
L E A S E

Between

**CODEVELCO NON-PROFIT DWELLINGS
(SOUTH) INC.**

AND

CITY PARK CO-OPERATIVE APARTMENTS INC.

Made as of the 17th day of October, 1989

LEASE

Between CODEVELCO NON-PROFIT DWELLINGS (SOUTH) INC.
and CITY PARK CO-OPERATIVE APARTMENTS INC.

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THIS LEASE made as of the 17th day of October, 1989

Pursuant to the *Short Forms of Leases Act*

B E T W E E N:

CODEVELCO NON-PROFIT DWELLINGS
(SOUTH) INC., a corporation without share
capital incorporated under the laws of the Province of Ontario

(hereinafter called "Codevelco")

OF THE FIRST PART

A N D

CITY PARK CO-OPERATIVE APARTMENTS INC.,
a co-operative corporation without share capital
incorporated under the laws of the Province of Ontario

(hereinafter called the "Co-op")

OF THE SECOND PART

WHEREAS Codevelco is a corporation without share capital formed for the purpose of promoting and encouraging the creation of non-profit co-operative housing and is the owner of the lands described in Schedule "A" attached hereto.

AND WHEREAS the Co-op has been incorporated in order to create a non-profit housing co-operative project in which the Co-op's members can reside on a non-profit co-operative basis.

AND WHEREAS the parties have agreed that Codevelco shall lease the Lands to the Co-op on the terms and conditions hereinafter set out and that the Co-op shall renovate the existing buildings and operate a non-profit co-operative housing project of approximately 772 units on the Lands.

NOW THEREFORE WITNESSETH that in consideration of the premises and the demise and the covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I INTERPRETATION

1.1 DEFINITIONS

The terms set out below shall have the following meanings when used in this Lease unless the context shall otherwise require:

- (a) **BASE MORTGAGE:** "Base Mortgage" shall mean the Mortgage under the program referred to in paragraph 1.4 that is given in order to secure the loan to the Co-op of the funds required for payment of the Initial Rental and initial renovation of the Project, and shall include any renewal or replacement of the Base Mortgage with respect to the indebtedness secured by the original Base Mortgage or the unpaid balance of such indebtedness provided any such renewal or replacement does not result in a longer amortization period than under the original Base Mortgage, unless Codevelco shall have given its written consent to such longer amortization period, which consent may be unreasonably or arbitrarily withheld.
- (b) **BASE MORTGAGE REPAYMENT DATE:** "Base Mortgage Repayment Date" shall mean the earlier of the day when the principal borrowed by way of the Base Mortgage is fully repaid or the day when such principal would have been fully repaid if the Co-op had continued to make all required payments of principal and interest in the ordinary course without extension of the amortization period (even if permitted under the Base Mortgage) except as Codevelco may have consented in writing, which consent may be unreasonably or arbitrarily withheld.
- (c) **CMHC:** "CMHC" shall mean Canada Mortgage and Housing Corporation.
- (d) **CONTINUING RENTAL:** "Continuing Rental" shall have the meaning set out in paragraph 3.1(c) hereof.

- (e) **CONVEYANCE:** "Conveyance" shall include a sale, agreement to sell, transfer, assignment, lease, sublease, licence or parting with possession, mortgage, charge or grant of any Security Interest, in, of or over all or any portion of this Lease or the Lands or Project by either party, and a change in the corporate nature of the Co-op so that it is no longer a co-operative corporation without share capital or no longer in compliance with paragraph 5.4 hereof or of Codevelco so that it is no longer a corporation without share capital or no longer in compliance with paragraph 5.5.
- (f) **EQUIPMENT AND OTHER ASSETS:** "Equipment and other Assets" shall have the meaning set out in paragraph 11.3 hereof.
- (g) **FUNDING AUTHORITY:** "Funding Authority" shall mean CMHC in the event the Project is funded under a federal housing program, and in the event that the Project is funded under a federal/provincial or solely provincial program, shall mean MOH and, to the extent that any approvals are required of CMHC under such program, shall also include CMHC. In the event that the federal or provincial governments change the Ministry or corporation administering their programs, then Funding Authority shall mean any such changed Ministry or department.
- (h) **INFLATION:** "Inflation" shall mean changes in the value of money as measured by changes in the All Items Consumer Price Index (not seasonally adjusted) for the Toronto area published by Statistics Canada, or such other index as the parties may reasonably determine, and "adjusted for Inflation" and similar language shall mean that the figure to which it refers shall be automatically raised or lowered for each year during the term in proportion to Inflation from the commencement of the term.
- (i) **INITIAL RENTAL:** "Initial Rental" shall mean the rental payable pursuant to paragraph 3.1(b) hereof.
- (j) **LANDS:** "Lands" shall mean the lands described in Schedule "A" attached hereto.
- (k) **LEASE:** "Lease" shall mean this lease including all of the schedules to this lease and any subsequent amendments to this lease.
- (l) **MOH:** "MOH" shall mean Her Majesty the Queen in Right of Ontario as represented by the Minister of Housing.
- (m) **MORTGAGEE:** "Mortgagee" shall mean any party to whom a Security Interest has been given by the Co-op of all or any part of its interest under this Lease or in the Lands or Project, whose Security Interest is permitted under the terms of this Lease, and of whose Security Interest Codevelco has been given written notice. "Mortgage" shall have a corresponding meaning.
- (n) **PLANS:** "Plans" shall mean the plans, drawings, specifications and other detailing to be agreed to by the parties in writing, as referred to in Schedule "C", as approved by the Funding Authority and the Base Mortgagee, based on which the Project is to be renovated, together with such changes in the Plans from time to time as may be agreed upon by the parties in writing or permitted by the terms of this Lease.
- (o) **POST-MORTGAGE RENTAL:** "Post-Mortgage Rental" shall mean the rental payable pursuant to paragraph 3.1(d) hereof.
- (p) **PROJECT:** "Project" shall mean the building of approximately 772 units and parking and amenity areas and the renovations to be performed thereon, and shall include all structures, buildings, landscaping and fixtures now or in the future located on or in the Lands and the Equipment and Other Assets, and where the context permits shall also include the Lands.
- (q) **PROPERTY TAXES:** "Property Taxes" shall mean all taxes, rates, local improvement rates, impost charges, duties, assessments or levies which may be levied, rated, charged or assessed against property, whether real or personal, moveable or immovable, and any capital taxes with respect to the capital attributable thereto (determined for all purposes of this Lease in accordance with the relevant statute and reasonably apportioned between the Project and the other assets of Codevelco), place of business taxes or the like, and whether by law the responsibility of Codevelco or the Co-op or both, and whether imposed by federal, provincial, municipal, school board, utility commission or other authority, and whether now or in the future in existence, and includes any other taxes, rates, duties, assessments, fees or levies which may be imposed on Codevelco or the Co-op or anyone else on account or in lieu thereof, whether or not forming a charge on property, or of a nature

similar thereto, and whether recurring annually, or at other intervals, or on a special or single instance basis only.

- (r) **REBUILDING:** "Rebuilding" shall have the meaning set out in paragraph 8.1 hereof.
- (s) **RENTAL TAXES:** "Rental Taxes" shall mean all Goods and Services Taxes, sales taxes, excise taxes, business transfer taxes, value added taxes, or other taxes, duties, rates, levies or fees levied, rated, charged, assessed or payable with respect to, or calculated or measured in whole or in part in relation to (a) the rentals or additional or imputed rentals payable by the Co-op to Codevelco under this Lease, or (b) the Lands or the Project or any part thereof, or (c) the area of the Lands or the Project or any part thereof, however calculated, or (d) the occupancy or leasing of the Lands or the Project or any part thereof, and whether by law the responsibility of Codevelco or the Co-op or both, and whether imposed by federal, provincial, municipal, school board, utility commission or other authority, and whether now or in the future in existence, and includes any other taxes, rates, duties, assessments, fees or levies which may be imposed on Codevelco or the Co-op or anyone else on account or in lieu thereof, or of a nature similar thereto, and whether recurring annually, or at other intervals, or on a special or single instance basis only. Rental Taxes shall not include any Property Taxes.
- (t) **SECURITY INTEREST:** "Security Interest" shall include a mortgage, charge, debenture, trust deed or other financing or security instrument.

1.2 SCHEDULES

The schedules attached to this Lease and forming a part hereof are as follows:

Schedule "A" - Legal Description of the Lands
Schedule "B" - Calculation of Post-Mortgage Rent
Schedule "C" - Renovation Provisions

1.3 REASONABLENESS

Wherever any consent, agreement or approval of Codevelco or the Co-op is required under the terms of this Lease, then unless otherwise provided herein, and subject to any specific provision respecting such consent, agreement or approval set out herein, neither party shall unreasonably or arbitrarily withhold its consent, agreement or approval. It is understood that Codevelco shall be considered to be acting reasonably in withholding its consent, agreement or approval in circumstances that might detract from the non-profit or co-operative nature of the Project or of the Co-op.

1.4 FUNDING AUTHORITY

It is acknowledged that the funds necessary for the initial development and construction of the Project will be borrowed by the Co-op and secured by a Mortgage pursuant to the non-profit co-operative housing program of a Funding Authority and that the Funding Authority will be providing subsidies and assistance to the Co-op and rent geared to income assistance for some of its members. The Co-op shall enter into and observe all agreements with the Funding Authority and any Mortgagee as may be required pursuant to the Funding Authority's program and shall always maintain any such Mortgage or agreement, and in general its position and that of the Project, in good standing with the Funding Authority and any Mortgagee and shall not commit any act or omit to perform any act that would constitute a default under any such Mortgage or agreement. References in this Lease to the rights or requirements of the Funding Authority shall, unless the context otherwise requires, refer to such rights and requirements only for such period as a Mortgage is outstanding under the Funding Authority's program or other monetary assistance is being received by the Co-op pursuant to the Funding Authority's program.

ARTICLE II

DEMISE AND TERM

2.1 LEASE

In consideration of the rents, covenants and agreements herein reserved and contained to be paid, observed and performed by the Co-op, Codevelco hereby demises and leases to the Co-op the Lands to have and to hold the same for and during the term of forty-nine (49) years commencing on the 17th day of October, 1989 and ending on the 16th day of October, 2038.

2.2 EXTENSION OF TERM

Codevelco shall not be obliged to grant any extension of the term or to act reasonably with respect thereto. However, the parties agree that prior to the expiration of the term in the event that the Co-op is not in default under the provisions of this Lease and is carrying on its operations as a non-profit housing co-operative, they will commence good faith negotiations for an extension of the term for such further term and on such terms and conditions as the parties may agree. Unless either party notifies the other at least five (5) years prior to the expiry of the term that it does not intend to extend the term, then the parties shall be deemed to have agreed on an extension of the term for a period of ten (10) years from the expiry of the original term, on the same terms and conditions as are contained in this Lease (including the right of further extensions under this paragraph). Rental due during such extension terms shall be the rental due hereunder, other than Initial Rental.

ARTICLE III RENT

3.1 CO-OPERATIVE'S RENT

(a) Codevelco reserves and the Co-op covenants and agrees to pay to Codevelco, or as otherwise herein provided, as rent in lawful money of Canada without any deduction, compensation, set-off or abatement whatsoever, Initial Rental, Continuing Rental and Post-Mortgage Rental paid at the times and in the manners hereinafter set out.

(b) Initial Rental shall be in the sum of Sixty-two Million Seven Hundred and Three Thousand Two Hundred and Ninety-eight Dollars (\$62,703,298) and shall be payable to Codevelco on the Lease Commencement Date.

(c) Continuing Rental shall be payable yearly and every year during the term. "Continuing Rental" shall mean the following amounts:

- (i) From the Interest Adjustment Date under the Base Mortgage until the Base Mortgage Repayment Date, the sum of Two Dollars (\$2) per year, if demanded.
 - (ii) The costs of renovation of the Project in accordance with Schedule "C" to be paid by the Co-op to the proper parties as contemplated in this Lease.
 - (iii) All Property Taxes levied, rated, charged or assessed during the Term on or in relation to the Lands or the Project, or any part thereof, or calculated with respect to the capital attributable thereto paid directly to the taxing authorities when due. The Co-op shall make payment on or before the due date of each instalment and shall provide to Codevelco on demand evidence of payment in the form of receipted bills.
 - (iv) All Rental Taxes, to the intent that the full amount and burden thereof shall be borne by the Co-op and that the full rentals payable under this Lease shall be received by Codevelco fully net and carefree of any Rental Taxes.
 - (v) All costs of utilities and supplies for the Project and all costs of maintenance and repair of the Project.
 - (vi) All other costs, expenses and charges incurred in and about the renovation, operation and management of the Lands and Project or required to be paid by the Co-op pursuant to any provision of this Lease.
- (d) Post-Mortgage Rental shall be payable to Codevelco in equal monthly installments yearly and every year during the term commencing on the day after the Base Mortgage Repayment Date, and shall be in amounts determined in accordance with Schedule "B" attached hereto.

3.2 ADDITIONAL RENT

All payments required to be made by the Co-op pursuant to the provisions of this Lease shall be considered additional rent and shall be deemed to be rent and failure to make any such payments shall give Codevelco all of the same remedies as a failure to pay rent.

3.3 NET RENTAL

The Co-op shall make all payments and perform all the acts required in and about the Lands and the Project, it being acknowledged that this Lease is intended to be completely net and carefree to Codevelco except as specifically provided herein. Codevelco shall not be responsible for any costs, charges, expenses, outlays or liabilities of any nature whatsoever

in respect of the Lands or Project and the Co-op shall indemnify and save Codevelco harmless therefrom.

3.4 BOOKS AND RECORDS

The Co-op shall provide Codevelco with a copy of its audited financial statements prepared in compliance with the requirements of the *Co-operative Corporations Act*, R.S.O. 1980, c. 91, as amended, in each year at the same time as it is required to present them to its members or to file them with the Ministry of Consumer and Commercial Relations or other applicable filing requirement. If in the future such requirements are removed from the *Co-operative Corporations Act*, or materially changed, then unless Codevelco shall otherwise agree the Co-op shall provide it annually with audited financial statements in compliance with the requirements of the *Co-operative Corporations Act* at the commencement of the term. Codevelco shall have reasonable access by accountants, agents, inspectors or others, to the books and records of the Co-op during normal business hours on reasonable notice to verify compliance with this Lease. Codevelco shall provide the Co-op with a copy of its annual report and audited financial statements within four months of its fiscal year end, or as soon thereafter as they are prepared. The parties shall keep the information delivered under this paragraph confidential and only disclose it to the relevant board or committee members on a need-to-know basis, unless it is necessary to use it in connection with any possible breach of this Lease by either party.

ARTICLE IV CONSTRUCTION OF THE PROJECT

4.1 DEVELOPMENT AND CONSTRUCTION

Provisions relating to development and construction of the Project that are mainly relevant in connection with the initial renovation of the Project, or in connection with a subsequent Rebuilding, have been inserted in Schedule "C" attached hereto. Where there is any conflict between the provisions of Schedule "C" and the other provisions of this Lease, the provisions of Schedule "C" shall govern.

ARTICLE V USE

5.1 USE OF LANDS

The Co-op shall use the Lands solely for the purpose of a non-profit co-operative housing project including 772 residential units, parking spaces and ancillary office, meeting and amenity space. Provided that the Co-op may continue to use for commercial purposes the portion of the Lands and Project that are so used at the date of commencement of this Lease, so long as paragraph 5.3 and the other provisions of this Lease are complied with. Provided further that continued occupancy by existing occupants of residential units who determine not to join the Co-op or are not admitted to the Co-op shall not be a breach of this Lease.

5.2 NUISANCE

The Co-op and its members, and its and their employees, agents, occupants and invitees, shall not commit, cause or permit any nuisance or waste on the Lands or permit the emission of any offensive substance, odour or noise from the Project.

5.3 COMPLIANCE WITH BY-LAWS

The Co-op shall at its sole cost and expense at all times comply with all provisions of any present or future law, by-law, regulation, or order enacted or made by any federal, provincial or municipal authority having jurisdiction or fire insurance underwriters, and shall not commit any act or omission that causes an increase in the fire risk or the cost of insurance or prevents the placing of insurance on the Project, and shall promptly at its own expense effect any changes, additions or repairs to the Project necessary to so comply with any of the foregoing or to cease so affecting the fire risk or the insurance. The foregoing obligations shall apply both with respect to the use of the Project and the construction, repair, replacement, alteration, addition to or improvement thereof.

5.4 CO-OP HOUSING LEGISLATION

The Co-op agrees that during the Term of this Lease it shall always be a non-profit co-operative housing corporation as defined in Regulation 547, as amended, to the *Landlord and Tenant Act*, R.S.O. 1980, c. 232, as amended. The parties acknowledge that the Co-operative Housing Association of Ontario is presently advocating amendments to

the *Co-operative Corporations Act*, R.S.O. 1980, c. 91, as amended, to create a separate Part that would be applicable to non-profit housing co-operatives. In the event that such legislation or similar legislation is adopted, then the Co-op agrees that it will, on the written request of Codevelco and subject to any requirement of the Funding Authority, make such amendments to its articles of incorporation, or take such other steps as may be necessary, in order to become and thereafter to always remain a non-profit housing co-operative as defined in such legislation.

5.5 MEMBERSHIPS, NON-PROFIT STATUS, ETC.

The Co-op shall always operate on a non-profit basis consistent with most other non-profit housing co-operatives, including without limitation, ensuring, to the extent legally possible, that none of the Co-op, any member, or anyone else receives any profit or surplus, key money, or unreasonable payment for furnishings or anything else in connection with the use or occupancy of any or all residential units or any transfer, subletting, licensing or surrender of any or all residential units or membership or occupancy rights in the Co-operative. Codevelco shall always remain a corporation without share capital whose assets and accretions are used for the purpose of promoting its objects and for other non-profit purposes.

