BK 21607 PG 280

#5

IMP FD SURE $ 20.00
RECORDING FEE 75.00
TOTAL 95.00
Rec# AA16 Rcpt # 16970
RPD CRS Blk # 302
Oct 01, 2009 02:49 pm

RECEIVED FOR RECORD
CIRCUIT COURT, A.A. COUNTY
2009 OCT -1 2:57

REGULATORY AND OPERATING AGREEMENT

FOR

ANNAPOLIS GARDENS AND BOWMAN COURTS

ANNAPOLIS, MARYLAND

TABLE OF CONTENTS

RECITALS 4

ARTICLE I. DEFINITIONS 5

ARTICLE II PUBLIC HOUSING UNITS 5

Section 2.01 Operation of the Public Housing Units. 5
Section 2.02 Number and Description. 5
Section 2.03 Distribution 6
Section 2.04 Target Households 6
Section 2.05 Over-Income Tenants 6
Section 2.06 Changing Designation of Units 6

ARTICLE III OPERATION OF PUBLIC HOUSING UNITS 7

Section 3.01 General Duty to Operate In Accordance with Applicable Requirements. 7
Section 3.02 Management Plan Requirements 7
Section 3.03 Admissions and Occupancy Policies 7
Section 3.04 Site-Based Waiting List Policy 8
Section 3.05 Public Housing Unit Leases 8
Section 3.06 Grievance Procedures 8
Section 3.07 Access to Records and Tenant Information 8
Section 3.08 Management Standards 8
Section 3.09 Management Agent and Management Agreement 9
Section 3.10 The Authority's Determinations Not to Adversely Affect the Owner. 10
Section 3.11 Waivers 11
Section 3.12 Tax Credit Requirements. 11
Section 3.13 Due Adoption; Public Housing Agency Plan 11
Section 3.14 Reoccupancy. 12

ARTICLE IV OPERATING SUBSIDY 12

Section 4.01 Amount of Subsidy 12
Section 4.02 Budgeting 13
Section 4.03 Operating Subsidy Payments 15
Section 4.04 Section 42 Compliance 15
Section 4.05 Future Changes 15
Section 4.06 Operating Account. 16
Section 4.07 PILOT 16

ARTICLE V AUTHORITY-RELATED RESERVES. 16

Section 5.01 ACC Reserve 16
Section 5.02 Reserve Escrow Agreement 18

Section 5.03 Records 18
Section 5.04 Replacement Reserve 18
Section 5.06 Lease Up Reserve 19
Section 5.07 Operating Reserve 19

ARTICLE VI PRESERVATION AND TRANSFORMATION OF PUBLIC HOUSING 20

Section 6.01 General 20
Section 6.02 Initial Adjustments to Income and Expenses 20
Section 6.03 Transformation or Discontinuation of Public Housing Usage 22
Section 6.04 Preservation and Transformation Planning 23
Section 6.05 Failure of the Owner and the Authority to Agree 23
Section 6.06 Preservation and Transformation Plan Provisions 23
Section 6.07 Restoration of Units 24
Section 6.08 First Right of Return 24
Section 6.09 Audit and Remedy 24

ARTICLE VII FINANCIAL STATEMENTS AND REPORTS; ANNUAL RECONCILIATION. 24

Section 7.01 Accounting System. 24
Section 7.02 Monthly Reports 24
Section 7.03 Quarterly Report 25
Section 7.04 Annual Audited Financial Statements 25
Section 7.05 Supplemental Data. 25
Section 7.06 Annual Reconciliation 25
Section 7.07 Maintenance of Records 27
Section 7.08 Records for Audit Purposes 27

ARTICLE VIII. NON-DISCRIMINATION AND OTHER FEDERAL REQUIREMENTS 27

Section 8.01 Applicable Requirements. 27

ARTICLE IX. INSURANCE REQUIREMENTS; RESTORATION OF PROPERTY 28

Section 9.01 Insurance. 28
Section 9.02 Claims 28
Section 9.03 Restoration, Casualty, Condemnation 28

ARTICLE X. DISPOSITION AND ENCUMBRANCE 29

Section 10.01 No Demolition or Disposition 29
Section 10.02 No Encumbrances. 29
Section 10.03 Exclusions. 29
Section 10.04 Transfers of Interests 29

ARTICLE XI DEFAULT AND REMEDIES 30

Section 11.01 Default 30
Section 11.02 Notice and Cure Period. 31
Section 11.03 Remedies. 31

Section 11.04 Rights of Others 31
Section 11.05 Exclusive Remedy 31

ARTICLE XII. DISCLAIMER OF HUD RELATIONSHIPS 32

ARTICLE XIII. MISCELLANEOUS 32

Section 13.01 Term of Agreement 32
Section 13.02 Decision Standards 32
Section 13.03 Notices 33
Section 13.04 Further Assurances 33
Section 13.05 No Assignment 34
Section 13.06 Counterparts 34
Section 13.07 Interpretation and Governing Law 34
Section 13.08 Severability 34
Section 13.09 No Personal Liability 34
Section 13.10 Modification of Agreement 34
Section 13.11 The Owner's Employees and Liabilities 34
Section 13.12 Neither Party an Agent 35
Section 13.13 Waivers 35
Section 13.14 Total Agreement 35
Section 13.15 Future Changes in Applicable Laws 35
Section 13.16 Calendar Days 35
Section 13.17 Temporary Interests 35
Section 13.18 Reasonableness 35
Section 13.19 Future Legislation 35
Section 13.20 Limited Owner Obligation 36
Section 13.21 Exhibits 36
Section 13.22 Conflicts 36

EXHIBIT A SITE DESCRIPTION 39

EXHIBIT B SITE HUD FORM 52723. 43

EXHIBIT C FIRST YEAR OPERATING BUDGET. 44

EXHIBIT D DEFINED TERMS 45

REGULATORY AND OPERATING AGREEMENT

This Regulatory and Operating Agreement (the "Agreement") is entered into as of the 29th day of September, 2009, by and between the Housing Authority of the City of Annapolis (together with its successors and assigns, the "Authority"), a public body corporate and politic organized under the laws of the State of Maryland and a "public housing agency" as defined in the United States Housing Act of 1937 (42 U.S.C. Section 1437 et seq., as amended), and Annapolis Community Development Partners, LLC, a limited liability company organized and existing under the laws of the State of Maryland (together with its successors and assigns the "Owner").

RECITALS: .

A. The Authority is the fee owner of certain real property in the City of Annapolis upon which sit the Annapolis Gardens and Bowman Court public housing developments (the "Existing Site"). The Authority conducted a competitive selection procedure and selected Landex of Maryland, Inc. to redevelop the Existing Site through the rehabilitation of the existing units (the "Revitalization").

B. The Revitalization that is the subject of this Agreement will be known as Annapolis Gardens and Bowman Court and will consist of one hundred fifty (150) units of rental housing (the "Development").

C. The 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 the Owner of all available economic and tax benefits to the fullest extent permitted by applicable law. All one-hundred fifty (150) units in the Development 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 Tax Credit Compliance Period and any applicable extended use period (as such term is defined in Section 42). Seventy-five (75) units will be operated as "public housing units" as defined in Section 3(b) of the United States Housing Act of 1937, as amended (the "Act"). The Public Housing Units shall be eligible to receive the benefit of Operating Fund assistance provided to the Authority by HUD pursuant to Section 9 of the Act.

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

E. HUD and the Authority have, as of the date of execution of this Agreement, entered into that certain Mixed Finance ACC Amendment on substantially even date herewith adding seventy-five (75) public housing units and associated appurtenances to the ACC under project number MD001000010 (which together with any fixtures, rents, revenues, other income

and personalty related to such units and appurtenances shall hereafter collectively be referred to as the "Project").

F. Pursuant to the requirements of the Act and the terms of this Agreement, the Owner is obligated to lease the Public Housing Units to families whose contribution toward rent is restricted and may be less than the operating costs of the Public Housing Units. The Authority has therefore agreed to subsidize the long-term operation and maintenance of the Public Housing Units through the provision of assistance provided to the Authority by HUD under and pursuant to the Annual Contributions Contract and the Act.

AGREEMENT

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

ARTICLE I. DEFINITIONS

Exhibit D contains definitions of certain capitalized terms used throughout this Agreement. Certain other capitalized terms are defined when they first appear.

ARTICLE II. PUBLIC HOUSING UNITS.

Section 2.01 Operation of the Public Housing Units. During the term of this Agreement, Owner shall develop and operate the Public Housing Units for public housing-eligible households in accordance with applicable Public Housing Requirements, DHCD Requirements, and Tax Credit Requirements, and the terms of this Agreement. Provided that the Owner continues operating the Public Housing Units in accordance with the applicable Public Housing Requirements, and in accordance with the terms of this Agreement, such units shall be eligible to receive the benefit of operating subsidy assistance 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, as more specifically set forth in Article IV hereof.

Section 2.02 Number and Description. After EIOP, the Owner will continuously set aside seventy-five units in the Development as Public Housing Units during the term of this Agreement, which units will contain a total of two-hundred thirteen (213) bedrooms, subject to fluctuation pursuant to Section 2.03 below. The Owner will maintain and operate the Public Housing Units in accordance with Public Housing Requirements and this Agreement. Such units shall be eligible to receive Operating Subsidy Payments from the Authority as described below. The Public Housing Units shall initially comprise the following mixture of unit sizes and descriptions:

Type	Number	Bedrooms
1 bedroom	5	5
2 bedrooms	31	62
3 bedrooms	20	60
4 bedrooms	9	36
5 bedrooms	10	50
TOTAL	75	213

Section 2.03 Distribution. The Public Housing Units shall not be fixed units, but shall "float" and, to the extent feasible and as agreed to by the parties, the Public Housing Units shall be scattered throughout the Development, and within structures within the Development. Public Housing Units and Non Public Housing Units shall be maintained and operated without distinction, except for those differences such as admissions procedures, lease terms and other conditions as are mandated by applicable Public Housing Requirements or intended by the Owner and the Authority to effectuate the law and/or benefit the Public Housing Units. The parties acknowledge that this Agreement primarily describes the Public Housing Units, but the Non Public Housing Units shall be subject to this Agreement to the extent that this Agreement makes explicit reference to such units or to the Development.

Section 2.04 Target Households. The Owner and the Authority intend to target households for admissions with income levels as specified in the Management Plan.

Section 2.05 Over-Income Tenants. Consistent with the Public Housing Requirements, 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; any such units shall be governed by rules generally applicable to units occupied by over-income tenants in the public housing program (subject to such modifications in lease and occupancy terms as are permitted hereunder) and further subject to DHCD Requirements and Tax Credit Requirements.

Section 2.06 Changing Designation of Units. After EIOP, the Owner may change the Public Housing Units designated in accordance with the Management Plan (as defined below) provided that the number of bedrooms in the Public Housing Units shall remain within a 5% deviation of the total number of bedrooms specified in the first paragraph of Section 2.02 herein, and provided that:

(a.) if such change is to be made with respect to an occupied Public Housing Unit, the tenant of such Public Housing Unit shall have the same rights with respect to occupancy and rent as applied prior to removal of the Public Housing Unit's designation as a Public Housing Unit so long as such tenant shall remain eligible under applicable Public Housing Requirements and the terms of this Agreement; and

(b.) the Public Housing Units shall at all times, to the extent feasible, be scattered evenly throughout the Development, and the Public Housing Units shall not be concentrated in any particular area or areas within the Development or within the structures within the Development.

ARTICLE III. OPERATION OF PUBLIC HOUSING UNITS.

Section 3.01 General Duty to Operate In Accordance with Applicable Requirements. The Owner shall maintain and operate the Public Housing Units in accordance with the Public Housing Requirements, the Tax Credit Requirements, the DHCD Requirements, this Agreement, and any other Authority-approved operational agreements executed by the Owner for the Development. The Owner shall perform all acts necessary to enable the Authority to fulfill its obligations to HUD with respect to the Development and shall take all actions within its control necessary and appropriate to avoid a default by the Authority under the ACC with respect to the Development. The Owner shall operate and maintain the Development within the annual operating budget approved in writing by the Authority ("Operating Budget") pursuant to the requirements of Section 4.02 herein.

Section 3.02 Management Plan Requirements. The Owner shall operate the Development in accordance with the Management Plan that describes how the Owner will operate the Development. The initial Management Plan of even date herewith has been approved by the Authority. All changes to the Management Plan must be approved in writing by the Authority prior to implementation, which approval shall not be unreasonable withheld, conditioned or delayed.

Section 3.03 Admissions and Continuing Occupancy Policies. The Owner shall be responsible for selection of applicants for admission to occupancy of the Public Housing Units in the Development in accordance with applicable Public Housing Requirements, the Tax Credit Requirements, the DHCD Requirements, the Management Agreement and the Management Plan. The Owner will be responsible for all aspects of application intake including, but not limited to, applicant interviews and screening, verification of application information, determinations of admissions eligibility and qualifications for preference, records maintenance, waiting list maintenance, unit assignment, lease execution, continued occupancy reviews, enforcement and termination of leases and all other functions relating to admissions and occupancy of the Development. With respect to any subject matter regarding maintenance or operation of public housing required by statute or by HUD regulations (including specifically, but without limitation, 24 CFR Part 960) to be addressed in written policies of the Authority, to the extent that such areas are addressed in this Agreement, the Management Agreement, the Management Plan, or the Authority-approved form of resident lease for residents of the Public Housing Units, the execution or approval of such documents by the Authority shall be deemed to constitute adoption of such policies by the Authority as applicable to the Public Housing Units. To the extent that such areas are not addressed in this Agreement, the Management Agreement, or Management Plan, or the resident lease, the Owner shall operate the Public Housing Units in accordance with the policies regarding such matters reflected in the Authority's Admissions and Continuing Occupancy Policy (the "Admissions and Continuing Occupancy Policy"). In the event of any conflict between the provisions of this Agreement, the Management Agreement, the Management Plan or the resident lease, and any provision of the Admissions and Continuing Occupancy Policy not required by statute or HUD regulation, the provisions of this Agreement, the Management Agreement, the Management Plan, or the resident lease (in that order) shall govern with respect to the Public Housing Units.

Section 3.04 Site-Based Waiting List Policy. The Owner is permitted to establish and maintain a site-based, sub-jurisdictional waiting list for the Development and must manage such list in accordance with applicable Public Housing Requirements, the Admissions and Continuing Occupancy Policy and the Management Plan. The initial, site-based waiting list policy is described in the Admissions and Continuing Occupancy Policy.

Section 3.05 Public Housing Unit Leases. The leases for the Public Housing Units must comply with Tax Credit Requirements, DHCD Requirements and applicable Public Housing Requirements including, but not limited to, HUD's implementing regulations at 24 CFR Part 966, Subpart A, as may be amended from time to time. The Authority has approved the initial form of lease for the Public Housing Units. All material changes to the initial form of lease for the Public Housing Units must be approved by the Authority, which approval shall not be unreasonably withheld, conditioned or delayed, prior to implementation and after appropriate notice to residents as required by 24 CFR 966.3 (or successor provision). It shall be the responsibility of the Owner to revise the tenant lease as required by changes in the applicable Public Housing Requirements and applicable state law.

Section 3.06 Grievance Procedures. The Owner will establish a grievance procedure for residents of the Public Housing Units, provided, that: (i) the Owner's grievance procedure complies 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 and (ii) the Authority has approved the Owner's grievance procedure in writing. Any grievance procedure developed by the Owner must provide for informal discussion and settlement of grievances by the Management Agent and a hearing before a hearing officer appointed in accordance with procedures to be detailed in the grievance procedure. Any changes to the grievance procedure shall conform to Public Housing Requirements and must be approved by the Authority, which approval shall not be unreasonably withheld, conditioned, or delayed, prior to implementation and after appropriate notice to residents as required by 24 CFR 966.52 (or successor provision). If the Owner does not develop a grievance procedure, or the Owner's grievance procedure is determined to be invalid or not in compliance with applicable Public Housing Requirements, the Authority's grievance procedures shall govern. The initial Owner's grievance procedure has been approved by the Authority and is included in the Management Plan.

Section 3.07 Access to Records and Tenant Information. The Owner must allow access by HUD, the Authority, and the Comptroller General of the United States and their authorized agents, upon reasonable notice to the Owner, to books and records maintained by the Owner and by any Management Agent and/or the Owner or Management Agent's agents relating to the Development, including the ability of the Authority to access electronically the current operating records of the Development or otherwise as necessary in connection with any allocation of the costs, expenses, or income connected with the Development in the event that the Authority has the technical capacity to undertake such electronic access. The Owner and Management Agent shall provide data relating to tenants in a format reasonably acceptable to the Authority so that the Authority can provide requested reports to HUD. Such books and records will be made available for review, excerpt, transcript, copying and audit at all reasonable times.

Section 3.08 Management Standards. The Owner shall use diligent efforts to operate the Development in a manner that will satisfy the DHCD Requirements, Tax Credit Requirements and achieve "high performer" status under the Public Housing Assessment System

(PHAS) at 24 C.F.R. Part 902 for the Development or equivalent designation under any successor regulation promulgated by HUD to assess public housing conditions.

Section 3.09 Management Agent and Management Agreement.

(a.) The Owner may appoint a Management Agent to perform day-to-day management functions for the Development.

(b.) The Authority must approve the Owner's selection of a Management Agent in writing before any entity (other than the Owner pursuant to subsection (c)(v) herein) performs any management duties with respect to the Development, which approval shall not be unreasonably withheld, conditioned or delayed. Landex Management, LLC shall serve as the initial Management Agent and has been approved by the Authority.

(c.) The agreement between the Management Agent and the Owner must be in writing and must be approved by the Authority prior to any Management Agent performing any duties with respect to the Development. At a minimum, the Management Agreement must:

i. Require the Management Agent to operate and manage the Development in accordance with the terms of this Agreement, the Authority-approved Management Plan, the applicable Public Housing Requirements, DHCD Requirements and Tax Credit Requirements;

ii. Require the Management Agent to provide access by HUD, the Authority, and the Comptroller General of the United States and their authorized agents, upon reasonable notice to the Owner, to books and records and accounts maintained by the Management Agent and/or Owner and their agents relating to the Development, including the ability of the Authority to access electronically the current operating records of the Development or otherwise as necessary in connection with any allocation of the costs, expenses, or income connected with the Development in the event that the Authority has the technical capacity to undertake such electronic access;

iii. Permit the Owner to terminate the Management Agreement if the Management Agent fails to materially comply, whether by act or omission, with the applicable Public Housing Requirements, or the Management Agreement, or causes the Owner to be in default under this Agreement, or fails to meet the Performance Standards. Such termination provision must contain notice and opportunity to cure language for curable defaults, and must recognize the Authority as a third party beneficiary under the Management Agreement for the purpose of effectuating the termination and acknowledge that the

Authority may require the Owner to terminate the Management Agreement for defaults under the Management Agreement after notice and opportunity to cure.

iv. The Authority has approved the initial Management Agreement entered into between the Owner and the Management Agent. The Management Agreement shall not be materially amended without the prior written approval of the Owner and the Authority (and HUD, to the extent required), which approval shall not be unreasonable withheld, conditioned, or delayed.

v. In the event the Authority or any successor Management Agent is terminated as Management Agent in accordance with this Section, the Owner shall propose a management agent in writing and the Authority may disapprove such proposed Management Agent in writing, for (i) insufficient prior experience in managing affordable multifamily rental or public housing, (ii) demonstrated poor performance in managing affordable multifamily rental or public housing, or (iii) having been suspended, debarred, or otherwise held to have violated any law that materially reflects on the fitness of the Management Agent to manage the Development. The Authority's approval of a successor Management Agent or Management Agreement shall not be unreasonably withheld or conditioned. Pending receipt by the Owner of the Authority's approval, written objections to or disapproval of a proposed Management Agent, and a reasonable time thereafter (no less than sixty (60) calendar days) to correct any conditions forming the basis of the Authority's objections or disapproval or to propose an approvable Management Agent, the 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.

Section 3.10 The Authority's Determinations Not to Adversely Affect the Owner. It is the intention of the parties to operate the Development as agreed to by the parties. The following paragraphs are intended to implement this shared understanding, but nothing in this section shall limit the effect of the Authority's actions that are mandated by Public Housing Requirements. The Authority shall not voluntarily adopt particular policies, procedures or documents governing the Public Housing Units that would materially adversely affect the economic stability of the Development, without the written agreement of the Owner. If the Owner and 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, then the Authority shall adopt or ratify such policies, procedures or documents, provided, however, that the Authority shall seek HUD approval, if required. Such particular policies, procedures or documents may include, without restrictions, site-specific amendments to the Authority's Admissions and Continuing Occupancy Policy, the Waiting List, the form of Public Housing Unit Lease and the

Grievance Procedures. The Authority 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 unless required by Public Housing Requirements. To the extent that it may legally do so, upon request of the Owner, 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 resident generally, if such policy or procedure would have a material and adverse effect on the Development or which would violate the Tax Credit Requirements. If any policy or procedure which the Authority proposes to voluntarily adopt is of a type which is required (by law or by regulation or by notice which HUD declines to waive) to be applied consistently to every public housing unit and public housing applicant or resident under the jurisdiction of the Authority, then the Authority shall make reasonable efforts to consult with the Owner before adopting such policy or procedure and shall attempt to conform to all Tax Credit Requirements and to minimize adverse impact on the Owner.

Section 3.11 Waivers. If, at any time during the term of this Agreement, HUD shall, by regulation or other administrative rule applicable to the Development (which regulation or rule is not required by statute), modify the eligibility or suitability standards, including preferences, for occupancy of public housing units, the criteria or methods for calculation of applicant or resident income or contribution to rent, or any other factor bearing upon the charges for or occupancy or use of public housing units generally which, in the absence of waiver, would be applicable to the Public Housing Units and which, in the reasonable judgment of the Owner, would be materially adverse to the Development, the Authority shall, upon request by Owner (supported by Owner's demonstrated need for such a waiver which is acceptable to the Authority), promptly submit to HUD and diligently pursue a request for waiver excepting or exempting the Public Housing Units from the application of such regulation or administrative rule, which request shall be prepared by the Owner and reasonably acceptable to the Authority. The Owner shall cover the costs incurred by the Authority in pursuing any such waiver.

Section 3.12 Tax Credit Requirements. The Owner and Authority acknowledge and agree that all or some of the Public Housing Units will also be subject to, Tax Credit Requirements, and will be operated in accordance therewith. The Authority will not disapprove (with respect to the Public Housing Units) any policy of the Owner that is permitted under Public Housing Requirements and required for compliance with the Tax Credit Requirements, nor shall the Authority impose upon the Owner any policy or procedure with respect to the Public Housing Units that is not required under Public Housing Requirements and that would cause noncompliance with the Tax Credit Requirements. The Owner and the Authority will take such actions as are necessary to set rents (including "flat rents") for the Public Housing Units at a level not to exceed that permissible under applicable Tax Credit Requirements, provided not inconsistent with Public Housing Requirements.

Section 3.13 Due Adoption: Public Housing Agency Plan. The Authority will ensure that the material elements of this Agreement and the Management Plan (including, but not restricted to, the Waiting List, site-based resident selection preferences, exception from deconcentration requirements, and any transformation remedies, etc.) are reflected in duly adopted policies of the Authority or duly adopted exceptions to such policies effective no later than the time that Public Housing Units are first available for occupancy. The Authority will ensure that its PHA Plan continually includes such references to and provisions for the Development and its operations as may be necessary or appropriate to ensure that the provisions

of this Agreement and the operating policies of the Development (including, but not restricted to, the Waiting List, site-based resident selection preferences and transformation remedies, etc.,) are authorized by the Act and recognized by HUD. The Authority will provide to the Owner: (1) a copy of any proposed PHA Plan, or amendment thereto, at the time public notice is given pursuant to Section 5A(f)(2) of the Act during which time the Owner may provide comments to the Authority for consideration, and (2) a copy of its PHA Plan and all amendments thereto, as adopted, within thirty (30) days of its approval by HUD, and shall make good faith efforts to provide earlier notice of contemplated changes to the PHA Plan which would materially affect the Owner.

Section 3.14 Reoccupancy. Reoccupancy procedures for Prior Residents shall be as set forth in the Management Plan.

Section 3.15 **Reserved.**

ARTICLE IV. OPERATING SUBSIDY

Section 4.01 Amount of Subsidy.

(a.) It is the general intent of this Agreement that the Development receive the benefit of operating assistance that is properly attributable to and required by the Public Housing Units and that is provided by HUD to the Authority. The provisions herein are intended to effectuate this intent, and the parties agree to amend or refine these provisions as may be required to more closely effectuate this intent.

(b) The Authority shall pay to the Owner an operating subsidy that will equal (subject to the receipt of funds from HUD) the lower of the following, ("Operating Subsidy Requirement"), less excess amounts received by Owner (and not previously repaid to Authority) the prior year as identified in Section 7.06(a) herein:

(i) The Formula Operating Subsidy Amount, or

(ii) the difference between budgeted Public Housing Units Income and budgeted Public Housing Units Expenses.

Commencing on the Operating Subsidy Commencement Date for the first unit, the Authority agrees to provide the Owner any funds provided by HUD in accordance with the formula established in this section 4.01(b), for those Public Housing Units for which the Operating Subsidy Commencement Date has occurred.

(c) The remaining ten percent (10%) of the Funded Project Expense Level shall be retained by the Authority to cover frontline functions performed by the Authority ("Authority Fee"). Upon agreement of

Owner and the Authority, the Authority may distribute all or a portion of the amount determined in this Section 4.01(c) to the Owner and charge the Owner for fee for service activities or other frontline functions that the Authority provides (but not in excess of that amount determined in accordance with this Section 4.01(c)).

(d) The Authority and the Owner will work diligently to ensure that Operating Subsidy assistance is paid by HUD, in the maximum amount available under Public Housing Requirements, for each applicable Public Housing Unit, as soon after the Operating Subsidy Commencement Date as possible.

(e) If, for any Subsidy Fiscal Year, HUD adjusts or supplements the amount of Operating Fund assistance the Authority receives for the Public Housing Units, an equivalent adjustment or supplement (on a per unit basis) shall be made to the Operating Subsidy Requirement for the same year (provided that any increased amounts are necessary in accordance with Section 4.01(b) herein), and the Authority shall pass through to the Owner any supplemental amounts received for the Public Housing Units or reduce future payments to the Owner in the amount of the reduction of Operating Fund assistance attributable to the Public Housing Units.

(f) At least 90 days prior to the end of the Subsidy Fiscal Year, or as otherwise requested by the Authority prior to a required HUD submission, the Owner shall provide to the Authority the information reasonably necessary to allow the Authority to complete all documentation required by HUD with respect to the Authority's request for Operating Funds. The Authority shall promptly submit such documentation to HUD and take any and all reasonable and necessary actions to obtain prompt HUD approval thereof and to ensure that there is no interruption in the Operating Subsidy Payments (as defined in Exhibit D).

