



INTEROFFICE MEMORANDUM

TO: Planning Board
Board of Finance
Board of Representatives

FROM: David R. Martin, Mayor 

DATE: June 30, 2014

RE: Lease Addendum - Willard Manor - 36 Vine Road

The attached copy of the above described Lease Addendum is being submitted for your review and approval.

Please note that there are some strike-outs of the text; HUD requires that the strike-outs remain in the final document to be signed.

Kindly place this item on the agenda for your next scheduled meeting.

Thank you.

RECEIVED
JUN 30 2014
BY: VTR TIME 4:30pm
BOARD OF REPRESENTATIVES

RECEIVED
JUN 8 0 2014
BY _____ TIME _____
BOARD OF REPRESENTATIVES

MAYOR
DAVID R. MARTIN



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BURT ROSENBERG
MICHAEL S. TOMA

June 23, 2014

To: Mayor David R. Martin

From: Burt Rosenberg, Asst. Corporation Counsel *BR*

Re: Lease Addendum – Willard Manor – 36 Vine Road

Attached are four copies of the above described Lease Addendum, which I have approved as to form.

The Lease Addendum is required by the U.S. Department of Housing and Urban Development [HUD] for the refinancing of the 2.65 acre parcel leased by the Neighborhood Preservation Foundation, Inc. from the City.

Please note that there are some strike-outs of the text; HUD requires that the strike-outs remain in the final document to be signed. Please make note of this requirement in your correspondence to the Boards.

Pursuant to Section 9-7 of the City Code, it is necessary for the Planning Board, Board of Finance and the Board of Representatives to approve the Lease. Therefore, please forward the Lease to the three boards, requesting their respective approval.

Thank you for your consideration.

Encl.

C: Kathryn Emmett, Director of Legal Affairs
Ernie Orgera, Director of Operations

LEASE ADDENDUM

This LEASE ADDENDUM is made and entered into this ___ day of _____, 2014, by and between the CITY OF STAMFORD, a municipal corporation organized and existing under the laws of the State of Connecticut, located in the County of Fairfield in said State and acting herein by David Martin, its Mayor, hereunto duly authorized and hereafter referred to as "Landlord"; and NEIGHBORHOOD PRESERVATION FOUNDATION, INCORPORATED, a non-profit corporation organized and existing under the laws of the State of Connecticut and located in the City of Stamford, County of Fairfield and State of Connecticut, acting herein by RICHARD SMERIGLIO, its Treasurer, hereunto duly authorized and hereafter referred to as "Tenant".

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to a certain "LEASE FOR HOUSING FOR THE ELDERLY SITE AT WILLARD SCHOOL" which is dated September 25, 1990 and recorded in Volume 3639, Page 158 of the Stamford Land Records, hereafter referred to as "Lease"; and

WHEREAS, Landlord and Tenant are parties to a certain AMENDMENT TO LEASE FOR HOUSING FOR THE ELDERLY SITE AT WILLARD SCHOOL" which is dated November 1990 and recorded in Volume 3639, Page 174 of the Stamford Land Records, hereafter referred to as "Amendment"; and

WHEREAS, the Lease is subject to the provisions of a certain HUD LEASE ADDENDUM recorded on November 30, 1990 in Volume 3639, Page 172 of the Stamford Land Records, hereafter referred to as "1990 HUD Lease Addendum"; and

WHEREAS, the parties hereto have agreed that the provisions of this LEASE ADDENDUM shall supersede the provisions of the Amendment and the 1990 HUD Lease Addendum and that the Amendment and the 1990 HUD Lease Addendum shall be of no further force and effect; and

WHEREAS, the parties have agreed that the Lease shall be amended by this Lease Addendum, as hereafter set forth.

NOW THEREFORE, the parties hereto agree as follows:

The provisions of this LEASE ADDENDUM shall supersede the provisions of the Amendment and 1990 HUD Lease Addendum, both of which shall be of no further force and effect; and

Notwithstanding any other provisions of the ground Lease, if and so long as this leasehold is subject to a security instrument insured, reinsured, or held by HUD or given to HUD in connection with a resale, or the Property is acquired and held by

HUD because of a default under the security instrument, the following provisions of this Lease Addendum shall be in effect:

