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Sterling Park Apartments

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**LaRue Little
Office of the General Counsel
Chicago Housing Authority
60 E. Van Buren St., 12th Floor
Chicago, Illinois 60605**

REGULATORY AND OPERATING AGREEMENT

BETWEEN

CHICAGO HOUSING AUTHORITY

AND

**New Sterling Park LLC,
an Illinois limited liability company**

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REGULATORY AND OPERATING AGREEMENT

This Regulatory and Operating Agreement (this "Agreement"), dated and effective as of June 1, 2015 is made by and among the Chicago Housing Authority, an Illinois municipal corporation (the "Authority"), and New Sterling Park LLC, an Illinois limited liability company (the "Owner").

RECITALS

A. The Owner intends to develop an apartment complex containing one hundred-eighty-one (181) low income rental units in a multifamily residential development pursuant to 24 CFR Part 905, Subpart F, to be known as Sterling Park Apartments, (the "Development") which consists of one building configured in two wings - one (1) of six stories and one (1) of four stories with approximately 1,890 square feet of management/residential services office space on the ground floor, 55 on-site dedicated parking spaces for residents and visitors, and may also have up to 126 off-street parking spaces at an adjacent property, outdoor courtyard and play space, one (1) fitness room, one (1) community room and one (1) computer lab. The Owner has agreed to dedicate sixty-six (66) units (the "PHA-Assisted Units") in the Development for use as "public housing" as defined in Section 3(b) of the United States Housing Act of 1937 (42 USC § 1437, et seq.), as amended from time to time, any successor legislation and all implementing regulations issued thereunder or in furtherance thereof (the "Act") during the Term (as defined herein) of this Agreement, all of which shall be qualified low income units under Section 42 of the Internal Revenue Code, as amended, (the "Tax Credit PHA Assisted Units"). The Owner will finance the Development with a combination of public and private sources, pursuant to a mixed finance development proposal submitted by the Authority to the United States Department of Housing and Urban Development ("HUD") for approval in accordance with 24 CFR Section 905.610. HUD has provided its written approval of the mixed finance development proposal to the Authority as provided in 24 CFR Section 905.610(d).

B. In consideration of the Authority's agreement to participate in the Development by making a construction and/or permanent loan in an amount not to exceed \$19,715,758 to the Owner (the "CHA Loan") to pay a portion of the costs of the PHA-Assisted Units and by providing an annual operating subsidy to Owner pursuant to the terms hereof (the "Operating Subsidy") to maintain the affordability of the PHA-Assisted Units, the Owner has agreed to operate and maintain the PHA-Assisted Units as "public housing" as defined in Section 3(b) of the United States Housing Act of 1937, as may be amended from time to time (the "Act") during the Term of this Agreement. The Owner intends, subject to All Applicable Public Housing Requirements, to operate and maintain all of the PHA-Assisted Units as qualified low income units under Section 42 of the Internal Revenue Code, as amended, and to further operate and maintain the PHA-Assisted Units for the Term as may be required by Federal, State and local laws.

C. The Authority will make the CHA Loan to Owner by lending funds made available to the Authority by HUD pursuant to the Act. The Authority will provide the Operating Subsidy (as hereinafter defined) to the Owner from operating subsidies received by

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the Authority from HUD pursuant to Section 9 of the Act and/or from other sources of funds available to the Authority for such purpose as provided herein.

D. The parties hereto are entering into this Agreement in order to set forth the rules and requirements for the operation and management of the PHA-Assisted Units and the terms and conditions for payment of the Operating Subsidy.

Accordingly, the parties hereto agree as follows:

1. Definitions.

As used herein, the following terms not otherwise defined herein shall have the meanings given in this Section 1.

(a) "ACC" shall mean whichever of the following is in effect from time to time with respect to the PHA-Assisted Units: (i) the Consolidated Annual Contributions Contract C-1014, dated December 11, 1995, between HUD and the Authority; or (ii) any successor Annual Contributions Contract; including any Mixed Finance Amendment to any of the foregoing, as and to the extent made applicable to the PHA-Assisted Units by the specific amendment referring thereto.

(b) "ACC Affordability Reserve" shall mean the ACC Affordability Reserve account required to be established and maintained in accordance with the Operating Agreement.

(c) "Act" shall have the meaning given in the Recitals.

