

Instrument Prepared by:
Robert M. Holland, Jr.
Miller & Martin PLLC
1200 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2433

**FIRST AMENDMENT TO RESTRICTIVE COVENANTS
RUNNING WITH THE LAND OF THE NASHVILLE
HOUSING AUTHORITY IN THE CAPITOL HILL
REDEVELOPMENT PROJECT**

This First Amendment (“Amendment”) to Restrictive Covenants Running with the Land of The Nashville Housing Authority in the Capitol Hill Redevelopment Project (the “Covenants”) made and executed this 22nd day of January, 2007 by the Metropolitan Development and Housing Agency, a public body and a body corporate and politic, and as the successor-in-interest to The Nashville Housing Authority as grantor of the Covenants (the “Grantor”).

WITNESSETH:

WHEREAS, Grantor established the Covenants on January 20, 1958 of record with the Register’s Office for Davidson County, Tennessee, in Book 2735, page 473, recorded on January 22, 1958, to carry out a program of clearance and redevelopment of slum and blighted areas in the City of Nashville, Davidson County, Tennessee, known as the “Capitol Hill Redevelopment Project” (the “Project”); and

WHEREAS, the Grantor desires to amend the Covenants to provide for residential uses as a permitted land use; and

WHEREAS, Grantor has obtained the necessary consents and approvals from the landowners in the Project to carry out this Amendment.

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, Grantor hereby amends, waives and releases the Covenants as set forth below:

1. Article VI. Specific Restrictions is hereby amended as follows. The language “Hotels, Motels and Commercial Apartment Hotels (but no other residential use)” is hereby deleted and the following language is inserted in lieu thereof:

All Residential Uses including but not limited to Hotels, Motels and Commercial Apartment Hotels.

2. Pursuant to Article VI of the Covenants, attached hereto as Collective Exhibit A are the Capitol Hill Redevelopment Project Limited Consent, Release and Amendment Agreements evidencing that 70% of the total number of owners of land in said Project vested of record with fee simple title to at least 70% of the land area in said Project subject to the Covenants consent to the modification and amendment to the Covenants as provided herein.

3. Pursuant to Article IX of the Covenants, Grantor acknowledges that this First Amendment to the Covenants shall become effective as of January 20, 2009.

4. Except as amended herein, all other terms and conditions of the Covenants shall remain in full force and effect.

5. This First Amendment shall be governed by and construed in accordance with the laws of the State of Tennessee.

Metropolitan Development and Housing Agency

By: 
Title: Deputy Executive Director

Attest:



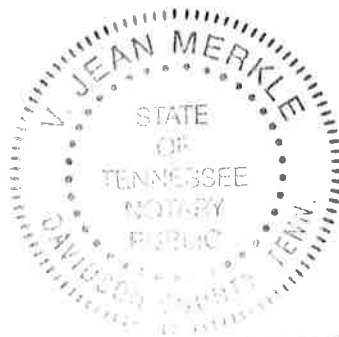
STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public of and for the State and County aforesaid, personally appeared James L. Thiltgen with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon his oath, acknowledged himself to be the Deputy Executive Director of the Metropolitan Development and Housing Agency, the within named bargainer, a body public and corporate, and that he as such Deputy Executive Director, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of Metropolitan Development and Housing Agency by himself as such officer.

Witness my hand and seal, at office in Nashville, Tennessee, this 22nd day of January, 2007.

Jean Merkle
Notary Public

My Commission Expires: 9-19-2009



SEP 19 2009

RESTRICTIVE COVENANTS RUNNING WITH THE LAND OF
THE NASHVILLE HOUSING AUTHORITY IN THE
CAPITOL HILL REDEVELOPMENT PROJECT

ARTICLE I. PREAMBLE

This DECLARATION, made this 20th day of January, 1958, by The Nashville Housing Authority, Nashville, Tennessee, a public body and a body corporate and political, created under the provisions of the "Housing Authorities Law" of Tennessee, hereinafter called the "Grantor";

W I I N E S S E I H :

WHEREAS, in furtherance of the objectives of the State Urban Redevelopment Law and the Federal statutes, the "Grantor" has undertaken a program of clearance and redevelopment of slum and blighted areas in the City of Nashville, Davidson County, Tennessee, (hereinafter called the "City"), and in this connection has undertaken a project known as the "Capitol Hill Redevelopment Project" located in the area bounded generally by the west line of McLemore Street and the Louisville and Nashville Railroad Company right-of-way line on the west, the center line of Third Avenue North on the east, Charlotte Avenue and the State Capitol Grounds on the south and the right-of-way of the Louisville and Nashville Railroad Company on the north, which area is hereinafter called the "Project"; and

WHEREAS, the Grantor has prepared and the City of Nashville, acting through the City Council has, under date of April 29, 1952, by Resolution No. 52-471 approved a plan (hereinafter called the "Redevelopment Plan") providing for the clearance and redevelopment of the Project Area and the future uses of the land comprising such Area, a copy of which Plan is made a part hereof by reference; and

WHEREAS, in order to enable the Grantor to achieve the objectives of the Redevelopment Plan and particularly to make the land in the Project available, after acquisition and clearance by the Grantor, for redevelopment by private enterprise for the uses specified in the Redevelopment Plan, both the Federal Government and the City have undertaken to provide, and have provided, substantial aid and assistance to the Grantor through a Contract for Loan and Capitol Grant dated September 26, 1952, in the case of the Federal Government, and a Cooperation Agreement dated July 7, 1950, in the case of the City; and

WHEREAS, the Grantor is now the owner in fee simple of the land in the Capitol Hill Redevelopment Project hereinafter described in Article III hereof and is desirous of subjecting said land to the conditions, restrictions, reservations and easements herein set forth for the benefit of said land and the owner of each and every parcel thereof, their successors and assigns, upon whom same shall be binding as covenants running with the land;

NOW, THEREFORE, The Nashville Housing Authority as the owner in fee simple of the land in the Capitol Hill Redevelopment Project in Nashville, Davidson County, Tennessee, hereinafter more particularly described in Article III hereof, hereby declares that said land is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, restrictions, reservations and easements hereinafter set forth which are hereby declared to be covenants running with the land and shall be binding upon the Grantor and all subsequent purchasers, owners, lessees, and successors in interest thereof for an initial period of 21 years from the 20th day of January, 1958, and shall be automatically continued thereafter for successive periods of ten years each, unless sooner terminated, amended or modified in the manner provided in Article IX hereof. The Grantor, both in its own right and also for the purposes of protecting the interests of the community and any other parties, public or private, in whose favor or for whose benefit the aforesaid restrictive covenants have herein been provided for, shall be deemed a beneficiary of said restrictive covenants which shall run in favor of the Grantor for the entire period during which said restrictive covenants shall be in force and effect, without regard to whether the Grantor remains an owner of any land or interest therein to which such restrictive covenants relate; and that as such beneficiary the Grantor shall have the right in the event of any breach of any said restrictive covenants to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper procedure to enforce the curing of such breach of these restrictive covenants, to which beneficiaries of such restrictive covenants may be entitled, except that said covenants shall not apply to parcels purchased by the State of Tennessee, so long as they are used for public purposes by the State of Tennessee.

ARTICLE II. DEFINITION OF TERMS

"Grantor" shall mean The Nashville Housing Authority, its successors and assigns, unless the context indicates otherwise, but shall not include purchasers of individual parcels.

"Improvements" shall mean and include a building or buildings, outbuildings appurtenant thereto, parking areas, loading areas, fences, masonry walls, hedges, lawns, mass plantings and any structures of any type or kind located above ground.

"Building Site" shall mean any parcel of land or portion thereof, or two or more contiguous parcels or portions thereof, upon which improvements may be or have been built or placed in conformance with the requirements of these covenants.

"Building Line" shall mean the line so identified and shown upon the subdivision plat (see Article III hereof) back of the street line between which and the street line no buildings, structures or parking area or portion thereof may be located above the established sidewalk grade at its nearest point, except as may otherwise be provided herein.

"Front Yard" shall mean all existing or required open space on a building site and between the street line and the building or structures located thereon.

Words used in the present tense shall include the future, and the singular number shall include the plural and the plural the singular.

ARTICLE III. PROPERTY IDENTIFICATION

The real property which is, and shall be, conveyed, transferred, occupied and sold subject to the conditions, restrictions, reservations and easements set forth herein, is located in the County of Davidson, State of Tennessee, and is more particularly described as follows, to-wit: being all of the parcels of land and sub-parts thereof identified alphabetically, beginning with A and extending through Q, and shown on the subdivision plat of the Capitol Hill Redevelopment Project area as of public record in the Office of the Register of Davidson County, Tennessee, County Court House, Book 2663, pages 35 and 36, or any subsequent amended plats, and said subdivision plat and such amendments, if any, are made a part of this Declaration as fully as if contained herein.

ARTICLE IV. GENERAL PURPOSE OF CONDITIONS

The real property described in Article III hereof is subjected to the conditions, restrictions, reservations and easements contained herein for the purpose of insuring the use and improvement of each parcel or sub-parcel of land in such a way as to produce an economically sound development of the entire project area and to reduce to a minimum any depressing and blighting influences.

ARTICLE V. GENERAL RESTRICTIONS

1. Conformity to Redevelopment Plan. The land in the Project Area, and every part thereof, shall be devoted to, and only to the uses permitted by the Redevelopment Plan for the Project, so long as said Redevelopment Plan remains in effect.

2. Approval of Use and Improvements (Plans and Specifications). No use or change in use shall be established or made, nor shall any improvement be erected, constructed, placed, or altered on any building site until the proposal for such use or improvement is first submitted to and approved in writing by the Grantor. When said proposal pertains to improvements, the submittal shall include plans, sketches, specifications, and other information in sufficient clarity and detail to show:

- (a) Conformity and harmony of design and materials of construction with other improvements (existing or proposed) on the same or other building sites within the Project area;
- (b) The location of the proposed improvement on the building site in relation to topography, street grades, building lines, and landscaping; and
- (c) Conformity with the provisions of "Article VI, Social Restrictions" and any applicable restrictions or limitations of this covenant.

3. Maintenance of Improvements. All improvements, with special attention to landscaped areas, shall be properly maintained in a slightly and well-kept condition.

4. Streets, Rights-of-Way and Easements. Streets, rights-of-way and easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plan referred to in Article III hereof.

5. Race, Creed, or Color Covenant. No covenant, agreement, lease, conveyance, or other instrument shall be effected or executed by the Grantor or by purchasers or lessees from it or any successors in interest of such purchasers or lessees, whereby land in the project area is restricted upon the basis of race, creed, or color, in the sale, lease or occupancy thereof.

6. The Provisions of This Declaration. The provisions of this Declaration are in addition to the provisions of the zoning or building ordinances or any other regulations of the City of Nashville and where differences occur between the provisions of this Declaration and such ordinances, the more restrictive provisions shall apply.

ARTICLE VI. SPECIFIC RESTRICTIONS

1. Land Uses. No building site shall be used except for commercial, light industrial and comparable uses and then no noxious or offensive trade or activity shall be carried on, nor shall anything be done thereon, which may be or become an annoyance or nuisance to the occupants and users of any of the land areas, as described in Article III above, by reason of unsightliness, disharmony, crowding, congestion or the excessive emission of odors, dust, fumes, smoke, noise, or vibration. The trades or activities which, when conducted in accordance with modern practices and within modern facilities, are hereby determined to be commercial, light industrial and comparable uses and to meet the conditions contained in the foregoing paragraph, shall include but not be limited to the following:

On All Building Sites Within the Total Area, as Described in Article III above:

Retail Businesses	Restaurants
Professional and Business Offices	Banks
Theaters	Auditoriums
Hotels, Motels, and Commercial Apartment Hotels (but no other residential use)	Clubhouses
Telephone Exchanges	U. S. Post Offices
Churches	Retail Services (such as shoe shops, barber shops and similar types of shops)
Automobile Parking Facilities	Radio Broadcasting and Television Studios

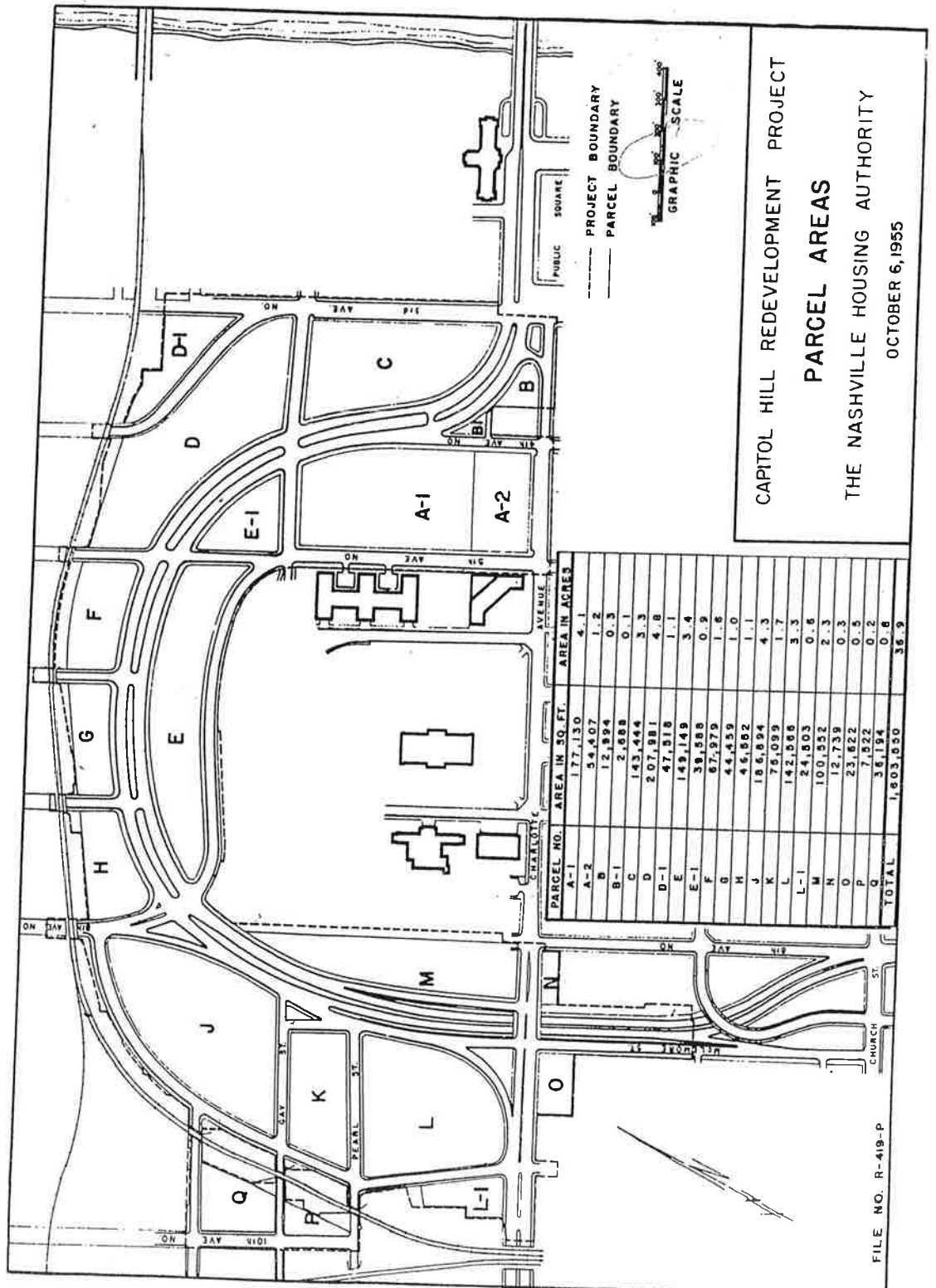
On Building Sites, Including Any Part or Combination. Parcels D, D1, F, G, H, J, K, L, N, O, P, and Q. In Addition to the Above Uses:

Wholesale, When Conducted Within a Building
Distributing and Incidental Services, When Conducted Within a Building
Automobile Sales and Service, When Conducted Within a Building;

On Building Sites, Including Any Part or Combination, Parcels P and Q.
In Addition to the Above Uses:

Builders Supplies, Storage and Sale	Dry Cleaning
Contractor's Plant	Laundry
	Bottling Works.

2. No Resubdivision Except by Grantor. No grantee shall resubdivide any lot, parcel or tract of land as shown on the plat of this project and no sales or leases or parcels less than the whole thereof shall be made by any grantee, or the heirs, successors or assigns of any grantee, without the consent of the Grantor set forth in a written document eligible for registration as provided by law; but the Grantor specifically reserves the right to resubdivide any lot, parcel or tract of land as shown on the plat of this project and to sell less than the whole thereof.



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3. Modern Design and Construction. The design and construction of buildings and structures shall be of such kind and quality as to conform to modern methods and no design or construction of an obsolete nature shall be allowed.
4. Scrap Materials and Incinerators. No part of any parcel of land in said project area comprising front, side or rear yards of any improvement erected thereon shall ever be used as a junk yard or scrap pile or for the storage of scrap metal, scrap building materials, bottles, rags, refuse, garbage, trash or other unsightly materials. No incinerators shall be kept, used or maintained on any portion of the property unless enclosed in and under the roofs of buildings or other structures.
5. Advertising Signs. No billboards or general advertising signs shall be located on any building site. Signs which identify the name, business, products and/or services of persons or firms occupying the premises will be permitted only when designed and placed in harmony with the improvements upon the building site and such signs shall not extend into or over the street or sidewalk or over the area between the building line and the street line or sidewalk line.
6. Fences. No fences, masonry walls or similar structures shall be permitted to extend into front yard areas except upon written approval by the Grantor.
7. Height of Buildings. The limitation on height of buildings and structures in said project shall be that provided by ordinances of the City of Nashville with the following exceptions.
 - (a) No building or structure shall be erected on Parcels A, A-1, or A-2 as shown on the plat of said project having a height in excess of the elevation of (573.5) the roof coping of the Cordell Hull Office Building owned by the State of Tennessee located on the west side of Fifth Avenue, North.
8. Front Yards. All front yard areas shall be developed and used as open landscaped yard areas with walks, trees, shrubs and grass arranged in a manner approved by the Grantor in writing.
9. Off-Street Loading. Each building site, as a part of its improvements, shall be provided with off-street loading spaces adequate in the judgment of the Grantor in arrangement, capacity and convenience to serve the needs of the Grantee in the use thereof.

10. Off-Street Parking. Each building site, as a part of its improvements, shall be provided with off-street automobile parking facilities adequate in the judgment of the Grantor in arrangement, capacity and convenience to serve the needs of the Grantee in the use thereof. The Grantor reserves the right to waive this restriction when, in its judgment, the off-street parking need of any Grantee is adequately met by available nearby off-street parking facilities permanently provided. (See Article V, paragraph 2)

ARTICLE VII. FAILURE OF GRANTOR TO ACT

Whenever the written approval of the Grantor is required in connection with any improvement to be installed, erected, or altered, or is otherwise required by the provisions of these covenants and the Grantor fails to approve, or disapprove, as required, within ninety (90) days after said plans and specifications have been submitted to it in final form, this covenant will be deemed to have been fully complied with. Further, if the construction or alteration of an improvement is begun in violation of the terms and conditions requiring the written approval of the Grantor and no suit to enjoin the construction or alteration of such improvement has been commenced prior to ninety (90) days or the completion date thereof, whichever is the later, this covenant will be deemed to have been fully complied with.

ARTICLE VIII. WAIVER OF DAMAGES

The Grantor, its successors, or assigns, shall not be liable for damages to anyone so submitting plans for approval, or to any owner or owners of land covered by this instrument by reason of mistake in judgment, negligence, or nonfeasance of itself, its agents or employees arising out of or in connection with the approval or disapproval, or failure to approve any such plans. Likewise, anyone submitting plans to the Grantor for approval, by the submitting of such plans, and any owner by so acquiring title to any of the real property covered hereby, agrees that he or it will not bring any action or suit to recover for any such damages against the Grantor.

ARTICLE IX. DURATION AND AMENDMENT OF COVENANTS

As provided in Article I hereof, each of the conditions, restrictions, reservations and easements herein set forth shall continue and be binding upon the Grantor and upon its successors and assigns, and each of them, and all parties and persons claiming under them, including purchasers, owners, lessees and successors in

interest, for a period of twenty-one years from the 20th day of January, 1958, and shall be automatically continued thereafter for successive periods of ten years each; provided, however, that 70% of the total number of owners of land in said project area who are vested of record with fee simple title to at least 70% of the land area in said project subjected to these restrictive covenants, based on the number of square feet owned by them as compared with the total land area restricted (said 70% of said project land area having been determined as of the date of this instrument to be 1,122,665 square feet) may release all or any part of said land so restricted from any one or more of said restrictive covenants, or may change, amend, alter, modify or add to any one or more of said restrictive covenants, except Section 5 of Article V hereof at the end of the first twenty-one year period, or at the end of any successive ten year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the Register's Office for Davidson County, Tennessee, at least two years prior to the expiration of said twenty-one year period or the expiration of any successive ten-year period thereafter.

ARTICLE X. VIOLATIONS

The restrictive covenants herein set forth shall run with the land and bind the present owner, its successors and assigns, and all parties claiming by, through, or under it shall be taken to hold, agree, and covenant with the owner of said building sites, its successors and assigns, and with each of them, to conform to and observe said restrictions as to the use of said building sites, and the construction of improvements thereon, but no restrictions herein set forth shall be personally binding on any corporation, person, or persons, except in respect to breaches committed during its, his or their seisin of, or title to said land, and Grantor or the owner or owners of any of the above land shall have the right to sue for and obtain an injunction prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions herein set forth, in addition to ordinary legal action for damages, and the failure of Grantor or the owner of any other parcel or parcels of land or building sites hereby restricted to enforce any of the restrictions herein set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so as to any subsequent violation. The violation of these restrictions shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value.

ARTICLE XI. INVALIDATION

The invalidation of any one or more of the foregoing restrictive covenants or any part thereof by judgment of any Court of competent jurisdiction shall not in any way affect the validity of any other of such restrictive covenants but the same shall remain in full force and effect.

IN WITNESS WHEREOF, The Nashville Housing Authority, being authorized so to do by resolution of its Board of Commissioners, has caused this instrument to be executed by its Chairman and attested by its Secretary and its corporate seal to be hereto affixed, this 20th day of January, 1958.

THE NASHVILLE HOUSING AUTHORITY

(SEAL)

BY: _____
CHAIRMAN

ATTEST:

SECRETARY

STATE OF TENNESSEE)
(
DAVIDSON COUNTY)

Before me, _____, a Notary Public within and for the State and County aforesaid, personally appeared Walter J. Diehl and Gerald Gimre with whom I am personally acquainted and who upon their several oaths acknowledged themselves to be the Chairman and Secretary respectively of The Nashville Housing Authority, the within named bargainor, a body public and corporate, and that they as such Chairman and Secretary, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Authority by the said Walter J. Diehl as such Chairman and attest the same by the said Gerald Gimre as such Secretary.

WITNESS my hand and official seal at office at Nashville, Tennessee, on this the _____ day of _____, 19____.

My commission expires: _____
NOTARY PUBLIC