- a) The term "Property" as used herein shall mean all that certain piece, parcel or tract of land, together with the Improvements thereon, as more particularly described, shown and designated on Exhibit A of the Lease. The land and the Improvements comprising the Property are owned by Landlord and leased to Tenant in the Lease. The term "demised premises" in the Lease shall be interchangeable with and have the same meaning as the term "Property" herein.
- b) The Tenant is authorized to obtain a loan, the repayment of which is to be insured by HUD and secured by a security instrument on this leasehold estate and the Improvements¹. The Tenant is further authorized to execute all documents necessary as determined by HUD and otherwise to comply with Program Obligations² for obtaining such an insured loan.
- c) In the event that HUD acquires title to this leasehold estate or otherwise acquires title to the Tenant's interest herein, HUD shall have the option to purchase good and marketable fee simple title to the Property and the Landlord's interest, if any, in the Improvements, free of all liens and encumbrances except such as may be waived or accepted by HUD. Such option shall be exercised within twelve (12) months after HUD so acquires such leasehold estate or the Tenant's interest. The purchase price shall be the sum of Two Million Forty Six Thousand (\$2,046,000.00) Dollars payable in cash, by check drawn on the U.S. Treasury, by electronic funds transfer or by wire transfer, provided all rents are paid to date of transfer of title. HUD shall, within said twelve months, give written notice to the Landlord of its election to exercise said option to purchase. The Landlord shall, within thirty (30) days after HUD gives such notice, execute and deliver to HUD a warranty deed of conveyance to HUD as grantee conveying the said fee and interest and containing a covenant against the grantor's acts, but excepting therefrom acts of the Tenant and those claiming by, through or under the Tenant. Nothing in this option shall require the Landlord to pay any taxes or assessments that were due and payable by the Tenant.
- d) If approved by HUD, the Tenant may convey, assign, transfer, lease, sublease or sell all or any part of its leasehold interest in the Property and its interest in the

¹ "Improvements" means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the land, including any future replacements and additions.

² "Program Obligations" means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Lease Addendum rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: (<http://www.hud.gov/offices/adm/hudclips/index.cfm> or a successor location to that site).

Improvements without the need for approval or consent by any other person or entity.

- e) (i) Insurance policies shall be in an amount, and with such company or companies and in such form, and against such risks and hazards, as shall be approved by lender and HUD.
- (ii) The Landlord shall not take out separate insurance concurrent in form or contributing in the event of loss with that specifically required to be furnished by the Tenant to lender. The Landlord may at its own expense, however, take out separate insurance which is not concurrent in form or not contributing in the event of loss with that specifically required to be furnished by the Tenant to lender.
- f) (i) If all or any part of the Property or the Improvements or the leasehold estate shall be taken or damaged by condemnation, that portion of any award attributable to the Improvements or the Tenant's interest in the leasehold estate or damage to the Improvements or to the Tenant's interest in the leasehold estate shall be paid to lender or otherwise disposed of as may be provided in the security instrument. Any portion of the award attributable solely to the underlying fee estate (exclusive of any Improvements) shall be paid to the Landlord. After the date of taking, the annual ~~ground~~ rent shall be reduced ratably by the proportion which the award paid to the Landlord bears to the total value of the Property as established by the amount HUD is to pay, as set forth in paragraph (b) of this Lease Addendum.
- (ii) In the event of a negotiated sale of all or a portion of the Property or the Improvements, in lieu of condemnation, the proceeds shall be distributed and annual ~~ground~~ rent reduced as provided in cases of condemnation, but the approval of HUD and lender shall be required as to the amount and division of the payments to be received.
- g) The Landlord may terminate the ~~ground~~ Lease prior to the expiration day of the full term of this ~~ground~~ Lease ("**Expiration Date**") after a Tenant default under this ~~ground~~ lease ("**Ground Lease Event of Default**"), but only under the following circumstances and procedures. If any ~~Ground~~ Lease Event of Default shall occur, then and in any such event, the Landlord shall at any time thereafter during the continuance of such ~~Ground~~ Lease Event of Default and prior to any cure, give written notice of such default(s) ("**Notice of Default**") to the Tenant, lender and HUD, specifying the ~~Ground~~ Lease Event of Default and the methods of cure, or declaring that a ~~Ground~~ Lease Event of Default is incurable. If the ~~Ground~~ Lease Event of Default is a failure to pay money, the Landlord shall specify and itemize the amounts of such default. Failure to pay money shall be specified as a separate default and not combined with a non-monetary ~~Ground~~ Lease Event of Default. Within sixty (60) days from the date of giving the Notice of Default to the Tenant, the Tenant must cure a monetary default by paying the Landlord all amounts specified in the Notice of Default and must cure any specified ~~Ground~~-Lease Event of Default that is capable of being cured within such period. During the period of 180 days