(d) "Affordable Housing Tax Credit Restrictive Covenant" shall mean the Regulatory Agreement between the Owner and the City of Chicago, which shall be recorded against the Development in accordance with Section 42(h)(6) of the Code.

(e) "Agreement" shall have the meaning given in the Introduction.

(f) "All Applicable Public Housing Requirements" shall mean all requirements applicable to public housing, including, without limitation, the Act, HUD regulations thereunder (except to the extent that HUD has granted waivers of regulatory requirements), the ACC (including the Mixed Finance Amendment), the Mixed Finance Development Proposal dated April, 2015, as amended, the Declaration of Restrictive Covenants, this Agreement, Gautreaux Court Orders, the Amended and Restated Moving to Work Demonstration Agreement, as amended, and all other pertinent Federal statutory, executive order, and regulatory requirements, as such requirements may be amended from time to time.

(g) "Allowed PHA-Assisted Units Expenses" shall mean all necessary and reasonable operating expenses of or attributable to the PHA-Assisted Units for any period on an accrual basis, including:

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(i) All ordinary and necessary expenses of operating the PHA-Assisted Units shown as line items on Form HUD-92547-A (Budget Worksheet), or any successor thereto, including any other reasonable operating expenses paid by Owner, but exclusive of (A) real estate taxes for which an exemption or abatement is available under the laws of the State; (B) payments of interest and/or principal due to any lender (including the Authority); and (C) utility expenses that are the direct responsibility of the tenant;

(ii) Management fees payable pursuant to the Management Agreement;

(iii) Legal expenses associated with the operation of the PHA-Assisted Units and required accounting and audit expenses, including tax return preparation expenses, which types of expenses would be permitted to be charged as project expenses pursuant to HUD Handbook 4370.2 REV-1 Financial Operations and Accounting Procedures for Insured Multifamily-Projects, or any successor thereto;

(iv) Asset management fee paid to the Investor or its designee;

(v) Condominium [master association, parking association and homeowner association] assessments, if applicable; and

(vi) Deposits into any Replacement Reserve for PHA-Assisted Units.

The parties acknowledge that portions of the improvements may be subject to total or partial real estate tax abatement. Accordingly, the parties agree that only those portions of real estate taxes and special assessments attributable to the PHA-Assisted Units, after giving effect to such abatements, shall be included in "Allowed PHA-Assisted Units Expenses." Further, in the event that any expense is attributable to PHA-Assisted Units and other property comprising the Development, such expense shall be equitably apportioned between all such property so that "Allowed PHA-Assisted Units Expenses" shall include only that portion of such expense that is so apportioned to the PHA-Assisted Units.

(h) "Authority" shall have the meaning given in the Recitals.

(i) "Authority Fiscal Year" shall mean the Authority's fiscal year for purposes of calculating the operating subsidy received by the Authority pursuant to Section 9 of the Act. The Authority Fiscal Year is currently January 1 to December 31. The Authority shall notify the Owner of any change in the Authority Fiscal Year.

(j) "Authority Loan Documents" shall mean all documents evidencing or securing the CHA Loan.

(k) Intentionally omitted.

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(l) "Capital Expenditures" shall mean costs that would be eligible to be paid from the Replacement Reserve in accordance with the Operating Agreement and not otherwise ineligible to be paid from Public Housing Funds.

(m) "CHA Loan" shall have the meaning given in the Recitals.

(n) "City" shall mean the City of Chicago.

(o) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(p) "Compliance Period" shall have the meaning given in Section 42 of the Code.

(q) "Construction Lender" shall mean Citibank, N.A., as lender under that certain construction loan to Owner in the stated principal amount of \$29,500,000 (the "Construction Loan").

(r) "Construction Period" in reference to all or a portion of the PHA-Assisted Units shall mean the period commencing on such date as construction has commenced and ending on such date as a certificate of occupancy has been issued by the City or, if multiple certificates of occupancy are issued, the last of such certificates.

(s) "Debt Service Reserve" shall mean the Debt Service Reserve account required to be established and maintained in accordance with the Operating Agreement.

(t) "Declaration of Restrictive Covenants" shall mean the recorded declaration, dated as of June 1, 2015 of restrictive covenants running with the land obligating the Owner and any successor in title to the Owner, including any successor who acquires title to the PHA-Assisted Units by foreclosure or a deed-in-lieu of foreclosure, to maintain and operate the PHA-Assisted Units in compliance with All Applicable Public Housing Requirements for the period set forth therein.

