

**HONORABLE BOARD OF LEGISLATORS
THE COUNTY OF WESTCHESTER**

Your Committee is in receipt of a legislative package which contains the following: 1) a Local Law authorizing the County of Westchester (the “County”) to enter into a lease agreement for County-owned property located at the southwesterly corner of Court and Quarropas Streets in the City of White Plains (the “Property”) with a corporation formed by HANAC, Inc. (“HANAC”) and Monadnock Development LLC, its successors or assigns, for the purpose of constructing affordable senior rental housing; and 2) a Local Law amending Section 104.11(5)(f) of the Laws of Westchester County to provide the County with authority to lease the Property to a corporation formed by HANAC and Monadnock Development LLC, its successors or assigns, for a term of 65 years, with three consecutive renewal options not to exceed ten (10) years each, for a total of 95 years.

In 2000, the County purchased the old Post Office building located at 143 Grand Street in the City of White Plains. The purchase consisted of five (5) contiguous tax lots on a 1.19 acre parcel of property. The existing building, situated on one (1) of the tax lots, has been converted into offices housing the Board of Elections. The balance of the property is vacant and being used for County employee parking.

In assessing the best use for this vacant portion of the site, the County determined that the Property is well suited for the development of a senior rental affordable housing project that can serve as a model for others throughout the County and the region to follow. In making this determination, the County reviewed demographics for the City of White Plains and the surrounding area including the existing and projected senior population, income levels and

related characteristics that clearly indicated the need for affordable housing for seniors. The strategic location of the site in downtown White Plains, its proximity to transit, support services and recreational amenities, and compatibility with existing land uses reinforced this determination. The opportunity to make this a showcase project to demonstrate the County's strong commitment to green construction, including energy conservation, environmentally sensitive design and smart technology and to provide facilities for persons with disabilities and other much needed services confirmed that this was the right use and the right time for this type of project to move forward at this location.

On January 27, 2005, the County issued a Request for Proposals (“RFP”) seeking proposers to acquire and subsequently develop a portion of the site for affordable senior rental housing, with the period of affordability being forty (40) years. Upon completion of the RFP process, it was determined that the successful proposer was a team headed by HANAC. On September 11, 2006, your Honorable Board approved Local Law No. 10-2006 authorizing the County to lease the Property for a term of 65 years to a corporation formed by HANAC and the Bluestone Organization for the purpose of constructing not less than 180 units of affordable senior rental housing. On that same date Local Law No. 9-2006 was approved by your Honorable Board to amend Section 104.11(5)(f) of the Laws of Westchester County in order to permit the 65 year lease and renewal options. The lease was executed on August 3, 2007 and required, among other things, that the lessee obtain local approvals necessary for construction of the housing, close on all of its construction financing and receive County approvals within one (1) year of the date of execution, subject to extension by the County. Such an extension was later granted until December 31, 2009. As the lessee had not satisfied the conditions of the lease by the end of the extension, the lease expired by its own terms. Nonetheless, your Committee

believes that the proposed affordable housing project is important and that the parties should enter into a new lease for that purpose.

Your Committee is advised that HANAC has constructed and operated numerous affordable senior housing facilities in the New York City metropolitan area. For this project, they plan to join up with Monadnock Development LLC.

Throughout the RFP and evaluation process in 2005 and 2006, the HANAC team conveyed their earnest intent in responding to questions and concerns as well as providing quality senior housing and services. HANAC, as a nonprofit, can access additional funding to add amenities, services and programming to the project. This team will also be able to access state of the art green technology. This will help to assure that the County's project will be a showcase project not only in the region, but also nationwide.

It is proposed that the County enter into a long-term ground lease with a corporation formed by HANAC, Inc. and Monadnock Development LLC, its successors or assigns ("Lessee"). The Lessee would pay \$1,560,000 to the County as a one-time rental payment. The term of the ground lease will be sixty-five (65) years, with three (3) consecutive options to renew for a term not to exceed ten (10) years each, for a total term, including renewal options, not to exceed ninety-five (95) years. The Property will be subject to the affordability restrictions for the entire term of the lease. The Lessee will be responsible for the payment of all applicable taxes and assessments levied against the Property. The Lessee has also agreed, upon closing on its permanent financing, to set aside \$1,000,000 in a reserve account for the purpose of ensuring a quality environment for the residents. This project will be an all-electric facility and will

incorporate green technology such as Energy Star appliances, LED high-efficiency lighting fixtures, water-conserving plumbing fixtures, low-VOC interior finishes, native plantings for landscaped areas, and night sky exterior lighting to minimize light pollution. Accordingly, transmitted herewith for your Honorable Board's approval is a Local Law authorizing the County to enter into a lease agreement with a corporation formed by HANAC and Monadnock Development LLC, its successors or assigns, for the purpose of constructing affordable senior rental housing.

Your Committee has been advised that because the term of the proposed lease exceeds the thirty (30) year limitation of terms contained in the Section 104.11(5)(f) of the Laws of Westchester County, a Local Law amending Section 104.11(5)(f) is required. Section 104.11(5)(f) of the Laws of Westchester County, as amended by Local Law No. 9-2006, authorizes a lease term of 65 years and three consecutive renewal options not to exceed ten (10) years each, for a total of 95 years, to a corporation formed by HANAC and the Bluestone Organization, its successors or assigns. However, as the Bluestone Organization is no longer involved in the project, another Local Law is being submitted to your Honorable Board in order to amend Section 104.11(5)(f) to authorize the subject lease to a corporation formed by HANAC, Inc. and Monadnock Development LLC, its successors or assigns.

Your Committee has been further advised that pursuant the Section 209.171(7) of the Laws of Westchester County, the attached Local Law amending Section 104.11(5)(f) is subject to permissive referendum, because it changes a provision of law relating to the sale, exchange or leasing of County property. Consequently, the proposed Local Law may not take effect until

sixty (60) days after its adoption, assuming that within that time a petition protesting its adoption is not filed by the number of qualified electors required by law. Since the proposed Lease Agreement has a term longer than thirty (30) years, the Local Law approving the Lease Agreement cannot take effect until the effective date of the amendment to Section 104.11(5)(f).

As your Honorable Board is aware, no action may be taken with regard to the proposed legislation until the requirements of the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617 (“SEQRA”) have been met. As your Honorable Board may recall, in 2006 your Honorable Board approved Resolution No. 173-2006 making a Negative Declaration for this proposed action. The Planning Department has advised that since the scope of the lease has not changed, no further environmental review is necessary. Your Committee concurs with this conclusion.

Your Committee has been informed that passage of the Local Law authorizing the lease of the Property requires an affirmative vote of not less than two-thirds of the voting strength of your Honorable Board pursuant to Section 104.11(5)(b) of the Laws of Westchester County. The Local Law amending Section 104.11(5)(f) of the Laws of Westchester County requires an affirmative vote of not less than a majority of the voting strength of your Honorable Board. Your Honorable Board should note that should the Board agree with the Committee’s recommendation below, the Local Law amending Section 104.11(5)(f) must be passed prior to your action on the attached Local Law authorizing the lease agreement.

Your Committee believes that the lease of the Property to the Lessee and the subsequent construction of this model project will be of great benefit to the County of Westchester and will demonstrate the County's commitment to affordable housing for its senior citizens. Therefore, your Committee recommends the favorable action of your Honorable Board on the annexed proposed legislation.

Dated: _____, 2023

White Plains, New York

COMMITTEE ON

C:DLV

FISCAL IMPACT STATEMENT

SUBJECT: Affordable Senior Rental Housing NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense TBD

Total Current Year Revenue \$ 1,560,000

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 19-101-1000-9425

Potential Related Operating Budget Expenses: Annual Amount TBD

Describe: An Act to authorize the County to enter into a lease agreement for County-owned property located at the southwesterly corner of Court and Quarropas Streets in the City of White Plains for the purpose of constructing affordable senior rental housing

Potential Related Operating Budget Revenues: Annual Amount TBD

Describe: Total expected revenue \$1,560,000 to the County as a one-time rental payment for a term of sixty five(65) years with three(3) consecutive extensions of ten(10) years each, for a total term including renewal options, not to exceed ninety-five(95) years

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: \$0

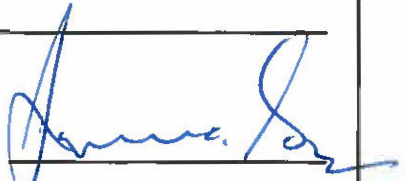
Next Four Years: \$0

Prepared by: Roberto Nascimento

Title: Sr. Budget Analyst

Department: Budget

Date: March 4, 2022

Reviewed By: 
Budget Director

Date: 3/4/22

TO: David Vutera, Associate County Attorney
Department of Law

FROM: David S. Kvinge, AICP, RLA, CFM
Assistant Commissioner



DATE: March 4, 2022

SUBJECT: **STATE ENVIRONMENTAL QUALITY REVIEW FOR LEASE OF
143 GRAND STREET, WHITE PLAINS, FOR AFFORDABLE SENIOR
HOUSING**

Pursuant to your request, the Planning Department has reviewed the above referenced action with respect to the State Environmental Quality Review Act and its implementing regulations, 6 NYCRR Part 617 (SEQR).

The action involves a lease of approximately 0.64 acre of County-owned property located in the City of White Plains to a developer for the proposed construction of affordable senior housing. The lease had been previously reviewed and approved by the County Board of Legislators in 2006. The lease was classified as an Unlisted action under SEQR and a Negative Declaration was issued by the Board of Legislators via Resolution 173-2006, in accordance with SEQR. The environmental review was limited to the lease of property only, with the understanding that further environmental (SEQR) review would be conducted for the proposed senior housing development, which would be subject to local municipal approvals.

Planning has been advised that the project was never completed and a new lease authorization is needed at this time. Planning has further been advised that there are no changes in the terms of the lease other than the dates. The SEQR regulations and forms have been revised since 2006. The proposed lease continues to be an Unlisted action under SEQR. The Board of Legislators may conclude that the previously adopted Negative Declaration remains valid and no further environmental review would be required.

Please do not hesitate to contact me if you have any questions regarding this matter.

DSK/cnm

cc: Andrew Ferris, Chief of Staff
Paula Friedman, Assistant to the County Executive
Norma Drummond, Commissioner
Tami Altschiller, Assistant Chief Deputy County Attorney
Claudia Maxwell, Associate Environmental Planner

RESOLUTION NO. - 2023

RESOLVED, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law Intro. No. -2023 entitled “A LOCAL LAW amending Section 104.11(5)(f) of the Laws of Westchester County to provide the County of Westchester with authority to lease County property located at the southwesterly corner of Court and Quarropas Streets in the City of White Plains to a corporation formed by HANAC, Inc. and Monadnock Development LLC, its successors and assigns, for a term of sixty-five (65) years, with three (3) consecutive options to renew for a term not to exceed ten (10) years each, for a total term, including renewal options, not to exceed ninety-five (95) years, for the purpose of constructing affordable senior rental housing”. The public hearing will be held at ____m. on the ____ day of _____, 2023 in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

DRAFT 3-20-23

LEASE AGREEMENT

BY AND BETWEEN

THE COUNTY OF WESTCHESTER

AND

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LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made and entered into this ____ day of _____, 2023 by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having its principal office at the Michaelian Office Building, 148 Martine Avenue, White Plains, New York, 10601 (hereinafter referred to as the "County")

and

23 Quarropas, LLC, a corporation formed by HANAC Inc. and Monadnock Development LLC, having an office and place of business at 155 Third Street, Brooklyn, NY 11231(hereinafter along with its permitted successors or assigns, referred to as the "Lessee")

W I T N E S S E T H:

WHEREAS, the County is the owner of property located at the southwesterly corner of Court and Quarropas Streets in the City of White Plains, identified on the City of White Plains tax maps as Section 125.83, Block 4, Lots 2, 3, 4, and 5 and more particularly identified on Schedule "A" (the "Premises" or "Leased Premises"), which is attached hereto and made a part hereof; and

WHEREAS, the County issued a Request for Proposals ("RFP") in 2005 seeking proposers to develop the site for affordable senior rental housing; and

WHEREAS, upon completion of the RFP process, the County determined that it was in the County's best interest that the proposed senior rental affordable housing project be constructed and operated by a corporation to be formed by HANAC, Inc. and the Bluestone Organization and authorized a lease which was executed on August 3, 2007; and

WHEREAS, the August 3, 2007 lease required, among other things, that Lessee get local approvals necessary for construction of the housing, close on all of its construction financing and receive County approvals within one (1) year of the date of execution, subject to extension by the County. Such an extension was later granted until December 31, 2009. As the Lessee had not satisfied the conditions of the 2007 lease by the end of the extension period and no further extension was granted by the County, the lease expired by its terms; and

WHEREAS, the County Board of Legislators has determined that the proposed affordable housing project is important and has considered a proposal by HANAC, Inc. and Monadnock Development LLC to grant authority for a new lease for that purpose on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the County does hereby grant to the Lessee the exclusive right to use and occupy the Leased Premises for the term and subject to the conditions hereinafter set forth.

ARTICLE 1 - TERM

- 1.1.1 The initial term of this lease shall be for a sixty-five (65) year period commencing on the Term Commencement Date (the “Initial Term”), unless terminated sooner in accordance with the provisions hereof. For purposes of this Lease Agreement, the Term Commencement Date shall be the date, mutually agreed upon in writing by the parties, by which each of the following shall have occurred, unless otherwise expressly agreed in writing by Lessor:
- 1.1.2 Lessee shall have received all applicable local approvals for the construction of Affordable Senior Rental Housing (as hereinafter defined) at the Leased Premises; and
- 1.1.3 Lessee shall have closed on all of its construction financing; and
- 1.1.4 Lessee shall have received the County approvals as described in Article 5.
- 1.2.1 Effective at the expiration of the Initial Term of this Lease and subject to the conditions herein specified, Lessee shall have the option to renew this Lease for a renewal term of ten (10) years, commencing on the expiration of the Initial Term (the “Initial Renewal Term”); provided (x) that Lessee or Affiliate of Lessee continues to be the Lessee under this Lease and in possession of any portion of the Leased Premises at the time of exercise of the renewal option and at the date of commencement of the Initial Renewal Term; and (y) that the Lessee or Affiliate is not in default of its obligations hereunder, after notice and expiration of the applicable cure period or, if no cure period for such default is provided herein, expiration of sixty (60) days after notice of such default except that if such default is incapable of being cured within such sixty (60) day period the time for Lessee to cure such default shall be extended provided Lessee is diligently pursuing a cure of such default, either at the time of exercise of the renewal option or at the date of commencement of the Initial Renewal Term.
- 1.2.2 Effective at the expiration of the Initial Renewal Term of this Lease and subject to the conditions herein specified, Lessee shall have the option to renew this Lease for a renewal term of ten (10) years, commencing on the expiration of the Initial Renewal Term (the “Second Renewal Term”); provided (x) that Lessee continues to be the Lessee under this Lease and in possession of any portion of the Leased Premises at the time of exercise of the renewal option and at the date of commencement of the Additional Renewal Term; and (y) that the Lessee is not in default of its obligations hereunder, after notice and expiration of the applicable cure period or, if no cure period for such default is provided herein, expiration of sixty (60) days after notice of such default except that if such default is incapable of being cured within such sixty (60) day period the time for Lessee to cure such default shall be extended provided Lessee is diligently pursuing a cure of such default, either at the time of exercise of the renewal option or at the date of commencement of the Additional Renewal Term.
- 1.2.3 Effective at the expiration of the Second Renewal Term of this Lease and subject to the conditions herein specified, Lessee shall have the option to renew this Lease for a renewal term of ten (10) years, commencing on expiration of the Second Renewal Term (the “Third Renewal Term”); provided (x) that Lessee or Affiliate continues to be the Lessee under this Lease and in possession of any portion of the Leased Premises at the time of exercise of the renewal option and at the date of commencement of the

Additional Renewal Term; and (y) that the Lessee or Affiliate is not in default of its obligations hereunder, after notice and expiration of the applicable cure period or, if no cure period for such default is provided herein, expiration of sixty (60) days after notice of such default except that if such default is incapable of being cured within such sixty (60) day period the time for Lessee to cure such default shall be extended provided Lessee is diligently pursuing a cure of such default, either at the time of exercise of the renewal option or at the date of commencement of the Additional Renewal Term.