commencing upon the date Notice of Default was given to lender and HUD, lender or HUD may: (a) cure any ~~Ground~~ Lease Event of Default; and (b) commence foreclosure proceedings or institute other state or federal procedures to enforce lender's or HUD's rights with respect to the leasehold or the Tenant Improvements. If the Tenant, lender or HUD reasonably undertake to cure any ~~Ground~~ Lease Event of Default during the applicable cure period and diligently pursues such cure, the Landlord shall grant such further reasonable time as is necessary to complete such cure. If HUD or lender commences foreclosure or other enforcement action within such 180 days, then its cure period shall be extended during the period of the foreclosure or other action and for 90 days after the ownership of the Tenant's rights under the Lease is established in or assigned to HUD or such lender or a purchaser at any foreclosure sale pursuant to such foreclosure or other action. The transfer of the Tenant's rights under the Lease to lender, HUD or purchaser, pursuant to such foreclosure or other action shall be deemed a termination of any incurable ~~Ground~~ Lease Event of Default and such terminated ~~Ground~~ Lease Event of Default shall not give the Landlord any right to terminate the Lease. Such purchaser may cure a curable ~~Ground~~ Lease Event of Default within said 90 days. If after the expiration of all of the foregoing cure periods, no cure or termination of an existing ~~Ground~~ Lease Event of Default has been achieved as aforesaid, then and in that event, this Lease shall terminate, and, on such date, the term of this Lease shall expire and terminate and all rights of the Tenant under the Lease shall cease and the Improvements, subject to the security instrument and the rights of lender thereunder, shall be and become the property of the Landlord. All costs and expenses incurred by or on behalf of the Landlord (including, without limitation, reasonable attorneys' fees and expenses) occasioned by any default by the Tenant under this ~~ground~~ Lease shall constitute additional rent hereunder. The Landlord shall have no right to terminate this ~~ground~~ Lease except as provided in this paragraph (f).

- h) Upon termination of this ~~ground~~ Lease pursuant to paragraph (f) above, the Landlord shall immediately seek to obtain possession of the Property and Improvements. Upon acquiring such possession, the Landlord shall notify HUD and lender in writing. Lender and HUD shall each have six (6) months from the date of receipt of such notice of acquisition to elect to take, as Tenant, a new ~~ground~~ lease on the Property and on the Improvements. Such new ~~ground~~ lease shall have a term equal to the unexpired portion of the term of this ~~ground~~ Lease immediately prior to such termination and shall, except as otherwise provided herein, be on the same terms and conditions as contained in this ~~ground~~ Lease, including without limitation, the option to purchase set forth under paragraph (b) above, except that lender's or HUD's liability for ~~ground~~ rent shall not extend beyond their occupancy under such ~~ground~~ lease. The Landlord shall tender such new ~~ground~~ lease to lender or HUD within thirty (30) days after a request for such ~~ground~~ lease and shall deliver possession of the Property and Improvements immediately upon execution of the new ~~ground~~ lease. Upon executing a new ~~ground~~ lease, lender or HUD shall pay to the Landlord any unpaid ~~ground~~ rent due or that would have become due under this ~~ground~~ Lease to the date of the execution of the new ~~ground~~ lease, including any taxes which were liens on the Property or the Improvements and

which were paid by the Landlord, less any net rentals or other income which the Landlord may have received on account of the Property and Improvements since the date of default under this ground Lease.

- i) The Landlord agrees that within ten (10) days after receipt of written request from the Tenant, it will join in any and all applications for permits, licenses or other authorizations required by any Governmental Authority³ in connection with any work which the Tenant may do hereunder and will also join in any grants for easements for electric telephone, telecommunications, cable, gas, water, sewer and such other public utilities and facilities as may be reasonably necessary in the operation of the Property or of any Improvements and if, at the expiration of such ten (10) day period, the Landlord shall not have joined in any such application, or grants for easements, the Tenant shall have the right to execute such application and grants in the name of the Landlord, and for that purpose, the Landlord hereby irrevocably appoints the Tenant as its attorney-in-fact to execute such papers on behalf of the Landlord, only to the extent that a public body as Landlord may do so within the exercise of its municipal powers and responsibilities.
- j) Nothing in this ground Lease shall require the Tenant to pay any franchise, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income excess profits or revenue tax, or any other tax, assessment charge or levy upon the rent payable by the Tenant under this ground Lease.
- k) All notices, demands and requests which are required to be given by the Landlord, the Tenant, lender or HUD in connection with this Ground Lease shall be in writing and shall be sent by registered or certified mail, postage prepaid, and addressed to the address of the party as given in this instrument unless a request for a change in this address has been sent to the party giving the notice by registered or certified mail prior to the time when such notice is given.

