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RECORDER'S OFFICE

REGULATORY AND OPERATING AGREEMENT

BETWEEN

HOUSING AUTHORITY OF THE CITY OF HAMMOND OF LAKE COUNTY, INDIANA,

AND

AMERICAN HEARTLAND HOMES TWO LLC



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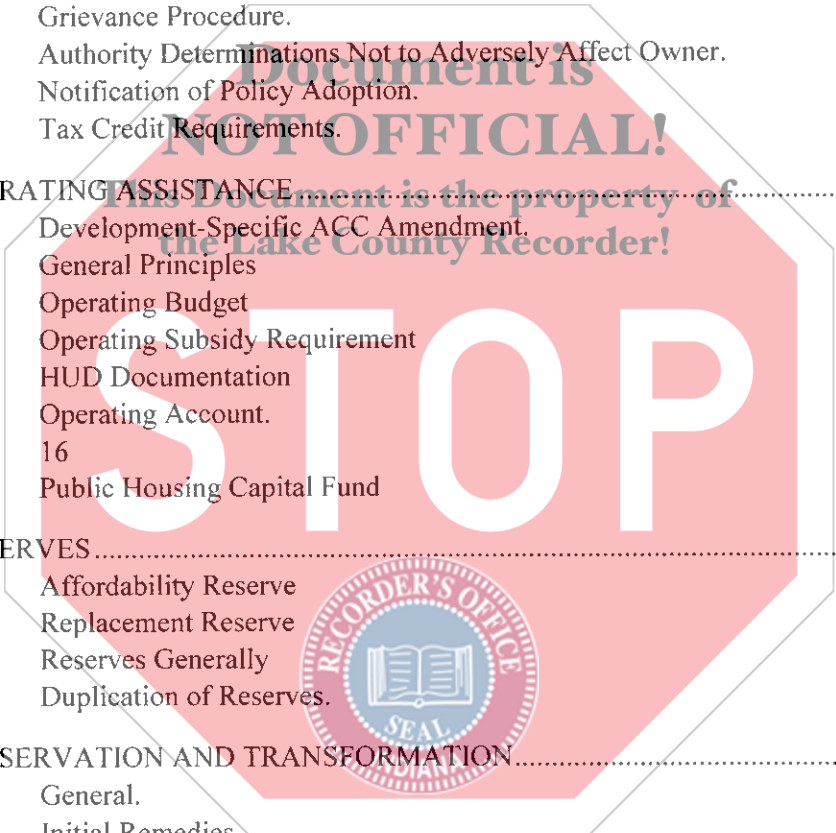
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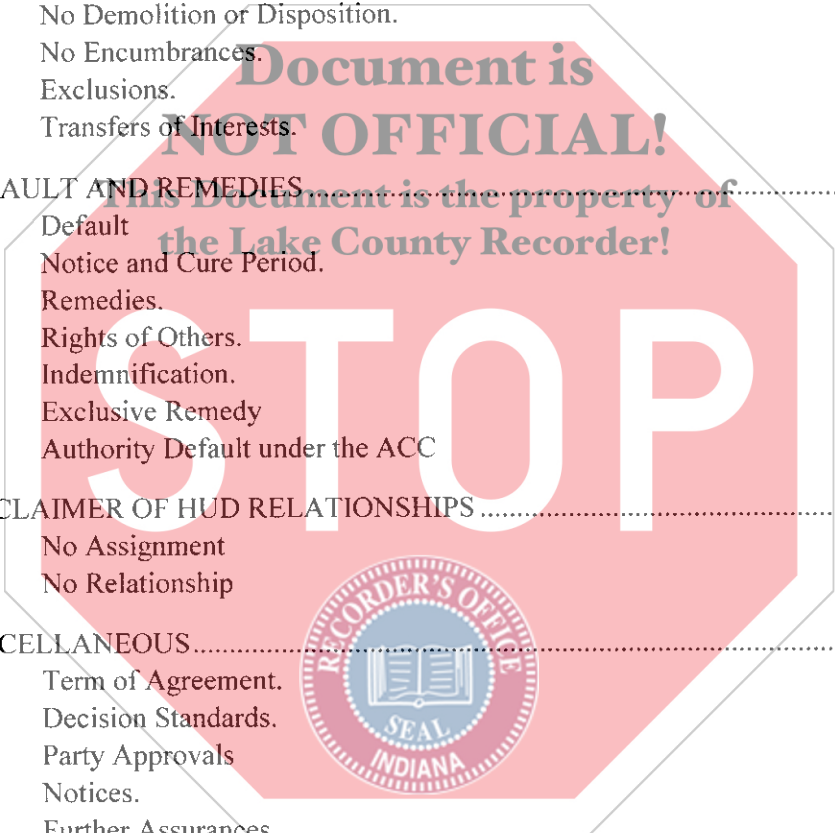
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REGULATORY AND OPERATING AGREEMENT
FOR
AMERICAN HEARTLAND HOMES TWO, HAMMOND, INDIANA

This Regulatory and Operating Agreement (*Agreement*) is entered into as of August __, 2011 by and between the Housing Authority of the City of Hammond, Lake County, Indiana (together with its successors and assigns, the *Authority*), a public body corporate and politic duly organized under the laws of the State of Indiana and a “public housing agency” as defined in the United States Housing Act of 1937, and American Heartland Homes Two LLC, an Indiana limited liability company (together with its successors and assigns, *Owner*).

RECITALS

- A. The Owner is the lessee of certain real property in Hammond, Indiana, that is more fully described in Exhibit A hereto (*Development Site*).
- B. The Development Site and the improvements to be constructed thereon, which will be known as American Heartland Homes Two, are referred to herein as the Development. The Development will include new construction, renovation and management on the Development Site of 49 units of rental housing and appurtenant facilities.
- C. Owner and the Authority desire and intend that the Development be developed, operated and managed so as to create a stable, sustainable community and assure receipt by Owner of all available economic and tax benefits to the fullest extent permitted by applicable law. All dwelling units will be operated and maintained as qualified low-income units under Section 42 of the Internal Revenue Code of 1986, as amended (*Section 42*), for a period of not less than the compliance period and any extended use period (as such terms are defined in Section 42) and seventeen (17) units in the Development shall be set aside as “public housing” as defined in Section 3(b) of the United States Housing Act of 1937, 42 USC §1437 *et seq.* as amended from time to time, any successor legislation, and all regulations pursuant thereto (the *Act*), and shall be eligible to receive the benefit of operating and capital assistance provided to the Authority by HUD pursuant to Section 9 of the Act (*Public Housing Units*).
- D. Because Owner will be obligated to lease the Public Housing Units to families whose rents are restricted and may be less than the operating costs of the Public Housing Units, the Authority has agreed to subsidize the operation of the Public Housing Units through the provision of operating subsidies provided to the Authority by HUD.
- E. In return for the receipt of such assistance, Owner has agreed to develop, operate and maintain the Public Housing Units in accordance with Public Housing Requirements, as defined herein.

AGREEMENT

In consideration of the foregoing recitals and underlying promises, which both parties agree to be good and valuable consideration, and intending to be legally bound, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

As used herein, the following terms shall have the following meanings:

ACC means the Consolidated Annual Contributions Contract between HUD and the Authority, No. C-918 dated February 16, 1996, as amended from time to time including, without limitation, as amended by the Mixed Finance Amendment.

Act is defined in Recital C of this Agreement.

ACOP means the Admissions and Continued Occupancy Policy adopted by the Authority as set forth in the Agency Plan.

Affiliate means, with respect to any other entity (referred to for clarity in this definition as a **Primary Entity**), (1) any entity which has the power to direct the Primary Entity's management and operation, or any entity whose management and operation is controlled by or under common control with the Primary Entity; or (2) any entity in which an entity described in (1) has a controlling interest; or (3) any entity a majority of whose voting equity is owned by the Primary Entity; or (4) any entity in which or with which the Primary Entity, its successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for merger or consolidation, so long as the liabilities of the entities participating in such merger or consolidation are assumed by the entity surviving such merger or created by such consolidation.

Affordability Reserve is defined in Section 5.1 of this Agreement.

Affordability Reserve Floor Level or **Floor Level** is defined in Section 5.1.

Agency Plan means the annual plan adopted by the Authority and approved by HUD in accordance with Section 5A of the Act, as it may be amended.

Agreement is defined in the introductory paragraph of this Agreement.

Approved Mortgage Lender means any lender of an Approved Mortgage Loan.

Approved Mortgage Loan means any mortgage loan to Owner, secured by Owner's interest in the Development or any portion thereof, that is identified in the Mixed Finance Amendment or that has been approved in writing by the Authority and by HUD.

Authority is defined in the introductory paragraph of this Agreement.

Authority Percentage means 26% (the count of the Public Housing Units, divided by the count of all dwelling units of the Development).

Capital Funds is defined in Section 4.8(a) of this Agreement.

Declaration of Restrictive Covenants means that certain HUD-approved Declaration of Restrictive Covenants in favor of HUD recorded against the Development Site and Owner's

leasehold interest therein, which obligates Owner, the Authority, and any successor in title to the Development Site, including a successor in title by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent), to maintain and operate the Public Housing Units in compliance with Public Housing Requirements for the period stated therein.

Development means the Development Site and the improvements now or hereafter constructed thereon.

Development AMP is defined in Section 4.2 of this Agreement.

Development Documents is defined in Section 3.1 of this Agreement.

Development Fiscal Year means the fiscal year of Owner, which is January 1 to December 31.

Development Income means Public Housing Units Income plus all dwelling rent and miscellaneous operating income attributable to the non-Public Housing Units (but exclusive of tenant security deposits).

Development Operating Expenses means all necessary and reasonable operating expenses of the Development for any period, including:

- (a) all ordinary and necessary expenses of operations of the Development shown as line items on Form HUD-92547-A (Budget Worksheet), inclusive of all real estate taxes or payments in lieu thereof; but exclusive of (i) debt service requirements of any loan, including any Approved Mortgage Loan and (ii) utility expenses which are the direct responsibility of a tenant; provided, however, that if Owner shall be required to borrow funds for repairs or replacements the costs of which exceed the aggregate amount in the Replacement Reserve, debt service requirements for such borrowing if approved by the Authority (which approval shall not unreasonably be withheld) and by HUD pursuant to Public Housing Requirements then applicable, shall be included in Development Operating Expenses;
- (b) management fees and expenses payable pursuant to the Management Agreement;
- (c) legal and accounting expenses associated with the operation of the Development which expenses would be permitted to be charged as project expenses pursuant to HUD Handbook 4370.2 REV-1, Financial Operations and Accounting Procedures for Insured Multifamily Projects (or any successor thereto)(reference to the HUD Handbook is made solely for definitional purposes and shall not be construed to subject the Development to the HUD Handbook generally);
- (d) investor services asset management fee paid yearly by Owner to Investor or its designee pursuant to the Operating Agreement;
- (e) a tax credit monitoring fee and/or any other fee required to be paid to the State Finance Agency;
- (f) contributions to any reserve account as permitted by ARTICLE 5;

- (g) any operating expense shared by the Development with any other project on a basis approved by the Authority; and
- (h) sums for tenant programs and services.

Development Site is defined in Recital A of this Agreement.

Development Shortfall means the amount by which Development Income is less than the sum of (i) Development Operating Expenses; and (ii) required payments on any Approved Mortgage Loan.

DOFA means January 1, 1942, which is the Date of Full Availability as that term is defined by HUD (currently in the Development Handbook, HUD Handbook 7417.1 REV-1, Chapter 12, Section 7).

HUD means the United States Department of Housing and Urban Development.

HUD Inflation Factor means the non-utility inflation factor published by HUD for the metropolitan statistical area within which the Development is located.

HUD Operating Subsidy is defined in section 4.4(a).

HUD Restricted Funds means Public Housing Units Income, together with any other funds provided to Owner by the Authority that are funds appropriated under the Act other than funds appropriated under Section 8 of the Act.

Initial Deposit is defined in Section 5.1 of this Agreement.

Investor means TRGHT, Inc., a Delaware corporation, and its Affiliates, successors and assigns, as approved by HUD and the Authority in accordance with, and to the extent required by, Section 10.4 hereof, and includes for these purposes either or both of an investor limited partner or member of Owner and a related special limited partner or member exercising administrative or oversight functions in Owner.

Management Agent means the management agent named in the Management Agreement or any successor management agent of the Development appointed by Owner in accordance with Section 3.3 of this Agreement.

Management Agreement means the management agreement covering the Development to be entered into between Owner and the Management Agent pursuant to Section 3.3 of this Agreement.

Management Performance Indicator is defined in Section 3.4 of this Agreement.

Management Performance Standard is defined in Section 3.4 of this Agreement.

Management Plan is defined in Section 3.3 of this Agreement.

Managing Member means a general partner, managing member or controlling shareholder, as the nature of the entity dictates.

Mediator is defined in Section 4.3 of this Agreement.

Mixed-Finance Amendment means that certain Mixed-Finance Amendment to the ACC, executed by the Authority and HUD substantially contemporaneously hereto, which adds the Public Housing Units to the coverage of the ACC.

Operating Agreement means the Operating Agreement of Owner in the form approved as an evidentiary document to the Mixed Finance Amendment, as it may be amended subject to any approvals required hereunder.

Operating Budget is defined in Section 4.3 of this Agreement.

Operating Fund or **Operating Funds** means federal moneys provided to the Authority by HUD pursuant to Section 9(e) of the Act.

Operating Fund Formula is defined in Section 4.2 of this Agreement.

Operating Fund Payment is defined in Section 4.4 of this Agreement.

Operating Fund Year means the fiscal year used by HUD for purposes of calculating the Operating Fund assistance payments to be made by it to the Authority, which at present is the year ending on December 31.

Operating Subsidy Payment is defined in Section 4.4 of this Agreement.

Operating Subsidy Requirement means the amount required to be paid by the Authority to Owner in any given period in accordance with Section 4.4 below.

Owner is defined in the introductory paragraph of this Agreement.

Partner refers to a partner, member or shareholder, as the nature of the entity dictates.

Permitted Investments means (a) direct obligations fully guaranteed by the United States of America or any agency thereof, (b) certificates of deposit and repurchase agreements which are fully insured by the Federal Deposit Insurance Corporation or have maturities no greater than two years issued by any bank trust company or national banking association having an A or better grade (or its equivalent) by Standard & Poor's Corporation and Moody's Investor Service, Inc., (c) commercial paper rated in the highest grade by Standard & Poor's Corporation and Moody's Investor Service, Inc., in each case having maturity of not more than one-hundred and eighty days, (d) a money market fund limited to U.S. government obligations, U.S. agency obligations, or repurchase agreements backed by such obligations, (e) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, at the time such agreement or contract is entered into, in one of the three highest rating categories for comparable types of obligations by any nationally recognized rating agency, and (f) such other investment approved in writing by the Authority and Owner, provided that such other investment must be consistent with HUD notices on permitted investments or approved in writing by HUD.

PILOT means a payment in lieu of real estate taxes.

PHAS is defined in Section 3.4 of this Agreement.

Public Housing Requirements means 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 Declaration of Restrictive Covenants, the ACOP, HUD notices and all applicable Federal statutory, executive order and regulatory requirements, as those requirements may be amended from time to time.

Public Housing Unit is defined in Recital C and is further described at ARTICLE 2 hereof.

Public Housing Unit Lease means a lease described in Section 3.7 hereof.

Public Housing Units Expenses means Development Operating Expenses multiplied by the Authority Percentage. However, the portion of any line item within the Development Operating Expenses included in Public Housing Units Expenses shall be altered from the Authority Percentage if either the Authority or Owner reasonably demonstrates that allocation of such item to the Public Housing Units on the basis of the Authority Percentage is inappropriate. By way of example and not limitation, if a PILOT or other advantageous tax treatment is applied to the Public Housing Units, then Public Housing Units Expenses shall be adjusted accordingly. No contribution to any Development reserve, other than a contribution to the Replacement Reserve as provided herein, shall be included in Public Housing Units Expenses unless otherwise agreed to by Owner and the Authority. Notwithstanding any other provision of this Agreement, no expense which would not be treated as an actual operating expense pursuant to 26 CFR §1.42-16(c) or any successor IRS regulation shall be included in Public Housing Units Expenses except upon the written direction of Owner (and the Authority's agreement that such expense is otherwise includable pursuant hereto).

Public Housing Units Income means Public Housing Units Unsubsidized Income plus Operating Subsidy Payments and other funds provided to Owner by the Authority for the operation of the Public Housing Units.

Public Housing Units Shortfall means the amount by which Public Housing Units Income is less than Public Housing Units Expenses for any period after DOFA.

Public Housing Units Unsubsidized Income means all dwelling rent derived from the Public Housing Units, an attributable portion of laundry income or other miscellaneous Development income, and any other sources of income received in respect of the Public Housing Units or their tenants, including but not limited to all types of revenue shown as line items on Form HUD 92547-A, reduced by amounts paid to Public Housing Units tenants as utility reimbursement which are in excess of the "total tenant payments" (as defined in Public Housing Requirements) due from such tenants (i.e., "negative rent"), but exclusive of interest on or withdrawals from any reserves.

Quarterly Report is defined in Section 7.2 of this Agreement.

Replacement Reserve is defined in Section 5.2 of this Agreement.

Replenishment is defined in Section 5.1 of this Agreement.

Reserve Shortfall is defined in Section 5.1 of this Agreement.

Section 42 is defined in Recital C of this Agreement.

State Finance Agency means the Indiana Housing and Community Development Authority.

Tax Credit Requirements means all federal and state requirements in connection with the Development's eligibility to receive low-income housing tax credits in accordance with the terms and provisions of the Operating Agreement pursuant to Section 42, the regulations promulgated thereunder, applicable policies, procedures and administrative rules of the Internal Revenue Service and the State Finance Agency, the Tax Credit Application (as defined in the Operating Agreement), and the Tax Credit Restrictive Covenant.

Tax Credit Restrictive Covenant means the agreement containing restrictive covenants which will be recorded against the Development Site in the appropriate land records in accordance with Section 42(h)(6) of the Internal Revenue Code of 1986, as amended.

Transformation is defined in Section 6.3 of this Agreement.

Transformation Plan means the plan described in Section 6.4 hereof.

Waiting List is defined in Section 3.5 of this Agreement.

ARTICLE 2 PUBLIC HOUSING UNITS.

- 2.1 **Number and Description.** Owner will continuously set aside seventeen (17) units in the Development as Public Housing Units during the term of this Agreement. Provided that Owner continues operating the Public Housing Units in accordance with Public Housing Requirements and in accordance with the terms of this Agreement, such units shall be eligible to receive Operating Subsidy Payments from the Authority, to the extent such funds are appropriated by Congress and otherwise made available to the Authority pursuant to Section 9(e) of the Act, or pursuant to any successor legislation. The Public Housing Units shall initially comprise the following mixture of unit sizes and descriptions:

Type	Number
2 Bedroom	7
3 Bedroom	10
TOTAL	17

- 2.2 **Distribution** The Public Housing Units shall "float" and not be at permanent locations in the Development, and to the extent feasible, shall be scattered throughout the Development. Public Housing Units and other Units shall be maintained and operated without distinction, excepting such differences in admissions, procedures, lease terms and other conditions as are mandated by Public Housing Requirements or the requirements of applicable subsidy programs.
- 2.3 **True Debt** To the extent consistent with Tax Credit Requirements and Public Housing Requirements, any admission preferences otherwise applicable pursuant to the Authority's public housing ACOP shall be revised as of January 1, 2037, if and only to the extent necessary, such that by no later than January 1, 2041, there shall be no need for the Authority to provide Operating Subsidy Payments to the Public Housing Units and Owner shall be able to demonstrate

a reasonable likelihood of repaying all debt on the Development (including all debt owed to the Authority) in accordance with its terms, provided, however, that prior to amending the system for preferences, Owner will avail itself of any alternative arrangements which are then available in order to demonstrate such reasonable likelihood. Nothing herein is intended to authorize any deviation from the Public Housing Requirements or any preference for families that are not eligible for public housing.

- 2.4 **Over-Income Tenants.** A unit shall not lose its status as a Public Housing Unit solely because the income of the tenant residing therein rises above the applicable public housing income limit unless so provided in the ACOP, or as otherwise agreed by Owner and the Authority.

ARTICLE 3 OPERATION OF PUBLIC HOUSING UNITS.

- 3.1 **Use; Covenants; Performance.** Owner shall develop, maintain and operate the Public Housing Units in compliance with Public Housing Requirements, Tax Credit Requirements, the Management Plan, this Agreement, any other agreement entered into by Owner and approved by the Authority and HUD, with respect to the development, operation and/or maintenance of the Development (collectively, the *Development Documents*), and state and local laws. In the event of any conflict between the Development Documents and Public Housing Requirements, Public Housing Requirements shall control with respect to the Public Housing Units. Consistent with its responsibilities undertaken in the Development Documents, Owner shall perform any and all acts required to enable the Authority to fulfill its obligations to HUD with respect to the Public Housing Units including its obligation to avoid a default under the ACC with respect to the Public Housing Units. The provisions of this Agreement are intended to create a covenant running with the land and, subject to the terms and benefits of this Agreement to encumber and benefit the Development and to bind Owner and the Authority and each of their successors and assigns and all subsequent owners of the Development. Notwithstanding Owner's agreement herein to perform substantial obligations and responsibilities with regard to the Public Housing Units, the Authority remains accountable to HUD for performance of such functions under and pursuant to Public Housing Requirements and will monitor the performance of Owner to assure compliance therewith. The Authority additionally shall monitor Owner's performance for compliance with applicable state and local laws relating to public housing.
- 3.2 **Intent.** The Authority and Owner acknowledge that HUD's mixed-finance program is intended to permit public housing authorities to assure a supply of high-quality public housing operated within an environment of private sector practices and incentives. This Article 3 enumerates certain respects in which operating procedures and other requirements as to the Public Housing Units may differ from those in effect with respect to conventional public housing units owned by the Authority. The Authority and Owner agree that, if experience demonstrates a need for or the desirability of further departures from standard procedures applicable to Authority-owned public housing, they will consult with each other regarding such further modifications and will take such further implementing steps consistent with Public Housing Requirements, including, as appropriate, requests to HUD for revision or waiver of regulations necessary to enhance the long-term viability of the Development, or requests to implement statutory revisions made by Congress from time to time affecting either public housing in general or public housing located within privately-owned mixed-income communities in particular.

3.3 Management Agent.

- (a) Owner will retain a management agent for the Development (the *Management Agent*) pursuant to a management agreement (the *Management Agreement*), both of which will be subject to written approval by the Authority and HUD. The Management Agreement will hold the Management Agent responsible to Owner for management of the Development in accordance with the terms of this Agreement, Public Housing Requirements (with respect to the Public Housing Units) and Tax Credit Requirements, in accordance with a management plan prepared by Management Agent which shall be consistent with the Management Agreement and this Agreement (as amended or supplemented from time to time, the *Management Plan*).
- (b) The Management Agreement shall 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 Development, its activities as Management Agent for the Development, or otherwise as necessary in connection with any allocation of the costs, expenses, or income connected with the Development. Such books and records shall be made available for review, excerpt, transcript, copying and audit at all reasonable times.
- (c) The Authority may require Owner to terminate the Management Agreement, and the Management Agreement shall so provide, after notice and an opportunity to cure, (a) in the case of any default under Article 11 of this Agreement for which the Management Agent is responsible by acts of omission or commission, or (b) in the event that the Management Agent fails without good cause to meet the Management Performance Standards (as defined below), or (c) in the event the Management Agent fails to operate the Development in compliance with this Agreement, requests or instructions of Owner or the Authority delivered in accordance herewith, or with Public Housing Requirements. In the event the Authority or an Affiliate is not serving as the Management Agent, the Management Agreement shall provide for the indemnification of the Authority for the Management Agent's failure to act in accordance with this Agreement or Public Housing Requirements.
- (d) In the event that the Management Agent is terminated, Owner shall propose in writing the appointment of a replacement Management Agent and Management Agreement, subject to the Authority's and Investor's approval. Failure by the Authority to state objections in writing and with specificity to a proposed Management Agent or Management Agreement, within fifteen (15) days of receipt of Owner's written proposal, shall constitute the Authority's approval. Pending receipt by Owner of the Authority's written objections or disapproval as aforesaid, and a reasonable time thereafter (no less than thirty (30) days) to correct any conditions forming the basis of the Authority's objections or disapproval or to propose an approvable Management Agent, Owner shall be entitled to manage the Development directly or through its chosen Management Agent so long as it shall do so in full compliance with the terms of this Agreement.
- (e) The initial Management Agent retained by Owner shall be the Authority. The parties have agreed upon a Management Agreement and an initial Management Plan. The initial

Management Plan shall not be materially amended without the prior written approval of Owner and the Authority.

In the event of default by the Authority under its management obligations, which default leads to termination of the Management Agreement, the Owner shall (with the approval of the Authority, which shall not unreasonably be withheld) engage qualified third party management as the Management Agent for the Development.

For such time as the Authority or its Affiliate is the Management Agent retained by Owner, the Owner shall not be in default under Article 11 of this Agreement due to actions or inactions taken by the Authority or its Affiliate in its capacity as the Management Agent.

- (f) Owner shall ensure, and the Management Agreement shall require, that the Management Agent use software that is compatible with, and can be accessed electronically by, the software used by the Authority for asset management and HUD reporting purposes.
- (g) The Management Agreement shall require the Management Agent to obtain necessary goods and services in accordance with procedures set forth in the Management Plan approved by the Authority, which shall comply with Public Housing Requirements.

3.4 **Management Performance Standards.** Owner and the Authority are jointly committed to maintaining the highest standards of operations, maintenance and management at the Development, in order that residents may have the best living experience and so as to contribute to the Authority's obtaining and maintaining a designation as a "high performer" under the Public Housing Assessment System (*PHAS*) codified at 24 CFR §902, or an equivalent score under any successor statute or regulation intended to evaluate the management or maintenance of public housing. Owner will ensure that responsible officers and staff of the Management Agent (if not the Authority) meet regularly with the Authority and the resident association or interested residents and develop mutually acceptable procedures for monitoring and improving project operations and developing ways in which Owner may benefit from the Authority's management expertise and resources. For any period in which the Authority is not the Management Agent, such procedures shall include the following:

- (a) The parties shall adopt a series of management performance indicators (*Management Performance Indicators*), which to the extent possible will cover all site-based indicators used in PHAS. The parties shall likewise establish standards (*Management Performance Standards*) to be met with regard to such Management Performance Indicators, as the Authority may reasonably require, which shall be at least commensurate with the standards maintained by the Authority for its own operations and with the standards necessary to receive or contribute to a site-based PHAS rating of, or equivalent to, "high performer."
- (b) As soon as available, but not later than thirty (30) days from the end of each fiscal quarter, Owner shall provide the Authority with a report (*Quarterly Management Report*) setting forth the calculated Management Performance Indicators for such quarter, together with a narrative generally describing management operations in the prior quarter, describing any issues or unusual situations encountered, and describing any changes in

practice to be applied. Physical inspection indicators may be abbreviated or estimated as agreed to by the parties. Any Management Performance Indicator which is below the prescribed Management Performance Standard will be specifically addressed and remedial measures proposed.

- (c) Following receipt of the Quarterly Management Report, the Authority shall conduct such reviews and property inspections as it deems appropriate (at reasonable times and upon reasonable notice, and without limitation of any other review and inspection rights it has hereunder.) Within fifteen (15) days of receipt of the Quarterly Management Report, the Authority shall deliver to Owner and the Management Agent, with a copy to the Investor, a written response stating those areas of property condition or operations which are deficient in its view, and if the Management Agent and Owner shall have proposed any changes in practice or remedial measures, the Authority shall indicate whether it agrees with the same.
- (d) If the Authority's response indicates that it is less than fully satisfied with property condition or operations, with consideration given to remedial measures proposed by the Management Agent, the Authority, Owner and Management Agent shall meet within five days to reach a consensus plan of action.
- (e) The Authority may conduct a complete inspection and review of operations of the Development, which is at least as rigorous as inspections conducted by HUD, at least once a year and if possible, between sixty (60) and ninety (90) days prior to any expected HUD inspection. Within fifteen (15) days following inspection, the Authority shall advise the Management Agent, Owner and Investor of its findings and required improvements.
- (f) The parties acknowledge that Owner's ability to operate the Public Housing Units and to receive the rating of "high performer" is dependent upon the payment of the Operating Subsidy Requirement to Owner in accordance with this Agreement and/or funds in the Affordability Reserve being available to Owner for withdrawal and that any assessment of Owner's performance under this Agreement must take into consideration such payment.

3.5 Resident Selection and Assignment.

- (a) The selection of applicants for admission to occupancy of the Public Housing Units in the Development shall be the function of Owner through the Management Agent, all in accordance with the criteria and procedures set forth in the ACOP and the Management Plan.
- (b) At initial lease-up and thereafter as vacancies occur, Owner will lease vacant Public Housing Units to families on a site-based waiting list operated in accordance with Public Housing Requirements (the *Waiting List*); provided, however, that the family meets all eligibility and screening requirements. The Management Plan will provide for the taking of applications for Public Housing Units at one or more sites maintained by Owner and/or the Management Agent, with appropriate accommodations for people with mobility impairments and other disabilities.

- (c) With respect to the Public Housing Units, Owner, through the Management Agent, will be responsible for application intake, applicant interview and screening, verification procedures, determination of eligibility and suitability for admission and qualification for preference, record maintenance, Waiting List maintenance, unit assignment and execution of leases, and all administrative functions in connection with the enforcement and termination of leases, all in accordance with the ACOP. The Management Plan shall incorporate reasonable screening of prospective residents for suitability and for ability to pay required rent and otherwise comply with the lease. The Management Agent, with the approval of Investor, shall establish procedures, which shall be set forth in the Management Plan, for informal review of eligibility or suitability determinations for admission to the Public Housing Units, consisting of an opportunity for a meeting with a person or persons designated by the Management Agent other than the person who made the initial determination. All screening evaluation forms, procedures and policies relating to Public Housing Unit admissions and occupancy shall be contained in the Management Plan and subject to the Authority's approval.
- 3.6 **Delegation.** To the extent that Public Housing Requirements may require the Authority to perform any administrative functions with regard to the Public Housing Units, except as otherwise provided herein, the Authority delegates such responsibility to Owner, subject to re-delegation to the Management Agent, subject at all times to the oversight and approval of the Authority as provided for herein.
- 3.7 **Leases.** Tenant leases executed with respect to Public Housing Units (each, a *Public Housing Unit Lease*) shall be on forms agreed to by the Owner, Authority and Investor, and shall comply with (a) 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, subject to any variations approved by HUD, (b) Tax Credit Requirements and (c) any other regulatory requirements to which the Development is subject. The Authority shall implement all required tenant notice and comment procedures pursuant to 24 CFR §966.3 (or any successor provision). Owner will assist in any necessary consultations with tenants and resident organizations. In the event that a change in the Public Housing Unit Lease is necessitated as a result of changes to Public Housing Requirements or state law, or for other reasons, the Authority and Owner shall agree on appropriate changes and the Authority (with reasonable Owner assistance) shall conduct all required tenant consultations in order to amend the Public Housing Unit Lease. To the extent permitted by Public Housing Requirements, Public Housing Unit Leases shall provide for increases in rental payments and other actions required to increase income from the Public Housing Units under the circumstances contemplated in Section 6.3 hereof. An initial form of Public Housing Unit Lease has been so reviewed and preliminarily approved by the Authority, subject to tenant consultation and final approval as provided in this Section 3.7.
- 3.8 **Rents.** Owner shall charge as rent to the tenant of each Public Housing Unit (and without regard to any subsidy paid by the Authority) the maximum rental amount permitted by Public Housing Requirements, but (for each tax credit unit) not to exceed the maximum rent permitted under Tax Credit Requirements, and subject as well to minimum rents established by the Authority.
- 3.9 **Grievance Procedure.** Owner and Authority agree to use the Authority's standard grievance procedure for residents of the Public Housing Units, which shall comply with 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. Owner shall pay for all costs and expenses incurred in utilizing such grievance procedure. Such procedure provides for informal discussion and settlement of grievances by the Management Agent and/or Owner and a hearing before a hearing officer or panel appointed as detailed in the grievance procedure. To the extent that Owner and the Authority wish to establish a grievance procedure that varies from the Authority's standard grievance procedure, or in the event that a change in the grievance procedure is necessitated as a result of changes to Public Housing Requirements or state law, or for other reasons, the Authority, with the approval of Owner, shall implement all required tenant notice and comment procedures pursuant to 24 CFR §966.52 (or any successor provision). Owner shall assist with and participate in such consultation pursuant to a request by the Authority.

3.10 Authority Determinations Not to Adversely Affect Owner.

- (a) Nothing in this Section shall limit the effect of Authority actions which are mandated by Public Housing Requirements.
- (b) The Authority shall not voluntarily adopt particular policies, procedures or documents governing the Public Housing Units which are distinct from those governing residents of Authority-owned public housing without the written agreement of Owner and Investor (including through this Agreement). If Owner, Investor and the Authority agree, in this Agreement or otherwise, that the Authority shall adopt or ratify particular policies, procedures or documents governing the Public Housing Units which are distinct from those governing residents of the Authority's conventional public housing (with the approval of HUD, if required, and which may include, without restriction, site-specific amendments to the ACOP, the Waiting List, the form of public housing lease and the grievance procedure), then the Authority shall do so and shall take no action to amend any such distinct policy, procedure or document governing the Public Housing Units, once so adopted, without the written agreement of Owner and Investor.
- (c) Upon request of Owner and Investor following advance notice of contemplated policy changes as required by Section 3.11, to the extent that it may legally do so, the Authority will exclude the Public Housing Units from the effect of any policy or procedure it voluntarily adopts for any or all of its public housing units, applicants or residents generally, or will modify such policy with respect to the Public Housing Units, if such policy or procedure would have an adverse effect on the Development or the Investor which effect would not be offset by additional financial or other support then committed by the Authority.

3.11 Notification of Policy Adoption. The Authority shall ensure that its Agency Plan and ACOP are not inconsistent or in conflict with the provisions of this Agreement and does not impede or adversely affect the implementation of this Agreement. The Authority will provide to Owner and Investor (1) a copy of any proposed Agency Plan, or amendment thereto or to any policy contained therein, no later than the time public notice is given pursuant to Section 5A of the Act or otherwise, (2) a copy of any proposed amendment to the ACOP at least 30 days prior to adoption, and (3) a copy of its Agency Plan and ACOP and all amendments thereto, as adopted, within thirty (30) days of adoption, and shall make good faith efforts to provide earlier notice of contemplated changes to the Agency Plan that would materially affect Owner and Investor.

During the advance notice periods described in clauses (1) and (2) above, Owner and Investor shall have the right to review the proposal in order to assure its consistency with this Agreement.

- 3.12 **Tax Credit Requirements.** The Authority acknowledges that the Public Housing Units are also subject to the Tax Credit Requirements and will be operated in accordance therewith at all times required thereunder. The Authority will not disapprove (with respect to the Public Housing Units) any policy of Owner that is permitted under Public Housing Requirements and required for compliance with the Tax Credit Requirements, nor shall the Authority impose upon Owner any policy or procedure with respect to the Public Housing Units that is not required by Public Housing Requirements and that would cause noncompliance with the Tax Credit Requirements.

ARTICLE 4 OPERATING ASSISTANCE

- 4.1 **Development-Specific ACC Amendment.** The Authority has entered into a Mixed-Finance Amendment to its ACC, which Mixed-Finance Amendment is specific to the Development. The Authority shall not enter voluntarily into any amendment to such Mixed Finance Amendment, or any amendment to the ACC which materially adversely affects the operation of the Development, without the written consent of Owner and Investor.

4.2 **General Principles.**

- (a) The parties recognize that Section 9(e) of the Act provides for a project-based subsidy formula as currently set forth in 24 CFR Part 990 (*Operating Fund Formula*), but that the operational parameters of such Operating Fund Formula are not fully and finally developed as of the effective date of this Agreement. Upon HUD's further implementation or revision of the Operating Fund Formula, the parties agree to amend this Article 4 if and as necessary so as to achieve as closely as possible the effect contemplated herein.
- (b) The Authority shall make all elections with HUD under the Operating Fund Formula with the intent that HUD will designate the Development as a distinct asset management project (the *Development AMP*).
- (c) Except as otherwise specified herein, funds currently or subsequently credited to the Development AMP in accordance with Public Housing Requirements shall belong to the Authority and may be applied by the Authority in its sole discretion, for the benefit of the Public Housing Units or otherwise within the Development AMP, but in all events subject to Public Housing Requirements.

4.3 **Operating Budget**

- (a) Not later than sixty (60) days before the date established by HUD for submission by the Authority to HUD of operating budget information for an upcoming Operating Fund Year, Owner shall submit to the Authority for review and approval its proposed operating budget for the following Operating Fund Year (or, in the case of the Operating Fund Year in which first availability for occupancy occurs, the remainder thereof). The Authority shall respond with approval or specific objections within forty five (45) days of

receipt of the proposed budget. Following review and consultation, the parties shall agree to an operating budget (as approved, and as it may be amended by written agreement of the parties, the **Operating Budget**). Each Operating Budget shall project Development Operating Expenses, Development Income, and the Operating Subsidy Payment (hereinafter defined) for the subject period. Owner shall provide to the Authority such supporting information available to it as the Authority shall reasonably request.

- (b) In the event Owner forecasts a Development Shortfall, Owner shall, as approved by Investor, (i) show in the Operating Budget how Owner intends to fund such shortfall; (ii) demonstrate what portion if any is an Attributable Shortfall (as defined below); and (iii) indicate whether Owner intends to use any rights or remedies provided herein for dealing with an Attributable Shortfall.
- (c) The parties agree to cooperate to resolve any differences regarding the Operating Budget. If Owner and Authority are unable to resolve any differences regarding the Operating Budget within twenty (20) days after Authority notifies Owner and Investor of its objections, then: (A) Owner may, as approved by Investor, change the Operating Budget to conform to objections raised by the Authority; or (B) Owner may, as approved by Investor, request by delivering a written notice to the Authority that an independent third party with experience in the management and operation of low-income housing, including if possible public housing, and with no interest in the Development or any affiliation with the parties to this Agreement (the **Mediator**) be appointed to mediate the parties' differences about the Operating Budget. The Authority and Owner shall each propose no more than three (3) candidates as Mediator, and from the aggregate list of candidates, Owner and Authority will mutually agree upon the candidate to serve as Mediator within ten (10) business days of the initial notice requesting such appointment. The parties agree to reasonably work with the Mediator to produce an Operating Budget acceptable to both parties. Pending resolution of any dispute, and unless otherwise agreed, the parties shall use the prior year's Operating Budget adjusted by the HUD Inflation Factor for the applicable Operating Fund Year; provided, however, that budget items not within Owner's or Management Agent's reasonable control (such as property insurance or utility charges) shall be budgeted in accordance with Owner's reasonable projections.

4.4 Operating Subsidy Requirement

- (a) During each Operating Fund Year commencing with the effective date hereof, provided that Owner continues to operate the Public Housing Units in accordance with Public Housing Requirements and this Agreement, the Authority shall pay to Owner operating subsidy equal to the deficit of Public Housing Units Unsubsidized Income below Public Housing Units Expenses projected in the approved Operating Budget for such year (subject to reconciliation for actual deficit pursuant to Section 7.5 of this Agreement), regardless of the payments received by the Authority from HUD under the Operating Fund Formula (**HUD Operating Subsidy**) with respect to the Public Housing Units and with respect to the Operating Fund Year (**Operating Fund Payment**). Such required amount with respect to any period is referred to herein as the **Operating Subsidy**

Requirement for such period; any amount paid toward the Operating Subsidy Requirement is referred to herein as an **Operating Subsidy Payment**.

- (b) The Authority shall pay to Owner, on or before the fifth (5th) business day of each month of an Operating Fund Year, one twelfth of the Operating Subsidy Requirement projected for such Operating Fund Year.
- (c) The Operating Subsidy Requirement shall commence as of the first month the Authority receives HUD Operating Subsidy attributable to the Development or any portion thereof and shall be retroactive to the same extent as HUD Operating Subsidy. The Authority and Owner will work diligently to see that such payments of HUD Operating Subsidy commence as soon as possible.

4.5 **HUD Documentation.** At least thirty (30) days prior to the required submission date, Owner shall provide to the Authority all Development-related data required to complete Form 52723 or other document forming the basis for HUD's calculation of the Operating Fund Payment. The Authority shall promptly submit such documentation to HUD and take any and all reasonable and necessary actions to obtain HUD approval thereof. Within fifteen (15) business days of receipt from HUD of an approved or final calculation, the Authority shall provide a copy of the same to Owner and Investor.

4.6 **Operating Account.** All Development Income shall be deposited by Owner in a Development-wide operating account maintained in a financial institution whose deposits are insured by an agency of the Federal government. Owner shall cause all receipts derived from the Public Housing Units, including tenant rents, carrying charges and other revenues, to be deposited into such operating account.

4.7 **Section 42 Compliance.** To the extent required by Section 42, notwithstanding anything to the contrary set forth in this Agreement, in any Development Fiscal Year all or part of which is included in the "compliance period" as defined in Section 42(i)(1), Operating Subsidy Payments will be made to and retained by Owner under this Agreement only to the extent they constitute "qualifying rental assistance payments" as defined in Section 1.42-16 of the Treasury Regulations. In the event that the annual financial statements required to be provided by Owner to the Authority pursuant to Section 7.3 below demonstrate that Operating Subsidy Payments for any year covered by the preceding sentence, after redeposit to the Affordability Reserve of amounts withdrawn therefrom during the subject year, exceed the amount constituting "qualifying rental assistance payments," then a sum equal to the excess shall be accounted for and applied to any projected Public Housing Units Shortfall for the next year and, to the extent in excess thereof, promptly paid to the Authority in accordance with Section 7.5 of this Agreement.

4.8 **Public Housing Capital Fund.**

- (a) If capital assistance is available to the Authority from time to time under Section 9(d) of the Act or any successor thereto (**Capital Funds**), any portion of which is required by Public Housing Requirements to be used for the Public Housing Units, then the Authority agrees to segregate such portion and provide it to Owner in a manner that complies with then-applicable Tax Credit Requirements and Public Housing Requirements and is otherwise approved by the Authority, Owner and Investor. In no event shall Capital

Funds for the Public Housing Units be less than the per unit per year amount to be deposited in the Replacement Reserve as set forth in Section 5.2

- (b) If Capital Funds are available to the Authority, which Capital Funds the Authority may discretionarily provide to the Public Housing Units, then the Authority agrees to give reasonable consideration to any request by Owner for such assistance.
- (c) The Authority shall have no obligation to provide Capital Funds in excess of the amounts required in Section 4.8(a) unless the provision of such funds and their intended use is permitted by Public Housing Requirements and will be deemed to constitute an obligation and expenditure of the Capital Funds within the time required by Public Housing Requirements. The Authority, with Owner's assistance, shall make such requests and submittals to HUD as may reasonably be required to obtain HUD approval.

ARTICLE 5 RESERVES

5.1 Affordability Reserve

(a) Establishment and Ownership

- (1) Owner shall establish, by way of deposits as and when provided herein, an account designated as the Affordability Reserve (*Affordability Reserve*) in one or more financial institutions whose deposits are insured by an agency of the Federal government. Funds placed in the Affordability Reserve (including interest thereon and including any additional amounts deposited therein from time to time pursuant to the terms hereof) shall be invested at the direction of Owner and shall constitute funds of Owner (except as otherwise stated herein) to be held and applied during the term of this Agreement solely for the benefit of the Public Housing Units in accordance with the Public Housing Requirements and the terms and conditions hereof.
- (2) The Affordability Reserve shall include subaccounts, as follows:
 - (A) Any funds deposited by Owner shall be held in the Owner Subaccount and shall be the property of Owner.
 - (B) Any amount deposited by the Authority into the Affordability Reserve pursuant to section 5.1(c)(3) shall be held in the Authority Subaccount, shall be invested at the direction of the Authority with all interest to be redeposited and accrue to the benefit of the Authority, and shall remain the property of the Authority. Authority deposits shall be made only with funds legally available for such purpose under Public Housing Requirements, shall be used solely for uses appropriate to the particular funds deposited by the Authority, and shall be held in such further subaccounts as the Authority may instruct in order to segregate Authority funds by source or appropriate use.

- (C) The identification of any subaccount named above as a “subaccount” is intended by the parties to be functionally descriptive, and each subaccount shall be established as an independent bank account if and to the extent that proper banking practices dictate. The balance in the Affordability Reserve shall be deemed to be the sum of the balances in each subaccount thereof.

(b) **Deposits.**

- (1) Owner shall deposit into the Affordability Reserve, from Owner’s funds no later than receipt of the final installment of Investor capital contributions, the sum of \$83,286 (the *Initial Deposit*).
- (2) In the event Owner makes a withdrawal from the Affordability Reserve because the Authority has failed to make an Operating Subsidy Payment equal to the Operating Subsidy Requirement, and the Authority shall subsequently make such missed payment or any portion thereof, then Owner shall promptly deposit into the subaccount of the Affordability Reserve from which withdrawal was made an amount equal to the amount previously withdrawn (up to the amount of the Authority payment subsequently made).
- (3) The Authority may, but is not required to, make additional deposits to the Authority Subaccount as provided in Section 5.1 or otherwise as may be permitted by Public Housing Requirements.
- (4) Public Housing Units Income in excess of Public Housing Units Expenses for a given Development Fiscal Year may be used to replenish amounts previously withdrawn from the Affordability Reserve with respect to the Public Housing Units, but may not be used to make incremental contributions to the Affordability Reserve. Such funds shall be deposited into the subaccount from which the withdrawal was made.

- (c) **Withdrawals.** Owner shall be entitled to withdraw funds from the Affordability Reserve under any of the following circumstances and no other; provided, however, that in each case Owner shall provide contemporaneous written notice of withdrawal to the Authority and Investor demonstrating its entitlement.

- (1) **Non-Receipt of Operating Subsidy Requirement.** Owner shall be entitled to withdraw funds if by the fifth (5th) business day of any month, the Authority shall not have paid to Owner an Operating Subsidy Payment equal to the full Operating Subsidy Requirement established for such month. Owner may withdraw from the Affordability Reserve the difference between the Operating Subsidy Payment actually paid and the full Operating Subsidy Requirement established for such month. Owner’s receipt of disbursements from the Affordability Reserve under this paragraph shall not release the Authority from its obligation to pay the Operating Subsidy Requirement. Owner may make withdrawals under this paragraph as often as monthly or may, in its discretion, cumulate requests for multiple months; or

- (2) **Development Shortfall.** Owner shall be entitled to withdraw funds on a monthly basis in the event that a report prepared in accordance with Section 7.1 of this Agreement demonstrates the existence of a Development Shortfall in a prior month. In such event, Owner may make a withdrawal from the Affordability Reserve in an amount up to the amount of such Development Shortfall. In the event of such withdrawal, Owner shall provide contemporaneous written notice of withdrawal to the Authority demonstrating its entitlement; or
 - (3) **By Consent.** The Authority, Owner and Investor may jointly decide to disburse funds from the Affordability Reserve to Owner in order to (by way of illustration and not limitation) (a) pay for emergency or uncontrollable costs, or (b) set forth a regular disbursement pending subsequent reconciliation, in the event of a standing or anticipated Development Shortfall; provided, however, that any HUD Restricted Funds in the Affordability Reserve may be expended solely for uses permitted by Public Housing Requirements.
 - (4) **Order.** Withdrawals shall be made first from Owner Subaccount until exhausted, and then the Authority Subaccount.
- (d) **Affordability Reserve Floor Level.**
- (1) The term *Affordability Reserve Floor Level*, or *Floor Level*, means, at any time in the future, an amount equal to eighty percent (80%) of the Initial Deposit increased for each intervening year from the date of Initial Deposit by the applicable HUD Inflation Factor.
 - (2) If at any time Owner shall in writing notify the Authority that the balance of the Affordability Reserve is below the Affordability Reserve Floor Level (the deficit amount being referred to herein as a *Reserve Shortfall*), then all payments (whether debt service or other payments) made by Owner to the Authority subsequent to the date of such written notice shall be promptly deposited by the Authority into the Affordability Reserve (Authority Subaccount) until the Affordability Reserve reaches the Affordability Reserve Floor Level. If the balance of the Affordability Reserve remains below the Affordability Reserve Floor Level, the Authority may in its sole discretion deposit into the Affordability Reserve (Authority Subaccount) the amount of the Reserve Shortfall. If the Authority shall fail to make such deposit, the Authority shall be deemed unable to fulfill its contractual obligations hereunder solely for purposes of Section 35(h) of the Act (and for no other purpose) and Owner shall have the right to institute the remedial steps described in ARTICLE 6 of this Agreement, to the extent permitted by Public Housing Requirements.

5.2 **Replacement Reserve**

- (a) **Establishment.** Owner shall deposit not less than \$380 per unit annually, subject to change as provided in this paragraph, into a replacement reserve account (*Replacement Reserve*). The amount to be deposited shall be determined annually in accordance with a

capital needs assessment and plan to be submitted and approved at the same time and subject to the same approval as the Operating Budget.

(b) **Dedicated Use** Funds placed in the Replacement Reserve (including interest thereon) shall be invested by Owner in Permitted Investments and shall thereafter constitute restricted funds to be applied during the term of this Agreement solely in accordance with the terms and conditions hereof. Upon any sale or transfer of Owner's interest in the Development during the term of this Agreement, any HUD Restricted Funds remaining in the Replacement Reserve shall continue to be available to assist the Public Housing Units, in accordance with this Agreement.

(c) **Conditions of Use.**

(1) The Replacement Reserve may be used by Owner solely for repair, replacement or modernization, as specified in the following paragraph, unless otherwise approved by the Authority and Investor.

(2) The Public Housing Units shall be deemed to receive the benefit of, and be responsible for, the Authority Percentage of any capital cost, regardless of whether it is attributable to a particular unit, multiple units or the entire Development.

(3) Together with the Operating Budget, Owner shall provide the Authority annually with a capital needs assessment and plan showing scheduled expenditures from the Replacement Reserve. Any withdrawal from the Replacement Reserve that is not reflected in a capital needs assessment and plan previously approved by the Authority shall be subject to the approval of the Authority.

(d) **Authority Subaccount.**

(1) Any HUD Restricted Funds that are deposited to the Replacement Reserve shall be maintained in a distinct subaccount. Absent a contrary determination by Owner and the Authority conveyed in writing to any entity maintaining the Replacement Reserve, then the Authority Percentage of each deposit to the Replacement Reserve shall be assumed to be HUD Restricted Funds and placed in the designated subaccount. Not later than the time of Annual Reconciliation pursuant to Section 7.5 of this Agreement, Owner shall finally determine the exact amount of HUD Restricted Funds that were deposited with respect to the prior Development Fiscal Year, and an appropriate transfer shall be made. For purposes of this final determination, the amount to be placed in the Authority subaccount of the Replacement Reserve for such Development Fiscal Year shall be deemed equal to (i) the Authority Percentage of the total amount placed in the Replacement Reserve for such Development Fiscal Year, minus (ii) the Public Housing Units Shortfall for such Development Fiscal Year after any further payments of Authority funds to Owner made pursuant to Section 7.5 of this Agreement.

(2) The Public Housing Units shall be deemed to receive the benefit of, and be responsible for, the Authority Percentage of any capital cost, regardless of

whether it is attributable to a particular unit, multiple units or the entire Development. Such amount shall be drawn from the Authority subaccount of the Replacement Reserve to the extent of any balance therein.

5.3 Reserves Generally

- (a) Owner may establish such other reserves as may be required by any Approved Mortgage Lender, by the Investor or as the Authority otherwise approves, but may not deposit in any such reserve HUD Restricted Funds unless then permitted by Public Housing Requirements. The foregoing prohibition shall not be deemed to prohibit Owner's deposit of Public Housing Units Income into (a) the Affordability Reserve as a Replenishment; (b) the Replacement Reserve; or (c) one or more escrow accounts for insurance, taxes, or similar Development Operating Expenses, all subject to any other terms and conditions of this Agreement. The Authority has irrevocably approved any reserve described or shown in an Exhibit to the Mixed-Finance Amendment.
- (b) Owner shall maintain accurate and complete records identifying the source, amount and use of all funds in any reserve accounts, including any Public Housing Units Income or other HUD Restricted Funds, including any public housing operating subsidies and any income earned thereon, and may use such subaccounts as will assist in identifying funds. Any Public Housing Units Income or other HUD Restricted Funds placed in a reserve account shall at all times during the term of this Agreement, except as otherwise approved in writing by HUD and the Authority, (a) be maintained in federally insured or collateralized accounts or investment securities suitable for investment of funds of a public housing authority as specified by Public Housing Requirements; (b) constitute restricted trust funds to be applied during the term of this Agreement solely for the benefit of the Public Housing Units in accordance with the terms and conditions hereof; and (c) not be pledged for the satisfaction of any debt of Owner, any such attempted pledge being of no effect.
- (c) Upon any disposition of the Development by sale, lease, assignment, foreclosure or otherwise during the term of this Agreement, all funds that originated in Public Housing Units Income or other HUD Restricted Funds and that remain in any reserve account (including without limitation the Affordability Reserve and the Replacement Reserve, including any income earned thereon) shall be transferred to the new owner to be used in connection with the Public Housing Units in accordance with this Agreement. Funds covered by this paragraph shall not be considered assets of the project for purposes of valuing any interest being acquired by the Authority.
- (d) Upon disposition of the Development by sale, lease, assignment, foreclosure or otherwise during the term of this Agreement, any funds of Owner remaining in any account or reserve and not covered by the preceding section may be dealt with in accordance with the Development Documents, unless otherwise required by Public Housing Requirements.
- (e) Upon the occurrence of a casualty or condemnation (without restoration) of all of the Public Housing Units, or upon dissolution of Owner, or if the Public Housing Units cease to be used as such, or upon any determination of Owner concurred in by the Authority

that any Development fund or reserve or portion thereof is unnecessary as such, all funds that originated in Public Housing Units Income or other HUD Restricted Funds and that remain in any reserve account (including without limitation the Affordability Reserve and the Replacement Reserve) including any income earned thereon, or the portion thereof no longer required for the Development, will be returned to the Authority for use in carrying out other public housing activities.

- (f) Upon the occurrence of a casualty or condemnation (without restoration) of the Development, or upon any determination of Owner concurred in by the Authority that any Development fund or reserve is unnecessary as such, any funds of Owner remaining in any account or reserve and not covered by the preceding section may be dealt with in accordance with the Development Documents, unless otherwise required by Public Housing Requirements.

5.4 **Duplication of Reserves.** No provision contained herein shall require Owner to create a reserve that would duplicate a reserve established by the Owner for the same purposes pursuant to Approved Mortgage Lender or Investor requirements set forth in the Development Documents.

ARTICLE 6 PRESERVATION AND TRANSFORMATION.

6.1 **General.** The parties recognize that they are structuring a long-term relationship premised on, among other things, the continuation without substantial change of the Act and the maintenance of full federal appropriations to support the government's obligations under the Act. The purpose of this Article 6 is to ensure that in the event there should be any legislative changes, diminished appropriations, uncontrollable cost increases, or other circumstances not the fault of Owner which create an imbalance of income and expenses attributable to the Public Housing Units, the viability of the Development can be maintained without unnecessary hardship to low-income residents or excessive claim on scarce resources of the Authority.

6.2 **Initial Remedies.** Notwithstanding any Public Housing Units Shortfall, Owner shall continue to maintain and operate the Public Housing Units as required hereunder; provided, however, that if (a) at anytime, Owner gives the Authority written notice that the balance in the Affordability Reserve has fallen below the Floor Level and the Authority declines to make such voluntary contributions to the Affordability Reserve in accordance with Section 5.1 as will bring the Affordability Reserve up to the Floor Level; (b) the Quarterly Reports delivered pursuant to Section 7.2 shall indicate a Development Shortfall over a period of two successive quarterly periods; and (c) Owner reasonably forecasts that such Development Shortfall will continue for the next two quarterly periods, then Owner may avail itself of the provisions of Section 6.2(b) below, but only if Owner first seeks to use Section 6.2(a) and projects that it will be insufficient to eliminate the Development Shortfall. If at any time Congress passes any law or appropriations measure whose result would be to reduce the Operating Subsidy Payment to less than 75% of the amount needed in order to avoid a Development Shortfall or would cause the Affordability Reserve to fall below the Affordability Reserve Floor Level, Owner may immediately avail itself of all remedies in this Section 6.2.

- (a) **Income Improvement Plan.** Owner and the Authority shall undertake in good faith to develop a plan to reduce Development Operating Expenses and increase Development Income. Such plan may include the reduction or elimination of social or recreational

services, deferral of routine maintenance (but not to the physical or financial detriment of the Development) and other actions, as well as efforts to increase income through rent increases to non-Public Housing Units or lease enforcement. However, Owner shall not be required to seek to reduce maintenance and other Development Operating Expenses below a prudent level or below the level of such expenses required for compliance with this Agreement, Public Housing Requirements or Tax Credit Requirements; to rent to residents with incomes higher than permitted under Section 42 of the Code; to reduce the management fee below market levels; to reduce the Asset Management Fee (defined in Owner's Operating Agreement) below the amount specified in the Owner's Operating Agreement; to reduce services and amenities below that required to competitively market to, and retain, residents; or to act in a manner that would violate Tax Credit Requirements or any other regulatory or financing agreement by which Owner is bound.

- (b) **Adjust Income Mix on Turnover.** Owner and the Authority shall take such steps as may be necessary and in accordance with Public Housing Requirements and Tax Credit Requirements to increase the income level of new tenants admitted to the Public Housing Units, including amending the preference and waiting list policy applicable to the Public Housing Units on an expedited basis in order to give admission preference to families with the highest income levels (to the extent required) permitted by Public Housing Requirements and Tax Credit Requirements.
- (c) **Increase Subsidy; Other Discretionary Actions.** Owner may request, and the Authority shall give good faith consideration to, providing additional assistance available to the Authority in addition to the operating subsidy contemplated herein. Additionally, Owner and the Authority will make good faith efforts to identify and adopt any other operational changes or locate any available third party assistance in order to increase Development Income and permit the continued operation of the Development without avoidable hardship to current residents. Without limitation: (A) the Authority may provide project-based Housing Choice Vouchers, to the extent available, to the non-Public Housing Units in the Development; and (B) the Authority will encourage very low income tenants of the Public Housing Units to move to non-Public Housing Units and may offer them tenant-based Housing Choice Vouchers, to the extent available, if no project-based assistance is available. Any net cash flow realized by Owner as a result of the use of Housing Choice Vouchers pursuant to this subsection shall be used to subsidize the Public Housing Units or shall be placed in reserve by Owner (in a manner approved by the Authority) and shall not result in profit to Owner.

6.3 Transformation.

In the event that, despite all good faith efforts and despite consideration and use of all lesser remedies provided herein, and the amount in the Affordability Reserve is below 80% of the Floor Level, all actions by Owner and the Authority are insufficient to provide Operating Subsidy Payments which, together with tenant rents, will eliminate any **Development Shortfall**, or if Owner and the Authority agree at any time that more focused measures are necessary in order to preserve the Public Housing Units, then subject to Section 6.4, Owner may take all further actions necessary to eliminate the Development Shortfall (**Transformation**) including, without limitation, requiring increases in rental payments from tenants of Public Housing Units (and requiring

tenants who are unable to pay the increased rent to accept relocation in accordance with Public Housing Requirements, so that their units may be leased to public housing eligible tenants able to pay the increased rent) so that income from the Public Housing Units in the aggregate, plus all such public assistance as aforesaid, shall be sufficient to eliminate any Development Shortfall; provided, however, that any such actions must be consistent with Public Housing Requirements and Tax Credit Requirements. The Public Housing Units Lease shall provide for the possibility of Transformation remedies in accordance with this Agreement. Notwithstanding the foregoing, Owner and Authority shall be permitted to implement the remedies authorized by Section 35(h) of the Act (as and when implemented by HUD) only in those circumstances enumerated in Section 35(h) and implementing regulations.

6.4 Preservation and Transformation Plan.

- (a) Before Owner exercises its rights under Section 6.3 hereof, Owner, Investor and the Authority shall seek to develop and agree upon a preservation and transformation plan (***Transformation Plan***) which satisfies Public Housing Requirements and Tax Credit Requirements and sets forth in detail the nature and priority of different remedial actions to be taken, the rights of existing tenants affected thereby, and other relevant matters. Such Transformation Plan must be reasonably likely to eliminate any Development Shortfall while maximizing the availability of Public Housing Units for low-income and very-low income families and minimizing the adverse effects on existing tenants. Owner may propose a Transformation Plan at any time after giving notice pursuant to Section 6.2.
- (b) Owner, Investor and the Authority shall make diligent efforts in good faith to agree upon a Transformation Plan, after notice to and appropriate consultation with residents of the Public Housing Units. If Owner, Investor and the Authority shall fail to agree prior to Owner being entitled to exercise remedies in accordance with Section 6.3 or within sixty (60) days of Owner proposing such a Transformation Plan (whichever is later), Owner may proceed to implement its Transformation Plan. However, if the Authority shall pay into the Affordability Reserve or otherwise make available additional contributions sufficient (based on current income/expense data) to fund the Development Shortfall for at least 12 months, then Owner shall be obliged to follow the Transformation Plan of the Authority until either the Transformation Plan accomplishes its goals and can be terminated, or the amount in the Affordability Reserve falls below the lower of (1) the Floor Level; or (2) the amount in the Affordability Reserve on the date Owner proposed its Transformation Plan, in which case Owner may institute its own Transformation Plan. All such plans shall be specifically subject to HUD's approval to the extent required by Public Housing Requirements.
- (c) To the extent that the Authority is reasonably able to provide substitute housing (Section 8 or public housing) to families that fail to pay the rent that Owner has specified for such household's adjusted gross income under the Transformation Plan, the Authority shall offer such substitute housing. If and as permitted by Public Housing Requirements, the Authority will provide Section 8 Housing Choice Vouchers (to the extent available) on a project-based or tenant-based basis in order to help families to remain in the Public Housing Units while paying the higher rents required by the Transformation Plan.

- 6.5 **Restoration of Units.** If, subsequent to institution of remedial steps described in Sections 6.2 and 6.3 above, the Operating Subsidy Payment, the resources provided hereunder, and any other resources made available shall support operation on a continuing basis of all or a portion of the number of Public Housing Units without a Development Shortfall (and shall have restored the Affordability Reserve to at least the Floor Level), the obligation of Owner to so operate such number of units as public housing in accordance with the terms hereof shall be reinstated, subject to the rights of tenants in occupancy.
- 6.6 **First Right of Return.** If the obligations of Owner are reinstated pursuant to Section 6.5 of this Agreement, Owner shall make reasonable efforts to notify any household that had previously been forced to vacate a Public Housing Unit because of Owner's exercise of any of the remedies provided herein and shall offer such tenant an opportunity to be placed at the top of the Waiting List, subject to such tenant's continuing eligibility for public housing and satisfaction of then-applicable resident selection criteria, including compliance with Tax Credit Requirements.
- 6.7 **Good Faith.** The parties agree to act in good faith and cooperate with each other to find strategies to ensure the continued viability of the Development if changes occur with respect to the Operating Fund beyond the changes contemplated in this Agreement. In so agreeing, the parties are mindful of the Authority's obligation to its entire portfolio of housing, as well as the desire of both parties to preserve the Development as a feasible affordable housing development.
- 6.8 **Remedial Legislation.** Nothing contained herein shall prevent or diminish the full application to the Development of any remedial legislation enacted before or after the date hereof (including, without limitation, regulations pursuant to Section 35(h) of the Act, or any substitute provision, if applicable), and any provision thereof releasing or otherwise modifying occupancy or tenant rent restrictions previously applicable to the Public Housing Units. In the event a tenant-based subsidy or any other replacement subsidy system is established in lieu of the current Operating Fund Formula, such that the mechanism described in ARTICLE 4 is fundamentally incompatible with the federal subsidy system, the Authority and Owner both shall use their most diligent efforts to secure sufficient subsidy to support the Development, but, subject to the Authority's reasonable discretion, not to the detriment of the remaining units in the Authority's stock.

ARTICLE 7 FINANCIAL STATEMENTS; ANNUAL RECONCILIATION.

- 7.1 **Accounting System.** Owner will maintain a system of accounting established and administered in accordance with sound business practices and Public Housing Requirements. All accounting and reporting required hereunder shall be prepared in accordance with generally accepted accounting principles consistently applied, and shall be sufficiently accurate and complete to demonstrate that public housing funds have been handled in the manner required herein and by Public Housing Requirements
- 7.2 **Quarterly Reports.** As soon as available, but not later than thirty (30) days from the end of each fiscal quarter, Owner shall submit to the Authority a quarterly report (*Quarterly Report*), commencing on the first quarter in which any of the units are occupied. The Quarterly Report shall consist of all narratives, reports and statements provided to the Partners of Owner and will include, at a minimum, a balance sheet, an income statement, and a narrative summary describing

any significant financial activity which is not captured in the balance sheet and income statement. The Quarterly Report shall also include a current rent roll identifying all Public Housing Units and a statement reflecting the then current balance of all reserve accounts and all deposits to or withdrawals from each of such accounts during such fiscal quarter.

7.3 **Annual Audited Financial Statements.** Not later than one hundred and twenty (120) days after the end of each Development Fiscal Year, Owner shall deliver to the Authority a copy of the audited financial statements of Owner for such year prepared in accordance with accounting principles generally used for entities operating affordable housing developments, accompanied by the report of independent certified public accountants thereon, together with a copy of any additional financial statements or reports delivered by Owner to its Partners. To the extent Public Housing Requirements require the submission of any annual financial statement or data to HUD in addition to that required under this paragraph or at an earlier time, Owner will provide it to the Authority at least thirty (30) business days before the required submission date.

7.4 **Supplemental Data.** The financial statements described in Section 7.3 of this Agreement shall be accompanied by supplemental data that shall show on an accrual basis for such period (i) Public Housing Units Unsubsidized Income, (ii) Public Housing Units Expenses, (iii) Operating Subsidy Payments received by Owner, (iv) any withdrawals from the Affordability Reserve and any other operating revenues or assistance attributable to the Public Housing Units, (v) the balance at the end of the period of the Affordability Reserve and any other reserve or special account maintained by Owner, including any subaccount of any reserve tracking deposits and withdrawals with respect to the Public Housing Units, (vi) aggregate stated lease rents and the amounts thereof uncollected from Public Housing Units for which no eviction actions have been commenced, and (vii) deposits to and withdrawals from the Replacement Reserve, together with a summary of all capital expenditures made.

7.5 **Annual Reconciliation.**

(a) If the supplemental data provided pursuant to Section 7.4 above shall show that the sum of the amounts described in clauses (i) (actual Public Housing Units Unsubsidized Income), (iii) (Operating Subsidy Payments) and (iv) (withdrawals from the Affordability Reserve, and any other operating revenues or assistance attributable to the Public Housing Units) shall exceed the amount described in clause (ii) thereof (actual Public Housing Units Expenses) then not later than ten (10) days following delivery of such supplemental data to the Authority, Owner shall deal with such excess in the following order, until such excess is eliminated:

- (1) redeposit to the Affordability Reserve any amounts withdrawn in the subject year;
- (2) apply any remainder to the projected Public Housing Units Shortfall for the current year;
- (3) Pay any remainder to the Authority, up to the amount of Operating Subsidy Payments made in the subject year;
- (4) If and only as required by Public Housing Requirements, pay any remainder (i.e. net operating income, if any, from Public Housing Units Unsubsidized Income

alone) to the Authority, which payment shall be applied to any obligation of Owner to the Authority (including deferred developer fee or debt service) to the extent consistent with, and as permitted by, Public Housing Requirements; and

- (5) Deal with any remainder as funds of the Owner, subject to claims of third parties and provisions of the Operating Agreement.
- (b) If the supplemental data provided pursuant to Section 7.4 above shall show that the sum of the amounts described in clauses (i) (actual Public Housing Units Unsubsidized Income), (iii) (Operating Subsidy Payments), and (iv) (withdrawals from the Affordability Reserve, and any other operating revenues or assistance attributable to the Public Housing Units) shall be less than the amount described in clause (ii) thereof (actual Public Housing Units Expenses), then the Authority shall provide additional Operating Subsidy Payments up to the amount specified in Section 4.4 of this Agreement. Owner may obtain any remaining deficit amount from the Affordability Reserve, but in no event to exceed the amount necessary to eliminate any Development Shortfall for the year.
- (c) remained vacant, divided by three hundred and sixty-five (365).

- 7.6 **Maintenance of Records.** It shall remain the responsibility of the Authority to maintain sufficient records and to take necessary action to assure HUD that all the Authority obligations to HUD under Public Housing Requirements are fulfilled. Where the ACC or other Public Housing Requirements or PHAS require the Authority to furnish reports, records, statements, certificates, documents or other information to HUD, or otherwise deal with HUD, the Authority shall inform Owner of such requirement and Owner shall furnish such reports, records, statements, certificates, documents or other information to the Authority and shall provide all other information reasonably requested by the Authority, all reasonably in advance of the date such information is due to HUD. Nothing contained in this Section shall be construed to relieve Owner of its obligation to maintain its own books and records. Owner acknowledges that any failure on its part to timely provide to the Authority the information required by this paragraph may result in delay or diminution of operating subsidy from HUD.
- 7.7 **Records for Audit Purposes.** Owner shall maintain all records concerning the Development for five years from creation, unless a longer period is required under this Agreement, 24 CFR §85.42, or other Public Housing Requirement. 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 Development. The right to such access shall continue as long as the records are retained, even if such period exceeds the obligatory retention period.
- 7.8 **HUD Documentation.** Upon timely request by the Authority, Owner shall provide to the Authority on a timely basis all Development-related reports and data necessary to meet HUD or other agency reporting requirements.

ARTICLE 8 NON-DISCRIMINATION AND OTHER FEDERAL REQUIREMENTS.

Owner will comply with all applicable requirements of the following, 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; and the fair housing poster regulations, 24 CFR Part 110.
- (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; and the Americans with Disabilities Act, 42 U.S.C. §12181-89, and regulations issued thereunder, 28 CFR Part 36.
- (e) Section 3 of The Housing and Urban Development Act of 1968, 12 U.S.C. §1701u, and its implementing regulations of 24 CFR Part 135.
- (f) Wage rates under the Davis-Bacon Act (40 U.S.C. §276(a) et seq.).
- (g) OMB Circulars Number A-110 and A-122, as they relate to the acceptance and use of federal funds, and 24 CFR part 85, to the extent applicable.

ARTICLE 9 INSURANCE REQUIREMENTS; RESTORATION OF PROPERTY.

9.1 Requirements. Owner shall comply with all requirements of Part B, Attachment VII of the ACC and shall procure and maintain in force adequate insurance from an insurance carrier reasonably satisfactory to the Authority 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 any lender, and such other hazards to which Owner determines that exposure exists. Without limiting the generality of the foregoing, Owner shall maintain all risk-insurance with respect to all insurable property pertaining to the Development, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such other hazards as are presently included in so-called "all-risk" coverage, in an amount not less than one hundred percent (100%) of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Owner from being a co-insurer, such insurance to be in builder's risk (non-reporting) form during and with respect to any construction on the Development Site.

9.2 Restoration.

- (a) 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 Development, in

whole or in part, and without diminution of any obligation of Owner in respect thereof under the Approved Mortgage Loans, Owner, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available to Owner, Authority or any other participating party (including, without limitation, by further advance pursuant to the Approved Mortgage Loans and any other funds committed to the Development) permit, shall promptly cause the restoration, reconstruction, and/or repair of the Development as nearly as possible to its value, condition and character immediately prior to such taking or casualty. The Approved Mortgage Loan documents shall contain provisions requiring restoration consistent with the foregoing if such restoration shall be determined feasible in accordance with the ACC. If such condemnation or insurance proceeds and other available funds are not sufficient or restoration is otherwise determined in accordance with the Approved Mortgage Loan documents to be infeasible, such proceeds shall be applied as provided in the Approved Mortgage Loan documents and the number of units (and bedroom count) in the Development remaining following such taking or casualty (and following any construction, reconstruction or repair undertaken by reason thereof or necessitated thereby) that shall be Public Housing Units shall be determined in accordance with Section 13(B) of the ACC, as amended by Section 11 of the Mixed-Finance Amendment.

- (b) In the event of any conflict between this Section 9.2 and the Mixed-Finance Amendment, including Section 11 thereof, the Mixed-Finance Amendment shall govern. In the event of a conflict between the ACC and the Approved Mortgage Loan documents, the ACC shall in all instances be governing.

ARTICLE 10 DISPOSITION AND ENCUMBRANCE

- 10.1 **No Demolition or Disposition.** 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 the terms of Sections 10.3 and 10.4 hereof, Owner shall not demolish, or dispose of its interest in, the Public Housing Units (including, without limitation, by conveyance or lease of the Development or any portion thereof, or by assignment of Owner's rights under this Agreement), without the prior written approval of the Authority and HUD.
- 10.2 **No Encumbrances.** During the term of this Agreement, and subject to the terms of Sections 10.3 and 10.4 hereof, Owner shall not mortgage, pledge, or otherwise encumber its interest in the Development or any assets of the Development, without the prior written approval of the Authority and HUD.
- 10.3 **Exclusions.** The following actions are expressly excluded from the covenants set forth in Sections 10.1 and 10.2 hereof:
- (a) Mortgage of Owner's interest in the Development pursuant to any Approved Mortgage Loan, and transfer of the Development to the mortgagee under any Approved Mortgage Loan, by foreclosure or deed-in-lieu of foreclosure (or the leasehold equivalent thereof), or to a third-party purchaser pursuant to a foreclosure sale (or the leasehold equivalent

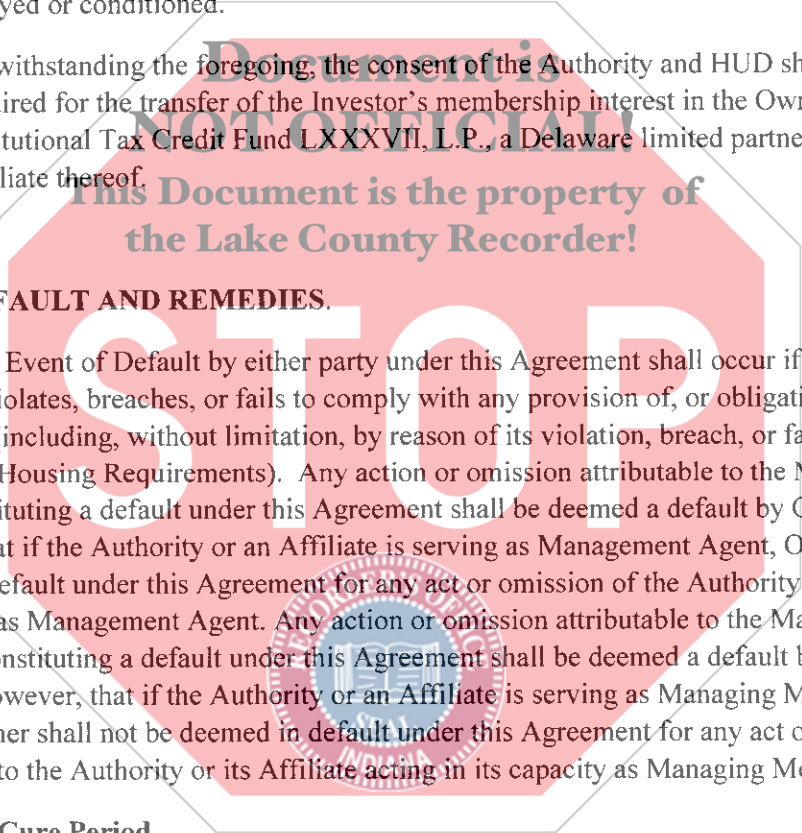
thereof), provided that any such transfer shall be subject to the terms of the Declaration of Restrictive Covenants and this Agreement.

- (b) 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 utility services.
- (c) Leases of dwelling units, subject to any conditions stated in this Agreement applicable to Public Housing Units.
- (d) Normal uses and encumbrances associated with the operation of the Development.
- (e) The execution and recordation of any document listed in Exhibit E to the Mixed-Finance Amendment, and the taking of any action permitted in any such document in accordance with its terms.

10.4 Transfers of Interests.

- (a) No transfer, conveyance, or assignment shall be made without the prior written approval of both the Authority and, if required by the then-current Applicable Public Housing Requirements, HUD of: (1) any interest of a managing member, general partner, or controlling stockholder (any such interest being referred to as a **Controlling Interest**) of Owner; or (2) a Controlling Interest in any entity which has a Controlling Interest in Owner; or (3) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed-Finance Amendment, any other interest in Owner, or in any partner or member thereof. For purposes of the definition of **Controlling Interest** set forth above and in this Section 10.4, a "Controlling Interest" shall not include any interest, no matter how large, of a limited partner in a limited partnership or of a limited liability company member that is not a manager or managing member of such limited liability company.
- (b) Notwithstanding the foregoing, the consent of the Authority and HUD shall not be 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: (a) provides the Authority and HUD with written notice of such transfer; and (b) certifies to the Authority and 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) Notwithstanding the foregoing, the Authority and HUD consent shall not be required for the exercise by Investor of its right pursuant to Section 8.13 of the Owner's Operating Agreement to remove the managing member of Owner and appoint Investor or an affiliate thereof as interim managing member of Owner so long as Investor gives prompt written notice to HUD of such removal and appointment; provided that the HUD consent shall be required for the appointment of such interim managing member to extend beyond a ninety (90) day period and for the appointment of any entity (including Investor or an affiliate thereof) as the permanent replacement managing member.

- (d) Notwithstanding the foregoing, the Authority and HUD consent shall not be required for the exercise by an Approved Mortgage Lender of its right pursuant to the Approved Mortgage Loan documents to remove the managing member of Owner and appoint a designee or assignee of the Approved Mortgage Lender as interim managing member of Owner so long as the Approved Mortgage Lender gives prompt written notice to HUD of such removal and appointment; provided that the HUD consent shall be required for the appointment of such interim managing member to extend beyond a ninety (90) day period and for the appointment of any entity (including Investor or an affiliate thereof) as the permanent replacement managing member.
- (e) The Authority agrees that it shall not, and shall not cause HUD to, unreasonably withhold, delay, or condition a request by Owner for consent by the Authority, HUD, or both hereunder, as applicable, to an internal reorganization of the company structure of Owner or any of the members of Owner.
- (f) The consent of the Authority and HUD shall not be required for any exercise by Investor of its right to enforce the requirements of Section 5.05 (Repurchase Requirements) of the Owner's Operating Agreement; provided that the resale of the Investor's interest by the entity that acquired it pursuant to such repurchase requirements shall be subject to the approval of the Authority and HUD, such approval not to be unreasonably withheld, delayed or conditioned.
- (g) Notwithstanding the foregoing, the consent of the Authority and HUD shall not be required for the transfer of the Investor's membership interest in the Owner to U.S.A. Institutional Tax Credit Fund LXXXVII, L.P., a Delaware limited partnership, or an Affiliate thereof.



ARTICLE 11 DEFAULT AND REMEDIES.

11.1 **Default** An Event of Default by either party under this Agreement shall occur if that party materially 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 Public Housing Requirements). Any action or omission attributable to the Management Agent constituting a default under this Agreement shall be deemed a default by Owner; provided, however, that if the Authority or an Affiliate is serving as Management Agent, Owner shall not be deemed in default under this Agreement for any act or omission of the Authority or its Affiliate in its capacity as Management Agent. Any action or omission attributable to the Managing Member of Owner constituting a default under this Agreement shall be deemed a default by Owner; provided, however, that if the Authority or an Affiliate is serving as Managing Member of Owner, Owner shall not be deemed in default under this Agreement for any act or omission attributable to the Authority or its Affiliate acting in its capacity as Managing Member.

11.2 **Notice and Cure Period.**

- (a) Upon a determination by one party that an Event of Default by the other party has occurred, the non-defaulting party shall notify the defaulting party and HUD and the Investor in writing of (i) the nature of the default, (ii) the actions required to be taken by

the defaulting party to cure the default, and (iii) the period of time within which the defaulting party must respond with a showing that all required actions have been taken, provided that such period of time shall be no less than thirty (30) days for monetary defaults, and no less than sixty (60) days for non-monetary defaults, or such additional periods of time as may be reasonable, provided that the defaulting party promptly commences the cure of such default within the initial cure period and diligently prosecutes the same to completion.

- (b) In addition to all other rights of Investor hereunder, if no later than thirty (30) days after receipt of said written notices from the Authority, Investor shall have exercised its removal right under the Operating Agreement and the substitute Managing Member within thirty (30) days of being admitted to Owner either has cured such default or has commenced to cure and thereafter diligently and continuously pursues same, then Owner shall not be considered in default or breach of the Agreement.

11.3 **Remedies.** Except as provided in Sections 11.5 or 11.6 of this Agreement, if the defaulting party (or, as applicable, Investor and/or any Approved Mortgage Lender if either has exercised intervention rights available to it) fails to respond or take corrective action to the satisfaction of the non-defaulting party within the time periods set forth herein, the non-defaulting party shall have the right to exercise or seek any legal or equitable remedy available to it by reason of the nature of such default, including without limitation specific performance, injunctive relief, or the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement. As provided in 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.

11.4 **Rights of Others.** The Authority shall transmit concurrently to Investor and to any Approved Mortgage Lender a copy of any notice of default by Owner under this Agreement. If Investor shall have exercised its right to remove the managing member of Owner and install a substitute managing member pursuant to the terms of the Operating Agreement within the applicable cure period established in Section 11.2 of this Agreement, and such substitute managing member promptly commences the cure of such default and pursues the same diligently to completion, Owner shall not be considered in default or breach of this Agreement. In the event that Owner shall fail to cure any such default within the applicable time period, any Approved Mortgage Lender shall be given a reasonable additional period of time (not less than sixty (60) days) to effect a cure of Owner's default; provided, however, that in an emergency situation the Authority shall be permitted to act temporarily to protect the Public Housing Units and the tenants thereof. Any notice required hereunder shall be deemed to have been given as and when given in accordance with Section 13.4 of this Agreement to the address shown in such Section 13.4 or to the address, if any, most recently provided to the Authority in writing by the party requiring notice.

11.5 **Indemnification.** Owner shall indemnify and hold harmless the Authority from and against any liability to HUD, for recapture, penalty or otherwise, and any costs including attorney fees incurred in connection therewith, resulting from any failure of Owner or the Management Agent

to comply with this Agreement and/or Public Housing Requirements; provided, however, that if the Authority or an Affiliate is serving as Management Agent, Owner shall not be required to indemnify and hold harmless the Authority for any liability to HUD resulting from any failure of the Authority or its Affiliate in its capacity as Management Agent to comply with this Agreement and/or the Public Housing Requirements; and further provided, however, that if the Authority or an Affiliate is serving as Managing Member of Owner, Owner shall not be required to indemnify and hold harmless the Authority for any liability to HUD resulting from any failure of the Authority or its Affiliate in its capacity as Managing Member to comply with this Agreement and/or the Public Housing Requirements.

11.6 **Exclusive Remedy.** Notwithstanding anything to the contrary herein, in the event that the Authority is unable to perform an obligation hereunder as a result of diminished appropriations under Section 9 of the Act or other legislative changes that significantly reduce the amount of operating subsidy that the Authority is able to provide to Owner or prevent the Authority from providing Owner with amount of operating subsidy sufficient together with Public Housing Units Income to fully cover Public Housing Units Expenses, the remedies contained in this Agreement shall be the exclusive remedies available to Owner with respect to the reduction of operating subsidies provided by the Authority to Owner. Owner further agrees that in the event that diminished appropriations under section 9 of the Act or other legislative changes significantly reduce the amount of operating subsidy that the Authority is able to provide, Owner shall have no recourse under this Agreement against any other "project" or "operating receipt" of the Authority, as such terms are defined in the ACC; or any public housing operating reserve of the Authority reflected in the Authority's annual operating budget and required under the ACC; provided, however, that nothing herein shall deprive Owner of legal or equitable remedies relating to that portion of the Operating Subsidy Requirement that remains due under this Agreement after allowing for any reduction of operating subsidy to the Authority, and provided further that any remedies of Owner shall be consistent with and limited by Public Housing Requirements and any restraint imposed by a court of competent jurisdiction.

11.7 **Authority Default under the ACC.** Authority covenants to provide Owner and Investor, within fifteen (15) days of receipt, with a copy of any written notice of default given by HUD under the ACC with respect to the Development.

ARTICLE 12 DISCLAIMER OF HUD RELATIONSHIPS

12.1 **No Assignment** The Authority and Owner acknowledge that any transfer of HUD grant funds or operating subsidy by the Authority to Owner, or to any other participating party, of public housing capital and/or operating subsidies, as described in this Agreement, shall not be or be deemed to be an assignment of HUD funds, and neither Owner nor any other participating party shall succeed to any rights or benefits of the Authority under the ACC, or attain any privileges, authorities, interests, or rights in or under the ACC.

12.2 **No Relationship** Nothing contained in the ACC 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, joint venture, or any association or relationship involving HUD, except between HUD and the

Authority as provided under the terms of the ACC; provided, however, that any Approved Mortgage Lender shall be entitled to rely upon Section 12(C) and (D) of the Mixed-Finance Amendment as required by Section 6(B)(2) of the Mixed-Finance Amendment and to foreclose upon its mortgage and/or exercise rights or remedies thereunder, and in doing so, succeed to the status of Owner under said mortgage and hereunder.

ARTICLE 13 MISCELLANEOUS.

13.1 **Term of Agreement.** Unless earlier terminated in accordance with the terms and conditions stated herein, this Agreement shall continue in full force and effect until the later to occur of (i) expiration of the period during which the Public Housing Units are required by law to be operated as "public housing" in accordance with the Act, and (ii) the expiration of forty (40) years from the date hereof.

13.2 **Decision Standards.** In any approval, consent or other determination by any party required under any provision of this Agreement, the party shall act reasonably, in good faith and in a timely manner, unless a different standard is explicitly stated.

13.3 **Party Approvals.**

- (a) *Approved* with respect to any document means that such document is identified in the Mixed-Finance Amendment or has otherwise been approved in writing by the Authority.
- (b) Notwithstanding anything hereinabove provided, in all instances where the Authority is empowered or required to grant its approval or otherwise take action, the Authority's exercise or nonexercise of such power shall (subject to Public Housing Requirements, and except where the Authority has explicitly reserved the right of sole discretion under this Agreement) be consistent with Tax Credit Requirements.
- (c) For all actions requiring a party's (the *Approving Party's*) approval, the other party (the *Requesting Party*) shall submit the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: "**Important: Your Response is Required in __ Working Days**".
- (d) The Approving Party shall have a specified number of days to respond in writing. The Approving Party's response, if not an approval, must include the basis for any objection and suggested modifications to obtain approval. For some issues, this Agreement identifies the number of days that the Approving Party shall have to respond. For other issues, the amount of response time shall be stated in the notice, and shall be proportionate to the type and magnitude of the decision and the Requesting Party's need to operate the Development. For example, but not in limitation, the decision time for emergency situations shall be shorter than the time for review and approval of budgets.
- (e) If the Requesting Party does not receive a response within the specified number of days from the delivery to the Approving Party of a notice as provided in Section 13.3, it may send the Approving Party a notice of non-response, which shall be delivered to the Approving Party in accordance with the formal notice provisions hereof and which shall

bear the bold-faced legend, “**Important: Notice of Non-response**”. Following the giving of this notice, the Approving Party will have five (5) days in which to respond.

- (f) If the Approving Party does not respond within such five (5) days, the Approving Party shall be deemed to have given its approval; provided, however, that no deemed approval shall apply to any decision that by its nature requires formal action by the Authority through its Board of Commissioners, or if the notice request did not contain the appropriate legend as required in this Section 13.3.

13.4 **Notices.** All notices, requests, demands, approvals, or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when received, if (i) delivered by hand, (ii) sent by registered or certified mail, return receipt requested, (iii) sent by recognized overnight delivery service such as Federal Express, or (iv) transmitted by facsimile or electronic mail, provided such notice is also sent simultaneously in the manner provided for in (i), (ii), or (iii) above, addressed as follows:

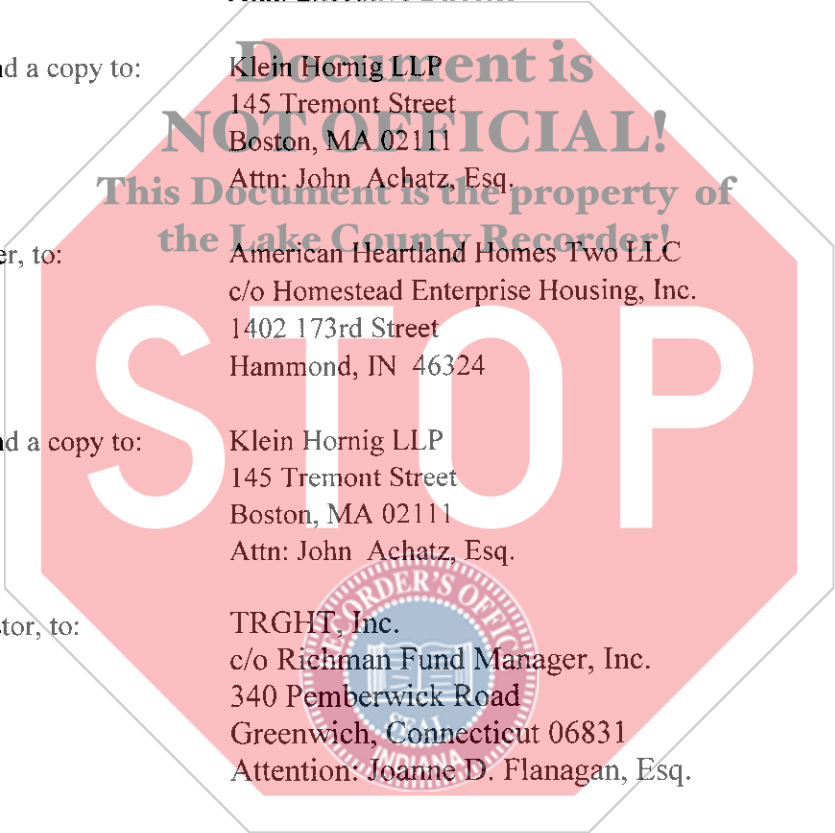
If to the Authority, to: Hammond Housing Authority
1402 173rd Street
Hammond, IN 46324
Attn: Executive Director

and a copy to: Klein Hornig LLP
145 Tremont Street
Boston, MA 02111
Attn: John Achatz, Esq.

If to Owner, to: American Heartland Homes Two LLC
c/o Homestead Enterprise Housing, Inc.
1402 173rd Street
Hammond, IN 46324

and a copy to: Klein Hornig LLP
145 Tremont Street
Boston, MA 02111
Attn: John Achatz, Esq.

If to Investor, to: TRGHT, Inc.
c/o Richman Fund Manager, Inc.
340 Pemberwick Road
Greenwich, Connecticut 06831
Attention: Joanne D. Flanagan, Esq.



and a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
Attention: James McDermott, Esq.

If to HUD, to: United States Department of Housing and Urban
Development
451 Seventh St., S.W.
Washington, DC 20410
Attn: Asst. 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, facsimile or e-mail transmission, delivery to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of facsimile or electronic mail, upon receipt of electronic confirmation thereof, but only if accompanied by notice by some other method hereunder, (iii) in the case of delivery by overnight courier or express delivery service, on the date following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

- 13.5 **Further Assurances.** Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.
- 13.6 **Type of Entity.** Any reference herein to a partnership, limited liability company, corporation, etc., or to a partner, member or stockholder shall mean whichever of such terms is appropriate for the entity or person referred to. Reference to a general partner shall likewise refer to a managing member, and vice versa.
- 13.7 **No Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties; provided, however, that except as provided in Section 10.4, Owner may not assign its interest in the Agreement without the prior written consent of the Authority and HUD. Any assignment of Owner's interest in the Agreement undertaken without the prior written consent of Authority and HUD shall be null and void.
- 13.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one instrument.
- 13.9 **Interpretation, Governing Law and Forum.** This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both parties. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana. It is the intention of the parties that each and every provision of law required to be inserted and set forth in this Agreement shall be so inserted and if any such provision has not been inserted, by mistake or otherwise, it shall be deemed incorporated herein. In the event of any differing requirements among regulatory programs to which the Development is subject, the Development shall comply with the strictest (and therefore all) of all such requirements.

- 13.10 **Severability.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.
- 13.11 **No Personal Liability** No officer, director, commissioner, shareholder, partner, employee, agent or other person authorized to act for or on behalf of either party shall be personally liable for any obligation, express or implied, hereunder. Owner shall look solely to Authority funds that are legally available for such purpose, and the Authority shall look solely to Owner, for the satisfaction of any remedy each might have with respect to the other for the other's failure to perform any of its obligations hereunder.
- 13.12 **Modification of Agreement.** This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties, subject to prior written approval by HUD and the Investor, and provided that no amendment shall impair the obligations of the Authority or Owner to develop and operating the Public Housing Units in accordance with Public Housing Requirements.
- 13.13 **Owner's Employees and Liabilities.** It is understood that persons engaged or employed by Owner as employees, agents, or independent contractors shall be engaged or employed by Owner and not by the Authority; and Owner alone is responsible for their work, direction, compensation and personal conduct. Nothing included in any provision of this Agreement shall impose any liability or duty upon the Authority to persons, firms, or corporations employed or engaged by Owner in any capacity whatsoever, or make the Authority liable to any such persons, firms, or corporations, or to any government, for the acts, omissions, liabilities, obligations, and taxes, of whatsoever nature, of Owner or of its employees, agents, or independent contractors.
- 13.14 **Neither Party an Agent.** Nothing in this Agreement shall be deemed to appoint either Owner or the Authority as an agent for or representative of the other, and neither one shall be authorized to act on behalf of the other with respect to any matters except those specifically set forth in this Agreement. Neither Owner nor the Authority shall have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of the other, whether arising from Owner's or the Authority's actions under this Agreement or otherwise.
- 13.15 **Conflict of Interest.** Each party warrants that to its actual knowledge, this Agreement (if deemed a contract) would not violate Article 19 of the ACC or any other conflict-of-interest provision in Public Housing Requirements. Owner shall not knowingly grant an interest hereunder to a person identified in such Article 19 or other provision except with the approval of the Authority and HUD.
- 13.16 **Waivers.** The failure of either party to insist in any one or more cases upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the waiving party.

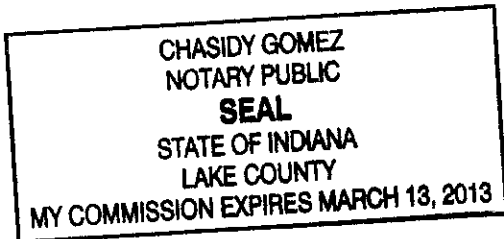
- 13.17 **Total Agreement.** This instrument embodies the whole agreement of the parties with respect to the matters set forth herein. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written between the parties.
- 13.18 **Calendar Days.** Unless otherwise stated, all references herein to a numbered period of days means calendar days.
- 13.19 **Temporary Interests.** Any rights granted hereunder to the State Finance Agency, any Approved Mortgage Lender, or other party, shall exist and be effective only for so long as such party maintains an otherwise enforceable interest in the Development, as through a currently effective loan or regulatory agreement. Any approval rights granted to HUD hereunder shall exist and be effective only for so long as such HUD approval is required by Public Housing Requirements. Approval rights of HUD required by Public Housing Requirements from time to time shall be deemed included herein even if not expressly set forth. Any conditions relating to Tax Credit Requirements shall exist and be effective only for such period as Owner is subject to the Tax Credit Requirements.
- 13.20 **Owner's Warranty of Existence and Authority.** Owner represents and warrants to the Authority that (i) Owner is a duly organized, validly existing limited partnership, limited liability company or corporation, as described at the beginning of this Agreement, and is in good standing under the laws of and qualified to do business in Indiana, (ii) Owner has all necessary power, authority, licenses and staff resources for the undertaking of its obligations under this Agreement, (iii) this Agreement has been duly entered into and is the legally binding obligation of Owner, (iv) this Agreement will not violate any judgment, law, or agreement to which Owner is a party or is subject to and will not violate the articles of incorporation or limited partnership certificate, and (v) there is no claim pending, or to the best knowledge of Owner, threatened, that would impede Owner's ability to perform its obligation hereunto. Owner shall not hereafter enter into any agreement or consent decree that would impair its ability to perform its obligations hereunder, and will notify the Authority if any suit is threatened or law proposed that would impair its ability to perform its obligations hereunder.
- 13.21 **Authority's Warranty of Existence and Authority.** The Authority represents and warrants to Owner that (i) the Authority is a duly organized, validly existing, public corporation under the laws of Indiana, (ii) the Authority has all necessary power and authority under Indiana law for the undertaking of its obligations under this Agreement, (iii) this Agreement has been duly entered into and is the legally binding obligation of the Authority, (iv) this Agreement will not violate any judgment, law, consent decree, or agreement to which the Authority is a party or is subject to and will not violate any law or ordinance under which the Authority is organized, and (v) there is no claim pending, or to the best knowledge of the Authority, threatened, that would impede the Authority's ability to perform its obligations hereunto. The Authority shall not hereafter enter into any agreement or consent decree that would impair its ability to perform its obligations hereunder, and will notify Owner if any suit is threatened or law proposed that would impair its ability to perform its obligations hereunder.

[Signatures on following page]

State of Indiana)
) ss:
County of Lake)

Before me, a Notary Public in and for said County and State, personally appeared Maria C. Becerra, Executive Director of the Housing Authority of the City of Hammond of Lake County, Indiana, who acknowledged execution of the foregoing deed for and on behalf of said corporation acting as managing member of said authority.

Witness my hand and notarial seal this 17th day of ~~June~~ ^{August}, 2010.



Signature Chasidy Gomez
Printed Chasidy Gomez
Notary Public
My Commission Expires: March 13, 2013
My County of Residence: LAKE

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

John Achatz

This instrument was prepared by:
John Achatz, Esq.
Klein Hornig LLP
145 Tremont Street
Boston, MA 02111



Description of Property

Parcel 1

All of Lot 11 in the Columbia Center Unit 4 (a Planned Unit Development) Addition to the City of Hammond, Indiana as recorded in the Lake County Recorder's Office in Plat Book 105 Page 11. Lying in the northwest quarter of the northeast quarter of Section 18, Township 36 North, Range 9 West, of the second principal meridian, in the City of Hammond, Lake County, Indiana, containing 2.811 acres more or less.

Parcel 2

All of Lot 12 in the Columbia Center Unit 5 (a Planned Unit Development) Addition to the City of Hammond, Indiana as recorded in the Lake County Recorder's Office in Plat Book 105 Page 12. Lying in the northwest quarter of the northeast quarter of Section 18, Township 36 North, Range 9 West, of the Second Principal Meridian, in the City of Hammond, Lake County, Indiana. Containing 1.320 acres more or less.