ARTICLE VI MAINTENANCE, REPAIRS, ALTERATIONS

6.1 MAINTENANCE

The Co-op shall at all times operate, maintain and repair the Project in the same manner and to the same level and standard as is generally provided for similar facilities in the greater Toronto area having due regard to the age and nature of the Project. The Co-op shall perform all necessary repairs to its Project to maintain the foregoing standard, provided that the Co-op shall not be obliged to repair reasonable wear and tear except as necessary to keep the Project at a reasonable level of operation for similar facilities of its age and type and in compliance with paragraph 5.3. The Co-op shall acquire, and whenever it is reasonably necessary or desirable the Co-op shall replace, any Equipment at its own expense and any such replacement shall become part of the Equipment referred to in paragraph 11.3. The Co-op shall maintain all replacement and other reserves as may be required by any agreement between it and any Funding Authority, and shall maintain reserves after the termination of any such agreement at least equal in amount and for similar purposes as were required under such agreement. Regardless of whether such an agreement is ever in existence, the Co-op shall always maintain such reasonable reserves as would be maintained by a well-operated non-profit housing co-operative that owned a project similar to the Lands and the Project. Subject to any such agreement, any interest or other accretions to, or reasonably attributable to, the monies forming part of such reserves shall be added to and form part of the reserves. Monies in the reserves shall not be removed from the reserves or used for any purposes other than as permitted under any such agreement and shall continue to be subject to the same controls after such agreement is terminated, but any consent or permission of a Funding Authority referred to in any such agreement shall thereafter mean a consent or permission of Codevelco. Any such agreement may be amended without the consent of Codevelco, except where the term or the agreement would be extended or any provision would be inserted that is inconsistent with this Lease. In such circumstances Codevelco's consent would be required and could be unreasonably withheld.

6.2 REPAIRS AND ALTERATIONS TO PROJECT

Subject to this paragraph the Co-op may at its sole expense make repairs or alterations to the Project in compliance with the Plans. It shall notify Codevelco with full details of any proposed repairs or alterations estimated to cost in excess of \$100,000 adjusted for Inflation. In the event any repairs or alterations, or related series of repairs or alterations, is reasonably estimated to cost in excess of \$500,000 adjusted for Inflation, the Co-op may not commence the work unless it first provides Codevelco with a copy of the plans and specifications showing the proposed work, and obtains the consent in writing of Codevelco to the work. Codevelco may not unreasonably or arbitrarily withhold its consent to any such work where the work involves only the repair of damage or wear and tear or the improvement of the Project to a standard not exceeding the normal standard for non-profit housing co-operatives. Any plans and specifications so approved shall thereafter be incorporated in the Plans. Where the cost of any work is reasonably estimated to be in excess of \$2,500,000 adjusted for Inflation, the work shall be considered a Rebuilding and the provisions of paragraph 8.1 shall apply in addition to this paragraph.

6.3 PERFORMANCE OF WORK

The Co-op shall ensure that the performance of the work, and the completed repairs or alterations to the Project, are in compliance with all rules, laws, orders, ordinances, regulations, codes and requirements of any government, municipality or utility, or any agency thereof having jurisdiction and with paragraph 5.3 of this Lease and shall obtain all requisite building and other permits.

6.4 LIENS

(a) The Co-op shall indemnify and save Codevelco harmless from any liability, claim, damages or expenses (including legal expenses) due to or arising from any claim for a lien made against the Lands or the Project. The Co-op shall cause all registrations of any claims for a lien or certificates of action related thereto to be discharged or vacated before any interest of Codevelco or the Co-op in the Lands becomes liable for sale, failing which Codevelco, at the expense of the Co-op, in addition to any other rights or remedies it may have, may, but shall not be obliged to, cause such claims or certificates to be discharged or vacated by payment to the claimant, payment into court, or otherwise and the costs thereof shall be forthwith paid by the Co-op to Codevelco on demand.

(b) Nothing herein contained shall authorize the Co-op, or imply any consent or agreement or request on the part of Codevelco, to subject Codevelco's estate or interest in the Lands or the Project to any construction lien or other lien of any nature or kind whatsoever. Notice is hereby given to all parties that Codevelco expressly refuses and denies any consent or agreement or request to permit its estate or interest in the Lands and the Project to be subject to any construction lien or other lien of any nature or kind whatsoever without the express written agreement of Codevelco to this effect. The Co-op acknowledges that Codevelco is not, and should not be held to be, an "Owner" as that term is defined in the *Construction Lien Act, 1983* with respect to the renovation of the Project by the Co-op.

6.5 ENTRY

Codevelco and persons authorized by it may enter the Project at all reasonable times and on reasonable notice to examine the condition thereof. Except in the case of emergency, any inspection of the parts of the Project forming residential apartments shall be conducted only in conjunction with the Co-op's normal inspection of members' units, unless the Co-op shall fail to conduct such an inspection at least once a year.

ARTICLE VII INSURANCE AND LIABILITY

7.1 INSURANCE POLICIES

The Co-op shall throughout the term of this Lease, unless the parties otherwise agree, carry property insurance for the full replacement cost of the Project (including chattels, personal property and equipment) with like materials (but without allowance for by-law changes) against damage to the Project by fire and such other perils and in such amounts and with such insurers as the parties may agree, acting reasonably, and in compliance with the requirements of the Funding Authority and any Mortgagee, and boiler and pressure vessel insurance, if appropriate, and liability insurance on an occurrence basis having a limit of not less than \$3,000,000 in respect of any one occurrence for injury or death to a single person or for property damage, and including without limitation coverage respecting loss of income, rentals or housing charges caused by any of the insured perils. In the event that insurance coverage other than the above, whether greater, lesser, or otherwise different, is or becomes the norm for well-operated non-profit co-operative housing projects, then the insurance requirements shall be adjusted to be consistent with such norm, subject to the approval of the parties, acting reasonably.

7.2 INSURANCE PARTICULARS

All the foregoing policies shall be in a reasonable amount having regard to the nature of the Project. The Co-op shall cause the limits of property and liability insurance to be adjusted for Inflation from time to time. The insurance referred to above shall be in amounts, on forms and with insurers, acceptable to both parties acting reasonably. The Co-op, Codevelco and any Mortgagee, and any mortgagee of Codevelco, shall be shown as named insureds on all insurance policies referred to above and all proceeds shall be payable to them jointly as their interests may appear. All such policies shall contain a waiver of any right of subrogation or recourse by the insurers against the Co-op, Codevelco, any Mortgagee and any mortgagee of Codevelco. Liability insurance shall contain provisions for severability of interests and cross liability among insureds. All policies shall contain undertakings from the insurers that none of the policies shall be cancelled or allowed to

lapse or materially changed until at least thirty days' written notice has been given to the Co-op, Codevelco, any Mortgagee and any mortgagee of Codevelco. The Co-op shall pay all premiums with respect to all insurance in a timely fashion. The Co-op shall provide Codevelco, any Mortgagee and any mortgagee of Codevelco with certified copies of all such policies in a timely fashion. If Codevelco becomes aware of any lapse or possible lapse of any such insurance or the Co-op fails to take out insurance in accordance with its obligations under this Lease, then Codevelco may place such insurance and the cost thereof shall be payable to it by the Co-op on demand. This shall not create any obligation on the part of Codevelco to take out any such insurance. Each party shall take all reasonable steps and actions and sign all reasonable documentation to permit the other to obtain any insurance proceeds to which it is entitled pursuant to the provisions of this Lease. In the event of a Rebuilding, Codevelco shall release its interest in the proceeds proportionate to the progress of Rebuilding provided it shall have reasonable evidence that the remaining proceeds are sufficient to pay for the balance of the Rebuilding and that there are no liens or other claims registered on title, all in accordance with good practice for mortgagees.

7.3 COMPLIANCE WITH INSURANCE

The Co-op agrees that it and its employees, agents and invitees will not keep in or upon the Project any article or substance which may be prohibited by the insurance policies mentioned above, or do or omit, or permit to be done or omitted anything which will cause any increase in the insurance premiums or the cancellation of any insurance policy. It shall use its best efforts to ensure that members and occupants of the Project comply with this requirement as well. If any insurance policy shall be cancelled or the coverage reduced or a threat of cancellation or reduction of coverage made by reason of anything arising out of the use or occupation of the Project, whether or not the first two sentences of this paragraph have been complied with, and if the Co-op fails to forthwith remedy the condition giving rise to such cancellation, reduction or threat, upon notice thereof by Codevelco, Codevelco may enter the Project and remedy the condition at the sole cost and expense of the Co-op, and in addition or in the alternative, may exercise any other remedy under this Lease.

7.4 LIABILITY AND INDEMNITY

The Co-op hereby releases Codevelco, its members, employees and agents from all liability, costs, damages, claims or demands for any death, injury, damage to property or other claim which the Co-op, its members, employees, agents, occupants and its and their invitees now has or might in the future have arising from death, injury, property damage or any other claim of any kind or nature whatsoever in relation to the Lands or the Project, and the Co-op agrees to indemnify and save harmless Codevelco, its successors and assigns, and its and their members, employees and agents from all costs, damages, claims or demands of any kind whatsoever by anyone with respect to any act, omission, negligence or liability or occurrence of kind or nature whatsoever (including those mentioned earlier in this paragraph) in and about the Lands and the Project. It is acknowledged that this paragraph involves a complete assumption of liability by the Co-op in respect of costs, damages, claims or demands in relation to the Lands or the Project regardless of whether or not the costs, damages, claims or demands arise out of any negligence, fault, act or omission of the Co-op, its members, employees, agents, occupants or its or their invitees, or of Codevelco, its successors and assigns, or its or their members, employees, or agents, or anyone else. It is further acknowledged that the complete risk of any such costs, damages, claims or demands is being assumed by the Co-op as consideration to Codevelco for entering into this Lease. It is further acknowledged that under the terms of this Lease the Co-op is required to take out and maintain certain insurance with respect to such risk, but that if the insurance with respect to any costs, damages, claims or demands is insufficient or non-existent, or the Co-op elects to self-insure, or fails to take out and maintain such insurance, whether or not the Co-op is thereby in default under this Lease, it shall nonetheless remain fully liable in accordance with the provisions of this paragraph.