All notices to lender or HUD shall be addressed as follows:

If to Lender: Oppenheimer Multifamily Housing & Healthcare Finance, Inc.
1180 Welsh Road, Suite 210
North Wales, PA 19454

If to HUD : U.S. Department of Housing and Urban Development
20 Church Street
Hartford, CT 06103

³ "Governmental Authority" means any board, commission, department or body of any municipal, county, state, tribal or federal governmental unit, including any U.S. territorial government, and any public or quasi-public authority, or any subdivision of any of them, that has or acquires jurisdiction over the mortgaged property, including the use, operation or improvement of the mortgaged property.

With a copy to:

U.S. Department of Housing and Urban Development
 New York City Regional Office
 Jacob K. Javits Federal Building
 (Broadway - between Duane & Worth Streets)
 26 Federal Plaza
 Room 3541
 New York, New York 10278-0068

If to Tenant: Neighborhood Preservation Foundation, Incorporated
 Attention: Richard Smeriglio, Treasurer
 36 Vine Road
 Stamford, CT 06905

If to Landlord: City of Stamford
 Attention: Office of the Mayor
 Government Center, 10th Floor
 888 Washington Boulevard
 Stamford, CT 06901

- l) **Except as provided herein**, this ~~ground~~ Lease shall not be modified without the written consent of HUD and lender.
- m) The provisions of this Lease Addendum benefit lender and HUD and are specifically declared to be enforceable against the parties to this Lease and all other persons by lender and HUD. In the event of any conflict, inconsistency or ambiguity between the provisions of this Lease Addendum and the provisions of any other part of this ~~ground~~ Lease, the provisions of this Lease Addendum shall prevail and control.
- n) The Lease is amended to delete Paragraph 2 in its entirety and to substitute in lieu thereof as Paragraph 2, the following:
- "2. This Lease shall expire on December 31, 2065."
- o) The Lease is amended to delete Paragraph 17 in its entirety and to substitute in lieu thereof as Paragraph 17, the following:
- "17. During the term of this Lease, the Landlord shall and does hereby grant to the Tenant, in common with others, an easement for ingress and egress to run with the land over the access driveway described in Paragraph 16 so as to provide unimpeded and uninterrupted access to the demised premises."

Warning

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions.

Dated on the date first above written.

Signed, sealed and delivered
in the presence of:

LANDLORD
CITY OF STAMFORD

David Martin
Its Duly Authorized Mayor

TENANT
NEIGHBORHOOD PRESERVATION
FOUNDATION, INCORPORATED

Tishie Jackson
Tishie Jackson

By: Richard Smeriglio
Richard Smeriglio
Its Duly Authorized Treasurer

Sandy Borst
Sandy Borst

Approved as to Form
Corporation Counsel
By: RL
Date: 6-23-14

STATE OF CONNECTICUT:
:
COUNTY OF FAIRFIELD : ss: Stamford

On this the ____ day of _____, 2014, before me _____, the undersigned officer, personally appeared David Martin, who acknowledged herself to be the Mayor of the City of Stamford, a municipal corporation, and that he as such Mayor being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by herself as Mayor.

IN WITNESS WHEREOF, I hereunto set my hand.

Commissioner of the Superior Court/
Notary Public

STATE OF CONNECTICUT:
:
COUNTY OF FAIRFIELD : ss: Stamford

On this the 10th day of June, 2014, before me, Jean A. Smeriglio, the undersigned officer, personally appeared Richard Smeriglio, who acknowledged himself to be the Treasurer of Neighborhood Preservation Foundation, Incorporated, a Connecticut corporation, and that he as such Treasurer being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Treasurer.

IN WITNESS WHEREOF, I hereunto set my hand.

JEAN A. SMERIGLIO
NOTARY PUBLIC
MY COMMISSION EXPIRES 6/30/2019

Jean A. Smeriglio
Notary Public
My Commission Expires: 6/30/2019

Seal: