

A REGULATORY AND OPERATING AGREEMENT [FOR ALL PUBLIC HOUSING]

THIS REGULATORY AND OPERATING AGREEMENT (the "Agreement") is entered into as of this [1] day of [1], 20 [1], by and between [2] (the "Authority"), a public body corporate and politic organized under the laws of the [3] and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. §1437, *et seq.*, as amended) (the "Act") and [4] (the "Owner"), a [5] organized and existing under the laws of [6]

RECITALS

WHEREAS, the Authority and the United States Department of Housing and Urban Development ("HUD") have entered into a Consolidated Annual Contributions Contract ("ACC"), as the same may be amended from time to time, which provides for grants and annual contributions to be made by HUD to assist the Authority in developing, operating and maintaining its public housing units in accordance with all applicable public housing requirements (as further defined herein); and

WHEREAS, HUD and the Authority have, as of the date of execution of this Agreement, entered into a certain Mixed Finance Amendment, Amendment No. [7] to the ACC ("Mixed Finance ACC Amendment"), adding [8] public housing units and associated appurtenances to the ACC under project number [9] (which, together with any fixtures, rents, revenues, other income, and personality related to such units and appurtenances shall hereafter collectively be referred to as the "Project" or the "Project Units"); and

WHEREAS, the Project is located on a site, as more particularly described in Exhibit A to this Agreement and incorporated herein (the "Property"); and

WHEREAS, the Authority and Owner intend that all of the dwelling units in the Project be developed, operated and managed as public housing units; and

WHEREAS, the Authority and Owner further intend that [10] of the dwelling units in the Project be qualified low-income housing units under section 42 of the Internal Revenue Code of 1986 ("Tax Credit Units") in accordance with an agreement, of even date herewith, for a period of not less than the applicable compliance period; and

WHEREAS, the Authority has agreed to provide the Owner with funds in the amount of [11A] dollars (\$ [11B]) derived from [12A] (the " [12B] Funds") for the development of the Project, the terms of which are more fully set forth in the Authority's loan agreement with Owner and other collateral documents of even date herewith by and between the Authority and Owner (collectively, the "Loan Agreement") [11C]; and

WHEREAS, the Authority has agreed to provide the Owner with operating subsidy assistance derived under section 9(e) of the Act ("Operating Subsidy"), and pursuant to its ACC with HUD, to assist the Owner in maintaining the low income character of the Project Units; and

WHEREAS, in return for the receipt of such assistance, the Owner has agreed to develop, operate and maintain the Project in accordance with all applicable public housing requirements, as defined herein, and this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

The aforementioned recitals are incorporated by reference into this Agreement.

DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth herein:

ACC: The Consolidated Annual Contributions Contract between HUD and the Authority, dated as of _____ [13] _____, as amended by the Mixed Finance ACC Amendment, dated of even date herewith and incorporating the Project Units, as the same may be further amended from time to time.

The United States Housing Act of 1937 (42 U.S.C. § 1437, *et seq.*), as amended from time to time, any successor legislation, and all implementing regulations issued thereunder or in furtherance thereof.

Applicable Public Housing Requirements: All requirements applicable to public housing, including, but not limited to, the Act, HUD regulations thereunder (and, to the extent applicable, any HUD-approved waivers of regulatory requirements), the ACC, the HOPE VI grant agreement (if applicable), HUD notices (including any notice of fund availability under which Landlord received an award of HOPE VI funds for use in connection with the Project), the HUD-approved Declaration of Restrictive Covenants in favor of HUD, the Landlord's admissions and occupancy policies applicable to the Project, as set forth in its PHA Plan, and all applicable Federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time.

Authority Admissions and Occupancy Policies	The Authority's standard public housing admissions and occupancy policies duly adopted and in accordance with all applicable Federal laws, including but not limited to the laws described in Article 5 of this Agreement (collectively, the "Fair Housing Laws"), and consistent with the policies set forth in the Plan; <i>provided, however,</i> that the Authority may adopt modifications of its standard public housing admissions and occupancy policies for purposes of its mixed finance projects generally, or specifically for the Project, to the extent these modifications conform with the Fair Housing Laws and provide tenants with the advance notice and comment rights afforded by 24 CFR §§ 966.3 and 966.52. , and
Authority Fiscal Year: 9(e) of	The Authority's fiscal year for the purpose of calculating the operating subsidy received by the Authority pursuant to Section the Act. The Authority Fiscal Year ends on _____ [14] _____ of each year.
Declaration:	The declaration of restrictive covenants required by HUD to be recorded against the Project prior to any mortgage(s) or other encumbrance(s) against the Property.
HOPE VI Grant Agreement:	The HOPE VI Revitalization Grant Agreement relating to the revitalization of the Project, by and between HUD and the Authority, dated as of _____ [15] _____, as may be amended.
Plan:	The Authority's PHA Agency Plan, and any amendments to the Plan, submitted by the Authority in accordance with 24 CFR part 903, and approved by HUD.
Project Fiscal Year:	The fiscal year of the Owner, which is January 1 through December 31.
Project	All real and personal property associated with the Project Units, and any appurtenances thereto, and that is subject to the ACC entered into between the Authority and HUD.
Project Units	All of the dwelling units at the Property (and including any Tax Credit Units).
Tax Credit Units income	_____ [10] _____ of the dwelling units in the Project qualified as low-housing units under Section 42 in accordance with an agreement, of even date herewith, for a period of not less than the applicable

compliance period.

ARTICLE 1 **DEVELOPMENT FUNDING**

The Authority has agreed to lend, and the Owner has agreed to borrow, up to _____
[11A] dollars (\$ [11B]) to assist in developing the Project pursuant to the
Loan Agreement. _____ [11C].

ARTICLE 2 **PROJECT UNITS**

2.1 Operation of the Project Units. During the term of this Agreement, Owner shall develop the Project Units, and operate the Project Units for occupancy by public housing-eligible households at rents and subject to all other conditions of the Applicable Public Housing Requirements and this Agreement. Provided that Owner continues operating the Public Housing Units in accordance with the Applicable Public Housing Requirements, and in accordance with the terms of this Agreement, such units shall be eligible to receive the benefit of Operating Subsidy to the extent such funds are appropriated by the Congress and otherwise made available to the Authority pursuant to Section 9(e) of the Act, or pursuant to any successor legislation, and as more specifically set forth in Article 4 hereof.

2.2 Number of Project Units and Bedrooms. Owner shall develop and operate _____ [8] Project Units consisting of _____ [16] total bedrooms, and having the following bedroom configurations: _____ [16A] one-bedroom units; _____ [16B] two-bedroom units, _____ [16C] three-bedroom units; and _____ [16D] four-bedroom units.

2.3 Monitoring by the Authority. Notwithstanding Owner's agreement to perform the obligations set forth in this Agreement, the Authority remains legally responsible to HUD under the ACC for ensuring that Owner (either directly or through its general contractor, management agent, or other agent) develops, operates and maintains the Project Units in accordance with the Applicable Public Housing Requirements. The Authority additionally shall monitor Owner's performance for compliance with prevailing State and local laws relating to public housing.

ARTICLE 3 **OPERATION OF PROJECT**

3.1 General Obligation to Operate Consistent with the Applicable Public Housing Requirements and Agreements. Owner shall maintain and operate the Project in compliance with the Applicable Public Housing Requirements. In addition, Owner shall maintain and operate the Project in accordance with this Agreement and any other agreement entered into by the Owner, and approved by the Authority and HUD, with respect to the development, operation and/or maintenance of the Project (collectively, the "Project Documents"). Owner shall also perform any and all acts required to enable the

Authority to fulfill its obligations to HUD with respect to the Project Units. Owner shall take all actions necessary and appropriate to avoid a default (as defined in the ACC) with respect to the Project.

3.2 Authority Admissions and Occupancy Policies. Owner agrees to operate and maintain the Project in accordance with the Authority's Admissions and Occupancy Policies, as that term is defined herein.

3.3 Prevailing Law. (a) **In the event of a conflict or inconsistency among any one or more of the Applicable Public Housing Requirements and a requirement contained in any Project Document, the Applicable Public Housing Requirements shall in all instances be controlling.**

(b) In the event of any conflict, during the period when the ACC is in effect with respect to the Project, between (i) this Agreement; and (ii) the Loan Agreement [11C], then the requirements of this Agreement shall control, except to the extent that a more restrictive requirement under the Loan Agreement [11C] can be enforced without violating the Applicable Public Housing Requirements.

3.4 Management. (a) Owner will select, with the Authority's prior written approval, a Management Agent to manage and operate the Project (the "Management Agent").

(b) Owner will retain the Management Agent pursuant to a management agreement approved in writing by the Authority (the "Management Agreement"). The Management Agreement will provide that the Management Agent will be responsible to Owner for managing and operating the Project in accordance with the terms of this Agreement, including, without limitation, the requirements referenced in section 3. Owner will ensure that the Management Agreement includes as a basis for default the Management Agent's failure to comply with any provision of, or obligation under, this Agreement.

(c) If the Management Agent materially violates, breaches, or fails to comply with any provision of, or obligation under, this Agreement, the Authority may require Owner to terminate the Management Agreement with the appointed Management Agent, subject to the notice and opportunity for cure provisions provided for in the Management Agreement. The term "material violation" shall include, but not be limited to, any of the following: any act of misfeasance, malfeasance or nonfeasance by the Management Agent, its agents, licensees, contractors or invitees that directly or indirectly results in:

- (i) a significant operating deficit;
- (ii) deteriorating physical condition of any portion of the Project;
- (iii) loss or diminution of utilities or other services;
- (iv) failure to take timely action or correct any deficiency brought to the attention of the Management Agent by Owner, the Authority, or HUD;
- (v) failure to comply with any law, regulation, or court order affecting the Project, including, without limitation, the Applicable Public Housing Requirements, provided by the Authority following receipt of a request from the Management Agent;
- (vi) failure to comply with the provisions of any Project Documents; or
- (vii) failure to take actions any prudent management agent would take under the applicable circumstances including, without limitation, change in availability of Operating Subsidy or applicable housing requirements. It is understood that Management Agent will not be responsible for failing to take action solely because of the unavailability of funds.

(d) The Management Agreement will provide the Authority, HUD, the Comptroller General of the United States, and any of their authorized agents, access to all books and records maintained by the Management Agent and/or its agents relating to the Project, its activities as

Management Agent for the Project, or otherwise as necessary in connection with any allocation of the costs, expenses, or income connected with the Project. Such books and records will be made available for review, excerpt, transcript, copying and audit at all reasonable times.

3.5 Maintenance of Records. (a) The Authority shall remain responsible for maintaining sufficient records, and to take necessary action(s), to assure HUD that all Authority obligations to HUD under the Applicable Public Housing Requirements are fulfilled. However, where the ACC or other Applicable Public Housing Requirements require the Authority to furnish reports, records, statements, certificates, documents or other information to HUD regarding the Project, the Owner shall furnish such reports, records, statements, certificates, documents or other information to the Authority or otherwise satisfy the Authority's requests with respect to such matters, upon reasonable notice. Nothing contained in this section shall be construed to relieve Owner of its obligation to maintain its own books and records.

(b) It shall be the responsibility of Owner to maintain sufficient records, and to take necessary action(s) to assure compliance with all obligations relating to the Project under the Project Documents. Owner shall furnish reports, records, statements, certificates, documents or other information as necessary in order to comply with the requirements of this provision.

3.6 Admissions.

(a) The Authority has obtained HUD approval, pursuant to its Plan and in accordance with 24 CFR § 903.7(b)(2), to use a site-based waiting list for the Project, which shall be implemented in a manner consistent with the requirement to affirmatively further fair housing, as set forth in the Plan. [_____ [17] _____].

(b) The Authority and the Management Agent each can accept applications for admission of families to the Project Units and will coordinate with one another to ensure the proper maintenance of, and the proper selection of families from, the waiting list for the Project (the "Site-Based Waiting List"), including recordation of the date and time of receipt of applications, and implementation of any Authority-wide income targeting requirements that may affect the admission of families to the Project pursuant to section 16(a)(2)(A) of the Act (42 U.S.C. 1437n(a)(2)(A) and 24 CFR § 903.2(b)(5)), all as described in the Authority Admissions and Occupancy Policies.

(c) The Authority acknowledges that it intends to take the steps necessary to permit applicants to be selected for admission to the Project Units pursuant to a local system of preferences in accordance with section 6(c)(4)(A) of the Act, 24 CFR §§ 903.7(b)(1) and 960.206, including preferences to: _____ [18]

_____. The Authority shall hold any public hearings required to be held in order to implement such a system of preferences, provided, however, that no preference adopted by the Authority will permit a Project Unit to be rented to an applicant whose income exceeds the limits established by the requirements of Section 42 of the Internal Revenue Code (and which limit currently is established at 60% of the family median income for the area, as determined by HUD, and as adjusted for family size). _____ [19].

(d) The Authority will refer to the Management Agent all applicants who have completed applications at the Authority offices. The Authority can require that applicant interviews take place at the offices of the Management Agent at the Project. The Authority will delegate to the Owner, subject to redelegation to the Management Agent at the Development, to the maximum extent permissible by law, all administrative functions in connection with the admission of families to the Project Units including applicant intake, applicant interview and screening, verification procedures, determination of eligibility for admission and qualification for preference, record maintenance, site-based waiting list maintenance, unit assignment and execution of leases, all in accordance with the Authority Admissions and Occupancy Policies.

(e) If the Management Agent determines that the applicant fails to meet the requirements of the Authority Admissions and Occupancy Policies, the Management Agent will notify the family in accordance with 24 CFR § 960.20 . The Management Agent will return the application with its justification for denial to the Authority. If the admission screening criteria used by the Management Agent pursuant to the Authority Admissions and Occupancy Policies are more stringent than those used by the Authority under its standard public housing admissions and occupancy policies, the Authority will ensure that the denied applicant maintains its place on the Public Housing Waiting List. If the Management Agent denied admission to an applicant using the Authority's standard public housing admissions and occupancy policies, as set forth in the Authority Admissions and Occupancy Policies, then the denial of admission to the Project will also result in the denial of continued eligibility on the Public Housing Waiting List.

(f) If the Management Agent determines that an applicant meets the requirements of the Authority Admissions and Occupancy Policies, and a Project Unit is available for occupancy, the Management Agent will coordinate with the Authority before making an offer to the family to ensure proper coordination between the Public Housing Waiting List and the Site-Based Waiting List.

(g) To be eligible to transfer to the Project Units, current public housing residents must be determined by the Authority to be in good standing under their existing public housing lease and meet any additional transfer requirements as set forth in the Authority Admissions and Occupancy Policies.

3.7 Tenant Leases. Tenant leases must conform to the Applicable Public Housing Requirements including, but not limited to, HUD's implementing regulations at 24 CFR part 966, Subpart A, as may be amended from time to time. Such lease form must conform to the standard lease form adopted and used by the Authority with respect to its public housing residents, unless the Authority first provides at least 30 days advance notice to tenants and resident organizations of the proposed changes to the lease form and an opportunity to provide written comments, as provided by 24 CFR § 966..3. It shall be the responsibility of the Owner to revise the tenant lease as required by changes in the Applicable Public Housing Requirements and applicable state law.

3.8 Grievance Procedures. Grievance procedures must conform to the Applicable Public Housing Requirements including, but not limited to, HUD's implementing regulations at 24 CFR part 966, Subpart B, as may be amended from time to time. Such grievance procedures must also conform to the Authority's standard public housing grievance procedures, unless the Authority first provides at least 30 days advance notice to tenants and resident organizations setting forth the proposed changes to the PHA grievance procedure and providing an opportunity to present written comments, as provided by 24 CFR § 966.52 .

ARTICLE 4 OPERATING SUBSIDY

4.1 Generally.

(a) Definitions.

- (i) "Project Expenses"** shall mean all necessary and reasonable: (1) operating expenses of the Project, as set forth as line items on Form HUD-52564 (Budget Worksheet); (2) payments in lieu of taxes ("PILOT") or real estate taxes for the Project, as applicable; (3) deposits to the Reserve for Replacement, as defined herein, and in accordance with section 4.5 below; (4) management fees payable in accordance with the Management Agreement; (5) legal expenses associated with the operation of the Project; (6) accounting and audit expenses, including tax return preparation costs, in connection with the Project; (7) any amounts paid to tenants as a utility allowance ("Utility Allowance"); and (8) up to 2.0% of billed rental income attributable to "bad debt." The term "Project Expenses" expressly excludes the debt service requirements of any lender, initial funding of any operating or replacement reserve described herein, and any initial operating deficits of the Project (as determined under 24 CFR § 941.404(a)).
- (ii) "Project Income"** shall mean all rents billed by the Owner in respect of the Project, including tenant rents, and any other source of income received by the Owner in connection with the Project, but excluding Operating Subsidy, syndication proceeds generated by the sale of the Owner's limited partnership interests in connection with the initial financing of the Project Units, and any

draws upon the Reserve for Replacement and Operating Reserves (as such terms are defined in this Article 4).

(b) Budgets. Not later than ninety (90) days before the start of any Project Fiscal Year, the Owner shall submit to the Authority its proposed budget for the Project for such Project Fiscal Year, together with budget justifications (the "Operating Budget"), which Operating Budget shall be prepared based upon the terms of this Agreement. The Operating Budget shall estimate the Project Expenses and Project Income for the next Project Fiscal Year, subject to the following conditions:

- (i) For the initial Project Fiscal Year, Project Income shall be deemed to be the amount set forth in Exhibit B. Thereafter, Project Income shall be estimated by using as a base the tenant rents actually billed for the most recent month of the current fiscal year. Notwithstanding the foregoing, with respect to any Project Fiscal Year, Owner and the Authority may agree, subject to consent by HUD, to estimate Project Income at a level different from that which would otherwise be established pursuant to the preceding sentence, taking into account the reasonably anticipated levels of income of tenants anticipated to be occupying the Project during such period.
- (ii) The Authority shall review the proposed Operating Budget within 90 days after its receipt thereof. If the Authority objects to the proposed Operating Budget, it shall set forth the rationale for each objection and provide documentation supporting each objection, together with an alternative recommendation. Owner will modify the Operating Budget in accordance with the Authority's objections. In addition, if the Authority and Owner cannot reach agreement on a proposed Operating Budget, the Authority shall have the right to require Owner, upon written notice, to prepare a plan which may include any of the remedies set forth in section 4.7(a)(i)-(v) (the "Action Plan").

4.2 Payment of Operating Subsidy.

(a) During each Project Fiscal Year, commencing after the end of the initial operating period of the Project, as defined in 24 CFR § 941.404(a) (the "Initial Year"), the Authority shall pay to Owner an Operating Subsidy which shall be the lesser of:

- (i) 95% of the amount set forth on line 23 of HUD Form 52723 (Version 1/2001), which line represents the average per unit month deficit (PUM), as adjusted by the percentage funding factor (found on line 38 of HUD Form 52723) established by HUD under the performance funding system (PFS), multiplied by twelve and then by the number of Project Units; or
- (ii) an amount equal to the estimated Project Expenses for the applicable Project Fiscal Year, as set forth in the approved Operating Budget, less the

estimated Project Income for such period, as determined in accordance with section 4.1(b) herein (which will be subject to adjustment pursuant to section 4.4 hereof);

as reduced in each instance by the aggregate amount of any direct payments made by the Authority of any budgeted Project Expenses, including, without limitation, the Reserve for Replacement.

(b) Owner shall pay directly to the residents of the Project Units (out of the Operating Subsidy received from the Authority) the Utility Allowance established by the Authority. If approved by the resident, payment of the Utility Allowance shall be made by check payable jointly to the resident and the utility company, or payable directly to the utility company. The resident lease and the Management Agreement shall reflect this option for payment of the Utility Allowance.

(c) Operating Subsidy for the Initial Year shall be as determined by the Authority and agreed to by Owner and HUD. In reaching that determination, the Authority and Owner agree to use the budget attached hereto as Exhibit B to establish Project Expenses.

(d) Notwithstanding the foregoing, payments of Operating Subsidy shall be due by the Authority to the Owner only so long as Owner, and Management Agent, and their respective agents, if any, comply with the Applicable Public Housing Requirements and the Project Documents, including this Agreement. The Authority shall pay to the Management Agent by the fifth business day of each month during a Project Fiscal Year, one-twelfth of the Operating Subsidy due for such Fiscal Year; *provided however*, that Owner and the Authority may agree to provide unequal monthly payments of Operating Subsidy for such year, upon determination of the Operating Budget and the Operating Subsidy for any Project Fiscal Year.

4.3 All payments of Operating Subsidy received from the Authority, and all Project Income, shall be deposited by Owner in a Project operating account maintained in a financial institution whose deposits are insured by an agency of the Federal Government, in accordance with the terms of the ACC.

4.4 Adjustments to the Amount of Operating Subsidy.

(a) If at the end of any Project Fiscal Year, it is determined that the amount of Operating Subsidy paid by the Authority, individually or in the aggregate, exceeds the amounts which would be required to be paid under section 4.2(a) and/or (c), if based upon actual Project Income (rather than an estimate thereof) and Project Expenses included in the Operating Budget (as the same may be amended), such excess funds and any accrued interest thereon shall be reimbursed to the Authority not later than ninety (90) days after the end of the Project Fiscal Year or, in lieu

thereof, the Authority may set off such excess (including the amount of accrued interest) by reducing subsequent monthly payments.

(b) If at the end of any Project Fiscal Year, it is determined that the amount of Operating Subsidy paid by the Authority, individually or in the aggregate, is less than the amounts which would be required to be paid under section 4.2(a) and/or (c) above if based upon actual Project Income (rather than an estimate thereof) and Project Expenses included in the Operating Budget (as the same may be amended), such shortfall shall be paid to Owner by the Authority not later than ninety (90) days after the end of the Project Fiscal Year.

4.5 Reserve for Replacement.

(a) **Establishment and Administration.** The Authority shall authorize and fund an interest-bearing project reserve fund for capital replacements with respect to the Project Units (the “Reserve for Replacement”). The Authority shall pay to Owner from Operating Subsidy an amount equal to _____ [20A] _____ dollars (\$ [20B]) per Project Unit per month, which amount the Authority shall deposit, monthly, into the Reserve for Replacement. The Reserve for Replacement shall be held in one or more financial institutions whose deposits are insured by an agency of the Federal Government, in accordance with the ACC. Income earned from the Reserve for Replacement will be retained in the Reserve for Replacement and will be deemed a part thereof.

(b) **Records.** Owner must maintain accurate and complete records identifying the source, amount and use of all funds in the Reserve for Replacement, including any public housing operating subsidies and any income earned thereon.

(c) **Purpose.** Funds held in the Reserve for Replacement shall be used by Owner and shall be used for the purpose of replacing capital assets or providing capital improvements in connection with the Project, as approved by the Authority.

(d) **Disbursements.** Disbursements from the Reserve for Replacement shall be made either in accordance with the Owner's plan as included in the approved Operating Budget, as approved in writing by the Authority, or for unanticipated disbursements, only with the written approval of the Authority.

(e) **Effect of disposition or dissolution.** In the event of a disposition of the Project by sale, lease, assignment, foreclosure or otherwise, or upon the dissolution of the Owner, any Project funds remaining in the Reserve for Replacement (the source of which is either Operating Subsidy or Public Housing Tenants' rents) will be transferred to the new owner to be used in connection with the Project or returned to the Authority for use in carrying out other public housing activities. Upon the occurrence of a casualty or condemnation (without restoration), of all of the Project Units, all Project funds remaining in the Reserve for Replacement (the source of which is either Operating Subsidy or Public Housing Tenants' rents) (including any income earned thereon) will be returned to the Authority for use in carrying out other public housing activities.

4.6 Operating Reserves.

(a) Establishment and Administration. The parties agree that Owner shall establish and fund the following operating reserves for the Project Units (collectively, the "Operating Reserves"):

(i) an operating deficit reserve to be initially funded in the amount of _____ [21A] dollars (\$ [21B]) derived from the following non-public housing funds: _____ [21C] (the "Operating Deficit Reserve"). The Operating Deficit Reserve is designed to ensure that any operating deficits (other than operating deficits resulting from the Authority's failure to provide Operating Subsidy payments) can be paid for in the normal course of operating the Project. Funds in the Operating Deficit Reserve can be drawn down by the Owner only for the following purposes: (i) to pay eligible expenses not encompassed by the Operating Budget, or (ii) because of an operating deficit caused by lower-than-projected public housing tenant rental contributions. **The Authority may provide Operating Subsidy or tenant rental contributions to replenish amounts drawn down by the Owner to pay for the reasonable and necessary operating deficits of the Project in accordance with section 4.7, but may not use these funding sources to make incremental contributions to the Operating Deficit Reserve, except as increased by the Consumer Price Index (CPI).**

(ii) an affordability reserve to be initially funded in the amount of _____ [22A] Dollars (\$ [22B]) derived from the following non-public housing funds: _____ [22C] (the "Affordability Reserve"). The Affordability Reserve is intended to ensure that the Authority's Operating Subsidy obligation on behalf of the Project Units is made available to the Owner on time, and in the amount, as required by section 4.2. **Operating Subsidy and/or tenant rental contributions may be used to replenish amounts drawn down from the Affordability Reserve with respect to the Project Units, but may not be used to make incremental contributions to the Affordability Reserve.** Owner may, with prior written notification to the Authority, make a withdrawal from the Affordability Reserve for any of the following reasons:

- (A) if the Authority fails to provide the amount of Operating Subsidy
- (B) required under section 4.2 by the due date, or because of a reduction in
- (C) annual appropriations under section 9(e) of the Act. In this case, Owner may obtain a disbursement from the Affordability Reserve in an amount equal to the sum of the Authority's missed operating subsidy payment(s); or
- (B) if the Authority's payment of Operating Subsidy to Owner falls below a pre-determined baseline figure, as adjusted for inflation, and as set forth in section 4.2 of this Agreement. In such case, Owner may obtain a disbursement from the Affordability Reserve in an amount equal to the sum of such shortfall.

(iii) the Operating Reserves shall be held in one or more financial institutions whose deposits are insured by an agency of the Federal Government, in accordance with the ACC.

(iv) **Records.** Owner must maintain accurate and complete records identifying the source, amount and use of all funds in the Operating Reserves, including any Operating Subsidy.

(v) **Effect of disposition or dissolution.** In the event of a disposition of the Project by sale, lease, assignment, foreclosure or otherwise, or upon the dissolution of Owner, any funds remaining in the Operating Reserves (funded with Operating Subsidy or Public Housing Tenants' rents) will be transferred to the new owner to be used in connection with the Project, or returned to the Authority for use in carrying out other public housing activities. Upon the occurrence of a casualty or condemnation (without restoration), of all of the Project Units, all funds remaining in the Operating Reserves (including any income earned thereon) will be returned to the Authority for use in carrying out other public housing activities.

4.7 Remedies.

(a) If, in the reasonable judgment of Owner and the Authority, the projected Project Income together with Operating Subsidy will be insufficient to operate the Project as contemplated herein for a period of two (2) years, the Authority and Owner agree to undertake the following measures, or such other measures as are permitted by law and included in an approved Action Plan (as defined in subsection (b) below):

(i) **Develop a Cost Cutting Plan.** Owner and the Authority shall undertake in good faith to develop a cost-cutting plan to reduce unnecessary Project Expenses;

(ii) **Enforce Leases.** Confirm that Owner is enforcing the provisions of resident leases which provide for termination of the tenancy of residents who are in default under their leases, for among other reasons failing to comply with the self-sufficiency requirements, community participation, or the "one strike" provisions of their lease;

(iii) **Turnover of Public Housing Units.** Owner shall lease Project Units, on turnover, to residents who have been selected in accordance with screening criteria approved by the Authority and Owner and consistent with the Authorized Admissions and Occupancy Policies.

(iv) **Increase in Minimum Rents.** Owner and the Authority shall determine whether it is advisable to increase minimum rents to the maximum amount allowed by the Applicable Housing Requirements.

(v) **Use of Operating Reserves.** In the event that the remedies set forth in subsections (i), (ii), (iii), and (iv) above are not projected to generate sufficient Project Income, when added to Operating Subsidy, to pay Project Expenses in any Project Fiscal Year, then

any shortfall may be covered from either the Operating Deficit Reserve or the Affordability Reserve, depending upon the cause of the shortfall.

(b) Action Plan. Prior to undertaking remedies not set forth in section 4.7(b), Owner shall develop a plan of action ("Action Plan") to increase Property Income and/or decrease Property Expenses to sustain the viability of the Property without violating the Applicable Public Housing Requirements. The Action Plan will set forth in detail the nature and priority of different remedial actions to be taken, the rights of existing residents affected thereby, and other relevant matters.

(c) **Exclusive Remedies.** The remedies set forth in this Article 4 shall constitute Owner's sole remedies against the Authority in the event the Authority is unable, for reasons beyond the Authority's control, to provide Owner with the amount of Operating Subsidy set forth in this Agreement, subject only to the Authority's obligation to treat the Project Units in a manner comparable to its other public housing projects.

ARTICLE (5) **COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS**

5.1 Compliance with Federal and State Regulations. Owner's obligation to comply with Applicable Public Housing Requirements includes, but is not limited to, compliance with the following authorities, as the same may be amended from time to time:

(a) The Fair Housing Act, 42 U.S.C. §§3601-19, and regulations issued thereunder, 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR part 107; the fair housing poster regulations, 24 CFR part 110, and advertising guidelines, 24 CFR part 109.

(b) Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and regulations issued thereunder relating to nondiscrimination in housing, 24 CFR part 1.

(c) Age Discrimination Act of 1975, 42 U.S.C. §§6101-07, and regulations issued thereunder, 24 CFR part 146.

(d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, and regulations issued thereunder, 24 CFR part 8; the Americans with Disabilities Act, 42 U.S.C. §§12181-89, and regulations issued thereunder, 28 CFR part 36.

(d) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701, and its implementing regulations at 24 CFR part 135.

(e) Wage Rates under the Davis-Bacon Act (40 U.S.C. §276a *et seq.*).

5.2 Uniform Administrative Requirements & Cost Principles. Owner shall comply with the policies, guidelines, and requirements of OMB Circular numbers A-110 and

A-122, as they relate to the acceptance and use of federal funds and to 24 CFR part 85, to the extent applicable.

5.3 Records For Audit Purposes. Without limitation on any other provision of this Agreement, Owner shall maintain all records concerning the Project for three (3) years subsequent to the expiration date of this Agreement, unless a longer period is required under 24 CFR §85.42. Owner shall maintain records required by 24 CFR part 135 for the period that HUD requires such records to be maintained. Owner will give the Authority, HUD, the Comptroller General of the United States, the General Accounting Office, or any of their authorized representatives, access to and the right to examine, copy, or otherwise reproduce all records pertaining to the development, operation or management of the Project. The right to such access shall continue as long as the records are retained, even if such period exceeds the mandatory three-year retention period.

5.4 Audits. Not later than 120 days after the end of each Project Fiscal Year, Owner shall

deliver to the Authority and, on behalf of the Authority, to HUD, a copy of the audited financial statements of Owner for the preceding Project Fiscal Year, prepared in accordance with generally accepted accounting principles and accompanied by the report of an independent certified public accountant, together with a copy of any additional financial statements or reports delivered by Owner to its partners, or other ownership entities.

5.5 Authority Default under the ACC. Authority covenants to provide Owner, within 15 days of receipt, with a copy of any written notice of default given by HUD under the ACC with respect to the Project.

ARTICLE (6) OWNER DEFAULT AND REMEDIES

6.1 Occurrence of Default. A default under this Agreement shall occur if either party hereto violates, breaches, or fails to comply with any provision of, or obligation under, this Agreement (including, without limitation, by reason of its violation, breach, or failure to comply with any portion of the Applicable Public Housing Requirements). A default by Owner that is attributable to an action or omission, or assertion or demonstration of an intended action or omission, of a Management Agent shall be deemed a default by Owner for purposes of this section (unless said Management Agent is an affiliate of the Authority) except to the extent that Owner diligently is pursuing the remedies available to Owner for such a default in accordance with the provisions of the Management Agreement as then in force.

6.2 Notice of Default. Upon a determination that a default has occurred, the non-defaulting party shall notify the defaulting party in writing (with a copy to HUD) of (a) the nature of the default, (b) the actions required to be taken to cure the default, and (c) the time within which the defaulting party shall respond with a showing that all required

actions have been taken. If the default is attributable to the Management Agent, the Authority also shall give a copy of such notice to the Management Agent.

6.3 Remedies. If a defaulting party (or, as applicable, the Management Agent) fails to respond or take corrective action, the non-defaulting party shall have the right to exercise any remedy available to it by reason of the nature of such default, or to seek appropriate relief in any court having jurisdiction, including but not limited to specific performance, injunctive relief, the termination of operating subsidies for the Project Units under this Agreement, and/or the appointment of a receiver to take over and operate the Project in accordance with the terms of this Agreement. As provided in Section 12(C) of the Mixed Finance ACC Amendment, during the term of this Agreement, and so long as the Owner shall not be in default under the ACC, HUD shall exercise any remedies or sanctions authorized under the ACC, including taking possession of the Authority's interest in the Project, in such a manner as not to disturb the Owner's rights under this Agreement.

ARTICLE (7) **MANDATORY DISCLAIMERS**

7.1 Transfer of Grant Funds Not Deemed Assignment. The Authority and Owner acknowledge that the proposed transfer to Owner, or to any other participating party, of public housing capital and/or operating subsidies, as described in this Agreement, shall not be deemed to be an assignment of such funds. Accordingly, neither Owner, nor any other participating party, shall succeed to any rights or benefits of the Authority under the ACC or the HOPE VI grant agreement, as applicable, or attain any privileges, authorities, interests, or rights in or under the ACC or the HOPE VI grant agreement, as applicable. Owner further agrees to include this disclaimer in each of its agreements or contracts with any partner, participating party, or any other party involving the use of public housing funds for the Project.

7.2 Transferred Grant Funds Not Deemed To Create Partnership With HUD. Nothing contained in the ACC or the HOPE VI grant agreement, as applicable, or in any agreement between the Authority and Owner, nor any act of HUD or the Authority, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture involving HUD.

ARTICLE (8) **INSURANCE REQUIREMENTS AND RESTORATION OF DEVELOPMENT**

8.1 Owner shall procure and maintain in force adequate insurance to protect Owner and the Authority from financial loss resulting from hazards, including, without limitation, hazards insured against under such types of coverages as are required by Part B, Attachment VII, of the ACC, or if stricter, such coverages, and in such amounts, as may be required by other lenders (including, without limitation, the Authority as lender under the Loan Agreement), and such other hazards as to which Owner determines that exposure exists.

8.2 If any act or occurrence of any kind or nature (including any taking by condemnation or any casualty) shall result in damage to or loss or destruction of the Project, in whole or in part, and without diminution of any obligation of Owner in respect thereof under the Loan Agreement, Owner, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available by Owner, by the Authority, or by any other participating party (including, without limitation, by further advance pursuant to the Loan Agreement and any other funds committed on behalf of the Project) permit, shall promptly cause the restoration, reconstruction, or repair of the Project as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The Loan Agreement, and any other funds committed on behalf of the Project, must contain provisions requiring restoration consistent with the foregoing, so long as restoration shall be determined to be feasible, as approved by HUD in accordance with the requirements of the Mixed Finance ACC Amendment. If HUD determines that partial or total restoration of the Project is not feasible, then such insurance or condemnation proceeds shall be applied (and the number and percentage of Project Units that must continue to be operated in accordance with the ACC) in accordance with the Mixed Finance ACC Amendment and the loan documents. To the extent of a conflict between the ACC and the loan documents, the ACC shall in all instances be controlling.

[11C]

ARTICLE (9)

DISPOSITION AND ENCUMBRANCE

9.1 During the term of this Agreement and during such further period when such approval may be required by law as then in effect, and subject to subsection 9.3 hereof, Owner shall not demolish or dispose of its interest in the Public Housing Units (including, without limitation, by conveyance or lease of the Project or any portion thereof, or by assignment of Owner's rights under this Agreement), without the prior written approval of the Authority and HUD.

9.2 During the term of this Agreement, and subject to subsection 9.3 hereof, the Owner shall not mortgage, pledge, or otherwise encumber its interest, or any portion thereof, in the Project Units, or pledge any assets of the Project as collateral for a loan, without the prior written approval of the Authority and HUD.

9.3 The following actions are expressly excluded from the covenants set forth in subsections 9.1 and 9.2 hereof:

**(a) Mortgage of Owner's interest in the Project pursuant to the Loan Agreement _____
[11C] _____, and transfer of the Project to the mortgagee under any HUD-
approved mortgage loan, by foreclosure or deed-in-lieu of foreclosure, or to a third-party
purchaser pursuant to a foreclosure sale, provided that any such transfer shall be subject
to the terms of the Declaration and this Agreement.**

(b) Dwelling leases with eligible families for the Public Housing Units.

**(c) Conveyance or dedication of land for use as streets, alleys, or other public
rights-of-way, and grants and easements for the establishment, operation, and maintenance
of public utilities.**

(d) Normal uses associated with the operation of the Development.

**9.4 (a) No transfer, conveyance, or assignment shall be made without the prior
written approval of HUD of: (i) any interest of a managing member, general partner, or
controlling stockholder (any such interest being referred to as a "Controlling Interest") of
the Owner; or (ii) a Controlling Interest in any entity which has a Controlling Interest in
the Owner; or (iii) prior to the payment in full of all equity contributions described in the
approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other
interest in the Owner, or in any partner or member thereof.**

**(b) Notwithstanding the foregoing, HUD consent is not required where a business
organization that has a limited interest (non-controlling and non-managing) in the Owner
transfers a non-controlling and non-managing interest in the business organization provided that
the Owner: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that
the new owner of the limited interest remains obligated to fund its equity contribution in
accordance with the terms of the HUD-approved organizational documents of the Owner.**

**(c) HUD will not unreasonably withhold, delay, or condition a request by the Owner
for HUD's consent to an internal reorganization of the corporate or partnership structure
of the Owner or any of the partners, members or stockholders of the Owner.**

ARTICLE (10) MISCELLANEOUS

**10.1 Term of Agreement. This Agreement shall continue in full force and effect
until the latest to occur of (i) expiration of the minimum period during which the Project
Units are required by law to be operated as public housing in accordance with the Act; or
(ii) the expiration of 40 years from the date the Project becomes available for occupancy.**

10.2 Successors and Assigns: Prohibition of Assignment Without HUD Consent.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties, except that Owner may not assign its interest in this Agreement without the prior written consent of the Authority and HUD. Any attempted assignment by Owner without such consents will be null and void.

10.3 Preservation of Rights and Remedies. No delay or omission by either party in exercising any right or remedy available hereunder shall impair any such right or remedy or constitute a waiver thereof in the event of any subsequent occasion giving rise to such right or availability of remedy, whether of a similar or dissimilar nature.

10.4 Amendment. This Agreement may be amended by mutual agreement of the Authority and Owner, subject to prior written approval by HUD and provided that all amendments must be in writing and signed by both parties and that no amendment shall impair the obligations of the Authority or Owner to develop and operate the Project Units in accordance with all Applicable Public Housing Requirements.

10.5 Notice. Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (a) delivered personally or by courier, (b) sent by overnight express delivery, or (c) mailed by registered or certified mail (return receipt requested), postage prepaid, to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party);

If to the Authority

[23]
Attn: Executive Director
[23]
[23]

If to Owner:

[24]
[24]
[24]

If to HUD:

**United States Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C.20410
Attn: Assistant Secretary of Public and Indian Housing**

All such notices and other communications shall be deemed given on the date of personal or local courier delivery, delivery to overnight courier or express delivery service, or deposit in the

United States Mail, and shall be deemed to have been received in the case of personal or local courier deliver, on the date of such delivery, in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and in the case of mailing, on the date of delivery specified in the receipt therefor.

10.6 Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the _____ [25] _____.

10.7 Counterparts. This Agreement may be executed in counterparts and all such counterparts shall constitute one single Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]
OF THE CONTRACTS THE DEFENDANTS ENTER INTO WITH THE UNITED
STATES HOUSING AND URBAN DEVELOPMENT AUTHORITY

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HOUSING AUTHORITY:

[2]

By: _____ [26]

[26]
Executive Director

OWNER:

[4]

By: _____ [27]
Name: _____ [27]
Title: _____ [27]

**INSTRUCTIONS FOR COMPLETING MODEL FORM
REGULATORY AND OPERATING AGREEMENT
[ALL PUBLIC HOUSING]**

The form, but not a required HUD form. Within this model form is HUD-required language (in bold-face type) which is included in every Hud Regulatory and Operating Agreement in a mixed-finance transaction. HUD-required language may not be changed except with prior written approval of HUD. Enter the following information, as described below, for each of the corresponding spaces on the Model Form of Regulatory and Operating Agreement (for use only with mixed finance projects consisting solely of public housing units):

1. Day, month and year, respectively, of execution of this Agreement.
2. Name of the Authority executing this Agreement.
3. The State or Commonwealth in which the Authority is duly organized and existing.
4. Name of the Owner executing this Agreement.
5. The legal structure of the Owner (e.g., limited partnership, limited liability company, etc.).
6. The State or Commonwealth in which the Owner is duly organized and existing.
7. The Mixed Finance ACC Amendment Number adding the Project to the Authority's ACC with HUD.
8. The total number of public housing units being added to the Mixed Finance ACC consistent with this Agreement.
9. The Project Number assigned by HUD for the public housing units being added to the Mixed Finance ACC Amendment consistent with this Agreement.
10. The number of public housing units in the Project that will also qualify as low income housing tax credit units under section 42 of the IRC (and which may include some or all of the Project Units).
11. The amount of funds being provided by Authority (as a loan or grant) to Owner, stated: (A) alphabetically; and (B) numerically.
12. (A) The source of the funds being provided by Authority to Owner; and (B) an acronym for such funds.
13. The date of execution of the ACC entered into between HUD and the Authority.

14. The ending date of the Authority's fiscal year.
15. The date of execution of the HOPE VI Revitalization Grant Agreement entered into between HUD and the Authority (if applicable).
16. The total number of bedrooms in the Project Units, with separate categories based upon the number of: (A) one-bedroom units; (B) two-bedroom units; (C) three-bedroom units; and (D) four-bedroom units.
17. If the Project has not been approved to use a site-based waiting list, delete the current text in subparagraph (a) and substitute alternative text, as appropriate, to describe the waiting list procedures that will apply to the Project (e.g., community-wide waiting list, etc.).
18. Specify the particular preferences that the Authority intends to adopt and that will apply to the Project.
19. Add reference to alternative text where a local system of preferences has already been adopted.
20. Indicate the amount of Operating Subsidy that the Authority will contribute each month to the Reserve for Replacement on behalf of each of the Project Units, stated: (A) alphabetically; and (B) numerically.
21. Indicate the amount of funds to be used to initially capitalize the Operating Deficit Reserve, stated: (A) alphabetically; and (B) numerically; and thereafter, indicate in subparagraph (C) the source of the non-public housing funds that will be used to capitalize this reserve.
22. Provide the same information as described in Paragraph 21 of these Instructions for the Affordability Reserve.
23. Provide the name and address, respectively, of the Authority for purposes of receiving notices under this Agreement.
24. Provide the name and address, respectively, of the Owner for purposes of receiving notices under this Agreement.
25. Indicate the State or Commonwealth whose laws will govern this Agreement.
26. Signature and name of the Authority's duly authorized representative (most often, the executive director).
27. Signature, name and title of the Owner's duly authorized representative.

28. Attach Exhibit A (Legal Description of Development)/

29. Exhibit B (Initial Year Project Budget).

30. Exhibit A - Legal Description of Project

31. [Insert _____ [28] ____]

32.

33. Exhibit B - Initial Year Project Budget

[Insert _____ [29] ____]