ARTICLE VIII

DAMAGE, REBUILDING, EXPROPRIATION

8.1 REBUILDING

A "Rebuilding" shall mean the work (including supply of materials) that may be required if the Project shall at any time be wholly or partially destroyed or damaged by fire or other peril, or if any repair, renovation, rebuilding, reconstruction or improvement shall have been approved under paragraph 6.2, and in either case the cost of the work is reasonably estimated to be in excess of \$2,500,000 adjusted for Inflation (and shall include the demolition of the then existing structures, or any of them, and construction of a new building or buildings). Except as provided in paragraph 8.2, the Co-op shall promptly perform any necessary Rebuilding (subject to obtaining the consent of Codevelco under paragraph 6.2), there shall be no abatement of rent or additional rent or credit for Initial

Rental during the Rebuilding and any Rebuilding shall proceed under the provisions of Schedule "C" with all necessary changes.

8.2 TERMINATION OF LEASE

(a) In the event a Rebuilding is necessary and the Mortgagee shall require insurance proceeds to be paid to it in reduction of the mortgage principal, then the Co-op shall within ninety (90) days after the occurrence of the damage either produce to Codevelco an adequate financing commitment or other evidence of financial ability to perform the Rebuilding, or this Lease shall be terminated.

(b) In the event a Rebuilding is necessary and the cost of the Rebuilding is reasonably estimated to be more than twenty-five percent (25%) of the value of the buildings and improvements forming part of the Project immediately prior to the damage, then the Co-op may, by notice in writing to Codevelco given within ninety (90) days after the occurrence of the damage, elect to terminate this Lease effective within a reasonable time. If such Rebuilding is necessary during the last ten years of the term, then Codevelco may also, by notice in writing to the Co-op given within ninety (90) days after the occurrence of the damage, elect to terminate this Lease effective within a reasonable time.

(c) In the event of a termination under this paragraph 8.2, the proceeds of insurance shall be used as follows:

- (i) The proceeds of insurance respecting loss of income or housing charges shall be used to pay to Codevelco any deficiency in rent and additional rent due under this Lease until the termination date.
- (ii) All other insurance proceeds shall be used
 - A. first, to pay to Codevelco the reasonable cost of demolition of the buildings and improvements on the Lands and levelling of the Lands (whether or not it actually does so demolish or level),
 - B. second, to pay to any Mortgagee the amount owed by the Co-op on the Mortgage,
 - C. third, to pay to the Co-op the reasonable value of its remaining interest in the buildings and improvements, had the damage not occurred, less any amounts paid to the Mortgagee under B,
 - D. and fourth, the balance shall be paid to Codevelco.

The value of the Co-op's remaining interest referred to in (ii)(C) shall be the value to the occupants of the Project measured by the then present value of the difference between their housing charges (being the amounts payable to the Co-op including any rent geared to income assistance in respect of any particular members, occupants or units) and market rents for similar accommodation, subject to such predictions as may be reasonable. If the parties are unable to agree on any of the foregoing amounts, the matter shall be determined by arbitration in accordance with this Lease. It is acknowledged that in the event of any termination of this Lease, no credit return or crediting of Initial Rental shall take place. If at the time of the damage Codevelco is still a corporation as described in paragraph 5.5 and provides the Co-op with a written commitment that priority in allocation of units in Codevelco's next projects shall be given to persons who were members of the Co-op or occupants of the Project at the time of the damage and that Codevelco will assume any liability of the Co-op under any Mortgage and any liability of the Co-op to occupants of the Project in respect of termination of their occupancy, then all proceeds of insurance, other than those referred to in (ii)(B) shall be paid to Codevelco.

(d) Notwithstanding the earlier provisions of this paragraph 8.2, in the event that there is a Mortgage under an MOH program at the time of the damage referred to in paragraph 8.2, the election of the Co-op referred to therein may be exercised only by the Mortgagee and the proceeds of insurance shall be used first to pay the amount outstanding on the Mortgage.

8.3 EXPROPRIATION

If at any time during the term, title is taken to any portion of the Project by expropriation, each party shall be entitled to separately pursue and retain such compensation as may be awarded to it and the parties shall co-operate with each other in pursuing their respective claims. However, in the event that there is any physical damage to the Project or work required as a consequence of such expropriation, then the provisions of

paragraph 8.2 shall apply and the proceeds of expropriation shall be deemed to be proceeds of insurance.

ARTICLE IX ASSIGNMENT, SUBLETTING

9.1 LIMITATIONS

(a) The Co-op shall not make any Conveyance without the prior written consent of Codevelco in each instance as to both the substance of the transaction and the form of the documentation. Except as provided below Codevelco may not unreasonably or arbitrarily withhold its consent to a Conveyance. Codevelco shall be considered to be acting reasonably in withholding its consent to any Conveyance (other than for financing purposes) in favour of any party unless such party is a not-for-profit organization and intends to continue to use the Project on a not-for-profit basis or where the Conveyance or any transactions of which the Conveyance forms a part would breach the intent or specific provisions of paragraph 5.5. Notwithstanding the foregoing, Codevelco may unreasonably or arbitrarily withhold its consent to a Conveyance for financing purposes except with respect to the Base Mortgage or any further financing taken out for the purpose of paying for the costs of repairs or alterations approved under paragraph 6.2.

(b) Notwithstanding subparagraph (a), the Co-op may, without the consent of Codevelco if in compliance with paragraph 5.5, grant occupancy rights, occupancy agreements or leases for occupancy of portions of the Lands by its members, subtenants or licensees such that, if this Lease were terminated, such persons would be monthly tenants of Codevelco.

9.2 EFFECT OF CONSENT

Any consent under this Article shall not constitute a waiver of the necessity for such consent on any subsequent occasion requiring consent, and shall not relieve the Co-op from any of its obligations to perform the obligations contained in this Lease. In the event of a Conveyance by the Co-op vesting the full beneficial interest of the Co-op under this Lease in another party, the Co-op shall cause such party to enter into an instrument with Codevelco assuming the covenants and obligations of the Co-op contained in this Lease, and Codevelco shall thereupon execute appropriate documentation to release the Co-op from liability upon the covenants and obligations contained in this Lease. All legal fees and expenses of Codevelco in connection with the documentation referred to in this paragraph shall be borne by the Co-op.

9.3 MORTGAGEE PROVISIONS

Notwithstanding any other provision of this Lease, where the whole or any part of the interest of the Co-op under this Lease is subject to a Mortgage insured by, or given to, a Funding Authority or Ontario Housing Corporation, as permitted under the terms of this Lease, then:

- (a) Codevelco shall not exercise effectively as against the Mortgagee any right of re-entry or right to terminate this Lease or right of distress or any other right or remedy that would affect the security of the Mortgagee or (except in case of emergency) right to perform the obligations of the Co-op until:
 - (i) Codevelco gives to the Mortgagee at least 45 days' notice in writing of the intention to re-enter or to terminate or to distrain specifying the full particulars of the grounds therefor, and
 - (ii) the Mortgagee does not during that 45 day period either remedy or commence to remedy all specified proper grounds for re-entry or termination or give to Codevelco notice in writing that the Mortgagee intends to take, or has taken formal proceedings for the enforcement of its Mortgage and the protection of its position, and
 - (iii) the Mortgagee, having given the notice specified in (ii), has had reasonable time to pursue to their conclusion all reasonable proceedings for the enforcement of its Mortgage and the protection of its position.
- (b) In the event of a default under a Mortgage, the Mortgagee or CMHC or an assignee from them shall be entitled without the consent of Codevelco to enter into possession of the Lands, or otherwise assume the administration of the Lands, including any and all of the rights and obligations of the Co-op under this Lease.

- (c) In the event that a Mortgagee is in possession of the Co-op's interest under this Lease, then if the Mortgagee so elects the insurance provisions of this Lease shall be adjusted on a reasonable basis so that the Mortgagee shall not have to maintain or contribute to insurance, and shall bear the corresponding insurance risks.
- (d) The provisions of this Lease respecting disposition of the Co-op's portion of insurance proceeds shall be subject to any rights of the Mortgagee under its Mortgage or the *Mortgages Act*.
- (e) When a Mortgagee holds the Co-op's interest in the Lands it may terminate the Lease on three months' written notice to Codevelco by conveying all the Co-op's right, title and interest under this Lease and in the Project to Codevelco.
- (f) If as a result of a default under a Mortgage, a Mortgagee, or any party to whom either of them or their successors or a receiver or manager appointed by either of them may make a Conveyance, holds the Co-op's interest in the Lands, and only so long as any such party holds such interest, then any such party may, in addition to the use mentioned in paragraph 5.1, use the Lands for the purpose of any other type of non-profit housing project, even if it is not a non-profit co-operative housing project. In such event paragraph 5.4 shall not be applicable, and paragraph 3.4 shall be amended to require equivalent financial statements.
- (g) Anything in this Lease to the contrary notwithstanding, throughout any period of time during which, as a result of proceedings for default under any leasehold mortgage, the leasehold mortgagee or purchaser or assignee in consequence of such default is in leasehold possession of the Lands or Project or holds leasehold title to the Lands or Project, Codevelco waives, as against the leasehold mortgagee and the purchaser and assignee and their successors and assigns, all rent and additional rent and interest accruing and otherwise required to be paid under this Lease; PROVIDED that for the purposes of this waiver, rent and additional rent do not include Property Taxes and Rental Taxes, water rates and utility charges required to be paid by the Co-op and the actual costs of construction, maintenance and repair of damage, if any, that are the responsibility of the Co-op.
- (m) Without creating any legal obligation on a Mortgagee or a Funding Authority, it is hereby stated that Codevelco would request that, prior to exercising any remedy as contemplated in this paragraph 9.3, the Mortgagee and the Funding Authority give *bona fide* consideration to any proposal by Codevelco to take over the financial and other obligations of the Co-op under any Mortgage and operating or other agreement with the Funding Authority, or to otherwise resolve the situation giving rise to the remedy.
- (n) The various rights of a Mortgagee referred to in this paragraph 9.3 shall also accrue to the benefit of an insurer of a Mortgagee and any Funding Authority that may be under an obligation to insure or indemnify a Mortgagee.
- (o) In the event that either Codevelco or the Co-op shall acquire the other's interest in the Lands there shall be no merger effected by operation of law or otherwise to the prejudice of a Mortgagee.
- (p) There shall be no cancellation or surrender or amendment of this Lease by unilateral action of the Co-op or Codevelco or by joint action of Codevelco and the Co-op without the prior consent in writing of the Mortgagee whose Mortgage is being affected by such cancellation, surrender or amendment.
- (q) In the event that this Lease is terminated by operation of law or events beyond the control of Codevelco or any act by the Co-op that is incurable, and without limiting the generality of the foregoing, the Co-op becomes bankrupt or insolvent or being a corporation shall become subject to any legislative enactment relating to liquidation, winding up, either voluntarily or compulsory, Codevelco shall provide notice of the termination of the Lease to the Mortgagee and the Mortgagee shall have the right to enter into a new Lease with Codevelco on the same terms and conditions as this Lease, provided that in such new Lease the Mortgagee, as tenant, shall continue to have any and all special rights and privileges that are accorded to it under this Lease.
- (r) Codevelco and the Co-op shall, upon request, execute, acknowledge and deliver to each Mortgagee an agreement between Codevelco, the Co-op and the Mortgagee agreeing to all the provisions of this Lease inserted for the benefit of the Mortgagee and its security.

9.4 CONVEYANCE BY CODEVELCO

During the term of this Lease, Codevelco may not make any Conveyance of the Lands to any party without the prior written consent of the Co-op unless such party is an organization organized on a not-for-profit basis and with goals similar to those of Codevelco as referred to in paragraph 5.5. Notwithstanding the foregoing, Codevelco may at any time without the consent of the Co-op make a Conveyance for financing purposes, and for this purpose grant any Security Interest in the Lands, Project or this Lease. In the event of default by Codevelco under any such Security Interest, the mortgagee or other party holding such Security Interest shall be bound by all provisions of this Lease, save and except that it shall be free to make any Conveyance it may see fit and to use the rentals in any manner it sees fit and shall not be bound by the earlier provisions of this paragraph 9.4 or the last sentence of paragraph 5.5.

9.5 SUBORDINATION BY CODEVELCO

Codevelco shall from time to time enter into such instruments as the Co-op, the Base Mortgagee or the relevant Funding Authority may request to postpone or subordinate its position to that of the Base Mortgagee. Pursuant to this provision Codevelco shall enter into a fee mortgage mortgaging its fee simple interest as further security for the Base Mortgage. If requested, Codevelco shall also guarantee the Base Mortgage, so long as its liability under any such guarantee is limited to the actual value of the Lands and Project at the time of enforcement of the Base Mortgage and it can fully satisfy such guarantee by at any time conveying its interest in the Lands and Project to the Mortgagee.

9.6 ATTORNMEN

In the event of a Conveyance by Codevelco vesting the full beneficial interest of Codevelco under this Lease in another party, or if any proceedings are brought for the foreclosure or other enforcement of any security held pursuant to any Conveyance by Codevelco and upon the security holder duly entering into possession of the Project, the Co-op agrees to attorn to and become tenant of the party receiving such Conveyance or the security holder and recognize such party as landlord under this Lease. It is acknowledged that the Co-op shall have no obligation to subordinate or postpone its interest or that of any Mortgagee to any security holder of Codevelco or anyone else and that immediately prior to execution and delivery of the Lease the Lands shall be free and clear of all mortgages, charges or other security interests.

9.7 ACKNOWLEDGMENT

Where a Conveyance is to take place pursuant to paragraph 9.1 or 9.4, then either party shall, within ten days after written request therefor by the other, deliver a certificate and acknowledgment to any party to such a Conveyance, or the other party to this Lease, certifying that this Lease is in full force and effect (subject to any modifications which may have been made), whether that party is aware of any existing default by the other or any set-offs or claims by the one against the other and such other statements of fact as either party may reasonably request.

ARTICLE X QUIET ENJOYMENT

10.1 QUIET ENJOYMENT

Codevelco covenants with the Co-op that if the Co-op pays the rents hereby reserved and performs its covenants and obligations herein contained, the Co-op shall and may quietly and peaceably possess and enjoy the Lands for the term hereby granted without any interruption or disturbance from Codevelco or any other person lawfully claiming by, from or under it.

10.2 TITLE AND INSPECTION

The Co-op acknowledges having inspected the Lands, and the title thereto and that it does not rely on any representation or warranty of Codevelco as to the Lands or the title and the Co-op accepts the title and the structures, grading, surface and the subsurface conditions of the Lands in the condition in which they exist at the commencement of the term.

ARTICLE XI END OF TERM

11.1 EXPIRATION

Subject to any provision to the contrary in this Lease, on the expiration of the term hereby created, or the earlier termination of this Lease, the Co-op shall surrender and yield up the Lands and Project to Codevelco in as good condition as the Co-op is required to maintain the Lands throughout the term and the Co-op shall deliver to Codevelco all keys to the Lands and the Project in its possession or control. It is acknowledged that on any termination of this Lease, other than through the default of Codevelco, the Co-op shall not be entitled to any credit for, or return of, Initial Rental or other amounts paid pursuant to this Lease. On any termination of this Lease, provided that the rights of the residential occupants do not exceed those of monthly tenants under the laws applicable at that time, Codevelco shall assume and be bound by all monthly occupancy arrangements with residential occupants and the residential occupants shall become monthly tenants of Codevelco.

11.2 BUILDINGS AND FIXTURES

The parties agree that as between Codevelco and the Co-op any buildings, fixtures, permanent installations or other improvements constructed or installed on or in the Lands shall be and remain the property of Codevelco from the time of their installation, but shall remain subject to all the rights of the Co-op during the term.

11.3 OPTION TO PURCHASE EQUIPMENT AND OTHER ASSETS

In order to permit Codevelco to carry on the operation of the Project after the termination of this lease, whether by effluxion of time, for default, or for any other reason, the Co-op hereby grants to Codevelco an irrevocable option to purchase for the sum of \$2.00 all refrigerators, stoves, laundry equipment, office equipment, maintenance equipment and other chattel property (all the foregoing herein called "Equipment") owned by the Co-op at that time (including any interest under a conditional sales, equipment lease or other agreement), and any replacement or other reserves (including those referred to in paragraph 6.1), cash in the bank, investments, and all other assets of the Co-op in existence at the time of such termination (the Equipment and the other items mentioned in this sentence being herein called "Equipment and Other Assets"). Until such termination the Co-op may manage and deal with the Equipment and Other Assets in the ordinary course, as provided in paragraph 6.1. Provided that notwithstanding the foregoing, the rights granted under this paragraph 11.3 shall be subject and subordinate to the rights of any Base Mortgagee.

11.4 SURVIVING OBLIGATIONS

On any termination of this Lease, the Co-op's right of possession shall cease and terminate, but the obligations of the parties with respect to any item of rent or covenants not performed at the date of such termination, indemnification, or any other obligations which, by their nature or by reason of the circumstances at the time of such termination, are not completely performed prior to such termination, shall remain in full force and effect until satisfied. It is agreed, however, that in no event shall the Co-op have any interest in or right to possession of the Lands or any part of the Project after the termination of the Lease.

11.5 OVERHOLDING

If the Co-op remains in possession of the Lands after the end of the term with the consent of Codevelco and without the execution and delivery of a new lease, there shall be no tacit renewal of the Lease or of the term, nor shall a tenancy from year to year be created, but notwithstanding any statutory provision to the contrary, a monthly tenancy shall be created, which may be terminated by either party on one month's notice and otherwise upon the terms and conditions set out in this Lease insofar as they are applicable.

ARTICLE XII DEFAULT

12.1 DAMAGES AND INJUNCTIONS

If the Co-op shall fail to observe or perform any of its obligations under this Lease, then it shall compensate Codevelco for any costs, expenses or damages incurred by it. In addition, Codevelco shall have the right to apply for an injunction, specific performance, a mandatory order, the appointment of a receiver and manager, or similar relief from a court of competent jurisdiction. The parties agree that this will in general be an appropriate

remedy for Codevelco since both parties are not-for-profit organizations and in general damages would not be a sufficient compensation.

12.2 PERFORMANCE

If the Co-op shall fail to observe or perform any of its obligations under this Lease (other than the payment of money) then, subject to any limitations specifically set out in this Lease, Codevelco may give thirty days written notice to the Co-op setting out the default in reasonable detail. Such thirty day period may be abbreviated in case of emergency. If the Co-op does not correct the default within such period, or if correcting the default would reasonably take more than the length of such period, commence to correct the default within such period and thereafter diligently carry on the correction until completed, Codevelco may (but shall not be obligated to) correct the default and for this purpose shall have all rights of entry as may be necessary or desirable. The Co-op shall pay Codevelco's reasonable costs and expenses of correcting the default immediately on their being incurred together with a reasonable allowance for overhead and administration.

12.3 NON-PAYMENT OF RENTAL

If the Co-op shall default in paying Initial Rental, Post-Mortgage Rental or other items of rent when due under the terms of this Lease and any such default shall not have been corrected within thirty (30) days of written notice by Codevelco to the Co-op, then in addition to any other remedies set out herein or available to Codevelco under the *Landlord and Tenant Act* or at common law, Codevelco shall have the right to sue for payment and to terminate this Lease by the procedure set out in paragraph 12.4.

12.4 TERMINATION

In the event of

- (a) a breach of this Lease by the Co-op under paragraph 12.3;
- (b) a receiver or receiver-manager of the Co-op's property being appointed and not removed within a reasonable period of time; or
- (c) any other breach of this Lease by the Co-op, which breach is material and substantial and is not corrected within six months after written notice from Codevelco, or if correction would require more than six months, correction is not commenced within six months and thereafter diligently carried on until completion;

Codevelco may apply to a court of competent jurisdiction for an order terminating this Lease. On any such application the judge shall have full rights to grant the order or grant the Co-op relief from forfeiture on such terms as may be determined by the judge, all in accordance with the *Landlord and Tenant Act*, R.S.O. 1980, c. 232, as amended. Save by such a judicial proceeding in the circumstances set out in this paragraph, Codevelco shall have no right to terminate this Lease prior to the end of the term, and any right which it would otherwise have under the *Landlord and Tenant Act*, at common law or otherwise, is hereby waived by it.

12.5 BANKRUPTCY

If the Co-op shall be adjudicated bankrupt with all appeal periods having expired, or if the Co-op, being duly authorized by its members to do so, shall make an assignment in bankruptcy then, at the option of Codevelco this Lease shall be terminated and the full amount of the current month's rental and the rental for the three ensuing months shall accelerate and shall immediately become due and payable. Provided that this paragraph shall not apply if any Mortgagee requests a new lease under paragraph 12.6.

12.6 MORTGAGEE

Prior to exercising any right of termination of this Lease, Codevelco shall notify any Mortgagee and shall comply with paragraph 9.3. A copy of any notice of default or of any judicial proceeding or arbitration under this Lease that is given to the Co-op shall be simultaneously given to each Mortgagee. On any termination under paragraph 12.5, Codevelco shall on request by any Mortgagee and subject to compensating Codevelco for any default in payment of rent or other default grant the Mortgagee as tenant a new Lease for the balance of the term on the terms and conditions contained herein.

12.7 INTEREST AND COSTS

Whenever Codevelco takes any proceedings, sends any notices, does any work, or otherwise incurs any expense or trouble or takes any action with respect to any default by the Co-op, and whether or not legal proceedings are begun or considered in consequence of

such default, and whether or not this Lease is terminated, Codevelco shall be entitled to be paid by the Co-op forthwith on demand in addition to any other amounts which may be payable or owing hereunder, all of the following:

- (a) the reasonable cost of effecting any repairs or performing any obligation, together with a reasonable allowance for overhead and administration.
- (b) reasonable court costs, collection costs, and legal fees as between a solicitor and the solicitor's own client.
- (c) interest on payments overdue under the terms of this Lease and on any monies expended by a party in consequence of any default by the other at a rate which is two percentage points above the prime rate of the Royal Bank of Canada prevailing from time to time.

12.8 NO WAIVER

The failure of either party to enforce any term or covenant or obligation of the other contained herein shall not be deemed to be a waiver of such term, covenant or obligation, or permission for any subsequent breach of the same, and such party may at any time enforce such term, covenant or obligation. The waiver by either party of any breach of any term, covenant or obligation hereof shall not be deemed to be a waiver of such term, covenant or obligation with respect to any subsequent breach. No term, covenant or obligation contained in this Lease may be waived by a party, unless such waiver is in writing executed by such party.

ARTICLE XIII MISCELLANEOUS

13.1 FORCE MAJEURE

Notwithstanding anything herein contained, neither party shall be in default with respect to the performance of any of the terms of this Lease if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Lease and all the obligations contained herein.

13.2 LICENCES OF CO-OP

The Co-op covenants that it has and at all times during the term will have all licences, approvals or authorities necessary to carry on its operations on the Lands and to hold its interest in real or personal property contemplated by the Lease and perform its obligations hereunder.

13.3 SUCCESSORS

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to any requirements respecting Conveyances set out in this Lease.

13.4 ENTIRE AGREEMENT

This Lease and the documents and materials referred to herein contain the entire agreement between the parties and it is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth herein or therein. Except as specifically otherwise provided therein, this Lease fully replaces and supersedes any offer to lease, agreement to lease, letter, letter of intent, or other contractual arrangement between the parties related to the Lands or the Project in existence at the time of execution and delivery of this Lease.

13.5 PARTIAL INVALIDITY

If any term, article, paragraph, subparagraph, clause or subclause or any of the words contained in this Lease shall be held wholly or partially invalid or unenforceable by any court of competent jurisdiction, Codevelco and Co-op agree that the remainder of this Lease shall not be affected by such judicial holding, but shall remain in full force and effect.

13.6 RELATIONSHIP OF PARTIES

Nothing in this Lease shall create any relationship between the parties other than that of landlord and tenant. It is specifically agreed that neither party is a partner, joint venturer, agent or trustee of the other.

13.7 CONSTRUING THIS LEASE

The captions, article and paragraph names and numbers and table of contents appearing in this Lease are for convenience of reference only, and in no way define, limit or describe the scope or intent of any portion of this Lease and have no effect on its interpretation. All provisions of this Lease creating obligations on either party hereto shall be deemed to be and shall be construed as covenants. This Lease shall be read with all changes of gender or number required by the context.

13.8 WAIVERS

No supplement, amendment or waiver of or under this Lease shall be binding unless executed in writing by the party to be bound thereby and no waiver by a party of any provision of this Lease shall be deemed or shall constitute a waiver of any other provision or a continuing waiver unless otherwise expressly provided.

13.9 GOVERNING LAW

This agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

13.10 NOTICES

Any notice required or permitted to be given hereunder or any tender or delivery of documents may be sufficiently given by personal delivery, or by sending the same by prepaid registered mail, to the Co-op at the following address:

CITY PARK CO-OPERATIVE APARTMENTS INC.
c/o Lantana Non-Profit Homes Corporation
3rd Floor
761 Queen Street West
Toronto, Ontario
M6J 1G1

and to Codevelco at the following address:

CODEVELCO NON-PROFIT
DWELLINGS (SOUTH) INC.
c/o Co-operative Housing Federation
of Toronto Inc.
Suite 100
22 Mowat Avenue
Toronto, Ontario
M6K 3E8

No notice or other document shall be deemed to have been given or delivered under this paragraph until actually received by the intended party, whether by mail or otherwise. Either party may change its address for notice by a notice given pursuant to this paragraph. It is understood that notices may be delivered by any other means.

13.11 ARBITRATION

Wherever in this Lease it is provided that either or both parties may not unreasonably withhold its or their consent, agreement or approval (whether specifically or pursuant to paragraph 1.3) or that any decision, agreement or action of the parties or either of them is to be reasonable or not unreasonable, or where either or both parties must make any calculation and this Lease provides that such calculation must be reasonable, then if the parties fail to agree as to what is reasonable, the matter is hereby submitted to arbitration by a single arbitrator chosen by the parties, or if they do not agree, by an arbitrator appointed by each of them and a third chosen by the first two. The arbitration award shall be final and binding on the parties and not subject to appeal. Any award regarding the payment of money shall provide for interest on monies not paid or overpaid pending the resolution of the dispute. Except as provided above, the arbitration shall proceed in all respects in accordance with the provisions of the *Ontario Arbitrations Act*.

ARTICLE XIV TRANSITIONAL PROVISIONS

14.1 CODEVELCO RESTRUCTURING

Codevelco undertakes that it will take all action necessary to implement the decisions of the membership of the Co-operative Housing Federation of Toronto Inc. ("CHFT") with respect to its structure and operation, which arise from the report or reports of the task force currently established by CHFT on the structure of Codevelco and related corporations. Provided that any such decisions shall not be made until at least 45 days have elapsed since the distribution of the report of the task force to all CHFT members, and at least 14 days have elapsed since a duly constituted meeting of CHFT members has been held to review and consider such report.

14.2 STANDARD FORM OF LEASE

In the event, at any time during the term of this Lease, Codevelco adopts as its standard form, a form of lease for use by Codevelco in leasing land to non-profit co-operative housing corporations, at the Co-op's option, to be exercised within sixty (60) days of written notice by Codevelco, the terms of this Lease shall be amended to accord with terms of that standard lease in all respects save the term, which shall be the remaining term of this Lease.

14.3 BOARD MEMBERSHIP

Pending the reorganization referred to in paragraph 14.1, one member of the board of Codevelco shall be chosen by vote of the Co-op and other co-operative corporations who have executed leases with Codevelco and related corporations on a basis substantially similar to that set out in this Lease. This requirement shall be satisfied by elections approximately every twelve (12) months by the co-operatives who have leases at the time of such election.

ARTICLE XV COMMERCIAL REDEVELOPMENT

15.1 COMMERCIAL LANDS

Codevelco may, with the approval of MOH, from time to time withdraw from this Lease the Lands and Project all or any part of the Commercial Lands and the Co-op shall execute all such amendments, releases and other documentation as may be reasonably required for this purpose. The Commercial Lands shall mean the lands now used as a commercial parking lot being comprised of Part 1, Plan 63R-2630 and the lands forming part of the grounds in front of the apartment building situate on Part 4 on the said Plan, as well as the lobby level of such floor and the floor below such lobby level and the two floors above such lobby level. Codevelco may construct residential or commercial developments on the Commercial Lands and shall consult fully with the Co-op as to its plans and proposals. Notwithstanding any such withdrawal, the parties shall be entitled to all appropriate easements for support, utilities, etc. as might be necessary or desirable, all of which shall be subject to an agreement to be executed at the time (including securing any amounts payable by Codevelco under paragraph 15.2) and subject to the approval of both parties acting reasonably and subject to the approval of MOH.

15.2 FINANCIAL CONSEQUENCES

On withdrawal of all or any part of the Commercial Lands from this Lease, Codevelco shall compensate the Co-op either by making a capital payment sufficient to compensate the Co-op for the revenue generated from the relevant portion of the Commercial Lands, as approved by MOH, or by itself paying the Co-op an amount on a monthly basis equal to the Co-op's lost revenue (including any applicable bridge subsidy, if MOH so requires) from then until the expiry of the Lease. It is acknowledged that MOH may direct alternative arrangements to pay certain of the costs of the initial renovation of the Project, in which event the above may not be applicable. MOH shall make the final determination in these matters.

IN WITNESS WHEREOF we have hereunto affixed our corporate seals attested by the hands of our proper authorized officers.

Date: Jan. 25/90

CODEVELCO NON-PROFIT
DWELLINGS (SOUTH) INC.

Per: [Signature]
Scott Barral/DIRECTOR c/s

[Signature]
E.A. Moore, Secretary
We have authority to bind the corporation.

CITY PARK CO-OPERATIVE
APARTMENTS INC.

Date: Jan. 25/90

Per: R. Dea Passey

Mary E Hunter c/s

SCHEDULE "A"
LEGAL DESCRIPTION OF THE LANDS

Lots 75, 76, 77, 78, 79; 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 142, 143, 144, 145, 146, 147, 148, 149, 150 and 151, parts of Lots 74 and 96 and parts of lanes adjacent to said lots and parts of lots (closed by By-law 16378), Plan 34, designated as PARTS 1, 2, 3 and 4, Plan 63R-2630

City of Toronto

Municipality of Metropolitan Toronto

The boundaries of Church Street have been confirmed by Boundaries Act Plan BA 2012 registered as No. CT 574083

SCHEDULE "B"
CALCULATION OF POST-MORTGAGE RENT

1. The annual rental due under paragraph 3.1(d) of the Lease is called the "Post-Mortgage Rent" or "Post-Mortgage Rental". Monthly installments shall be one-twelfth (1/12th) of the annual Post-Mortgage Rent. The Post-Mortgage Rent shall be determined in two parts. The Post-Mortgage Rent for the First Post-Mortgage Year shall be determined under Part I of this Schedule and the Post-Mortgage Rent for each Year thereafter shall be determined under Part II of this Schedule. Part III of this Schedule contains definitions and other provisions applicable to Parts I and II.

PART I

2. The Post-Mortgage Rent for the First Post-Mortgage Year shall be determined by performing the following calculations:

- (a) Determine the aggregate of the Revenues payable to the Co-op during or in respect of the Last Mortgage Year and multiply such aggregate by one hundred and two percent (102%).
- (b) Determine the annual Fair Market Rents and Revenues at the commencement of the First Post-Mortgage Year and multiply such aggregate by seventy-five percent (75%).
- (c) Determine the lesser of the figures determined under (a) and (b).
- (d) Determine the Rate of Inflation for the Last Mortgage Year.
- (e) Determine the Rent Review Rate of Increase for the First Post-Mortgage Year.
- (f) Determine the greater of the Rates determined under (d) or (e).
- (g) Multiply the figure determined under (c) by the Rate determined under (f).
- (h) Determine the Operating Costs for the First Post-Mortgage Year.
- (i) Subtract the figure determined under (h) from the figure determined under (g).

The figure determined under clause (i) shall be the Post-Mortgage Rent for the First Post-Mortgage Year.

PART II

3. The Post-Mortgage Rent for the Year following the First Post-Mortgage Year and all subsequent Years during the Term shall be determined by performing the following calculations:

- (a) Repeat the calculations set out in paragraph 2 with respect to the Year subsequent to the Year used for the immediately previous determination of Post-Mortgage Rent (with all appropriate changes to the provisions contained in Part III). If the figure determined under 2(a) is less than the figure determined under 2(b), then perform the remaining calculations under paragraph 2 to determine the Post-Mortgage Rent for the relevant Year.
- (b) If in respect of any Year the figure determined under 2(a) is equal to or greater than the figure determined under 2(b), then in all subsequent Years follow the steps set out below instead of clause 3(a).
 - (i) Determine the Post-Mortgage Rent for the immediately preceding Year.
 - (ii) Determine the Rate of Inflation for the immediately preceding Year.
 - (iii) Determine the Rent Review Rate of Increase for the Year whose Post-Mortgage Rent is then being determined.
 - (iv) Determine the lesser of the Rates determined under (ii) or (iii).
 - (v) Multiply the figure determined under (i) by the Rate determined under (iv).

The figure determined under subparagraph (a) or subparagraph (b), as applicable, shall be the Post-Mortgage Rent for the relevant Year.

PART III

4. **Meaning of "Year":** The "First Post-Mortgage Year" shall mean the twelve-month period commencing on the day after the Base Mortgage Repayment Date. The "Last Mortgage Year" shall mean the immediately preceding twelve-month period. References to a later "Year" shall refer to a subsequent twelve-month period commencing on the day after the anniversary of the Base Mortgage Repayment Date.

5. **Revenues:** "Revenues" shall mean the aggregate of the actual housing charges, rentals, parking revenues, laundry revenues and all other revenues payable to the Co-op or any other revenue of the Co-op of any nature or kind whatsoever, save and except that Revenues shall not include interest earned on moneys held as part of the reserves referred to in paragraph 6.1 of the Lease, where the amount of such interest is and has been ordinarily added to such reserves rather than taken into the general revenues of the Co-op. Revenues shall not include any bridge subsidy, i.e. assistance or other grant given by any Funding Authority in reduction of the general costs of the Co-op where the payment of such bridge subsidy does not continue after the Base Mortgage Repayment Date. Revenues shall include any rent-geared-to-income subsidy, i.e. assistance or other grant given by any Funding Authority in reduction of the housing charges or rents of particular members or occupants of the Co-op, whether or not it continues after the Base Mortgage Repayment Date.

6. **Fair Market Rents:** "Fair Market Rents" shall mean the aggregate of rentals or other charges that would be paid by tenants for the residential or other units in the Project, if they were vacant and exposed for rental on the ordinary market with market terms or leases and without any restrictions of this Lease, rent review legislation or any agreement with any Funding Authority or anyone else.

7. **Fair Market Rents and Revenues:** "Fair Market Rents and Revenues" shall mean the aggregate of Fair Market Rents plus a normal and reasonable market amount for each source of revenue that is or reasonably could be receivable by the Co-op other than those included in Fair Market Rents. Annual Fair Market Rents and Revenues shall equal the greater of the monthly Fair Market Rent and Revenue at the beginning of the Year multiplied by twelve, or the aggregate of the expected monthly Fair Market Rents and Revenues reasonably estimated for each of the twelve months in the year. Fair Market Rents and Revenues shall not include any bridge subsidy, i.e. assistance or other grant given by any Funding Authority in reduction of the general costs of the Co-op where the payment of such bridge subsidy does not continue after the Base Mortgage Repayment Date. Fair Market Rents and Revenues shall include any rent-geared-to-income subsidy, i.e. assistance or other grant given by any Funding Authority in reduction of the housing charges or rents of particular members or occupants of the Co-op whether or not it continues after the Base Mortgage Repayment Date.

8. **Rate of Inflation:** The "Rate of Inflation" for any Year shall mean the CPI for the eleventh month of the period divided by the CPI for the same month one calendar year earlier with the result multiplied by 100 to be expressed as a percentage. It is acknowledged that the eleventh month is being used so as to permit the parties to determine the Rate of Inflation during the twelfth month of any Year. It is acknowledged that the Rate of Inflation may be less than one hundred percent and that this may lead to a decrease in Post-Mortgage Rent under this Schedule.