(u) "Development" shall have the meaning given in the Recitals.

(v) "Development Fiscal Year" shall mean the fiscal year of the Owner, irrespective of whether such Fiscal Year coincides with the Authority Fiscal Year.

(w) "Development Operating Budget" shall mean the operating budget for the Development, including the PHA-Assisted Units as provided in Section 4(a).

(x) "Development Site" shall mean the real property on which the Development is located, as more particularly described in Exhibit A hereto.

(y) "Eligible Occupants" shall have the meaning given in Section 3(f) hereof.

(z) "Estimated Allowed PHA-Assisted Units Expenses" shall mean the Allowed PHA-Assisted Units Expenses estimated for any period.

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(aa) “Estimated PHA-Assisted Units Expenses” shall mean the PHA-Assisted Units Expenses estimated for any period.

(bb) “Estimated PHA-Assisted Units Income” shall mean the PHA-Assisted Units Income estimated for any period.

(cc) “Excess Operating Subsidy” shall have the meaning given in Section 4(i) hereof.

(dd) “Extended Use Period” shall have the meaning given in Section 42 of the Code.

(ee) “First Mortgage Lender” shall mean in reference to all or a portion of the PHA-Assisted Units, Construction Lender and after permanent loan conversion, Permanent Lender.

(ff) “Gautreaux Court Orders” shall mean applicable orders of the United States District Court for the Northern District of Illinois in Gautreaux vs. CHA et al., No. 66 C 1459 and No. 66 C 1460 (note: Gautreaux vs. CHA et al., No. 66 C 1460, and the consent decree thereunder, was terminated in 1997 and the Receivership Order entered August 14, 1987 under Gautreaux v. CHA, No. 65 C 1459 was terminated on May 20, 2010).

(gg) Intentionally omitted.

(hh) “HUD” shall have the meaning given in the Recitals.

(ii) Intentionally omitted.

(jj) “Initial Operating Reserve” shall mean the Operating Reserve Account required to be established and maintained in accordance with the Operating Agreement.

(kk) “Investor” shall mean RBC Tax Credit Equity, LLC, or related entity, in its capacity as the investor member of the Owner pursuant to the Operating Agreement, and its permitted successors and assigns.

(ll) “Management Agent” shall mean the Management Agent acting under the Management Agreement in effect from time to time.

(mm) “Management Agreement” shall mean the Management Agreement covering the Development, including the PHA-Assisted Units in effect from time to time in accordance with Section 3(e) hereof.

(nn) “Management Plan” shall mean the comprehensive and detailed written description of the policies and procedures to be followed in the management of the PHA-Assisted Units, prepared by the Management Agent and approved in writing by the Owner, the Authority and HUD prior to its implementation, and which shall thereafter be revised only with the prior written approval of the Owner, the Authority and, if required, HUD, as described in Section 3(e) hereof.

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(oo) "Mixed-Finance Amendment" shall mean the certain Mixed-Finance Amendment to ACC relating to the PHA-Assisted Units.

(pp) "Mortgage" shall mean any mortgage or deed of trust encumbering the Development, or any portion thereof, as security for a loan.

(qq) "Mortgage Lender" shall mean, collectively, the lender or lenders of any Mortgage Loan, and any subsequent holders or servicers of any Mortgage Loan.

(rr) "Mortgage Loan(s)" shall mean, collectively, the mortgage loan(s) or other mortgages securing financing arrangements secured by Mortgages and obtained by the Owner to assist in financing or refinancing the construction and development of the Development, other than the CHA Loan.

(ss) "Moving To Work Program" shall mean the HUD-approved Authority demonstration program to design and test innovative methods of providing housing and delivering services to low-income families in an efficient and cost-effective manner pursuant to that certain Amended and Restated Moving to Work Demonstration Agreement between the Authority and HUD, dated June 26, 2008, and the 1st through 6th Amendments to the Amended and Restated Moving to Work Demonstration Agreement, as may be hereinafter amended.

(tt) "Operating Agreement" shall mean that certain Amended and Restated Operating Agreement of the Owner, dated as of June 1, 2015, as the same may be amended from time to time.