- 1.3 “Affiliate”, as that term is used in this Lease, shall mean any person or entity controlling, controlled by, or under common control with another person or entity. The terms “control”, “controlled” or “controlling” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such controlled person or entity. The ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, at least fifty-one percent (51%) of the voting interest in, any person or entity shall be presumed to constitute such control
- 1.4 The renewal option for any of the Renewal Terms must be exercised by Lessee by prior written notice to the County not more than 2 years and not less than 1 year prior to the expiration of the then current term.
- 1.5 The renewal option may not be assigned separately from the Lease Agreement; any such assignment or purported assignment of the renewal option shall be null and void. Any assignment or transfer of the Lease Agreement shall be subject to the terms and conditions specified in Article 12 herein.
- 1.6 This Lease Agreement shall be considered null and void and of no force or effect should the approvals described in Subparagraph 1.1.2 have not all been obtained within 1 year of the execution hereof, except that such one year period may be extended in writing at the request of the Lessee and with the consent of the appropriate County department(s).
- 1.7 This Lease Agreement shall be considered null and void and of no further force or effect should the conditions provided for in Subparagraphs 1.1.3 and 1.1.4 have not occurred within one (1) year of the execution hereof, except that (a) such one (1) year period shall be extended as long as Lessee is diligently pursuing the achievement of the conditions in Subparagraphs 1.1.3 and 1.1.4, and (b) such one (1) year period may be extended in writing at the request of the Lessee and with the consent of the appropriate County department(s).

ARTICLE 2 - LEASED PREMISES AND DEVELOPMENT RIGHTS

- 2.1 The County hereby demises and leases the Leased Premises to Lessee and Lessee hereby leases and takes the Leased Premises from Lessor upon the terms and conditions of this Lease Agreement.

- 2.2 The County hereby assigns and transfers to Lessee any and all development rights that it has for the Premises, including any presently unused air rights, provided that such development rights shall only be used for the development of the Improvements (as hereinafter defined).

ARTICLE 3 - USE OF LEASED PREMISES

- 3.1 County represents that the Lessee may use, and the Lessee shall occupy and use, the Leased Premises for the following purposes and for no other purpose whatsoever:

- 3.1.1 for the construction and operation of Affordable Senior Rental Housing consisting of a building up to __ stories, with up to _140 residential dwelling units g (the “Building”), and Lessee may include space for uses such as, parking, community rooms, exercise room, laundry, management office, and computer room as well as other rentable space for uses including social service programs for seniors, and medical and hospital offices with significant programs for seniors. as well as other uses which are consistent with the population served and provide benefits to the broader community such as LGBTQ+. Further, the Lessee has the right to convert the Building into two condominium spaces, one with the Building and one for broader community uses with prior written approval by the appropriate County department(s). To the extent that any space is converted to condominium, condominium status will terminate at the conclusion of the Lease Term.

The number of stories and the number of units may be changed upon the prior written approval by the appropriate County department(s), which approval shall not be unreasonably withheld, but in no event shall the number of units be less than 120. “Affordable Senior Rental Housing” shall mean rental housing for senior (age 55 and above) households, wherein up to 40% of the units shall be rented to senior households with incomes at or below 80% of area median income (“AMI”) as defined by the U. S. Department of Housing and Urban Development (“HUD”) and at least 60% of the units shall be rented to senior households with incomes at or below 60% of AMI. Of the units at or below 60% of AMI, at least 10% will be at 50% of AMI. Lessee shall comply with New York State Housing and Community Renewal guidelines for people with mobility, vision and hearing impairments as well as any requirements related to accessibility, adaptability, and visitability. The definition of “Affordable Senior Rental Housing” may be changed on written approval of the parties and subject to approval of the Westchester County Board of Legislators. At least 50% of the units shall be constructed so as to incorporate Universal Design standards specified in Schedule “B”. The Building and all other improvements on the Leased Premises are hereinafter collectively referred to as the “Improvements”.

ARTICLE 4 – RENTAL

- 4.1.1 The Lessee agrees to pay the County \$1,560,000.00 as a one-time rental payment. The aforementioned payment shall be due and payable within thirty (30) days after the Term Commencement Date.

ARTICLE 5 - IMPROVEMENTS

- 5.1 Lessee warrants it has inspected the Leased Premises and accepts possession of the Leased Premises "as is" in their present condition. The County shall never have any obligation to repair, maintain or restore, during the term of this Lease, any improvements placed upon the Leased Premises by Lessee, its successors and assigns during the term of this Lease. Lessee shall have the right to conduct a Phase II Environmental Assessment of the Leased Premises and the County shall grant Lessee access to the Leased Premises for the purpose of conducting such assessment. In the event that, for any reason, other than the fact that up to four 400-gallon oil tanks may be required to be removed from the Leased Premises in order for the Lessee to construct the Improvements, Lessee is not satisfied with the results of such assessment, Lessee shall have the right to terminate this Lease. Notwithstanding the above, the County shall have the responsibility to deliver said Leased Premises to Lessee free of current parking uses on a schedule mutually agreed upon with the appropriate County department(s).
- 5.2.1 Preparation and submission of Plans shall be as follows:
- 5.2.2 Lessee, at its own expense, has directed a licensed architect to prepare preliminary plans and specifications and a site plan (collectively the "Preliminary Plans") for the Improvements in sufficient detail to show the design, character, and appearance of the Improvements to be erected. Such Preliminary Plans are attached hereto and made a part hereof as Schedule "C".
- 5.2.3 Lessee, at its own expense, shall cause final architectural and mechanical building plans and specifications and site plans (collectively the "Final Plans") to be prepared for the Improvements. (The Preliminary Plans and the Final Plans are collectively referred to as the "Plans"). The construction of the Improvements shall not be commenced unless and until the Final Plans have been approved by the appropriate County department(s) in accordance with paragraph 5.2.4 below. The parties mutually agree by and between each other that, when a parking or loading issue(s), or a parking deficiency or the need for additional parking is identified related to the subject real property or a contiguous property, the parties will work cooperatively with each other and the City of White Plains to resolve such parking and/or loading problem(s).

- 5.2.4 The County shall notify Lessee, in writing of its approval or disapproval of the Final Plans within sixty (60) days after the same shall have been submitted by hand by Lessee to the County Commissioners of Public Works and Transportation and Planning. If the County fails to notify Lessee of its approval or disapproval within such time, the Plans shall be conclusively deemed approved by the County. Lessee may amend the Plans from time to time and shall submit to the County, by hand, for its approval, any and all substantial amendments to the Plans, which approval shall not be unreasonably withheld, conditioned, or delayed. The County shall notify Lessee in writing of its approval or disapproval of any amendments to the Plans within forty-five (45) days after submission thereof to the County. If the County fails to notify Lessee of approval or disapproval of said amendments within said time periods, such amendments shall be conclusively deemed approved by the County. If the County shall disapprove the whole or any portion of the Plans or any amendments thereto such disapproval shall be in writing specifically identifying the County's objection and stating the reasons therefor. Any amendments to the Plans not required to be submitted to the County for approval as provided in this Section 5.2.4 shall be delivered to the County to complete the County's files.
- 5.3 Except as set forth in the Plans, the Improvements and any building or structure in replacement thereof thereafter constructed, shall be a complete, free standing building erected wholly within the boundary lines of the Leased Premises. Upon the request of the County, Lessee will furnish to the County a survey of the Leased Premises, prepared by a licensed surveyor, showing the location of the Improvements in relation to the perimeter of the Leased Premises.
- 5.4 Lessee shall erect the Improvements with reasonable diligence, subject to the terms and provisions hereof, in a good, proper and workmanlike manner in accordance with the Plans, as amended, modified or changed from time to time in compliance with Section 5.2.4 and with all applicable provisions of law. Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Leased Premises.
- 5.5 No construction shall be commenced unless Lessee, its contractors and/or subcontractors shall first have delivered the following to the County, without expense to the County:
- 5.5.1 Certificates of insurance evidencing comprehensive general liability insurance naming the County as an additional insured, from a company or companies licensed or authorized to do business in the State of New York carrying a Best Financial rating of A or better in the combined single limit of at least Ten Million (\$10,000,000) Dollars for each occurrence and for property damage of not less than Five Million (\$5,000,000) Dollars written to protect the County as its interest may appear. In addition, Lessee, its contractors' and subcontractors shall procure Worker's Compensation insurance, including employer's liability with minimum limits of One Million (\$1,000,000) Dollars, and certificates in proper

statutory form showing that all insurance required under the Worker's Compensation Law has been secured. The policies referred to above shall provide for thirty (30) days written notice to the County prior to the cancellation or termination of such policies.

- 5.5.2 Certificates of insurance evidencing Owner's Contractors Protective Liability Policy (OCP) and property damage insurance policy insuring the County and Lessee as their interests may appear for at least Five Million (\$5,000,000) Dollars for any one accident, Two Million (\$2,000,000) Dollars for any injury to any one individual, and Two Million (\$2,000,000) Dollars broad coverage for damage to property, providing first dollar coverage without deductible, provided, however, Lessee may, subject to the approval of the County's Director of Risk Management, provide coverage to the County from the first dollar to the amount of the deductible, not exceeding One Million (\$1,000,000) Dollars. The policies referred to above shall provide for thirty (30) days written notice to the County prior to the cancellation or termination of such policies.
- 5.5.3 A Performance Bond and Labor and Material Payment Bond in the form of AIA Document A311 (or another form reasonably satisfactory to the County's Risk Manager) obtained by Lessee (which it may require of and obtain from its contractor, construction manager or subcontractor), having as surety, a surety company authorized to do business in New York and of recognized responsibility, in an amount equal to the estimated cost ("Estimated Cost of the Improvements") of construction of the Improvements as estimated by Lessee's architect or general contractor and approved as to amount by a licensed professional engineer ("P.E.") employed by the County Department of Public Works and Transportation or a P.E. under contract with the Department, in their respective reasonable judgments which amount can be reduced as the Improvements are completed. Such bond shall be conditioned, without exception or proviso, upon the erection and completion of the Improvements in accordance with the terms of this Agreement and, substantially, in accordance with the approved Plans, in compliance with all applicable legal requirements, free and clear of all liens except Leasehold Mortgages; and shall also be conditioned for the payment of the entire cost thereof.
- 5.6 Construction of the Improvements shall proceed with diligence until the completion thereof, in accordance with all of the provisions hereof. The construction of the Improvements shall be completed within twenty-eight (28) months of commencement of construction, which time period shall be extended a reasonable period of time in writing by the appropriate County department(s) as long as the Lessee is diligently pursuing the completion of such Improvements.
- 5.7 On completion of the Improvements, Lessee shall deliver to the County (a.) a certification from its supervising architect certifying: (i.) that regular and periodic inspections have been made of the construction work; and (ii.) that the Improvements have been completed in accordance with the approved Plans and

the New York State Building Code and any other applicable local building codes; and (b) two (2) complete sets of as-built drawings.

- 5.8 During construction of the Improvements the County may, from time to time, and at reasonable times and upon reasonable notice, inspect such Improvements provided that conduct of such inspection shall not interfere with Lessee's construction activities. In the event that, during such construction, the County or its architects or engineers shall reasonably determine that the Improvements are not being constructed substantially in accordance with the Plans and that such deviation from the Plans will materially lessen the value of such Improvements or substantially weaken or impair the structural strength thereof the County shall give prompt written notice to Lessee, specifying in detail the particular deficiency, omission, or other respect in which the County claims construction deviates in any material respect from the Plans and, as a consequence, materially lessens the value of such Improvements or substantially weakens or impairs the structural integrity thereof. Within thirty (30) days after receipt of the County's notice, Lessee shall (i) remedy the condition as set forth in the County's notice provided, however, if such condition requires in excess of thirty (30) days to remedy, Lessee shall have a reasonable period of time in excess of such thirty (30) days to remedy the condition as long as Lessee has commenced any work required to remedy the condition within such thirty (30) day period and is diligently performing such work to completion. Should such inspection determine that the Improvements are not being constructed substantially in accordance with the Plans and that such deviation from the Plans will materially lessen the value of such Improvements or substantially weaken or impair the structural strength thereof, Lessee shall pay to the County the cost incurred in performing the inspection.
- 5.9 In the event this Agreement shall be terminated by reason of the default of Lessee as provided in this Agreement prior to the completion of the Improvements in accordance with the terms and provisions of this Agreement, then and in such event all Plans, reports, estimates and models which shall have been prepared or made in connection with such Improvements and which shall be in the possession of and owned by the Lessee shall become the property of the County if not required to be delivered to any leasehold mortgagee under the terms of a leasehold mortgage. In such event, Lessee shall deliver the same to the County, subject only to the rights of any leasehold mortgagee.
- 5.10 The obligation of the Lessee, subject to applicable provisions of this Agreement, to complete construction of any Improvements with reasonable diligence as provided in Section 5.6 above shall be deemed a material obligation on the Lessee's part to be performed under this Agreement. Lessee acknowledges that the County would not have made this Agreement without the Lessee's agreement to construct the Improvements. In the event Lessee materially defaults in this obligation to construct such Improvements with reasonable diligence, the County shall have the right to call upon the surety providing the Performance Bond and

Labor and Material Payment Bond required of Lessee under section 5.5.3 above to complete such construction. In the event this Agreement shall be terminated by reason of Lessee's default under Section 5.6, Lessee shall remain liable in damages to the County for any and all direct loss and damage sustained by the County by reason of the failure of the Lessee to complete the Improvements in accordance with the terms of this Agreement, provided, however, that prior to termination of this Agreement, unless Lessee has been removed from the Premises by the County's actions, Lessee shall take such action as the County reasonably directs to secure the Leased Premises and to prevent a hazardous or unsafe condition at the Premises or maintenance of a nuisance.

- 5.11 The date of completion of the Improvements shall be deemed to be the date on which the Certificate of Occupancy by the City of White Plains is issued.
- 5.12 Within ten (10) days after the Lessee closes its permanent financing with regard to the Building Lessee shall place One Million (\$1,000,000.00) Dollars in a reserve account for the purpose of engineering a quality environment for the residents. This requirement may be fulfilled by the existence of project operating and replacement reserves consistent with industry and New York State Housing and Community Renewal guidelines. The use and maintenance of these reserves will be agreed upon by investor and New York State Housing and Community Renewal.

ARTICLE 6 – TITLE TO IMPROVEMENTS

- 6.1 From and after commencement of construction of the Improvements and until termination of this Agreement, title to the Improvements shall remain in Lessee and Lessee shall alone be entitled to claim depreciation therefor. Upon the termination of this Agreement, all the Improvements shall become the property of the County, without payment by the County, and shall be surrendered in good order, repair and condition, reasonable wear and tear excepted, free of all liens and encumbrances other than those caused by the County, its officers, employees, agents or contractors or those approved by the County. If the Improvements are maintained in accordance with the standards set forth in Article 11, Lessee shall be deemed to have satisfied the requirement for “good order, repair and condition”. Lessee may, at its sole option, upon not less than ninety (90) days' notice to the County, convey title to the Improvements, free and clear of all liens and encumbrances other than those caused by the County, its officers, employees, agents or contractors or those approved by the County, to the County at any time prior to the end of the Lease Term, and any such conveyance shall not cause any change in fees due from Lessee or any of the other terms and conditions of this Agreement.

ARTICLE 7 - INSURANCE

7.1.1 At all times Lessee shall cause the Improvements which may hereafter be erected to be insured for the mutual benefit of County and Lessee against:

7.1.2 loss or damage by fire, and all risk coverage as shall be customary for similar premises similarly situated in Westchester County from time to time in amounts as reasonably directed by the County's Director of Risk Management, but in no event, no more than one hundred per cent (100%) of the then replacement cost (as hereinafter defined in Section 7.2) of the Improvements reserving the right to increase such coverage as and when the replacement value increases;

7.1.3 loss or damage by explosion of steam boiler, air conditioning equipment, pressure vessels or similar apparatus, now or hereafter installed in any Improvements in such limits with respect to any one accident in adequate amounts as determined by Lessee, but not less than shall be customarily obtained for premises similarly situated in Westchester County;

7.1.4 such other hazards and in such amounts as the County may reasonably require and as at the time are commonly insured against with respect to buildings similar in character, general location, and use and occupancy, and in amounts customarily carried with respect thereto for similar premises situated in Westchester County, due regard being, or to be given, to the height and type of building, its construction, use and occupancy.

7.2.1 Upon commencement of the Lease Term, Lessee shall also maintain the following insurances, naming the County as an additional insured. It should be noted that the following insurance shall be subject to review by the County's Office of Risk Management annually and may be adjusted with regard to type and dollar amounts, as may reasonably be required by generally accepted Risk and Insurance management principles. Insurance certificates evidencing the insurance shall be furnished to the County annually or upon the end of a policy term.

All policies of the Lessee shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County is named as an insured, shall not apply to the County.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Lessee/Lessee/Lessee.

7.2.2 Commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Leased Premises, with such limits as may from time to time be customary for similarly situated premises in Westchester County, but as of the date hereof shall be at least a per occurrence limit of One Million (\$1,000,000.00) Dollars and Two Million (\$2,000,000.00) Dollars in the aggregate and shall include the following coverages:

- i. Premises - Operations.
- ii. Broad Form Contractual.
- iii. Independent Contractor and Sub-Contractor.
- iv. Products and Completed Operations.

7.2.3 Commercial Umbrella/Excess Insurance: \$2,000,000 each Occurrence and Aggregate naming the "County of Westchester" as additional insured, written on a "follow the form" basis.

7.2.4 Automobile liability insurance providing for a limit of liability per occurrence of \$1,000,000 for bodily injury and a minimum limit of \$100,000 per occurrence for property damage or a combined single limit of \$1,000,000 unless otherwise indicated in the contract specifications. This insurance shall include for bodily injury and property damage the following coverages and name the "County of Westchester" as additional insured:

- (i) Owned automobiles, if applicable.
- (ii) Hired automobiles.
- (iii) Non-owned automobiles.

7.2.5 If applicable, Workers' Compensation and Employer's Liability. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: <http://www.wcb.ny.gov>.

7.3 The term "replacement cost" shall mean the actual replacement cost of the Improvements (excluding foundation, footing and excavation costs) and said "replacement cost" shall be determined at the request of County and to be made by Lessee, by an architect, appraiser or one of the insurers, reasonably and mutually acceptable to County and Lessee, but such determination shall not be required to be made more frequently than once every three years. No omission on the part of County to request any such determination shall relieve Lessee of its obligations hereunder.

7.4 Prior to commencing work, and throughout the term of the Agreement, the Lessee shall obtain at its own cost and expense the required insurance as delineated below from insurance companies licensed in the State of New York, carrying a Best's financial rating of A- or better. Lessee shall provide evidence of such insurance to the County of Westchester ("County"), either by providing a copy of policies and/or certificates as may be required and approved by the Director of Risk Management of the County ("Director"). The policies or certificates thereof shall provide that ten (10) business days prior to cancellation, notices of same shall be given to Lessor either by overnight mail or personal delivery for all of the following stated insurance policies. All notices shall name the Lessee and identify the Agreement.

If at any time any of the policies required herein shall not satisfy the requirements within Section 7, as to form or substance as determined by the Director, the Lessee shall upon notice to that effect from the County, promptly obtain a new policy, and submit the policy or the certificate as requested by the Director to the Office of Risk Management of the County for approval by the Director. Upon failure of the Lessee to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated.

Failure of the Lessee to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Lessee from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Lessee concerning indemnification.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Lessee's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Lessee until such time as the Lessee shall furnish such additional security covering such claims in form satisfactory to the Director.

In the event of any loss, if the Lessee maintains broader coverage and/or higher limits than the minimums identified herein, the County shall be entitled to the broader coverage and/or higher limits maintained by the Lessee.

- 7.5 Except with respect to insurance required by Section 7.1(b), neither party shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article to be furnished, or which may reasonably be required to be furnished by Lessee unless County and Lessee are included therein as the insured, with loss payable as in this Agreement provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in this Article provided.
- 7.6 All policies of insurance required herein, shall name County, as additional insureds as their interest may appear as their respective interests may appear. Notwithstanding anything to the contrary contained in this Agreement, Lessee and/or any Leasehold Mortgagee shall have the sole right to adjust or otherwise settle any claim for insurance proceeds under any insurance policy maintained pursuant hereto, except for Workers' Compensation and New York State Disability.
- 7.7 Any loss paid under any casualty insurance policy to Lessee as provided herein shall be held by Lessee in trust for application to the cost of restoring, repairing, replacing or rebuilding the Improvements, subject to Lessee's agreements with any Leasehold Mortgagee.

ARTICLE 8 - INDEMNIFICATION

8.1

In addition to, and not in limitation of the insurance requirements contained in Article 7 above, the Lessee agrees:

(a) that except for the amount, if any, of damage contributed to, caused by, or resulting from the negligence of the County, the Lessee shall indemnify and hold harmless the County, its officers, employees, agents, and elected officials from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorney's fees or loss arising directly or indirectly out of the performance or failure to perform hereunder by the Lessee or third parties under the direction or control of the Lessee; and

(b) to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto; and

(c) In the event the Lessee does not provide the above defense and indemnification to the County, and such refusal or denial to provide the above defense and indemnification is found to be in breach of this provision, then the Lessee shall reimburse the County's reasonable attorney's fees incurred in connection with the

defense of any action, and in connection with enforcing this provision of the Agreement.

- 8.2 The parties represent and warrant to one another that no broker has been retained on its behalf in the negotiation of this Lease and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other of and from any claim for commission or brokerage made by any such broker when such claim is based in whole or in part upon any act or omission of the respective other party.

ARTICLE 9 - ASSIGNMENT AND SUBLEASE

- 9.1 Except as provided in this Section 9, Lessee covenants and agrees that it will not sell, transfer, mortgage, pledge or assign this Lease or any part thereof, or any rights created thereby, without the prior written consent of the County. Such consent must be authorized by the Westchester County Board of Legislators. The aforementioned consent of the County shall not be unreasonably withheld, conditioned, nor delayed. Failure of the County to grant its consent to a sale, transfer or assignment of this Lease based on an evaluation by the County that the proposed purchaser, transferee or assignee of the leasehold interest either has insufficient financial resources or lacks the requisite experience in the operation of Affordable Senior Rental Housing shall not be considered unreasonable. Failure of the County to grant its consent to a pledge or mortgage of this Lease based on an evaluation by the County that the proposed pledge or mortgage of the leasehold interest is not for the construction, replacement, improvement or upgrade of the Property (an "Improper Mortgage") or its improvements shall not be considered unreasonable. The refinancing of an existing pledge or mortgage of this lease shall not be considered an Improper Mortgage.
- 9.1.1 An assignment or transfer within the meaning of this Article 9 shall be deemed to include one or more sales or transfers by operation of law or otherwise, or creation of new stock or new classes of stock, merger with another corporation, corporate or other amendments, or otherwise by which an aggregate of more than ten (10%) percent of Lessee's stock shall be vested in a party or parties who are non-stockholders as of the date hereof, provided, however, such prohibition of an assignment or transfer shall exclude any assignment or transfer to an Affiliate, as defined in Article 1.
- 9.1.2 Lessee agrees to provide the County at the time notice is given of any proposed assignment or transfer, with whatever information the County shall reasonably request concerning the identity, background, financial responsibility and other qualifications of the entity or entities involved in any such proposed transfer or assignment. Lessee acknowledges that the County cannot and will not act upon any request for approval of any such proposed transfer or assignment unless and

until complete and accurate information is supplied regarding the parties thereto. Lessee further agrees to furnish, at such times as the County may request (but no more often than once per year), a complete statement sworn and subscribed by the president or other executive officer of Lessee, setting forth the names of all stockholders of the Lessee and the extent of their respective holdings, or in lieu thereof, Lessee shall furnish a copy of a proxy statement or such other documents as may be required by the Securities and Exchange Commission or national exchange and by the charter and by-laws of the Lessee in connection with the proposed transfer of beneficial interest.

- 9.2 Any assignment or transfer of this Lease, or any rights of Lessee hereunder in contravention of this Lease shall be null and void.
- 9.3 Any assignment of this Lease approved by the County shall be on the condition that the assignee accepts and agrees to all of the terms, conditions and provisions of this Lease, and agrees to accept and discharge all of the covenants and obligations of Lessee hereunder arising after the date of such assignment, including but not limited to, the payment of all sums due or to become due by Lessee under the terms hereof arising after the date of such assignment
- 9.4 Notwithstanding anything contained herein to the contrary, Lessee may assign, pledge, and/or mortgage its leasehold interest in this Lease to a Lender with the consent of the appropriate County department(s) which consent will not be unreasonably withheld, delayed nor conditioned.
- 9.5 Notwithstanding anything contained herein to the contrary, Lessee shall have the right to assign this Lease, sublease this Lease, transfer rights in and to this Leas to an Affiliate. With the County's prior written approval, Lessee may also, convert nonresidential space(s) of the Building from leasehold into condominium, but all condominium rights will terminate at the conclusion of the Lease Term.
- 9.6 Notwithstanding anything contained herein to the contrary, Lessee shall have the right to assign this lease to a tax nominee with the consent of the appropriate County department(s) which consent shall not be unreasonably withheld, delayed, nor conditioned.
- 9.7 The County, acting through its appropriate department(s) shall have the right to approve any financing or refinancing that includes the Premises or its Improvements as collateral, which consent shall not be unreasonably withheld or delayed. Failure of the County to grant such consent based on an evaluation by the County that the proposed financing or refinancing is not for the replacement, improvement or upgrade of the Premises or its Improvements shall not be considered unreasonable.

ARTICLE 10 - CONDEMNATION

10.1

If, at any time during the term of this Lease Agreement, there shall be a total taking or a constructive total taking (as herein defined) of the Leased Premises in condemnation proceedings or by any right of eminent domain (any such matters being hereinafter referred to as a "taking"), this Lease Agreement shall terminate and expire on the date of such taking. Lessee shall be entitled to receive any condemnation award for the value of the improvements made to the Leased Premises. Any condemnation award for the value of the Leased Premises shall be paid as follows:

(a) Lessee shall receive the portion of such award equal to such award multiplied by a fraction, the numerator of which is the number of months from the date of the judgment of condemnation until the end of the Third Renewal Term, and the denominator of which is the number of months from the Term Commencement Date until the end of the Third Renewal Term; and

(b) The County shall receive the balance of any such condemnation award.

A voluntary sale by the County to any party having the power to effect a taking, either under a threat or exercise of that power, or while proceedings are pending, shall be deemed a taking, if the Leased Premises can no longer be used by Lessee for the purposes set forth herein. For the purposes of this Article the term "constructive total taking" shall mean a taking of such scope that the untaken portion of the Leased Premises cannot in the reasonable judgment of Lessee, be developed, constructed, repaired, used, or reconstructed for the purposes set forth herein, taking into consideration the nature of the untaken portion and the amount of the award available for development, construction, repair or reconstruction. For purposes of this Article, the "date of taking" shall be deemed to be the earlier of (i) the date on which actual possession of the whole or substantially all of the Leased Premises, or a part thereof, as the case may be, is acquired by any lawful power of authority pursuant to the provisions of applicable federal or state law or (ii) the date on which title to the Leased Premises or the aforesaid portion thereof shall have vested in any lawful power of authority by condemnation pursuant to the provisions of applicable federal or state law. The parties agree that this clause shall not be interrupted or construed to permit the County, acting solely for itself, to exercise any power of eminent domain with respect to the Leased Premises without just compensation. Any condemnation award relating to a partial taking of the improvements made to the Leased Premises shall be paid to Lessee. Any condemnation award relating to a partial taking of the Leased Premises shall be paid and calculated as set forth in Section 10.1(a) and (b) of this Lease.

ARTICLE 11 - GOVERNMENTAL REQUIREMENTS

- 11.1 The Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over the Lessee's operations at the Leased Premises which may be necessary for the Lessee's operations thereat. The Lessee shall comply with all applicable federal, state and local laws, rules, regulations and orders relating to the construction, ownership and operation of the Building and related improvements on the Leased Premises during the term of this Lease,
- 11.2 The Lessee shall pay, as additional rental, all taxes, license, certification, permit and examination fees and excise which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or income to Lessee therefrom, and shall make all applications, reports and returns required in connection therewith. Nothing in this Lease contained shall require Lessee to pay any franchise, corporate, estate, inheritance, succession, capital, levy, transfer, federal income, or revenue tax of the County.
- 11.2.1 Without limiting the generality of Section 11.2 above, the Lessee shall pay to the appropriate tax collection agency when due and payable, without deduction or set-off, all real estate taxes if any, general and special assessments, water rents, rates and charges, sewer rents and all other governmental impositions and charges of every kind and nature, extraordinary and ordinary and any taxes in lieu of the foregoing (hereinafter collectively referred to as "Real Estate Taxes") levied, imposed or assessed by any local taxing authority during the Lease Term of or any part thereof upon the land, buildings and other improvements constituting the Leased Premises. Lessee shall, in addition to the foregoing, pay any new tax of a nature not presently in effect but which may be hereafter levied, assessed or imposed upon the County or the Leased Premises, if such tax shall be based on or arise out of the ownership, use or operation of the Leased Premises.
- 11.3 Lessee shall have the right, at its own cost and expense, to institute an action which the County as owner of the Leased Premises could institute pursuant to Article 7 of the Real Property Tax Law or otherwise to obtain judicial review of the Assessment of the Leased Premises. If any Real Estate Taxes as may be assessed against the Leased Premises are reduced as a result of such action, the Lessee shall be entitled to the full benefit thereof, including any refund payable to Lessee resulting therefrom.
- 11.4 If Lessee fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 11.2.1 hereof or (ii) to maintain any insurance required to be maintained by Section 5.5.1, 5.5.2, 7.2.2., 7.2.3, and 7.2.4 hereof, the County may pay such tax, assessment or other governmental charge or for such insurance, except in such case where Lessee's failure to pay under clause (i) above or to maintain under clause (ii) above arises out of a good faith contest or challenge by Lessee through the appropriate procedures and while maintaining

adequate reserves in accordance with generally accepted accounting principles. Lessee shall reimburse the County for any amount so paid by the County pursuant to this Section 11.4, together with interest thereon from the date of payment by the County to the date of reimbursement at the rate of interest equal to eight percent (8%) per year.

- 11.5 Notwithstanding anything contained herein to the contrary, Lessee may make arrangements with the Westchester County IDA for financing, other benefits, and/or a payment in lieu of taxes (“PILOT”).

ARTICLE 12 - RIGHTS OF ENTRY RESERVED

- 12.1 The County, by its officers, employees, agents, representatives and contractors shall have, on reasonable notice to Lessee, the right at all reasonable times to enter upon the Leased Premises for any and all purposes, provided, such action by the County, its officers, employees, agents, representatives and contractors does not unreasonably interfere with the Lessee's use, occupancy, or security requirements of the Leased Premises.
- 12.2 Exercise of any or all of the foregoing rights, by the County, or others under right of the County, shall not be, nor be construed to be, an eviction of Lessee, nor be made the grounds for any abatement or rental nor any claim or demand for damages consequential or otherwise.