9. **CPI:** "CPI" shall mean the All Items Consumer Price Index (not seasonally adjusted) for the Toronto area published by Statistics Canada, or such other index as the parties may reasonably determine. When the base of such index changes all appropriate adjustments shall be made in order to fairly perform the calculations contemplated in this Schedule.

10. **Rent Review Rate of Increase:** "Rent Review Rate of Increase" means the rate, expressed as a percentage, determined under clause (b) of subsection (1) of Section 71 of the *Residential Rent Regulation Act*, 1986, or any successor legislation, as the rate intended to be a norm or standard for the permitted rate of increase in residential rents, plus one hundred percent. In the event that at the time this Schedule is applied there has been any amendment in the said Act, or successor legislation, or the practice relating to setting the rate of increase, so that there no longer is a similar norm or standard, then such Rate shall be deemed to equal the Rate of Inflation for the immediately preceding Year. It is acknowledged that the Rent Review Rate of Increase shall apply even though such legislation does not now, and might not in the future, apply to the occupancy of residential units in the Project. If the Rent Review Rate of Increase is based on a different period from the relevant Year under this Schedule, then the Rate shall be adjusted as may be reasonable.

11. **Operating Costs:** "Operating Costs for the First Post-Mortgage Year" means the costs and expenses incurred by the Co-op during the First Post-Mortgage Year in the

operation of its activities related to the Project determined in accordance with generally accepted accounting principles, but without the inclusion of the Post-Mortgage Rent or any capital cost or expense, depreciation or amortization, except the Co-op's contribution to the replacement reserve referred to in paragraph 6.1 of the Lease, and without the inclusion of any interest, debt service or debt retirement or any rent-geared-to-income or other subsidy of particular occupants' housing charges or rents.

12. **Typicality:** It is acknowledged that the provisions of this Schedule are intended to establish a fair means for determining the Post-Mortgage Rent and accordingly the parties have assumed that the Co-op's Revenues for the Last Mortgage Year and Operating Costs for the First Post-Mortgage Year would be typical of the operation of ordinary non-profit housing co-operatives and of the Co-op in particular. The Co-op covenants not to do anything that would have the effect of artificially or atypically reducing Revenues for the Last Mortgage Year or increasing Operating Costs for the First Post-Mortgage Year. If Revenues for the Last Mortgage Year or Operating Costs for the First Post-Mortgage Year are not typical (whether through the deliberate or other act or omission of the Co-op, unusual circumstances, or for any other reason, and whether greater or lesser than would be typical), then the parties shall agree, acting reasonably, on what typical figures would have been and such figures shall be used in determining Post-Mortgage Rent. Without restricting the foregoing, it is acknowledged that the parties have assumed the Base Mortgage will be paid off over the originally contemplated term without prepayment or extension and that regular monthly payments would have been made throughout the Last Mortgage Year and that housing charges to pay for this outlay would have been reflected in the Co-op's Revenues for the Last Mortgage Year. If this is not the case, then an appropriate amount will be added to the Co-op's Revenues for the Last Mortgage Year to compensate.

13. **Split years:** It is acknowledged that the "Years" with respect to which Post-Mortgage Rent is payable may not coincide with the calendar year or the fiscal year with respect to which the Co-op's accounts are ordinarily kept and its audited financial statements are made up. In such event the calculation of Revenues for the Last Mortgage Year and Operating Costs for the First Post-Mortgage Year shall be performed by prorating the actual amount of such items for each of the Co-op's fiscal years with parts falling within the Last Mortgage Year or the First Post-Mortgage Year.

14. **Readjustment:** All calculations contemplated in this Schedule shall be made in accordance with generally accepted accounting principles, except where such principles are inconsistent with specific provisions hereof. The Co-op shall cause an audited financial statement to be prepared for each of the Last Mortgage Year and the First Post-Mortgage Year. The auditor shall be a chartered accountant licensed to practice as a public accountant in Ontario and who is acceptable to Codevelco, acting reasonably. Such statement shall be based on the Co-op's ordinary statements for any of its fiscal years with parts falling within Years the Last Mortgage Year or the First Post-Mortgage Year and shall be delivered within six months after the expiry of the last of such fiscal years. The statement shall contain an acknowledgment that it is prepared for the purposes of this Lease and shall set out the amount of Revenues and Operating Costs as are required in order to perform the calculations contemplated in this Schedule. The statement shall contain an opinion that it fairly represents the actual figures referred to in the statement, determined in accordance with the definitions and other provisions contained in this Lease. The Post-Mortgage Rent for the First Post-Mortgage Year and subsequent Years shall not be finally determined until after the issuance of such statement. Until then Post-Mortgage Rent payments shall be based on reasonable estimates given by Codevelco to the Co-op in writing. Any shortfall by the Co-op shall be payable without interest within thirty (30) days after delivery of the statement and any excess owing to the Co-op shall be credited to further payments of Continuing Rental as they fall due. In the event of an arbitration under paragraph 15, then the adjusting payment or crediting shall not be due until thirty (30) days after delivery of the arbitration award, but interest shall accrue from the date of required payment under the previous sentence at the rate determined under paragraph 12.7(c) of the Lease.

15. **Arbitration:** The parties acknowledge that the arbitration provisions of the Lease shall apply in the event of any dispute in the determination of Post-Mortgage Rent.

SCHEDULE "C" RENOVATION PROVISIONS

1. **Relation to Lease:** The provisions of this Schedule are in addition to and supplement the provisions of the Lease that are relevant to any construction. Where there is any conflict, the provisions of this Schedule shall govern.

2. **Financing commitment:** Prior to commencement of any renovation or construction, the Co-op shall provide Codevelco with reasonable evidence of a financing commitment or other financial resources reasonably adequate to provide for construction of the Project, together with such assignments, bonds or other security to protect the position of Codevelco as Codevelco may reasonably require. Provided that so long as any construction is being undertaken pursuant to a program of MOH or CMHC, compliance with the requirements of MOH or CMHC shall be deemed to be sufficient compliance with this paragraph.

3. **Performance of renovations:** Forthwith after execution of the Lease and receiving appropriate approvals from the Funding Authority the Co-op shall at its own expense commence, and thereafter diligently carry on, renovation of the Project in accordance with the scope of work and plans approved by the Funding Authority and shall give all necessary notices and pay all fees required by law and comply with all laws, by-laws, regulations, codes and agreements relating to the conduct of the work and the preservation of the public health and safety and all requirements of the Funding Authority. The Project shall be renovated in accordance with plans and specifications (being the Plans as referred to in the Lease) prepared by or at the direction of the Co-op. Where the Plans are subject to approval by MOH, no approval of Codevelco shall be required. Otherwise the Plans shall be subject to the approval of Codevelco, which approval as to major factors may be unreasonably or arbitrarily withheld but otherwise shall not be unreasonably or arbitrarily withheld. Notice of approval, or notice of non-approval with written reasons, shall be given within five (5) business days in case of major factors and otherwise within two (2) business days. In addition, Codevelco shall give prior consideration and comment on any preliminary plans or proposals that may be submitted by the Co-op in order to enable it to respond to the final proposal faster than stated above, if reasonably possible.

4. **Consultants and contractors:** The Co-op shall employ reputable consultants, contractors and other in respect of the Project. The choice of, and any change in architect, development consultant and contractor, shall be subject to the approval of Codevelco, which approval may not be unreasonably or arbitrarily withheld and shall be given within the time periods mentioned in paragraph 3. The parties hereby acknowledge the following approvals to date

Development Consultants	Co-operative Housing Federation of Toronto Inc.
	Lantana Non-Profit Homes Corporation
Architect	Richard Williams

The Co-op shall ensure that all contracts with the architect, contractor or others involved in development of the Project shall be assignable to Codevelco in the event of default by the Co-op, subject to any prior right of assignment to MOH, CMHC or the lender under the Base Mortgage.

5. **As-is condition:** The Co-op will accept the Lands and Project "as is".

6. **Procurement technique:** The procurement technique for the renovation will be proposed by the Co-op and subject to the approval of MOH. If at any time in the future the procurement technique is not subject to MOH approval, it shall be subject to the approval of Codevelco (including the call for tenders, if any, the final construction contract, choice of contractor, price and form of contract).

7. **Bonds and Insurance:** Except as otherwise permitted by MOH, the construction contract shall provide for a performance bond and labour and material payment bond to be provided by the contractor in an amount equal to fifty (50%) percent of the contract price. The construction contract shall provide for property damage and liability insurance satisfactory to Codevelco, the Base Mortgagee and the Funding Authority, which insurance shall protect the interest of Codevelco as an insured.

8. **Access by Codevelco:** Codevelco's representatives shall have reasonable access to the Project during performance of the work for the purpose of inspection, but at their own risk and subject to all rights of contractors and others involved in the construction and will be entitled to attend all site meetings and inspections where the Co-op's representatives are entitled to attend.

9. **Default:** Notwithstanding the default provisions of the Lease, in the event the Co-op is not proceeding diligently with construction and fails to diligently so proceed within seven days after notice in writing by Codevelco, then, subject to any rights of the Base Mortgagee, Codevelco shall have the right to enter the Lands and cause the construction to be completed with the cost thereof together with interest as provided in the Lease to be paid to it by the Co-op.