Section 4.02 <u>Budgeting</u>

(a.) The Owner must use diligent efforts to operate the Development in accordance with the annual operating budget ("Operating Budget"), such budget to be approved by the Authority. The initial approved Operating Budget (for the first year of operations) is attached hereto as Exhibit C.

(b.) Not later than one hundred twenty (120) calendar days prior to the beginning of each Development Fiscal Year, the Owner shall submit to the Authority its calculation of the Formula Operating Subsidy Amount and the Operating Subsidy Requirement projected for the following Development Fiscal Year, and the basis therefor. The

Authority shall review such calculation and promptly notify the Owner of any error or inconsistency with this Agreement or HUD rules and regulations, and the parties shall make all good faith efforts necessary to agree on the projected Formula Operating Subsidy Amount and Operating Subsidy Requirement.

(c.) For each Development Fiscal Year, the Owner shall provide the Authority, not later than ninety (90) calendar days before the beginning of each Development Fiscal Year, a proposed Operating Budget for the Development for review and approval. Each Operating Budget shall include any proposed withdrawals from various reserves to meet capital and operating requirements that, upon approval of the Operating Budget, shall be deemed approved by the Authority. The Operating Budget shall be subject to the Authority's written approval, which shall not be unreasonably withheld, conditioned or delayed. The Authority will respond to the proposed Operating Budget within 30 days. If the Authority fails to respond within 30 days, the Owner will provide the Authority with written notice, stating that the Authority has 15 additional days to respond. The parties agree to cooperate to resolve any differences regarding the proposed Operating Budget. If the parties fail to agree upon an Operating Budget prior to the start of the Development Fiscal Year, the prior year's approved budget shall (increased by a consumer price index selected by the Owner) shall control until such Operating Budget for the current Development Fiscal Year is approved.

(d.) Except as provided below, the Owner shall only expend funds in accordance with the approved Operating Budget and may request an amendment to the Operating Budget should any material variances (defined as a variance exceeding five percent (5%)) be predicted. Actual expenditures may vary from the approved Operating Budget by up to ten percent (10%) for any line item (on an annual basis) provided that the overall budget remains the materially same (defined as within five percent (5%) of the Operating Budget on an annual basis). Any variance in excess of such amount or any variance in the overall budget must be approved by the Authority prior to expenditure. The Owner shall provide monthly reports indicating actual expenses over such period and identify all variances from the approved Operating Budget. Any material variance that results in an increase to the Operating Budget not authorized under subpart (e) hereof without Authority consent will be subject to reconciliation procedures pursuant to Article VII.

(e.) No prior approval of the Authority shall be required for expenditures in emergency situations involving manifest danger to persons or property or required to avoid suspension of any necessary service, or to comply with applicable law, in which the Authority cannot be contacted, or does not respond within a reasonable period of time

under the circumstances, provided that funds are immediately needed for such purpose. In such cases, the Owner shall promptly notify the Authority in writing of the situation and what actions were taken to abate the problem. In the event that Owner makes withdrawals from the ACC Reserve pursuant to this Section, and it is subsequently determined that such withdrawals were not permissible in accordance with this Agreement, then Owner shall reimburse the ACC Reserve with interest from the date of improper withdrawal or use at a rate of 2% above the "prime" rate as published in the Wall Street Journal on the date of improper withdrawal.

Section 4.03 Operating Subsidy Payments. No later than the 10th day of each month, the Authority shall pay one-twelfth (1/12) of the annual Operating Subsidy Requirement estimated for such Development Fiscal Year pursuant to Section 4.01(b) herein; *provided however,* that the Authority may provide, upon review of the Operating Budget, the Operating Subsidy Requirement and a cash flow analysis provided by the Owner, unequal monthly (or other periodic) payments for such year if such unequal payments are supported by such cash flow analysis. The Authority also may provide unequal payments if HUD fails to provide funds on a timely basis, provided that, in such event, the Owner shall be entitled to draw upon the ACC Reserve as provided in Article 5 below if such unequal payments cause a Public Housing Units Shortfall.

Section 4.04. Section 42 Compliance. In order to assure compliance with 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 Tax Credit Compliance Period and in which Operating Subsidy Payments are made to the Owner, 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 7.06 below demonstrate that Operating Subsidy Payments for any year covered by the preceding sentence, after redeposit to the ACC Reserve of amounts withdrawn during the subject year, exceed the amount constituting qualifying rental assistance payments, the Owner shall promptly repay a sum equal to such coverage to the Authority for deposit into an Authority-owned subaccount of the ACC Reserve.

Section 4.05 Future Changes. The Authority and Owner acknowledge that HUD is implementing the final rule amending 24 C.F.R. Part 990 as published in the Federal Register on September 19, 2005 (the "Final Rule") to provide for a project-based subsidy formula as provided under Section 9(e) of the Act. At such time as the effects of the Final Rule upon the Development have been clarified by HUD, the parties agree to review and, if necessary, amend Section 4.01(a) and such other provisions of this Agreement as may be required. In considering or implementing such amendment(s), the parties shall work in good faith to achieve a result by which the Authority provides Operating Subsidy to the Owner up to the amount it receives from HUD for the Public Housing Units, reduced by a 10% retainage (or fee, if applicable) for the Authority; provided, however, the Authority will not be obligated to treat Owner any more favorably relative to the remaining housing portfolio of the Authority, except as may be provided

for in Section 6.02 below. Any such amendment(s) shall require the prior written consent of HUD and shall be subject to the applicable Public Housing Requirements.

Section 4.06 Operating Account. Operating Subsidy Payments received from the Authority, together with all other operating receipts in respect of the Development including tenant rents and charges and other revenues (but exclusive of tenant security deposits), shall be deposited by the Owner in a Development-wide operating account maintained in a financial institution whose deposits are insured or otherwise collateralized by an agency of the Federal Government. Tenant security deposits shall be maintained in a separate account maintained in a financial institution whose deposits are insured by an agency of the Federal Government.

Section 4.07 PILOT. The Authority shall cooperate with the Owner's efforts to ensure that the Development is at all times subject to minimal taxation by the City of Annapolis and the County of Anne Arundel and that any taxes or payments in lieu thereof on behalf of the Public Housing Units are recognized by HUD as an "add-on" to the extent permitted. The Authority and the Owner agree that the Authority will pay directly to the taxing authority any payments as may be required on behalf of the Development and the Authority shall retain any subsidy received from HUD attributable to such payments for the Public Housing Units. Provided, however, that the Owner shall provide funds to the Authority for such payments on behalf of the Non Public Housing Units prior to payment to the taxing authority and in the event the subsidy received from HUD for such payments is less than the actual amount paid by the Authority to the taxing authority on behalf of the Public Housing Units, the Owner shall immediately pay the amount of such shortfall to the Authority or the Authority shall offset such shortfall against any subsidy payable by the Authority with respect to the Public Housing Units under Article 4 hereof.

ARTICLE V. AUTHORITY-RELATED RESERVES

Section 5.01 ACC Reserve.

(a) Establishment and Ownership.

i. Pursuant to the Reserve Escrow Agreement, the Owner shall make a deposit in the amount of the Initial Deposit into the ACC Reserve. Funds placed in the ACC 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, in Permitted Investments and shall constitute funds of the Owner (except as otherwise indicated) to be held and 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 the Reserve Escrow Agreement. .

ii. Upon any sale or transfer of Owner's interest in the Development during the term of this Agreement, any portion of the ACC Reserve that is derived from public housing funds shall be the property of the Authority. Notwithstanding the above, if the Authority exercises its option or right of first refusal to purchase the Development, all reserves contemplated in this Agreement shall be considered part of the Development and shall become the property of the

Authority, subject to applicable rights of the Approved Mortgage Lenders.

(b) Deposits.

i. No later than December 31, 2010, Owner shall deposit into the ACC Reserve, from equity or other project funds, the Initial Deposit.

ii. In the event Owner makes a withdrawal from the ACC 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 the Owner shall deposit into the ACC Reserve (Replenishment Subaccount), as a **"Replenishment"**, an amount equal to the amount previously withdrawn (up to the amount of the Authority's late Operating Subsidy Payment). Funds in the Replenishment Subaccount shall be used before other funds of Owner in the ACC Reserve and shall be subject to applicable Public Housing Requirements, if any, applicable to such funds.

iii. The Authority may, but is not required to, make additional deposits to the ACC Reserve as may be permitted by Public Housing Requirements.

(c) Withdrawals from the ACC Reserve may be made for the following reasons and in accordance with the Reserve Escrow Agreement:

i. Non-Receipt of Operating Subsidy Requirement. Owner may withdraw funds, upon certification to the Authority, that by the tenth day of any month following EIOP, the Authority shall not have paid to Owner the full Operating Subsidy Requirement established for such month or from prior months. Owner may request a withdrawal from the ACC Reserve up to the difference between the Operating Subsidy Payment actually paid and the Operating Subsidy Requirement established for such month or prior months. The Authority shall approve such request by joining in such joint signature account withdrawal within ten (10) days of a written request from Owner demonstrating its entitlement in accordance with this paragraph, unless the Authority reasonably contests the entitlement; or

ii. Deficit Attributable to Public Housing Units. In the event that a Quarterly Report prepared in accordance with Section 7.03 demonstrates the existence of a Public Housing Units Shortfall in a prior quarter, then the Owner may request a withdrawal from the ACC Reserve in an amount up to the Public Housing Units Shortfall. The Authority shall approve such request, which approval shall not be unreasonably withheld, conditioned or delayed, by joining in such joint signature account withdrawal within ten days of a written request from Owner demonstrating its entitlement in accordance with this paragraph, unless the Authority reasonably contests the entitlement; or

iii. By Consent. Owner may withdraw funds with the consent of the Authority. The Authority shall not unreasonably withhold, condition or delay its consent, and shall consent to a withdrawal (by joining such joint signature account withdrawal) where Owner requires funds for emergency conditions at the Development (including funds for the prompt reimbursement of emergency expenditures by Owner or the Management Agent, if any, provided that such funds shall only be utilized to pay these expenses attributable to the Public Housing Units). Any Authority consent in an emergency situation shall be subject to post-emergency review, and the Owner will replace (with interest, as provided in section 4.02(e)) any withdrawal for which the Authority reasonably withdraws an emergency consent.

iv. Annual Reconciliation. At the direction of the Authority, the Owner may withdraw funds for any required payment pursuant to Section 7.06.

v. Order. Withdrawals shall be made first from the Replenishment Subaccount and then from the ACC Reserve Account.

Articles 5 and 6 herein are Owner's sole remedies in the event the Authority does not provide those amounts required under the Agreement.

Section 5.02 Reserve Escrow Agreement. The Authority and the Owner will enter into an Reserve Escrow Agreement with an escrow agent (the "Reserve Escrow Agent") and funds invested therein shall be for the ACC Reserve. Funds held in the ACC Reserve (including interest thereon and including any additional amounts deposited therein from time to time pursuant to the terms hereof), shall constitute funds of the Owner, and shall be held in escrow by the Reserve Escrow Agent.

Section 5.03 Records. The Owner will maintain accurate and complete records identifying the source, amount and use of all funds in the reserves, including any operating subsidy, and any income earned thereon,.

Section 5.04 Replacement Reserve.

a. *Establishment.* The Owner shall deposit a portion of Public Housing Units Income into the Replacement Reserve in the amount of up to $300 per Public Housing Unit per year, increased in each year after the first year of operations by three percent (3%).

b. *Restricted Funds.* Funds placed in the Replacement Reserve (including interest thereon and additional amounts deposited therein from time to time pursuant to the terms hereof) shall be invested in Permitted Investments. The portion of the Replacement Reserve attributed to the Public Housing Units (as determined by the Authority Percentage) and actually funded from Public Housing Units Income shall 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 all applicable Public Housing Requirements.

c. *Disposition.* In the event of a disposition of the Development by sale, lease, assignment, foreclosure or otherwise, or upon the dissolution of the Owner, any funds remaining in the Replacement Reserve that were derived from the Public Housing Units Income or other public housing funds will be transferred to the new owner to be used in connection with the Development in accordance with the terms of this Agreement including, but not limited to, the requirements of this Section 5.04. Upon the occurrence of a casualty or condemnation (without restoration) of the Development, or in the event that any of the Public Housing Units cease to be treated as public housing units, all funds remaining in the Replacement Reserve attributable to the Public Housing Units, and actually funded from Public Housing Units Income or a pro-rata portion in the event that only some units cease to be Public Housing Units (including any income earned thereon) will be returned to the Authority for use in carrying out other low income housing activities.

d. *Use.* Funds in the Replacement Reserve that are attributable to the Public Housing Units (as determined by the Authority Percentage) may be used by the Owner for that portion of the Development's capital needs which is attributable to the Public Housing Units based on the Authority Percentage or as the parties otherwise agree is appropriate under the circumstances, but in any event in accordance with applicable Public Housing Requirements and subject to the approval of the Authority, which approval shall not be unreasonably withheld, conditioned or delayed. All other funds in the Replacement Reserve may be used by the Owner for the Development's capital needs.

e. *Public Housing Capital Fund.* If capital assistance is available to the Authority under Section 9(d) of the Act or any successor thereto that the Authority may discretionarily provide to the Development, then the Authority agrees to give reasonable consideration to any request by Owner for such assistance, consistent with the Authority's planning procedures and the needs of other properties of the Authority, and consistent with Public Housing Requirements.

Section 5.06 Lease Up Reserve. A Lease-Up Reserve shall be established by Owner with an initial deposit of $85,364 from financing proceeds. Such reserve shall be available to the Owner to cover operating deficits of the Development prior to the achievement of 100% initial occupancy. Any funds remaining in the reserve after 100% initial occupancy shall be released to the Owner.

Section 5.07 Operating Reserve. An Operating Reserve shall be established by Owner in the amount of $518,925 from financing proceeds. The Operating Reserve shall be available in the amounts set forth in the Operating Agreement to Owner to cover operating deficits for all units of the Development in accordance with the terms of this Agreement and the DHDC Regulatory Agreement. Any funds remaining in the Operating Reserve at the end of the Tax Credit Compliance Period shall be distributed in accordance with the Operating Agreement and the DHCD Regulatory Agreement.

ARTICLE VI. PRESERVATION AND TRANSFORMATION OF PUBLIC HOUSING

Section 6.01 General.

(a) 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 sufficient federal appropriations to support the government's obligations under the Act. The purpose of this Article 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 the Owner, its agents or affiliates, which result in a Public Housing Units Shortfall, then the economic and physical viability of the Development can be maintained for the term identified in Section 13.01 herein without unnecessary hardship to low-income residents or excessive claim on resources of the Authority or financial harm to the Owner.

(b) In the event that the Authority does not provide sufficient Operating Subsidy Payments or other operating subsidy amounts to cover Public Housing Units Shortfalls in accordance with an approved Operating Budget, the parties intend that the ACC Reserve and the Operating Reserve be available (as provided in Article V hereof) to provide substitute funding to the Owner to meet such Public Housing Unit Shortfall or other operating deficit. Disbursements from the reserves are intended to provide sufficient funding until such time as the Development reaches the end of the Tax Credit Compliance Period and to provide sufficient funding to carry out disposition or transformation remedies, if necessary. This Article VI is intended to ensure that sufficient remedies are available to the Owner in the event that there is a clear demonstration of a permanent diminution of operating subsidies that risks the long-term viability of the Development.

Section 6.02 Initial Adjustments to Income and Expenses.

If at any time:

(a.)

(i) The Owner reasonably projects that the balance in the ACC Reserve will fall below the ACC Reserve Floor Level within the next three (3) months (and provides documentation basing such projection on funds available, the approved Operating Budget and expected Operating Subsidy Payments and Cash Flow), and the Authority does not provide sufficient funds which it reasonably projects will restore such balance; **and either:** (1) the quarterly statements of Income and Expenses for the Public Housing Units delivered pursuant to Article VII of this Agreement shall indicate a

cumulative Public Housing Units Shortfall over a period of two calendar quarters, and the Owner reasonably forecasts (providing sufficient documentation (as discussed above)) that such Public Housing Unit Shortfall will continue for the next four calendar quarters; **or** (2) the Audited Financial Statement delivered pursuant to Section 7.04 shall indicate a Public Housing Units Shortfall over the preceding Development Fiscal Year and the Owner reasonably forecasts (providing sufficient documentation (as discussed above)) that Public Housing Units Shortfalls will continue for the next Development Fiscal Year;

or:

(ii) The Owner and the Authority agree that changes are appropriate in order to avoid future Public Housing Units Shortfalls in light of operating forecasts and other circumstances;

then:

(b)

(i) Adjust Expenses. The Owner shall undertake in good faith to reduce such Public Housing Units Expenses that it reasonably believes can be reduced (but not to the physical or financial detriment of the Development). The Owner shall not be required to seek to reduce maintenance and other operating expenses below a prudent level.

(ii) Adjust Income Mix on Turnover. The Owner may take such steps as may be necessary and in accordance with applicable Public Housing Requirements and subject to the DHCD Requirements and Tax Credit Requirements, to increase the income level of new tenants admitted to the Public Housing Units, including admitting public housing eligible families having higher income levels than would otherwise receive priority under the Management Plan (once Prior Residents have been admitted).

The Owner may avail itself of the provisions of subparagraphs (iii), (iv) and (v) below, but only if it also implements the approaches in subparagraphs (i) and (ii) above:

(iii) Increase in Minimum Rents. Owner and Authority shall jointly determine whether it is advisable to increase minimum rents of the Public Housing Units to the maximum allowed by Public Housing Requirements; provided that Owner and Authority shall use best efforts to ensure that no such increase in rents shall create an undue hardship for extremely low income residents.

(iv) Cooperation of the Authority. In order to facilitate the rental of units in the Development to public housing eligible families having higher income levels as provided in the preceding paragraph, the Authority will, in accordance with Public Housing Requirements, offer other Authority-owned units or Section 8 vouchers to the extent available to the Authority,

to a sufficient number of tenants in the Development so as to encourage lower-income tenants to vacate the Public Housing Units in favor of higher income public housing eligible families.

(v) 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, including waiving its Authority Fee. 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 permit the continued operation of the Development without avoidable hardship to current residents.

Section 6.03 Transformation or Discontinuation of Public Housing Usage

(a) In the event that the Owner can reasonably demonstrate that based on: (1) the rate of turnover in the Public Housing Units, (2) the incomes of potential residents on the waiting list, (3) the reasonable reduction in Public Housing Units Expenses, and (4) projected Cash Flow, that: (i) the Public Housing Units will not return to a break even point (i.e. Public Housing Units Income equal to Public Housing Units Expenses) within a period of three hundred sixty (360) calendar days, *and* (ii) the amount in the ACC Reserve is below the ACC Reserve Floor Level and the Authority does not deposit additional funds into the ACC Reserve sufficient to increase it to a level at or above the ACC Reserve Floor Level, *and* (iii) the ACC Reserve is not projected by Owner to cover the projected Public Housing Units Shortfall for the remainder of the Tax Credit Compliance Period;

or

(b) if the Owner and the Authority agree, at any time, that more focused measures are necessary in order to preserve the Public Housing Units in light of operating forecasts, legislative actions and other circumstances;

then:

(c) Owner and the Authority may elect to discontinue the public housing usage of the Public Housing Units (or any portion of the Public Housing Units for which the Authority cannot guaranty Operating Subsidy Payments sufficient to eliminate Public Housing Units Shortfalls) and the Authority shall cooperate with the Owner to procure some or all of the Public Housing Units' disposition from the public housing program, in accordance with and as then may be provided in Public Housing Requirements applicable to "subsidy only" mixed-finance projects, pursuant to a Preservation and Transformation Plan to be developed by the Owner (as described below). The Authority's assistance may include, without limitation, the submission to HUD in the name of the Authority, if appropriate, of any request or supporting information prepared by Owner that is consistent with Owner's rights hereunder. Upon the completion of discontinuance, this

Agreement will terminate and be of no effect as to the discontinued Public Housing Units. Owner may in its discretion decline any Operating Subsidy Payments with respect to some or all of the Public Housing Units, and may continue not to receive such subsidy for such period as Public Housing Requirements may require before permitting disposition from the public housing program. Prior to initiating the discontinuance of public housing usage, the Owner will develop a plan in consultation with the Authority and residents that details the number of Public Housing Units to be discontinued so that operating income will equal necessary operating expenses and the process by which the tenants of the discontinued Public Housing Units will be relocated from the Development or provided with Housing Choice Vouchers in order to remain. The Authority may offer Housing Choice Vouchers for such purpose to the extent reasonably available.

or

(d) The Owner (in consultation with the Authority and its residents) may utilize remedies available under Section 35(h) of the Act, and any regulations promulgated thereunder (as and when implemented by HUD), to the extent available.

Section 6.04 Preservation and Transformation Planning. If the Owner reasonably projects that the conditions in Section 6.03 will be met within one hundred twenty (120) calendar days, the Owner may provide a written request to the Authority to exercise its rights hereunder accompanied by a detailed implementation proposal. The Owner and the Authority shall develop and agree upon a preservation and transformation plan ("Preservation and Transformation Plan") which meets applicable Public Housing 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. The goal of such Preservation and Transformation Plan will be to eliminate any Public Housing Units Shortfall but not result in any excess of Public Housing Units Income over Public Housing Units Expenses, taking into account the desire to maximize the availability of Public Housing Units for low-income and very-low income families and minimize the adverse effects on existing tenants. The parties recognize that this is a complex balance involving a choice between, for instance, greater change affecting fewer units or a smaller change affecting many units.

Section 6.05 Failure of the Owner and the Authority to Agree. The Owner and the Authority shall make diligent efforts, in good faith, to agree upon a Preservation and Transformation Plan, taking into account the necessity of adhering to the timeframes outlined. If the Owner and the Authority shall fail to agree within ninety (90) calendar days of the presentation of the Preservation and Transformation Plan, the Owner and the Authority shall mutually select a third-party mediator to resolve such differences.

Section 6.06 Preservation and Transformation Plan Provisions. Any Preservation and Transformation Plan may provide as follows, *inter alia*:

(a) Revisions in the rent structure as permitted under Section 35(h) of the Act when and as implemented by HUD. The Owner shall give the Authority and each

affected household at the Development written notice of any new rent structure, which shall be effective no sooner than sixty (60) calendar days following such notice or such longer period as may be required in regulations implemented by HUD.

(b) To the extent that the Authority is reasonably able to provide substitute housing (Section 8 or public housing) to households which fail to pay the rent which the Owner has specified for such household's adjusted gross income or which opt to move, the Authority shall offer such substitute housing and the Owner may require such household to vacate its unit at the Development, but only to the extent permitted by Public Housing Requirements and consistent with local landlord-tenant law.

(c) All reasonable expenses to be incurred in relocating residents shall be considered to be expenses of the Owner and shall not be paid by such relocated residents.

Section 6.07 Restoration of Units. If, subsequent to institution of remedial steps described above, the resources made available by the Authority and/or Cash Flow is sufficient to support operation of all or a portion of the number of the Public Housing Units in the manner they were operated prior to such action for at least a period of one year, and the ACC Reserve shall have been restored to at least the ACC Reserve Floor Level, the obligation of the Owner to so operate such number of units as Public Housing Units in accordance with the terms hereof shall be reinstated as soon as practicable, subject to continuing rights of existing tenants. The provisions of this Section 6.07 shall apply on a continuing basis.

Section 6.08 First Right of Return. Households that vacate units in the Development because of the Owner's exercise of any of the remedies provided herein shall have a first right of return (i) if they otherwise qualify in accordance with the Management Plan to occupy Development units, and (ii) if the obligations of the Owner are reinstated pursuant to the foregoing Section 6.07 herein subject to such households' continuing eligibility for public housing and to Tax Credit Requirements.

Section 6.09 Audit and Remedy. The Authority shall have the right to audit the Owner's financial and program records annually, and in the event the Owner converted Public Housing Units to higher income levels to an extent greater than permitted under this Agreement, the Owner shall return such Public Housing Units back to such permitted levels subject to continuing rights of existing tenants and shall pay to the Authority any net income improperly obtained.

ARTICLE VII. FINANCIAL STATEMENTS AND REPORTS; ANNUAL RECONCILIATION

Section 7.01 Accounting System. The Owner will maintain a system of accounting established and administered in accordance with sound business practices and Public Housing Requirements.

Section 7.02 Monthly Reports. As soon as available, but not later than fifteen (15) days

from the end of each calendar month, the Owner shall submit to the Authority a Monthly Report illustrating income and expenses for the Development and the Public Housing Units (separately) for the previous month.

Section 7.03 Quarterly Reports. As soon as available, but not later than thirty (30) days from the end of each fiscal quarter, the Owner shall submit to the Authority a Quarterly Report, commencing on the first quarter in which any of the units are occupied; provided, however, that with respect to the final quarter of each fiscal year, a Quarterly Report shall not be required though the Owner may nonetheless elect to prepare and submit such a Quarterly Report. The Quarterly Report shall consist of all narratives, reports and statements provided to the members of the Owner and will include, at a minimum, a balance sheet, an income statement, a narrative summary describing any significant financial activity that is not captured in the balance sheet and income statement, and current balance in each account maintained by it pursuant to this Agreement, including without limitation the ACC Reserve, and any deposit to or withdrawal from such account. The Quarterly Report shall also include a current rent roll identifying all Public Housing Units, and the Quarterly Report will provide information separately with respect to the Public Housing Units and the Development as a whole.

Section 7.04 Annual Audited Financial Statements. Not later than 120 days following the end of each Development Fiscal Year, the Owner shall deliver to the Authority, and if required HUD, a copy of the audited financial statements of the Owner for such year prepared in accordance with accounting principles generally used for partnerships operating Section 42 housing developments and accompanied by the report of independent certified public accountants thereon, testing for compliance with this Agreement, together with a copy of any additional financial statements or reports delivered by the Owner to its members.

Section 7.05 Supplemental Data. The financial statements described in Section 7.04 shall be accompanied by supplemental data which shall show on an accrual basis for such period: (i) dwelling rent and other income (ii) the Operating Subsidy Payments received by the Owner, including from the ACC Reserve; (iii) any other operating revenues or assistance attributable to the Public Housing Units and attributed to the Non Public Housing Units; (iv) Public Housing Units Expenses; (v) net deposits to the Replacement Reserve; (vi) amounts withdrawn from each reserve account and (vii) the actual Cash Flow from the Non Public Housing Units. Such supplemental data shall also include (viii) the balance at the end of the period of the ACC Reserve, Replacement Reserve, and any other reserve or special account relating specifically to the Public Housing Units, and the Non Public Housing Units, and (ix) aggregate stated lease rents and the amounts thereof uncollected from Public Housing Units and the Non Public Housing Units for which no eviction actions have been commenced. If the Owner shall fail to deliver such financial data required by this section to the Authority, the Authority shall have the right to retain an independent auditor to compile the financial data of the Owner and to charge the reasonable cost thereof to the Owner, but the Authority shall notify the Owner in advance of incurring such costs.

Section 7.06 Annual Reconciliation.

(a) If the supplemental data provided pursuant to Sections 7.04 and 7.05 above shall show that the sum of: (i) Public Housing Units Rental Income, (ii) Operating Subsidy Payments, including from the ACC Reserve and (iii) any other operating

revenues or assistance attributable to the Public Housing Units (exclusive of capital contributions to the Owner and proper withdrawals from any available reserves other than the ACC Reserve) exceeds the sum of actual Public Housing Units Expenses and (iv) net deposits to the ACC Reserve, then not later than thirty (30) business days following delivery of such supplemental data to the Authority, the Owner shall return such funds to the Authority not later than ninety (90) days after the end of the Development Fiscal Year, or set off such excess from the Operating Subsidy Requirement, for the following Development Fiscal Year.

(b) If the supplemental data provided pursuant to Section 7.04 above shall show that the sum of (i) Public Housing Units Rental Income, (ii) Operating Subsidy Payments, including withdrawals from the ACC Reserve, and (iii) any other operating revenues or assistance attributable to the Public Housing Units (excluding capital contributions to the Owner and proper withdrawals from any available reserves other than the ACC Reserve) is less than actual Public Housing Units Expenses (in accordance with the approved Operating Budget) incurred after EIOP, the Authority shall pay such shortfall to the Owner not later than sixty (60) days after receiving an audited financial statement pursuant to Section 7.04 herein; provided, however that in no case shall the Authority be obligated to provide funds in excess of the amount established pursuant to Section 4.01(a) and (e) herein. If such shortfall payment is required pursuant to this Section and is not made by such date, then the Owner may obtain such shortfall from the ACC Reserve in accordance with Section 5.01.

(c) Separately and independently from the reconciliation provided for under subsections (a) and (b) above, the Owner shall reimburse to the Authority the amount, if any, of Operating Subsidy Payment received by Owner during such period attributable to any Public Housing Unit for a period in which such Public Housing Unit was vacant for more than sixty (60) days, unless pursuant to reasonable accommodation requirements under the Act. For purposes of this provision:

1. A Public Housing Unit shall be deemed vacant (i) commencing on the first day for which rent is not charged for that unit following termination or expiration of its occupancy as a Public Housing Unit, and (ii) ending on the day preceding the first day for which rent is charged for that unit based on re-occupancy as a Public Housing Unit, or the first day for which rent is charged for occupancy as a Public Housing Unit of a different unit which was not previously occupied as a Public Housing Unit, whichever shall first occur; and

2. The amount of the Operating Subsidy Payment attributable to a Public Housing Unit for a period in which such Public Housing Unit was vacant for more than sixty (60) days shall be determined by multiplying the amount of Operating Subsidy Payment received by Owner during such year, by the product of (i) the net rentable square feet of such Unit, divided by the net rentable square feet of all Public Housing Units (including such

vacant Unit), multiplied by (ii) the number of days in excess of sixty (60) during which such Unit is vacant, divided by 365.

Section 7.07 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 Public Housing Requirements require the Authority to furnish reports, records, statements, certificates, documents or other information to HUD, or otherwise deal with HUD, the Owner shall furnish to the Authority such reports, records, statements certificates, documents or other information as are within its control and shall provide all other information in its control reasonably requested by the Authority via a medium, electronic or print, reasonably acceptable to the Authority. Nothing contained in this Section shall be construed to relieve Owner of its obligation to maintain its own books and records.

Section 7.08 Records for Audit Purposes. Without limitation on any other provision of this Agreement, Owner shall maintain all records concerning the Public Housing Units and the Non Public Housing Units for five (5) years unless a longer period is required under 24 CFR §85.42. Owner shall maintain records required by 24 CFR part 135 for the period that HUD requires such records to be maintained. Owner will give the Authority, HUD, the Controller 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 mandatory three-year retention period. Furthermore, if the Authority audits the Owner's records and determines that any disbursements received by Owner from the ACC Reserve are in excess of the amount that Owner was entitled to receive under this Agreement, or that were used by Owner for purposes other than those permitted by this Agreement, such amounts shall be refunded by Owner to the ACC Reserve upon demand by Authority together with interest since the date of improper withdrawal or use at the rate earned by funds in such account during that same period plus three (3%) percent.

ARTICLE VIII. NON-DISCRIMINATION AND OTHER FEDERAL REQUIREMENTS

Section 8.01 Applicable Requirements. The Owner will comply with all applicable requirements including but not limited to 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 C.F.R. Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 C.F.R. Part 107; the fair housing poster regulations, 24 C.F.R. Part 110, and applicable advertising guidelines.

(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 C.F.R. Part 1.

(c) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 C.F.R. Part 146.

(d) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 C.F.R. Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 C.F.R. Part 35.

(e) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations of 24 C.F.R. Part 135.

(f) OMBS Circular Numbers A-110 and A-122, as they relate to the acceptance of federal funds and to 24 CFR part 85, to the extent applicable.

(g) Wage Rates under Davis-Bacon Act (40 U.S.C. §276a et seq.) to the extent applicable.

ARTICLE IX. INSURANCE REQUIREMENTS: RESTORATION OF PROPERTY.

Section 9.01 Insurance. The Owner shall comply with all requirements of Part B, Attachment VII of the ACC and shall procure and maintain in force adequate insurance to protect the 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 the Owner reasonably determines that insurance is appropriate. Without limiting the generality of the foregoing, the Owner shall maintain and shall cause the Management Agent to maintain the insurance required to be carried under the ground lease between the Authority and the Owner (the "Ground Lease") and under any leasehold mortgage of the Development.

Section 9.02 Claims. In the event of an insured claim that takes place during the term of this Agreement, or that arises out of events that take place during the term of this Agreement, the Owner will notify the Authority within sixty (60) days following discovery of the claim by the Owner. In addition, the Owner will investigate and furnish the Authority with reports of all accidents, claims and known potential claims for damage or injury and will cooperate with its insurers and those of the Authority.

Section 9.03 Restoration, Casualty, Condemnation. 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 the Owner in respect thereof under any approved leasehold mortgages (as identified in the Ground Lease), the Owner, to the extent that insurance proceeds or condemnation proceeds and other funds, if any, made available by the first priority lien mortgage lender(s) (including, without limitation, by further advance pursuant to the approved leasehold mortgages) permit, may in Owner's reasonable discretion 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 leasehold mortgage documents shall contain provisions requiring restoration consistent with the foregoing if such restoration shall be determined feasible in accordance with the ACC, as amended by the Mixed-Finance Amendment. If such condemnation or insurance proceeds and other available funds are not sufficient or restoration is

otherwise determined by Owner in accordance with the approved leasehold mortgage documents to be not feasible, such proceeds shall be applied as provided in the approved leasehold mortgage 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) which shall be Public Housing Units, shall be determined in accordance with Section 9 of the Mixed-Finance ACC Amendment.

ARTICLE X. DISPOSITION AND ENCUMBRANCE

Section 10.01 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 except as otherwise provided under this Article X, the 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 the Owner's rights under this Agreement), without the prior written approval of the Authority and HUD.

Section 10.02 No Encumbrances. During the term of this Agreement, and subject to the terms of Sections 10.03 and 10.04 hereof, the Owner shall not mortgage, pledge, or otherwise encumber its interest in the Development, without the prior written approval of the Authority and HUD.

Section 10.03 Exclusions. The following actions are expressly excluded from the covenants set forth in Sections 10.01 and 10.02 hereof:

(a) Mortgages, financing arrangements, extended low-income housing commitments within the meaning of 26 U.S. Code 542 and other instruments approved in writing by HUD under the terms of the Mixed-Finance ACC Amendment, and transfer of the Development to the mortgagee under any such approved mortgage loans, 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;

(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) Normal uses and encumbrances associated with the operation of the Development or arising by operation of law (including leases to residents of dwelling units);

(d) Execution and recordation of the Authority and HUD approved covenants, conditions or restrictions pursuant to Tax Credit Requirements.

Section 10.04 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 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 that 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 ACC Amendment, any other interest in Owner, or in any partner or member thereof. Provided however, that HUD consent shall not be required if the Controlling Interest is transferred to an affiliate of the transferor. For purposes of the definition of "Controlling Interest" set forth above and this Section 10.04, 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 (i) a business organization that owns an interest that is not a Controlling Interest in the Owner or in any member, partner or stockholder of Owner, as applicable, transfers all or a portion of such interest; 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 (a) the new owner of the interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner, and (b) in the case of a non-Controlling Interest in the Owner, the transferee is an affiliate of the transferor and (ii) in connection with a foreclosure or deed in lieu of foreclosure by an Approved Mortgage Lender, provided that the Approved Mortgage Lender will be required to abide by the applicable Public Housing Requirements as detailed in the Declaration of Restrictive Covenants."

(c) 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.

ARTICLE XI. DEFAULT AND REMEDIES.

Section 11.01 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 or the Ground Lease (including, without limitation, by reason of its violation, breach, or failure to comply with applicable Public Housing Requirements) and fails to cure such default within the time period provided in Section 11.02. Upon expiration of the cure period provided by Article 11 herein and continuing until such default is cured, the Authority shall have the right to withhold Operating Subsidy Payments. Notwithstanding the foregoing, the Public Housing Units shall continue to be operated in accordance with the Public Housing Requirements.

Notwithstanding anything to the contrary set forth in this Agreement, HUD may pursue any and all rights and remedies against the Authority and the Owner pursuant to the ACC as

modified by the Mixed-Finance ACC Amendment.

Section 11.02 Notice and Cure Period.

(a) Upon a determination by one party that a default by the other party has occurred, the non-defaulting party shall notify the defaulting party 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 fifteen (15) business days for a failure to make Operating Subsidy Payments, thirty (30) calendar days for other monetary defaults, and no less than sixty (60) calendar 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) If following receipt of said written notices from the Authority, any Approved Leasehold Mortgagee shall have exercised its rights under the leasehold mortgage documents and either has cured such default or has commenced to cure and thereafter diligently and continuously pursues same, then the Owner shall not be considered in default or breach of the Agreement, and the Authority shall promptly resume Operating Subsidy Payments and pay all amounts previously withheld.

Section 11.03 Remedies. If the defaulting party (or, as applicable, any Approved Mortgage Lender, if such party has exercised intervention rights available to it) fails to respond or take corrective action within the time periods set forth above, the non-defaulting party shall have the right to exercise any legal or equitable remedy available to it by reason of the nature of such default, including without limitation to seek appropriate relief through a non-compulsory arbitration proceeding conducted under rules of the American Arbitration Association as the parties may agree, or to seek appropriate relief in any court having jurisdiction, including, but not limited to, 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.

Section 11.04 Rights of Others. The Authority shall transmit concurrently to the Approved Mortgage Lenders a copy of any notice of default by the Owner under this Agreement, and in the event that the Owner shall fail to cure any such default within the applicable time period, the Approved Leasehold Mortgagees shall be given an additional thirty (30) days to effect a cure of the Owner's default or to pursue its rights under the mortgage loan documents accordance with 11.02(b); 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. Authority shall also transmit a copy of any notice of default to HUD.

Section 11.05 Exclusive Remedy. Notwithstanding anything to the contrary herein, in the event that diminished appropriations under Section 9(e) of the Act or other legislative

changes reduce the amount of operating subsidy that the Authority is able to provide to the Owner, the remedies contained in this Agreement, consistent with the Act (including, without limitation section 35(h) thereof) as amended from time to time, and applicable HUD Regulations issued pursuant thereto, including, but not limited to, steps to be taken by the Owner to increase the rent derived from the Public Housing Units, shall be the exclusive remedies available to the Owner with respect to the reduction of operating subsidies provided by the Authority to the Owner. The 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, the 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, or against any other asset of the Authority that is unrelated to the Development

ARTICLE XII. DISCLAIMER OF HUD RELATIONSHIPS

The Authority and the Owner acknowledge that any transfer of HUD funds by the Authority to the Owner or any participating party shall not be or be deemed to be an assignment of such funds, and the Owner or any participating party shall not 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. Owner further agrees to include this disclaimer in each of its agreements or contracts with any partner, participating party, or any other party involving the use of public housing funds for the development.

Nothing contained in the ACC or in any agreement between the Authority and the 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 the first priority lien mortgage lender (if applicable) shall be entitled to rely upon Section 12(D) of the Mixed-Finance Amendment and to foreclose upon its mortgage and/or exercise any rights or remedies thereunder, and in doing so, succeed to the status of the Owner under said mortgage and hereunder.

ARTICLE XIII. MISCELLANEOUS.

Section 13.01 Term of Agreement. Except as otherwise provided herein, this Agreement shall continue in full force and effect until the later to occur of (a) 40 years from EIOP, or (b) 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.

Section 13.02 Decision Standards

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

(a) Good faith means honesty in fact in the conduct or transaction concerned based on the facts and circumstances actually known to the individual(s) acting for the party.

(b) Discretion, sole discretion, option, election or words of similar import in this Agreement denote the party's privilege to act in furtherance of the party's interest.

(c) Judgment denotes a subjective standard obligating the party to use good faith in forming its professional opinion or estimate.

(d) Reasonable or reasonable judgment denotes an objective standard obligating the party in good faith to act in a manner which is consistent with usual and customary practices of entities similarly situated, and not arbitrary or capricious.

Section 13.03 Notices. All such notices and other communications shall be deemed given on the date of personal or local courier delivery, telecopy (fax) transmission, one (1) day after delivery to overnight courier or express delivery service, or the day indicated received on the return receipt when deposited in the United States Mail.

If to the Authority:	Housing Authority of the City of Annapolis 1217 Madison Street Annapolis, MD 21403 Attn: Eric Brown
With a copy to:	Reno & Cavanaugh, PLLC 455 Massachusetts Avenue, N.W. Suite 400 Washington, D.C. 20001 Attn: Megan Glasheen
If to Owner:	Annapolis Community Development Partners, LLC 801 International Drive, Suite 100 Linthicum, Maryland 21090 Attn: Judith Siegel
With a copy to:	Gallaher Evelius & Jones LLP 218 N. Charles Street, Suite 400 Baltimore, Maryland 21201 Attn: Mark P. Keener
If to HUD:	United States Department of Housing and Urban Development 451 7th Street, S.W. Washington, DC 20410 Attn: Assistant Secretary of Public and Indian Housing

Section 13.04 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.

Section 13.05 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 10.04, the Owner may not assign its interest in the Agreement without the prior written consent of the Authority, which shall not unreasonably be withheld and the prior consent of HUD. Any attempted assignment by Owner without such consents will be null and void.

Section 13.06 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

Section 13.07 Interpretation and Governing Law. 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 construed, interpreted, and governed by the laws of the State of Maryland. 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.

Section 13.08 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, provided such severability does not materially affect the basic understanding of the parties hereto as reflected in this Agreement.

Section 13.09 No Personal Liability. No officer, director, 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. The Owner shall look solely to the Authority funds that are legally available for such purpose, and the Authority shall look solely to the Owner, for the satisfaction of any remedy each party might have with respect to the other for the other's failure to perform any of its obligations hereunder.

Section 13.10 Modification of Agreement. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. Material modifications require the prior written approval of HUD and no amendment shall impair the obligations of the Authority or Owner to develop and operate the Public Housing Units in accordance with the applicable Public Housing Requirements.

Section 13.11 The Owner's Employees and Liabilities. It is understood that persons engaged or employed by the Owner as employees, agents, or independent contractors shall be engaged or employed by the Owner and not by the Authority; and the 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 the 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 the Owner or of its employees, agents, or independent contractors.

Section 13.12 Neither Party an Agent. Nothing in this Agreement shall be deemed to appoint either the 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 the 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 the Owner's or the Authority's actions under this Agreement or otherwise.

Section 13.13 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.

Section 13.14 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.

Section 13.15 Future Changes in Applicable Laws. The parties hereto agree that in the event any of the federal or other legal requirements currently applicable hereto are amended, modified or repealed subsequent to the date hereof, it is the intent of the parties that, to the greatest extent permitted by law, nothing herein shall be construed or interpreted to apply such amendments, modifications, or new requirement in a manner more restrictive of the operation of the Development than those requirements currently applicable to the Development.

Section 13.16 Calendar Days. Unless otherwise stated, all references herein to a numbered period of days means calendar days.

Section 13.17 Temporary Interests. Any rights granted hereunder to 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 an effective loan, regulatory, or operating agreement. Any approval rights of HUD referenced herein shall be required only if and to the extent required by then-current Public Housing Requirements.

Section 13.18 Reasonableness. The Authority and the Owner shall act in a commercially reasonable manner with respect to their respective obligations as set forth in this Agreement, including the granting of any consent or approval.

Section 13.19 Future Legislation. Subject to remedies provided in Article 6 hereof, nothing contained herein shall prevent or diminish the full application to the Public Housing Units of any legislation enacted after the date hereof, including any that provides for termination of the Operating Fund under Section 9 of the Act or other Federal project-based assistance to public housing developments, including, without limitation, any provision thereof releasing or otherwise modifying occupancy or tenant rent restrictions previously applicable to units in such developments.

Section 13.20 Limited Owner Obligation. It is of the essence of this Agreement that during the term hereof, the Owner will maintain and operate the Public Housing Units in accordance with Public Housing Requirements as provided herein; provided, however, that if the Public Housing Units Rental Income, plus any form of governmental operating or rental assistance received in respect of the Public Housing Units (including without limitation withdrawals from the ACC Reserve or other contributions by the Authority), shall be less than Public Housing Units Expenses, the Owner shall at no time be required to contribute from its own funds toward Public Housing Units Expenses in order to preserve the character or number of Public Housing Units specified in Section 2.02 herein.

Section 13.21 Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

Section 13.22 Conflicts. The Public Housing Units are subject to the Public Housing Requirements, including, without limitation, requirements with respect to operating receipts and operating expenditures as contained in the ACC. In the event of any conflict between a provision of this Agreement or the applicable Public Housing Requirements that affects the Public Housing Units, and the Tax Credit Requirements, the DHCD Requirements, or any other applicable federal, state or local statutes, regulations and executive orders, then the more restrictive provision shall govern to the extent consistent with the Public Housing Requirements, unless such Public Housing Requirements may have been expressly waived in writing by HUD.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized signatories on or as of the date written on the initial page hereof.

AUTHORITY:

HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS

By: _____
Name: Eric Brown
Title: Executive Director

STATE OF MARYLAND)
) ss.
COUNTY OF BALTIMORE)

On this the 29th day of September, 2009, before me, the undersigned officer, personally appeared Eric Brown, who acknowledged himself to be the Executive Director of the Housing Authority of the City of Annapolis, a public body corporate and politic, and he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the Housing Authority of the City of Annapolis, by signing the name of the Housing Authority of the City of Annapolis by himself as Executive Director.

In witness whereof I hereunto set my hand.

Melissa M. Merryman
NOTARY PUBLIC
Baltimore County, Maryland
My Commission Expires
02/08/2013

Melissa M. Merryman

Notary Public/ My Commission Expires: 2-8-13
Commissioner of Superior Court

OWNER:

ANNAPOLIS COMMUNITY DEVELOPMENT PARTNERS, LLC

By: Landex Development, LLC

By: Peter S. Siegel
Sole Member

STATE OF MARYLAND)
) ss:
COUNTY OF BALTIMORE):

On the 29th day of September, 2009, before me, the undersigned officer, personally appeared Peter S. Siegel who acknowledged himself to be the Sole Member of Landex Development, LLC the managing member of Annapolis Community Development Partners, LLC and he being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the limited liability company, by signing the name of the limited liability company himself.

In witness whereof I hereunto set my hand.

Melissa M. Merryman
NOTARY PUBLIC
Baltimore County, Maryland
My Commission Expires
02/08/2013

Notary Public/My Commission Expires: 2-8-13
Commissioner of Superior Court

Prepared by:

Sarah Molseed
Reno & Cavanaugh, PLLC
455 Massachusetts Avenue, N.W., Suite 455
Washington, DC 20001-2621
Phone: (202) 783-2800

EXHIBIT 'A'
Site Description
LEGAL DESCRIPTION (September 1, 2009)

PARCEL No. 269

BEING the lands taken by Inquisition dated August 18, 1960, and recorded among the land record books of Anne Arundel County, Maryland in Liber 1417, folio 202 : R. William Brown, Chairman, Louis N. Phipps, Sara Brandt, Leroy Bowman, Augustus Snyder Commissioners comprising the Housing Authority of the City of Annapolis vs Harry F. Moreland;

BEGINNING for the same at point located in the existing pavement of Admiral Drive at the intersection of the division line between the lands now or formerly of Admiral Properties, LLC (see 9282/726), and the herein described lands (see 1417/202); said beginning point being further located at the southeasternmost corner of the herein described lands and the point of beginning as described in said Liber 1417, folio 202;

THENCE leaving said beginning point and binding on the said division line (in part with the lands of State of Maryland State Roads Commission of Maryland (see 252/155));

1. South 83° 54' 15" West 37.73 feet to an iron rod set;

2. North 88° 05' 45" West 55.00 feet to an iron rod set;

3. South 32° 35' 45" East 46.67 feet to an iron rod set;

4. North 81° 19' 55" West 117.38 feet to an iron rod set;

5. North 81° 19' 55" West 128.01 feet to an iron rod set;

6. North 81° 25' 15" West 213.03 feet to an iron rod set;

7. North 82° 35' 55" West 155.01 feet to an iron rod set;

8. North 83° 56' 45" West 100.05 feet to an iron rod set; and

9. North 82° 32' 45" West 85.02 feet to an iron rod set on the division line between Parcel No. 270 and the herein described lands as shown hereon;

THENCE leaving the State of Maryland State Roads Commission of Maryland lands and binding on the aforesaid division line the following four (4) courses and distances;

10. North 29° 26' 45" East 324.61 feet to an iron rod set;

11. North 24° 37' 15" West 162.83 feet to an iron rod set;

12. North 47° 03' 05" West 328.39 feet to a fence post;

13. North 51° 51' 05" East 433.93 feet to a point located in the existing pavement of Admiral Drive;

THENCE leaving Parcel No. 270 and binding on the lines of Admiral Drive as described in Liber 1417 folio 202 the following nine (9) courses and distances;

14. South 35° 13' 55" East 70.85 feet to a point;

15. South 36° 58' 25" East 76.30 feet to a point;

16. South 36° 51' 35" East 90.41 feet to a point;

THENCE with a curve to the left a distance of 176.57 feet to a point of tangency, said curve having a radius of 570.24 feet and scribed by a chord of;

17. South 45° 47' 40" East 175.87 feet;

18. South 54° 39' 55" East 122.52 feet to a point;

19. South 52° 14' 55" East 57.42 feet to a point;

THENCE by and with a curve to the right a distance of 142.53 feet to a point of tangency, said curve having a radius of 236.65 feet and scribed by a chord of;

20. South 34° 59' 38" East 140.39 feet;

21. South 17° 44' 25" East 358.56 feet to a point;

22. South 28° 49' 25" East 131.25 feet to the place of beginning.

CONTAINING in all 12.018 Acres of land, more or less.

SAVING AND EXCEPTING from the above described Parcel 269 that area of land identified as Croll Drive, and Bowman Road, Annapolis Gardens, Parcel One, in a deed between The Housing Authority of the City of Annapolis and the Mayor and Aldermen of the City of Annapolis recorded in the land records of Anne Arundel County, Maryland in Liber 3064, page 120, being described as follows;

BEGINNING for the same at a point located in Admiral Drive, South 36° 58' 25" East 15.13 feet from the end of the 14th course described above;

THENCE leaving said beginning point and binding on the outline of the herein described lands the following twenty-two (22) courses and distances;

1. South 36° 58' 25" East 50.01 feet to a point;

2. South 51° 52' 20" West 197.64 feet to an iron rod set;

thence by and with a curve to the left a distance of 91.15 feet to an iron rod set and a point of tangency, said curve having a radius of 49.05 feet and scribed by a chord of:

3. South 01° 21' 47" East 78.59 feet;

4. South 54° 35' 53" East 368.99 feet to an iron rod set;

thence by and with a curve to the right a distance of 319.89 feet to an iron rod set and a point of tangency, said curve having a radius of 290.61 feet and scribed by a chord of;

5. South 23° 03' 51" East 303.98 feet;

6. South 08° 28' 11" West 18.88 feet to an iron rod set;

thence by and with a curve to the left a distance of 31.66 feet to an iron rod set and a point of tangency, said curve having a radius of 20.00 feet and scribed by a chord of;

7. South 36° 52' 39" East 28.46 feet;

8. South 82° 13' 30" East 121.85 feet to a punch hole set in concrete;

thence by and with a curve to the left a distance of 46.12 feet to an iron rod set and a point of tangency, said curve having a radius of 102.80 feet and scribed by a chord of:

9. North 84° 55' 20" East 45.74 feet;

10. North 72° 04' 10" East 66.08 feet to a point;

11. South 17° 44' 25" East 40.78 feet to a point;

12. South 28° 49' 25" East 9.39 feet to a point;

13. South 72° 04' 10" West 67.72 feet to a punch hole set in concrete;

thence by and with a curve to the right a distance of 68.55 feet to a punch hole set in concrete and a point of tangency, said curve having a radius of 152.80 feet and scribed by a chord of:

14. South 84° 55' 20" West 67.98 feet;

15. North 82° 13' 30" West 619.33 feet to an iron rod set;

16. North 29° 26' 45" East 85.22 feet to an iron rod set;

thence with a curve to the right a distance of 108.15 feet to an iron rod set and a point of reverse curvature, said curve having a radius of 55.00 feet and scribed by a chord of:

17. South 71° 31' 26" East 91.55 feet;

thence with a reverse curve to the left a distance of 23.40 to an iron rod set and a point of tangency, said curve having a radius of 20.00 feet and scribed by a chord of:

18. South 48° 42' 27" East 22.09 feet;

19. South 82° 13' 30" East 267.63 feet to an iron rod set;

thence with a curve to the left a distance of 31.17 feet to an iron rod set and a point of tangency, said curve having a radius of 20.00 feet and scribed by a chord of:

20. North 53° 07' 21" East 28.11 feet;

21. North 08° 28' 11" East 19.97 feet to an iron rod set;

thence by and with a curve to the left a distance of 264.85 feet to a punch hole set in concrete and a point of tangency, said curve having a radius of 240.61 feet and scribed by a chord of;

22. North 23° 03' 51" West 251.68 feet;

23. North 54° 35' 53" West 368.99 feet to a punch hole set in concrete;

thence by and with a curve to the right a distance of 184.06 feet to an iron rod set and a point of tangency, said curve having a radius of 99.05 feet and scribed by a chord of;

24. North 01° 21' 47" West 158.70 feet;

25. North 51° 52' 20" East 198.65 feet to the place of beginning.

CONTAINING 2.119 Acres of land, more or less.

CONTAINING in all an aggregate area of 9.899 Acres of land more or less, as described by McCrone, Inc., Registered Professional Engineers and Land Surveyors and shown on a plat entitled "ALTA/ACSM LAND TITLE SURVEY OF THE LANDS OF THE HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS" DATED March 16, 2009.

PARCEL No. 270

BEING the lands conveyed by deed dated September 19, 1974 to The Housing Authority of the City of Annapolis from Victor Development Co., Inc., and recorded among the land record books of Anne Arundel County, Maryland in Liber 2706, folio 635.

BEGINNING for the same at an iron rod set along the northern outline of the lands now or formerly of the State of Maryland State Roads Commission of Maryland (see 252/155) at the intersection of the division line between Parcel No. 269 and Parcel No. 270, as shown hereon; said beginning point being further located at the southeasternmost corner of the herein described lands (P.B. 50 P. 46);

THENCE leaving said beginning point and binding on the northern outline of the State of Maryland State Roads Commission of Maryland;

1. North 82° 32' 45" West 305.81 feet to an iron rod set on the division line between the lands of Merrit-GB1, LLC (see 8205/433) and the herein described lands;

THENCE leaving the lands of the State of Maryland State Roads Commission of Maryland and binding on the aforesaid division line;

2. North 07° 27' 15" East 611.72 feet to a point located in the center of Moreland Parkway, passing in transit an iron rod set at 554.55 feet;

THENCE binding on the center of Moreland Parkway (60' R/W);

3. North 51° 51' 05" East 498.18 feet to a point located in the existing pavement of Admiral Drive,

THENCE;

4. South 38° 08' 55" East 40.00 feet to a point located on the division line between Parcel No. 269 and the herein described Parcel No. 270;

THENCE binding on the said division line the following four (4) courses and distances;

5. South 51° 51' 05" West 433.93 feet to a fence post;

6. South 47° 03' 05" East 328.39 feet to an iron rod set;

7. South 24° 37' 15" East 162.83 feet to an iron rod set;

8. South 29° 26' 45" West 324.61 feet to the place of beginning.

CONTAINING in all 5.070 Acres of land, more or less.

SAVING AND EXCEPTING from the above described Parcel 270 that area of land identified as Bowman Road, Annapolis Gardens, Parcel Two, in a deed between The Housing Authority of the City of Annapolis and the Mayor and Aldermen of the City of Annapolis recorded in the land records of Anne Arundel County, Maryland in Liber 3064 page 120, being described as follows;

BEGINNING for the same at an iron rod set on the southeastern corner of Bowman Road as shown on Plat Book 50 Page 46 and as shown hereon;

THENCE leaving said beginning point and binding on the outline of the herein described lands the following five (5) courses and distances;

1. North 82° 32' 45" West 193.90 feet to an iron rod set;

thence by and with a curve to the right a distance of 209.44 feet to an iron rod set and a point of reverse curvature, said curve having a radius of 50.00 feet and scribed by a chord of;

2. North 37° 27' 09" East 86.60 feet;

thence with a reverse curve to the left a distance of 52.36 feet to a punch hole set in concrete and a point of tangency, said curve having a radius of 50.00 feet and scribed by a chord of;

3. South 52° 32' 35" East 50.00 feet;

4. South 82° 32' 45" East 127.49 feet to a punch hole set in concrete;

5. South 29° 26' 45" West 53.92 feet to the place of beginning.

CONTAINING 0.374 Acres of land, more or less.

CONTAINING in all an aggregate area of 4.696 Acres of land more or less, as described by McCrone, Inc., Registered Professional Engineers and Land Surveyors and shown on a plat entitled "ALTA/ACSM LAND TITLE SURVEY OF THE LANDS OF THE HOUSING AUTHORITY OF THE CITY OF ANNAPOLIS" DATED March 16, 2009.

EXHIBIT B
[HUD FORM 52723]

BK21607PG325

Operating Fund
Calculation of Operating Subsidy
PHA-Owned Rental Housing

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0029 (exp.05/31/2010)

Public Reporting Burden for this collection of information is estimated to average .75 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is required by Section 9(a) of the U.S. Housing Act of 1937, as amended, and by 24 CFR Part 990 HUD regulations. HUD makes payments for the operation and maintenance of low-income housing projects to PHAs/projects. The Operating Fund determines the amount of operating subsidy to be paid to PHAs/projects. PHAs/projects provide information on the Project Expense Level (PEL), Utilities Expense Level (UEL), Other Formula Expenses (Add-ons) and Formula Income – the major Operating Fund components. HUD reviews the information to determine each PHA's/project's Formula Amount and the funds to be obligated for the Funding Period to each PHA/project based on the appropriation by Congress. HUD also uses the information as the basis for requesting annual appropriations from Congress. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Section 1

1. Name and Address of Public Housing Agency:		2. Funding Period: 1/1/ to 12/31/
		3. Type of Submission: ☐ Original ☐ Revision No.
4. ACC Number:	5. Fiscal Year End: ☐ 12/31 ☐ 3/31 ☐ 6/30 ☐ 9/30	6. Operating Fund Project Number:
7. DUNS Number:	HUD Use Only	
	8. ROFO Code:	9. Financial Analyst:

Section 2

Calculation of ACC Units for the 12-month period from July 1 to June 30 that is prior to the first day of the Funding Period:

ACC Units on 7/1/	+	Units Added to ACC	-	Units Deleted from ACC	=	ACC Units on 6/30/

Line No.	Category	Column A Unit Months	Column B Eligible Unit Months (EUMs)	Column C Resident Participation Unit Months
Categorization of Unit Months:				
Occupied Unit Months				
01	Occupied dwelling units – by public housing eligible family under lease			
02	Occupied dwelling units – by PHA employee, police officer, or other security personnel who is not otherwise eligible for public housing			
03	New units – eligible to receive subsidy during the funding period but not included on Lines 01, 02, or 05-13 of this section			
04	New units – eligible to receive subsidy from 10/1 to 12/31 of previous funding period but not included on previous Calculation of Operating Subsidy			
Vacant Unit Months				
05	Units undergoing modernization			
06	Special use units			
06a	Units on Line 02 that are occupied by police officers and that also qualify as special use units			
07	Units vacant due to litigation			
08	Units vacant due to disasters			
09	Units vacant due to casualty losses			
10	Units vacant due to changing market conditions			
11	Units vacant and not categorized above			
Other ACC Unit Months				
12	Units eligible for asset repositioning fee and still on ACC (occupied or vacant)			
13	All other ACC units not categorized above			

				Operating Fund Project Number:
Calculations Based on Unit Months:				
14	Limited vacancies			
15	**Total Unit Months**			
16	Units eligible for funding for resident participation activities (Line 15C divided by 12)			
Special Provision for Calculation of Utilities Expense Level:				
17	Unit months for which actual consumption is included on Line 01 of form HUD-52722 and that were removed from Lines 01 through 11, above, because of removal from inventory, including eligibility for the asset repositioning fee			

Section 3

Line No.	Description	Requested by PHA	HUD Modifications
Part A. Formula Expenses			
Project Expense Level (PEL)			
01	PUM project expense level (PEL)		
02	Inflation factor		
03	PUM inflated PEL (Part A, Line 01 times Line 02)		
04	PEL (Part A, Line 03 times Section 2, Line 15, Column B)		
Utilities Expense Level (UEL)			
05	PUM utilities expense level (UEL) (from Line 26 of form HUD-52722)		
06	UEL (Part A, Line 05 times Section 2, Line 15, Column B)		
Add-Ons			
07	Self-sufficiency		
08	Energy loan amortization		
09	Payment in lieu of taxes (PILOT)		
10	Cost of independent audit		
11	Funding for resident participation activities		
12	Asset management fee		
13	Information technology fee		
14	Asset repositioning fee		
15	Costs attributable to changes in federal law, regulation, or economy		
16	**Total Add-Ons** (Sum of Part A, Lines 07 through 15)		
17	**Total Formula Expenses** (Part A, Line 04 plus Line 06 plus Line 16)		
Part B. Formula Income			
01	PUM formula income		
02	PUM change in utility allowances		
03	PUM adjusted formula income (Sum of Part B, Lines 01 and 02)		
04	**Total Formula Income** (Part B, Line 03 times Section 2, Line 15, Column B)		
Part C. Other Formula Provisions			
01	Moving-to-Work (MTW)		
02	Transition funding		
03	Other		
04	**Total Other Formula Provisions** (Sum of Part C, Lines 01 through 03)		
Part D. Calculation of Formula Amount			
01	Formula calculation (Part A, Line 17 minus Part B, Line 04 plus Part C, Line 04)		
02	Cost of independent audit (same as Part A, Line 10)		
03	Formula amount (greater of Part D, Lines 01 or 02)		
Part E. Calculation of Operating Subsidy (HUD Use Only)			
01	Formula amount (same as Part D, Line 03)		
02	Adjustment due to availability of funds		
03	HUD discretionary adjustments		
04	**Funds Obligated for Period** (Part E, Line 01 minus Line 02 minus Line 03) Appropriation symbol(s):		

Operating Fund Project Number:

Section 4

Remarks (provide section, part and line numbers):

Section 5

Certifications:

☐ In accordance with 24 CFR 990.215, I hereby certify that _____ Housing Agency is in compliance with the annual income reexamination requirements and that rents and utility allowance calculations have been or will be adjusted in accordance with current HUD requirements and regulations.

☐ In accordance with § 225 of Title II of Division K of the Consolidated Appropriations Act, 2008, Pub. L. 110-161 (approved December 26, 2007), I hereby certify that _____ Housing Agency has 400 or fewer units and has elected to transition to asset management.

☐ I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate. Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of Authorized PHA Representative & Date:	Signature of Authorized HUD Representative & Date:
X	X

EXHIBIT C:
First Year Operating Budget

PROJECT EXPENSES

Date: 8/10/09

ADMINISTRATIVE EXPENSES

Advertising and Marketing		$ 2,500
Other Administrative Expense *(describe)*	training, credit/criminal check, and compliance	14,500
Office Salaries		98,280
Office Supplies		9,500
Office or Model Apartment Rent		0
Management Fee *(Effective Gross Income x Annual Rate of*	6.14%)	72,000
Manager or Superintendent Rent Free Unit		
Legal Expenses *(project only)*		7,500
Auditing Expenses *(project only)*		11,000
Bookkeeping Fees and Accounting Services		18,000
Telephone and Answering Services		7,500
Bad Debts		16,593
Miscellaneous Administrative Expenses *(describe)*	Tenant Services	25,000
Annual Tax Credit Monitoring Fee ($25.00 per tax credit unit)		3,750
Total Administrative Expenses		$ 286,123

UTILITY EXPENSES *(paid by owner)*

Fuel Oil	$
Electricity	5,000
Gas	5,000
Water	27,500
Sewer	26,236
Total Utility Expenses	$ 63,736

OPERATING AND MAINTENANCE EXPENSES

Janitor and Cleaning Payroll	$ 20,800
Janitor and Cleaning Supplies	1,900
Janitor and Cleaning Contract	1,200
Exterminating Payroll or Contract	4,000
Exterminating Supplies	
Garbage and Trash Removal	16,000
Security Payroll or Contract	60,000
Grounds Payroll	41,600
Grounds Supplies	
Grounds Contract	45,000
Repairs Payroll	63,000
Repairs Material	8,361
Repairs Contract	5,000
Elevator Maintenance or Contract	
Heating and Air Conditioning Maintenance or Contract	4,500
Swimming Pool Maintenance or Contract	
Snow Removal	8,500
Decorating Payroll or Contract	8,000
Decorating Supplies	2,500
Other Operating and Maintenance Expenses *(describe)*	
Miscellaneous Operating and Maintenance Expenses	
Total Operating and Maintenance Expenses	$ 290,361

TAXES AND INSURANCE

Real Estate Taxes				$
Payment in Lieu of Taxes	*Total*	*Years:*	*Annual:*	72,906
Payroll Taxes (FICA)				20,000
Miscellaneous Taxes, Licenses and Permits				
Property and Liability Insurance *(hazard)*				55,600
Fidelity Bond Insurance				600
Workmen's Compensation				5,000
Health Insurance and Other Employee Benefits				12,500
Other Insurance *(describe)*				
Total Taxes and Insurance				$ 166,606
Reserve for Replacement				$ 45,000
Total Operating Expenses				$ 851,826
Net Operating Income *(Effective Gross Income - Total Operating Expenses)*				$ 321,273

Exhibit D:
Defined Terms

"ACC" means the Consolidated Annual Contributions Contract between HUD and the Authority, dated January 18, 1996 as amended from time to time, including, without limitation, as amended by a Mixed Finance ACC Amendment governing the Development that is executed substantially contemporaneously herewith and incorporating the Public Housing Units, as the same may be amended from time to time.

"Act" means the United States Housing Act of 1937, as amended from time to time, and any successor legislation.

"ACC Reserve" means a reserve account established pursuant to the Reserve Escrow Agreement by the Owner and Authority in accordance with Section 5.01 hereof in order to cover any Public Housing Units Shortfall.

"ACC Reserve Floor Level" means $290,154.

"Admissions and Continuing Occupancy Policy" shall have the meaning given in Section 3.03.

"Approved Mortgage Lender" means any lender of a loan approved by the Authority (an "Approved Mortgage Loan"), together with its successors and assigns, as of the date of this Agreement the Approved Mortgage Lenders include (i) TD Bank, N.A.; (2) Enterprise Mortgage Investments; (3) the Maryland Department of Housing and Community Development; (4) Arundel Community Development Services, Inc.; (5) the Authority; and (6) the Maryland Community Development Administration.

"Authority" means the Housing Authority of the City of Annapolis, its successors and assigns.

"Authority Percentage" means the number of Public Housing Units divided by the total number of dwelling units in the Development.

"Cash Flow" means the excess, if any, of (i) all income received by Owner with respect to the Development, exclusive of Public Housing Units Income, over (ii) the aggregate of (A) Development Operating Expenses in excess of the Public Housing Units Expenses, and (B) any debt service requirements of any lender other than any debt service requirements included in the Development Operating Expenses.

"Declaration of Restrictive Covenants" means that certain Declaration of Restrictive Covenants in favor of HUD, recorded in the land records of Anne Arundel County, Maryland, which obligates the Owner 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, as the same may be amended or supplemented from time to time.

"Development" is defined in the Recitals hereof.

"Development Fiscal Year" means the fiscal year of the Owner.

"Development Operating Expenses" means all necessary and reasonable operating expenses of the Development for any period which are generally incurred by all units without distinction, including, but not limited to:

(a) all ordinary and necessary expenses of operations of the Development shown as line items on Form HUD-92547-A (Budget Worksheet), including any real estate taxes or payments in lieu of taxes (to the extent required) that are paid on the Development as a whole without distinction between Public Housing Units and other units, but exclusive of (i) debt service requirements of any lender (including the Authority), (ii) real estate taxes (or payments in lieu thereof) that are solely or disproportionately levied on some, but not all of the units in the Development and (iii) utility expenses which are the direct responsibility of the tenant;

(b) management fees and expenses payable pursuant to the Management Agreement;

(c) legal expenses associated with the operation of the Development and accounting and audit expenses, including tax return preparation expenses, which would be permitted to be charged as project expenses pursuant to HUD Handbook 7475.1 REV., CHG-1., Financial Management Handbook, or any successor thereto;

(d) contributions to the Replacement Reserve that are required by the Approved Leasehold Mortgagee; and

(e) sums for tenant programs and services, as the Owner may determine to be reasonable.

"Development Site" means the real property on which the Development is located, as more particularly described in Exhibit A hereto.

"DHCD Requirements" means those requirements imposed upon the Development by those certain documents executed on substantially even date herewith between the Maryland Department of Housing and Community Development and the Owner evidencing the RHPP loan in the amount of $1,747,246 (the "DHCD Loan Documents").

"End of the Initial Operating Period" or "EIOP" means, for the purpose of this Agreement, the end of the first calendar quarter in which at least 95% of the Public Housing Units are occupied and the Operating Subsidy Commencement Date has occurred with respect to at least 95% of the Public Housing Units.

"Formula Operating Subsidy Amount" shall equal ninety percent (90%) of the Funded Project Expense Level plus any amount received by the Authority as a PILOT add-on attributable to the Public Housing Units.

"Funded Project Expense Level" shall mean the Calculation of Formula Amount found on line 3 of Part D of HUD form 52723 (03/2008) (which form is attached hereto as Exhibit B) less the amount for add-ons found in Section 3, Part A, line 16, adjusted to reflect any pro ration from HUD, including as reflected in Part E, or such operating payment as shall be received by the Authority in accordance with a successor to such form.

"Ground Lease" is defined in Section 9.01.

"HUD" means the United States Department of Housing and Urban Development, its successors and assigns.

"Initial Deposit" shall mean the initial deposit to the ACC Reserve funded from the development budget (as shown on Exhibit F on the Mixed Finance ACC Amendment of substantially even date herewith) in the amount of $772,200.

"Management Agent" means the management agent named in the Management Agreement.

"Management Agreement" means any management agreement approved by the Authority and covering the Development to be entered into between the Owner and the Management Agent pursuant to Section 3.02 hereof, as the same may be amended from time to time.

"Management Plan" means the comprehensive and detailed written description of the policies and procedures to be followed in the management of the Development, as described in Section 3.02 hereof.

"Non Public Housing Units" means the dwelling units of the Development that are not Public Housing Units.

"Operating Agreement" means the Amended and Restated Operating Agreement of the Owner, as of the effective date of this Agreement, as it may be amended, modified or supplemented from time to time.

"Operating Budget is defined in Section 4.02(a).

"Operating Fund" or "Operating Funds" means moneys provided to the Authority by HUD pursuant to Section 9(e) of the Act, or any successor provision designed to provide operating subsidy assistance to the Authority for public housing units.

"Operating Subsidy Commencement Date" means the time that HUD shall be obligated to commence operating subsidy payments to the Authority with respect to the Public Housing Units in accordance with HUD regulations at 24 CFR 941.404 or, if earlier, when HUD recognizes inclusion of such units in "unit months available", as such term is used in 24 CFR Part 990.

"Operating Subsidy Payment" or "Operating Subsidy Payments" means the amount of Operating Funds paid to the Owner at any time.

"Operating Subsidy Requirement" is defined in Section 4.01(b).

"Owner" means Annapolis Community Development Partners, LLC and its successors and assigns, to the extent such successors and assigns are approved by HUD and the Authority in accordance with, and to the extent required by, Section 10.04 hereof.

"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 (2) 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 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 the Owner, provided that such other investment must be consistent with HUD notices on permitted investments or approved in writing by HUD.

"PHA Plan" means the annual and five-year plans adopted by the Authority and approved by HUD in accordance with Section 5A of the Act, or any substitute or alternate plan approved by HUD under the Moving to Work program.

"Preservation and Transformation Plan" is defined in Section 6.04.

"Prior Resident" means a prospective tenant in the Development who was a tenant at either the Annapolis Gardens or Bowman Court developments on or after January 1, 2009, or whose application for residency had been processed and approved by January 1, 2009, who was displaced as a result of Revitalization, or as further set forth in

the Management Plan and Admissions and Continuing Occupancy Policy and in accordance with the Relocation Plan dated July 2008.

"Project Expense Level" means the Project Expense Level for the Public Housing Units as such term is defined in 24 CFR 990.165 and established or approved by HUD.

"Public Housing Assessment System" or "PHAS" means the assessment system established pursuant to Section 6(j) of the Act, and implemented at 24 CFR Part 902, and any successor law or regulation intended to evaluate the management or maintenance of public housing.

"Public Housing Requirements" means the Act; HUD regulations thereunder (and to the extent applicable, any HUD-approved waivers of regulatory requirements); any other federal laws, regulations, notices (including any notice of funding availability under which the Authority received a HOPE VI Grant for use in connection with the Project), and Executive Orders pertaining to public housing; the ACC (as amended by the Mixed-Finance Amendment); the Grant Agreement; the Declaration of Restrictive Covenants; (including any documents incorporated into any of them by amendment, exhibit or reference); the Admissions and Continued Occupancy policies applicable to the Development as set forth in the PHA plan as those requirements may be waived or amended from time to time. In the event of any conflict among the foregoing authorities, or between any of such authorities and this Agreement, then the Act, the Mixed Finance ACC Amendment and the Declaration of Restrictive Covenants (in that order of primacy, in the event of conflict there among, and including any waivers granted pursuant thereto or pursuant to HUD regulations applicable to privately owned mixed-finance communities such as the Development) shall control.

"Public Housing Unit" means a dwelling unit in the Development designated as such by the Owner and operated and maintained as a "public housing" unit in accordance with applicable Public Housing Requirements, as such dwelling unit is further described at Article II hereof.

"Public Housing Unit Lease" means a lease described in Section 3.05 hereof.

"Public Housing Units Expenses" means (a) the Development Operating Expenses in accordance with the approved Operating Budget multiplied by the Authority Percentage, plus (b) real estate taxes or payments in lieu thereof, if any are required, that are paid only on account of the Public Housing Units, and that have not been included in Development Operating Expenses. However, the portion of any line item within the Development Operating Expenses included in Public Housing Units Expenses may be altered from the Authority Percentage if either the Authority or the Owner reasonably demonstrates that allocation of such item to the Public Housing Units on the basis of the Authority Percentage is inappropriate (e.g., costs which relate solely or preponderantly to the Non Public Housing Units or the Public Housing Units, costs for which the public housing share has been paid through other means, or costs which are not includable under applicable Public Housing Requirements). No contribution to any development reserve,

other than a contribution to the Replacement Reserve shall be included in Public Housing Units Expenses unless consistent with applicable Public Housing Requirements and approved by the Authority. No amounts shall be allocated to Public Housing Expenses that are not permissible uses of public housing funds.

"Public Housing Units Income" means (a) Public Housing Units Rental Income plus (b) the amount of the Operating Subsidy Payments, withdrawals from the ACC Reserve, or other funds provided by the Authority for Development operations, but exclusive of interest on or withdrawals from any reserve account other than the ACC Reserve..

"Public Housing Units Rental Income" means (a) all dwelling rent and other income attributable to the Public Housing Units, reduced by (b) amounts paid to Public Housing Units occupants as utility reimbursement (i.e., "negative rent").

"Public Housing Units Shortfall" means the amount by which the Public Housing Units Income (excluding withdrawals from the ACC Reserve) is less than Public Housing Units Expenses (in accordance with the approved Operating Budget) for any period after EIOP, provided that no Public Housing Units Shortfall shall be deemed to exist for any period in which, but only to the extent that, any such shortfall can be covered by available Cash Flow from the Non Public Housing Units for such period.

"Public Housing Formula Utilities Expenses" means the formula amount of utilities expenses calculated in accordance with 24 CFR 990.180 for the Public Housing Units.

"Replacement Reserve" means the reserve created by the Owner to fund the replacement of certain capital items such as heating or roofing systems and is further defined in the DHCD Loan Documents.

"Reserve Escrow Agreement" means that Agreement between the Authority, Owner, and Reserve Escrow Agent governing the ACC Reserve.

"Reserve Escrow Agent" means Enterprise Mortgage Investments, Inc.

"Revitalization" has the meaning stated in the Recitals.

"Section 42" means Section 42 of the Internal Revenue Code of 1986, as amended, and any implementing regulations.

"Subsidy Fiscal Year" means the year ending on December 31, which is the fiscal year utilized by HUD for purposes of calculating the Operating Fund assistance.

"Tax Credit Compliance Period" means the fifteen year period described in Section 42.

"Tax Credit Requirements" means any and all matters required by Section 42, regulations thereunder, or any agreement made as a condition of receipt of tax credits or funds under Section 1602 of the American Recovery and Reinvestment Act of 2009, whether or not such requirement is explicitly stated in Section 42, regulations thereunder, or other guidance from the Internal Revenue Service or Department of the Treasury.

"Term of Agreement" means the term of this Agreement as set forth in Section 13.01 hereof.

"Waiting List" means the site-based waiting list described in Section 3.04 hereof.

ATTORNEY CERTIFICATION

I, the undersigned, an attorney admitted to practice before the Court of Appeals of Maryland, hereby certify that the within instrument was prepared by me or under my supervision.

Sarah Molseed, Esquire

The State of Maryland, Anne Arundel County, Set

I HEREBY CERTIFY That the aforegoing Agreement Regulatory and operating for Annapolis Gardens and Condominiums is truly taken and copied from Liber KPD No 21607 Folio 280 one of the Land Record books for Anne Arundel County

IN TESTIMONY WHEREOF I hereby set my hand and affix the Seal of the Circuit Court for Anne Arundel County this 1st day of October A.D 2001

Deputy

Robert P. Duckworth
Clerk of the Circuit Court for Anne Arundel County

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY MD

MARYLAND DEPARTMENT OF
HOUSING & COMMUNITY DEVELOPMENT

Project Name: Annapolis Gardens/Bowman Court
Project No. RHPP 28.02.0022
ARRA TCX 14.610.7900

MANAGEMENT AGREEMENT

THIS AGREEMENT is made this 29th day of September, 2009, between Annapolis Community Development Partners, LLC (hereinafter referred to as the "Owner") and Landex Management, LLC (hereinafter referred to as the "Agent").

WITNESSETH:

In consideration of the terms, conditions and covenants hereinafter set forth, the Owner and Agent mutually agree as follows:

Section 1. <u>Definitions</u>.

As used in this Agreement:

1.1 "DHCD" shall mean the Department of Housing and Community Development as established under the provisions of the Housing and Community Development Article of the Annotated Code of Maryland, as amended, and all regulations promulgated thereunder (collectively, the "Act"). If the Loan (as hereinafter defined) is funded from the Multifamily Bond Program or the ARRA Section 1602 program of DHCD, then all references herein to DHCD shall also mean the Community Development Administration, an agency in the Division of Development Finance of DHCD ("CDA").

1.2 "Lease" shall mean the form of agreement between the Owner and a Resident under the terms of which said Resident is entitled to enjoy possession of a dwelling unit.

1.3 "Loan" shall mean the Loan from DHCD to the Owner for the acquisition, construction and/or rehabilitation of the Project.

1.4 "Loan Documents" shall mean the Note, Deed of Trust, Security Agreement and Assignment of Rents, Regulatory Agreement, Building Loan Agreement and any and all other documents executed in connection with the Loan.

1.5 "Non-Housing Income" shall mean all amounts actually collected by the Agent, other than Rent, including (i) vending and laundry income, and (ii) income received from rental of parking spaces, garage spaces and commercial space.

1.6 "Project" shall mean the real property and the improvements, buildings, appurtenances and equipment thereon, of the Owner known as Annapolis Gardens and Bowman Court located in the [City of