ARTICLE 13 - TERMINATION BY COUNTY

- 13.1 In the event that the Lessee shall default in the payment of rental, additional rental or any other charges required by this Lease to be paid to the County, and such default shall continue for a period of ten (10) business days after receipt of written notice from the County, the County may terminate this Lease and all rights and privileges granted hereby to the Lessee in and to the Leased Premises on five (5) business days prior written notice to Lessee. If Lessee shall fail to cure its default by payment of the delinquent amount in full within such five (5) business day period, this Lease and all rights and privileges granted hereby in and to the Leased Premises shall terminate.
- 13.1.1 At any time following a default in the payment of rental, additional rental or any other charges by Lessee which has been cured pursuant to Section 13.1 above, the County may demand and Lessee shall deliver to the County within fifteen (15) business days after demand the most current financial annual report of Lessee to present fairly Lessee's financial condition. If Lessee shall fail to deliver its current annual report in accordance with this Section 13.1.1, Lessee shall conclusively be deemed in material default of its obligations hereunder.

- 13.2 This Lease together with all rights and privileges granted in and to the Leased Premises shall terminate automatically upon the happening of any one or more of the following events:
- 13.2.1 If Lessee shall generally not pay its debts as they become due; or shall make a general assignment for the benefit of creditors; or the Lessee shall commence any case, proceeding or action seeking to have an order for relief entered on its behalf as debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property.
- 13.2.2. If the Lessee hereunder shall be adjudicated insolvent or bankrupt in an involuntary proceeding, or if a receiver, trustee, custodian or other similar official is appointed in such proceeding or if any case, proceeding or action is commenced seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or of its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors and said adjudication or appointment of a receiver or trustee remains unvacated or not stayed by appeal for a period of one hundred twenty (120) days.
- 13.3 Upon the default by Lessee in the performance of any covenant or conditions required to be performed by Lessee (other than default which can be cured by payment of money pursuant to Section 13.1 above), and the failure of Lessee to remedy such default, after notice thereof from County to Lessee, and expiration of thirty (30) days or other applicable cure period, the County shall have the right to cancel this Lease for such cause; provided that if such default by its nature or under the circumstances is not susceptible of cure within such period, same shall be extended provided Lessee commences and diligently prosecutes such cure.
- 148.1 Upon the default by Lessee, and the giving of notice by the County to cancel this Lease as provided for herein, said notice of cancellation shall become final in accordance with its terms; provided, however, that should the County determine after the cure period specified herein that Lessee is diligently remedying such default to completion, and so advise Lessee in writing, said notice of cancellation shall be held in abeyance. If, however, the County determines that such default is no longer being diligently remedied to conclusion, the County shall so advise Lessee in writing, and said notice of cancellation shall no longer be held in abeyance for any reason and shall become final without further notice to Lessee. The reasonable determination of the County in this regard shall in all events be conclusive and binding upon Lessee.
- 13.5 Upon the cancellation or termination of this Lease pursuant to the terms herein, all rights of Lessee, Lessees and any other persons in possession shall terminate, including all rights or alleged rights of creditors, trustees, assigns, and all others

similarly so situated as to the Leased Premises. Upon said cancellation or termination of this Lease pursuant to the terms herein, the Leased Premises, except for such personal property which may be removed from said Leased Premises as provided elsewhere herein, shall be free and clear of all encumbrances and all claims of Lessee, its Lessees, creditors, trustees, assigns and all others and the County shall have immediate right of possession to the Leased Premises.

13.6 Failure of the County to take any authorized action upon default by Lessee of any of the terms covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the County from Lessee, or performance by County under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of any right on the part of the County to cancel this Lease for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

13.7 Notwithstanding anything contained herein to the contrary, prior to terminating the Lease, the County shall provide written notice to all lenders, pledges, mortgagees and assignees of interest, which shall have 30 days (or a reasonable extended time period) to cure any default or other matter giving rise to the County's right to terminate, and if such cure is accomplished within such time period, then the County shall have no right to terminate for this reason.

ARTICLE 14 – TERMINATION BY LESSEE

14.1 Article 14 has been deliberately omitted.

ARTICLE 15 – SURRENDER AND RIGHT OF RE-ENTRY

15.1 Upon the cancellation or termination of this Lease pursuant to any terms hereof, Lessee agrees peaceably to surrender up the Leased Premises to the County in the same condition as they are at the time of the commencement of the term hereof, and as they may hereafter be repaired and improved by Lessee; save and except, (a) such normal wear and tear thereof as could not have been prevented by ordinary and usual repairs and maintenance, (b) obsolescence in spite of repair, and (c) damage to or destruction of the leasehold improvements for which insurance proceeds are received by the County. Lessee shall have no obligation to remove or restore any alterations or improvements. Upon such cancellation or

termination, the County may re-enter and repossess the Leased Premises together with all improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Lease, at County's election. Furthermore, upon such cancellation or termination, and for a reasonable time thereafter (not exceeding thirty (30) days after such cancellation or termination, and for which period Lessee will pay to the County current lease rentals), or during the term of this Lease, if Lessee is not in default in rentals or any other charges or obligations due the County, Lessee shall have the right to remove its personal property, fixtures and trade equipment which it may have on the Leased Premises, provided a) the removal thereof does not impair, limit or destroy the utility of said Leased Premises or building for the purpose for which they were constructed or improved, and b) Lessee repairs all damages that might be occasioned by such removal, and restores the building and site to the condition above required.

ARTICLE 16 – SURVIVAL OF THE OBLIGATIONS OF THE LESSEE

- 16.1 In the event that the Lease shall have been terminated in accordance with a notice of termination as provided in Article 13 hereof, all the obligations of the Lessee under this Lease shall survive such termination, re-entry, retaining or resumption of possession and shall remain in full force and effect for the full term of this Lease.
- 16.2 Failure by Lessee to comply with any provision hereof shall subject Lessee to such costs, expenses, damages and losses as the County may incur by reason of Lessee's breach hereof, including but not limited to all expenses incurred by County in connection with regaining possession, restoring the Leased Premises, legal expenses (including but not limited to attorney's fees), putting the Leased Premises in order.

ARTICLE 17 – NOTICES

- 17.1 All notices, consents and approvals required or desired to be given by the parties hereto shall be in writing and either sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier, or sent by facsimile (with acknowledgment received and a copy of the notice, consent or approval sent by overnight courier), to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice shall be effective on the date of receipt.

To the County:

Commissioner of Planning
Michaelian Office Building, Room 432

148 Martine Avenue
White Plains, New York 10601

With a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Lessee:

23 Quarropas, LLC _____
Attn: Kirk Goodrich _____
155 Third Street
Brooklyn, New York 11231 _____

With a copy to:
Marks DiPalermo Wilson PLLC
245 Main Street, Suite 410
White Plains, New York 10601

ARTICLE 18 - HOLDING OVER

- 18.1 No holding over by Lessee after the expiration or early termination of this lease shall operate to extend or renew this lease for any further term whatsoever but Lessee will by such holding over become the Lessee at will of County and after written notice by County to vacate such premises, continued occupancy thereof by Lessee for in excess of thirty (30) days shall constitute Lessee a trespasser.

ARTICLE 19 - INVALID PROVISIONS

- 19.1 The invalidity of any provisions, articles, paragraphs, portions, or clauses of this Lease shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable Lease.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

- 20.1 **Remedies to be Non-Exclusive**
All remedies provided in this Lease shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to

the County, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities, shall not prevent the exercise of any other remedy.

20.2 **Non-Waiver of Rights**

The failure by either party to exercise any right or rights accruing to it by virtue of the breach of any covenant, condition or Lease herein by the other party shall not operate as a waiver of the exercise of such right or rights in the event of any subsequent breach by such other party, nor shall such other party be relieved thereby from its obligations under the terms hereof.