(uu) "Operating Subsidy" or "Operating Subsidies" shall mean the amounts payable by the Authority in accordance with Section 4(d) hereof or as otherwise provided herein.

(vv) "Owner" shall have the meaning given in the Recitals, and its successors and assigns.

(ww) Intentionally omitted.

(xx) "Permanent Lender" shall mean Citibank, N.A., or any other lender approved by HUD.

(yy) "Permanent Loan" shall mean that certain loan to Owner from Citibank, N.A. in an amount up to \$3,925,000 secured by a permanent first mortgage.

(zz) "Permitted Investments" shall mean (i) an investment in United States government securities, securities issued or fully guaranteed by United States government agencies, certificates of deposit and time or demand deposits in, or repurchase agreements constituting obligations of, commercial banks with deposits insured by the Federal Deposit Insurance Corporation and having a combined capital and surplus of not less than \$100,000,000, (ii) commercial paper bearing either of the two highest ratings by Moody's Investors Service, Inc. ("Moody's) or Standard and Poor's Rating Services,

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(iii) tax-exempt notes or bonds rated MIG-2 or better by Moody's, (iv) investment agreements or guaranteed investment contracts, rated, or with any financial institution whose senior long-term debt obligations are rated, at the time of 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, (v) securities of public investment companies registered with the Securities and Exchange Commission with assets in excess of \$100,000,000, a significant portion of the assets of which are invested in substantially the same type of investments as any of the foregoing, or (vi) such other investment approved in writing by the Authority and the Owner.

(aaa) Intentionally deleted.

(bbb) "PHA-Assisted Units" shall have the meaning given in the Recitals, which units shall be operated and maintained as "public housing" units in accordance with All Applicable Public Housing Requirements, as further described in Section 2 hereof.

(ccc) "PHA-Assisted Units Operating Budget" shall mean the Estimated Allowed PHA-Assisted Units Expenses, Estimated PHA-Assisted Unit Expenses and Estimated PHA-Assisted Units Income as provided in Section 4(a).

(ddd) "PHA-Assisted Units Expenses" shall mean the sum of (i) Allowed PHA-Assisted Units Expenses, (ii) the portion of any real estate taxes or payments in lieu of real estate taxes to be paid with respect to the PHA-Assisted Units, if any, paid by the Owner and not directly by the Authority, and (iii) amounts, if any, payable by the Owner to occupants of the PHA-Assisted Units as utility reimbursements (i.e. "negative rent"), if any, notwithstanding the current provision for the payment, thereof as set forth in Section 3(j).

(eee) "PHA-Assisted Units Fiscal Year" shall mean the Development Fiscal Year.

(fff) "PHA-Assisted Units Income" shall mean all income of the Owner in respect of PHA-Assisted Units, determined on an accrual basis, including all types of revenue shown as line items on Form HUD 92547-A, or any successor thereto, and the receipt of any reserve funds made available by the Authority, but not including Operating Subsidies and Tenant Rent collected pursuant to Section 3(j) and deposited pursuant to Section 5(c) hereof.

(ggg) "PHA-Assisted Units Shortfall" shall mean the amount by which PHA-Assisted Units Income plus Operating Subsidies is less than PHA-Assisted Units Expenses for any period; provided, however, for purposes of calculating any "PHA-Assisted Units Shortfall" there shall not be taken into account any Operating Subsidies due from, but not paid by, the Authority.

(hhh) "PHA Plan" shall mean the annual plan adopted by the Authority and approved by HUD under the Amended and Restated Moving to Work Demonstration Agreement, as amended from time to time, and upon termination of such Agreement, any successor annual plan and amendments thereto.

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(iii) "PHA Tenant Rent Reserve Account" shall have the meaning assigned to it in Section 5.

(jjj) "Price Index" shall mean the "Consumer Price Index for All Urban Consumers" published by the Bureau of Labor Statistics of the United States Department of Labor, for the Chicago-Gary-Kenosha, IL-IN-WI area, All Items, (1982-84=100), or any renamed local index covering the metropolitan Chicago area or any other successor or substitute index appropriately adjusted.

(kkk) "Program Income" shall mean funds received by CHA as income from various housing programs.

(lll) "Public Housing Funds" shall mean any funds derived from the federal public housing programs as described in the Act, including, but not limited to, development funds, operating funds, capital funds, MTW funds, Program Income funds and Tenant Housing Payments paid by tenants of the PHA-Assisted Units.

