official, employee or agent of the CHA shall be personally liable to Manager or Manager's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) the Management Fee or any other fee due to Manager or Manager's successor in interest or (iii) any other obligation arising under this Agreement.

Section 10.6 Independent Contractor Status

Manager and the Owner recognize that Manager is an independent contractor and not an employee, agent, partner, joint venturer, covenantor, or representative of the Owner and that the

Owner will not incur any liability as the result of Manager's actions. Manager and its employees, representatives, and agents shall at all times represent and disclose that they are independent contractors of the Owner and shall not represent to any third party that they are an employee, agent, covenantor, or representative of the Owner. The Owner shall not be obligated to withhold any funds from Manager for tax or other governmental purposes, with respect to its employees, agents, representative or subcontractors. Manager, its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to Owner's employees including workers' compensation insurance coverage.

Under no circumstance shall Manager undertake any action in connection with the Services other than in accordance with the terms of this Agreement. Any directives by a CHA employee contrary to the terms of this Agreement are *ultra vires* as to that CHA employee.

ARTICLE 11. COMMUNICATION AND NOTICES

Section 11.1 Communication Between the Parties

Manager shall meet with Owner upon Owner's written request and shall keep Owner advised of items materially affecting the Property. All verbal and written communication, including required reports and submissions, between Manager and Owner shall be through the CHA's Property Department, 60 E. Van Buren St., 13th Floor, Chicago, IL 60605, or electronic mail, when required. No verbal communication between the parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation, as set forth in the Illinois Code of Civil Procedure, the Federal Rules of Civil Procedure, the local rules of the Circuit Court of Cook County, and the local rules governing the U.S. District Court for the Northern District of Illinois.

Section 11.2 Notices

All notices, demands and consents, provided for in this Agreement shall be given in writing and shall be deemed received by the addressee (a) on the third day after mailing if mailed by United States certified or registered mail (mail return receipt requested, postage prepaid), or (b) on the day delivered if personally delivered or sent via electronic mail; or (c) one business day after being sent, if sent by overnight mail or overnight courier, or electronic mail, in each case to the parties at the following addresses:

If to Owner:	Chicago Housing Authority 60 E. Van Buren Street, 13 th Floor Chicago, Illinois, 60605 Attn: Deputy Chief of Property and Asset Management E-mail: llangston@thecha.org
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With a copy to: Chicago Housing Authority
60 E. Van Buren Street, 12th Floor
Chicago, Illinois 60605
Attn: Chief Legal Officer
E-mail: ccolston@thecha.org

If to Manager: The Habitat Company LLC
350 West Hubbard Street, Suite 500
Chicago, Illinois 60654
Attn: Mr. Matthew Fiascone, President
E-mail: mfrascone@habitat.com

With a copy to: The Habitat Company LLC
350 West Hubbard Street, Suite 500
Chicago, Illinois 60654
Attn: Mr. Stephen Galler, EVP and General Counsel
E-mail: sgaller@habitat.com

A party may change the above addresses by written notice to the other party.

ARTICLE 12. MISCELLANEOUS PROVISIONS

Section 12.1 Entire Agreement

This Agreement and the Exhibits attached hereto shall constitute the entire agreement between the parties hereto relating to the subject matter hereof and no other warranties, inducements, considerations, covenant, conditions, promises or interpretations shall be implied between the parties that are not set forth herein. In the event of a conflict between the Agreement and any Exhibits that have been incorporated by reference, the terms of the Agreement shall control.

Section 12.2 Amendments

No changes, amendments, modifications, or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the authorized agent of Manager and by the Owner or his/her respective designees. Owner shall incur no liability for additional Services without a written amendment to this Agreement pursuant to this Section.

Whenever in this Agreement Manager is required to obtain prior written approval, the effect of any approval which may be granted pursuant to Manager's request shall be prospective only from the later of the date approval was granted or the date on which the action for which the approval was sought is to begin. In no event may approval apply retroactively to a date before the approval was granted.

Section 12.3 Consent

Whenever in this Agreement the consent or approval of Manager or Owner is required, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Such consent shall be in writing and shall be duly executed by an authorized officer or agent for the party granting such consent or approval.