20.3 **Force Majeure**

Neither party shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of labor disputes, fires, floods, earthquakes, epidemics, pandemics, quarantine restrictions, governmental or executive orders which delay or shut down business(es), other acts of God, acts of the public enemy, acts of terrorism, acts or failure to act of governmental authority or other circumstances for which it is not responsible or which is not in its control provided, however, that this section shall not excuse Lessee from paying the rentals herein specified.

20.4 **Non-liability of Individuals**

No director, officer, member, manager, agent or employee of either party hereto shall be charged personally or held contractually liable by or to the other party under any term or provision of this Lease or of any supplement, modification or amendment to this Lease because of any breach thereof, or because of his or their execution or attempted execution of the same.

20.5 **Quiet Enjoyment**

The County covenants that as long as Lessee is not in default of any provision of this Lease, Lessee shall and may peaceably and quietly have, hold and enjoy the Leased Premises exclusively to it during the term hereof unless sooner canceled as provided in this Lease.

20.6 **Limited Use**

Lessee shall not use, or permit the use of, the Leased Premises, or any part thereof, for any purpose or use other than those authorized by this Lease.

20.7 **Choice of Law**

This Lease shall be construed in accordance with the Laws of the State of New York.

20.8 **Benefit**

This Lease is made for the sole and exclusive benefit of the County and Lessee, their successors and assigns, and is not made for the benefit of any third party.

20.9 **Ambiguity**

In the event of any ambiguity in any of the terms of this Lease, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

20.10 **Binding Effect**

All covenants, stipulations and Leases in this Lease shall extend to and bind each party hereto, its legal representatives, successors and assigns.

20.11 **Effectiveness**

This Lease shall not become effective until same has been fully and properly executed and delivered by both parties hereto.

20.12 **Title**

The titles of the several articles of this Lease are inserted herein for convenience only and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction hereof.

20.13 **No Partnership**

Nothing herein contained shall create or be construed as creating a co-partnership between the County and the Lessee or to constitute the Lessee an agent of the County. The County and the Lessee each expressly disclaim the existence of such a relationship between them.

20.14 **Living Wage Law**

(a) This Lease is subject to the Westchester County Living Wage Incentive as set forth in Article III of Chapter 233 of the Laws of Westchester County (“Article III”). Article III requires that all Covered Employers shall provide payment of the Living Wage Incentive as set forth in §233.402 of the Laws of Westchester County.

(b) Pursuant to the provisions of Article III, the County shall have the authority, under the appropriate circumstances, to terminate this Lease and seek other remedies as set forth therein, for violations of this Article.

(c) The Lessee agrees to uphold the Worker Retention Policy for Certain Covered Employees as set forth in §233.403, where such provision is applicable.

(d) The Lessee agrees to require any subcontractor or other employer that will provide Home Care Services or Building Services in connection with this Lease, to pay the Living Wage Incentive Rate and comply with all other requirements of Article III, including the Worker Retention Policy for Certain Covered Employees, where such provision is applicable.

A copy of Article III has been provided to the Lessee.

- 20.15 **Consent**
Wherever in this Lease the consent or approval of the County or of the Lessees Board required (other than where the consent or approval of the Westchester County of Legislators is required), such consent or approval shall not be unreasonably withheld, delayed, nor conditioned.
- 20.16 **Project Labor Agreement**
Lessee agrees that all construction work contemplated hereunder shall be performed pursuant to a Project Labor Agreement with the Building and Construction Trades Council of the Westchester and Putnam Counties, New York AFL-CIO.
- 20.17 **Recordation of Memorandum of Lease**
The County and the Lessee agree that, upon the request of the other, they will execute and deliver to the other a memorandum of this Lease, in recordable form, which memorandum of Lease, either party shall have the right to record in the Office of the County Clerk of Westchester County, New York.
- 20.18 **Title to Property**
The County agrees that the Leased Premises shall be delivered to the Lessee free and clear of all liens and encumbrances except as set forth in the Exhibit A attached hereto and made a part hereof, and the County agrees that after the date of this Lease, it will not encumber the Leased Premises, except as set forth in Exhibit A attached hereto and made a part hereof.
- 20.19 **Lender's Rights**
- a. Lessee contemplates obtaining financing for the construction of the Improvements, and permanent financing thereafter (a "Financing") from a lender or lenders (a "Lender"). It is contemplated that the Financing will be secured by a collateral assignment of this Lease by the Lessee to the Lender. The County agrees that the Lessee shall have a right to collaterally assign this Lease to a Lender with the consent of the appropriate County department(s) which shall not be unreasonably withheld or conditioned; provided, however, that Lessee's obligations under this Lease in the case of an assignment pursuant to this Section 20.19(a) shall continue in their entirety in full force and effect as the obligations of a principal and not as a surety, and Lessee shall remain fully liable for all its obligations under or relating to this Lease after such an assignment.
 - b. Lessee shall provide prior notice to the County of any such collateral assignment, which notice shall include the name and address of any such Lender.
 - c. The County shall, if requested, enter into an agreement or agreements with the Lender with respect to the collateral assignment of this Lease pursuant

to a Financing, provided such agreement contains reasonable terms and conditions, including, but not limited to, the County's agreement to give the Lender notice of any default by the Lessee pursuant to this Lease, with a reasonable time period during which the Lender may cure such default.. Upon request by Lessee, the County, within thirty (30) business days, shall execute a statement certifying that this Lease is unmodified (or, modified and stating the nature of the modifications), that, as against the County, the Lease is in full force and effect (or, if applicable, is not in full force or effect), that the County is not aware of the existence of any default by Lessee, has not issued and has no current intention of issuing a notice of default by Lessee (or if aware, or issued or issuing, the nature of the default by the Lessee), and that County is not aware of the existence of any default by the County pursuant to this Lease (or in the case of existing default, the County shall set forth the nature of such default by the County).

ARTICLE 21 - ENTIRE LEASE

21.1 This Lease, consisting of Articles 1 to 21, inclusive, Exhibit A and Schedules A, B, and C, constitutes the entire Lease of the parties hereto and may not be changed, modified, discharged or extended except by mutual written Lease of the County and the Lessee. The parties agree that no representations or warranties shall be binding upon the County or the Lessee unless expressed in writing in this Lease of Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year written above.

THE COUNTY OF WESTCHESTER

By _____

By _____

Authorized by the Westchester County Board of Legislators on the ____ day of _____, 20__ by Local Law No. ____-20__.

Authorized by the Board of Acquisition and Contract of the County of Westchester on the ____ day of _____, 20__.

Approved:

Associate County Attorney
The County of Westchester
C/Vutera/PLN/125728/HANAC lease 3-20-23

ACKNOWLEDGMENT

STATE OF NEW YORK)
 ss.:
COUNTY OF WESTCHESTER)

On the day of _____ in the year 202__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgement

STATE OF NEW YORK)
 ss.:
COUNTY OF WESTCHESTER)

On the day of _____ in the year 202__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgement

CERTIFICATE OF AUTHORITY

I, _____,
(Officer other than officer signing contract)

certify that I am the Assistant Secretary of
(Title)

(the "Corporation")

a corporation duly organized and in good standing under the laws of the State of New York; that

(Person executing Lease)

who signed said Lease on behalf of the Corporation was, at the time of execution

(Title of such person)

of the Corporation and that said Lease was duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
 ss.:
COUNTY OF _____)

On the day of _____ in the year 202__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

Signature and Office of individual
taking acknowledgement

SCHEDULE "A"

1. Covenants & Restrictions in Liber 1728 Page 221 (Affects Lot 10 on Map No. 1006) (see within). To be contested by Lessee.
2. Covenants & Restrictions in Liber 7668 Page 610, repeated in Liber 8471 Page 1 and Line 8808 Page 204 (Affects Parcels A) (see within).
3. Covenants & Restrictions in Liber 4390 Page 460 (Affects Parcel B)(see within). To be contested by Lessee.

SCHEDULE "B"

UNIVERSAL DESIGN STANDARDS

SCHEDULE "C"

PRELIMINARY PLANS