(mmm) "Relocation Rights Contracts" shall mean those certain CHA Leaseholder Housing Choice and Relocation Rights Contracts approved by the Board of Commissioners of the Authority on March 20, 2001 and October 16, 2001, as amended from time to time.

(nnn) "Replacement Reserve" shall mean any replacement reserve for the PHA-Assisted Units required to be established under the terms of the Operating Agreement (and approved by the Authority) or under the terms of the CHA Loan.

(ooo) "Reserves" shall mean the Subsidy Carryover Reserve Account, PHA Tenant Rent Reserve Account and the CHA Initial Operating Deficit Reserve Account, as established pursuant to Section 5.

(ppp) "Screening Criteria" shall have the meaning given in Section 3(h).

(qqq) "State" shall mean the State of Illinois.

(rrr) "Subsidy Carryover Reserve Account" shall have the meaning assigned to it in Section 5.

(sss) "Tax Credit Requirements" shall mean any and all matters required by Section 42 of the Code, Section 142 of the Code, the Affordable Housing Tax Credit Restrictive Covenant or any other agreement made with the City, whichever is applicable, as a condition of receipt of tax credits, whether or not such requirement is explicitly stated in Section 42 or Section 142 of the Code or regulations thereunder.

(ttt) "Tax Credit Units" shall mean dwelling units that qualify as low-income units under Section 42 of the Code.

(uuu) "Tenant Housing Payments" shall have the meaning given in Section 3(j).

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(vvv) "Tenant Rent" shall have the meaning given in Section 3(j).

(www) "Tenant Selection Plan" shall mean the Tenant Selection Plan for the PHA-Assisted Units as approved by the Authority.

(xxx) "Term" shall mean the period that commences on the date hereof and expires upon the later to occur of (i) forty (40) years from the date of first occupancy of the last PHA-Assisted Unit to be initially occupied, or (ii) expiration of the period during which the PHA-Assisted Units are required to be operated as "public housing" under the Act, including, if applicable, the period ending 10 years after the end of the last Authority Fiscal Year for which Operating Subsidy is provided by the Authority on behalf of the Development.

(yyy) "Utility Allowance" shall mean the utility allowance established by the Authority for the PHA-Assisted Units.

(zzz) "Waiting List" shall have the meaning given in Section 3(f) of this Agreement.

2. PHA-Assisted Units.

a. **Initial Bedroom Distribution** During the Term of this Agreement, and subject to Section 6, the Owner will continuously set aside the PHA-Assisted Units as "public housing" units, for initial occupancy by households eligible for public housing who will be obligated to pay Tenant Housing Payments in compliance with and subject to All Applicable Public Housing Requirements. Provided that the Owner continues operating the PHA-Assisted Units in accordance with All Applicable Public Housing Requirements, such units shall be eligible to receive the benefits of Operating Subsidies to the extent such funds are appropriated by the United States Congress and otherwise made available to the Authority by HUD pursuant to Section 9 of the Act and the ACC or pursuant to any successor legislation providing for project-based or tenant-based operating or rental assistance in respect of units in public housing developments or eligible occupants thereof. The PHA-Assisted Units shall initially comprise the following mixture of unit sizes and descriptions:

<u>New Construction</u>			
1 Bedroom Units	<u>24</u>	2 Bedroom Units	<u>31</u>
3 Bedroom Units	<u>9</u>	4 Bedroom Units	<u>2</u>
		5 Bedrooms	<u>0</u>
Total Units			<u>66</u>

Any change in bedroom mix shall require the written consent of the Authority and of HUD.

b. **Location of Units.** There shall be no less than sixty-six (66) total PHA-Assisted Units within the Development. The location of the PHA-Assisted Units may float among the other rental units within the Development consistent with the Management Plan; provided, however, that as of the date of this Agreement, the Owner has designated the units listed on

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Exhibit D as the units that will be PHA-Assisted Units to be occupied by public housing residents upon the first leasing of the units in the Development. Exhibit D has been presented by the Owner to the Authority, and such Exhibit has been approved by the Authority, prior to the execution of this Agreement. Following the date of this Agreement, any proposed changes to Exhibit D shall be submitted in writing by the Owner to the Authority, and HUD for their prior written approval. All proposed changes must be presented no later than six (6) weeks before the anticipated punch list for the first unit to be leased in the Development. The Authority will respond to any of Owner's requests for changes to Exhibit D within fourteen (14) calendar days of receipt of any such request, and will facilitate HUD review and approval of an amendment to the Mixed Finance Amendment, to the extent required, within a reasonable time.