Section 12.4 Manager's Authority

Manager's authority is expressly limited to the provisions contained herein and incorporated herein as they may be amended in writing from time-to-time in accordance with the provisions of this Agreement. Owner expressly withholds from Manager any power or authority to make any structural changes in the Property or to make any other major alterations or additions in or to the Property or fixtures or equipment therein, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers granted to Manager by the terms of this Agreement without the prior written consent of Owner.

Section 12.5 Supervision

In accordance with this Agreement, Manager shall have the right to engage independent contractors to perform duties under this Agreement as Manager deems necessary, but Manager is responsible for supervising the performance of such duties at all times.

Section 12.6 Deemed Inclusion

Provisions required by applicable federal, state, county or municipal law, statutes, ordinances, rules, regulations or executive orders to be included in this Agreement are deemed inserted in this Agreement whether or not they appear in the Agreement or, upon application of either party, the Agreement shall be amended to make this insertion; however, in no event shall the failure to insert the required provisions before or after the Agreement is signed prevent its enforcement.

Section 12.7 Severability

If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 12.8 Jurisdiction

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois without reference to any conflict of laws principles or rules that would result in the application of the laws of another state. Manager hereby irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Manager agrees that service of process on Manager may be made, at the option of the CHA, either by registered or certified mail addressed to the applicable office as provided for in this Agreement and to the office actually maintained by Manager, or by personal delivery on any managing partner, partners and principals of Manager. If Manager brings any action against the CHA concerning this Agreement, the action shall only be brought in those courts located within the County of Cook, State of Illinois.

Section 12.9 Interpretation

Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Agreement.

Section 12.10 Successors and Assigns; Assignment

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assigns. Manager shall not assign this Agreement or delegate any of its obligations hereunder without Owner's express written consent, and any attempted assignment or delegation in violation of this Section 12.10 shall be void.

Section 12.11 Cooperation

If any claims, demands, suits, or other legal proceedings which arise out of any of the matters relating to this Agreement be made or instituted by any third party against either Owner or Manager, Owner or Manager shall cooperate with each other in all reasonable respects and shall give to each other all pertinent information and reasonable assistance in the disposition thereof, at its sole expense. Manager agrees at all times to cooperate fully with Owner and to act in Owner's best interests if this Agreement is terminated for any reason, or if it is to expire on its own terms.

Section 12.12 Waiver

Whenever under this Agreement, Owner, by a proper authority, expressly waives Manager's performance in any respect or expressly waives a requirement or condition to either the Owner's or Manager's performance, the waiver so granted, shall only apply to the particular instance and shall not be deemed a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of the Agreement regardless of the number of times Owner may have waived the performance of a requirement or condition.

Section 12.13 Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, constitute one and the same document. Return of this document by electronic transmission bearing the signature of a party hereto, constitutes the execution and acceptance of such party. This Agreement may be executed via DocuSign or other electronic signature software, which shall be deemed an original.

Section 12.14 No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12.15 HUD Disclaimers

- (a) Nothing contained in the ACC or this Agreement, nor any act of HUD or the Owner, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD except between HUD and the Owner as provided under the terms of the ACC.
- (b) Manager acknowledges that any transfer of public housing funds by Owner to Manager shall not be deemed an assignment of such funds. Manager will not succeed to any rights or benefits of the Owner under the ACC or attain any privileges, authorities, interest, or rights in or under the ACC.
- (c) Manager agrees to ensure that paragraphs (a) and (b) of this Section are inserted into any contract or subcontract involving the use of HUD funds in connection with the Property.

Signature Page Follows

IN WITNESS WHEREOF, the parties have caused this Private Property Management Agreement to be executed and become effective as of September 1, 2021.

CHICAGO HOUSING AUTHORITY

DocuSigned by:
Sheila Johnson
By: _____
02DBAECFF536465...
Sheila Johnson
Deputy Chief Procurement Officer

Approved as to Form and Legality
Chicago Housing Authority
Office of the General Counsel

DocuSigned by:
Cheryl Colston
By: _____
7C7C97E7F721409...
Cheryl J. Colston
Chief Legal Officer

THE HABITAT COMPANY LLC
an Illinois Limited Liability Company

Matthew G. Fiascone
By: _____
Print: Matthew G. Fiascone
Title: President