c. **Over-Income Tenants.** Consistent with All Applicable Public Housing Requirements, a unit shall not lose its status as a PHA-Assisted Unit solely because the income of the tenant residing therein rises above the then applicable public housing income limit or above the income tier for which such tenant originally qualified; any such unit shall be governed by rules generally applicable to units occupied by over-income tenants in the public housing program and the Tax Credit Requirements and the Tenant Selection Plan. During the Compliance Period and the Extended Use Period, the Tax Credit PHA-Assisted Units shall be subject to Tax Credit Requirements and such modifications in lease and occupancy terms as are permitted hereunder and as may be required for compliance with the Tax Credit Requirements.

d. **Deconcentration.** The foregoing provisions of this Section 2 are subject to All Applicable Public Housing Requirements and HUD approvals required thereunder. If the Development is subject to 24 CFR Part 903 with respect to the deconcentration of public housing (the "Deconcentration Rule"), upon the written request of the Owner, the Authority will request from HUD a waiver from or exception to the Deconcentration Rule, to the extent the Deconcentration Rule is inconsistent with the terms of this Agreement.

e. **ADA Accessibility.** PHA-Assisted Units shall be constructed and equipped in accordance with all applicable accessibility requirements, including the following: (i) City of Chicago Building Codes; (ii) American National Standards Institute (A117.1-1986); (iii) the Uniform Federal Accessibility Standards, 24 CFR Part 40 (Appendix A); (iv) Section 504 of the Rehabilitation Act of 1973 (24 CFR Part 8); (v) Fair Housing Design Standards; and (vi) Americans with Disabilities Act and Accessibility Guidelines thereunder.

3. Operation of PHA-Assisted Units.

a. **Compliance with the Act.** The Owner shall maintain and operate the PHA-Assisted Units in compliance with All Applicable Public Housing Requirements. In addition, the Owner shall maintain and operate the PHA-Assisted Units in accordance with those provisions of the Relocation Rights Contract (relating to lease compliance and grievance procedures) applicable to the Owner, this Agreement and any other agreement entered into by the Owner, and approved by the Authority and HUD, with respect to the development, operating and/or maintenance of the Development (collectively, the "Development Documents"). The Owner shall also perform any and all acts required of it as Owner to enable the Authority to fulfill its obligations to HUD with respect to the PHA-Assisted Units. The Owner shall take all actions

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necessary and appropriate to avoid a default (as defined in the ACC) with respect to the PHA-Assisted Units.

b. **Prevailing Law.** In the event of a conflict among any one or more of All Applicable Public Housing Requirements and a requirement contained in any Development Document, such All Applicable Public Housing Requirements shall in all instances be controlling. In the event of any conflict, during the period when the ACC is in effect with respect to the PHA-Assisted Units, between (i) this Agreement; and (ii) the Authority Loan Documents, then the requirements of this Agreement shall control, except to the extent that a more restrictive requirement under the Authority Loan Documents can be enforced without violating any of the All Applicable Public Housing Requirements, provided that the enforcement of any such more restrictive requirement shall not impair any rights of the First Mortgage Lender.

c. **Authority PHA-Assisted Units Goals.** The Authority and the Owner acknowledge that HUD's development program is intended to permit public housing authorities, in partnership with other public and private entities, to address the needs of severely distressed public housing and to create mixed-income communities. Further, the Authority and the Owner acknowledge that the goal of achieving long-term sustainability of the PHA-Assisted Units as part of such mixed-income community will be enhanced by administrative procedures and terms and conditions of occupancy that reduce discernible distinctions in operation and maintenance, and conditions of continued occupancy between the PHA-Assisted Units and the non-PHA-Assisted Units to the greatest extent feasible, while assuring that the PHA-Assisted Units are available to house families who meet the occupancy objectives of the Authority described herein and the Gautreaux Court Orders. Sections 3(d) through 3(o) enumerate certain respects in which operating procedures and other requirements as to the PHA-Assisted Units will differ from those in effect with respect to public housing units owned by the Authority. Subject to All Applicable Public Housing Requirements, the Authority and the Owner agree that, if experience demonstrates a need for or the desirability of further departures from standard procedures applicable to PHA-owned public housing units, they will consult with each other and HUD regarding such further modifications and will take such further implementing steps as they agree to be advisable, including, as appropriate, requests to HUD for revision or waiver of regulations necessary to permit the Authority to undertake measures that enhance the long-term viability of the PHA-Assisted Units as part of a mixed-income community, or requests to implement statutory revisions made by Congress from time to time affecting either public housing in general or public housing located within privately-owned mixed-income communities in particular. The Management Agreement shall also contain a provision stating that the Authority has a right to require that the Owner shall terminate the Management Agreement if the Management Agent fails to comply with the terms of this Agreement, provided that the Owner is given notice and an opportunity to cure in accordance with Section 11(b).

The benefits and effects of any applicable waivers pursuant to the Moving To Work Program, or other legislative and regulatory changes affecting mixed-finance public housing units, may be made applicable to the PHA-Assisted Units, after following any procedural requirements.

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d. **Maintenance of Records.** The Authority shall remain responsible for maintaining sufficient records, and taking necessary action(s), to assure HUD that all Authority obligations to HUD under All Applicable Public Housing Requirements are fulfilled. However, where the ACC or other All Applicable Public Housing Requirements require the Authority to furnish reports, records, statements, certificates, documents or other information to HUD regarding the PHA-Assisted Units, the Owner shall furnish such reports, records, statements, certificates, documents or other information to the Authority or otherwise satisfy the Authority's requests with respect to such matters, upon reasonable notice. Nothing contained in this Section shall be construed to relieve the Owner of its obligation to maintain its own books and records. It shall be the responsibility of the Owner to maintain sufficient records, and to take necessary action(s), to assure compliance with all obligations relating to the PHA-Assisted Units under the Development Documents. Owner shall furnish reports, records, statements, certificates, documents or other information as necessary in order to comply with the requirements of this provision.

e. **Management.** Subject to All Applicable Public Housing Requirements, the Owner will retain the Management Agent for the Development, including the PHA-Assisted Units, pursuant to the Management Agreement, which will be subject to written approval by the Authority and HUD. The management of the PHA-Assisted Units shall be in compliance with All Applicable Public Housing Requirements, including the lease and grievance procedures set forth in 24 CFR Part 966, as approved by the Authority and HUD, and any other applicable Federal requirements, including the Uniform Relocation Act ("URA"), if applicable, and the Tax Credit Requirements. The Owner shall cause the Management Agent to be responsible to the Owner for management of the PHA-Assisted Units in accordance with the terms of this Agreement and All Applicable Public Housing Requirements and in accordance with the Management Plan. The Owner will comply with any applicable notices required under the URA. If required, the Authority will at its expense, provide relocation benefits to tenants where the URA is applicable. If statutes, executive orders and regulations regarding public housing are amended or repealed, the Management Plan and approvals by the Authority and HUD must be amended to accommodate these changes, if required by such statutes, executive orders and regulations.

A failure to comply with any material aspect of an approved Management Plan shall constitute a default under this Agreement entitling the Authority to exercise remedies hereunder, and cause termination of Operating Subsidies as set forth in Section 11(c) hereof subject to applicable notice and cure periods set forth in Section 11(b).

Owner shall cause the Management Agent to perform all the duties and responsibilities normally associated with management of public housing and shall cause the Development, its units, appurtenances and grounds to be maintained and secured according to standards acceptable to the Authority and HUD, including, but not limited to, the following as pertaining to the PHA-Assisted Units: (1) preparing reports as directed by the Authority using the Authority's Management Information Systems ("MIS"), or any other system mutually agreed upon by the Authority and Owner, and maintaining office records, books, accounts and reports in a manner satisfactory to the Authority; (2) as directed by the Authority, using the Authority's MIS which may include all functions of the system of record purchased by the Authority, including, but not limited to, work orders, housing eligibility, tenant accounting, accounts payable, general ledger,

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bank reconciliation, payroll, purchasing, fixed assets, inventory control and modernization/development. Owner shall cause the Management Agent to use the system of record (or replacement software) as provided by the Authority at no cost to the Owner or the Management Agent. The Authority reserves the right to change the software and also utilize forms and spreadsheets to input information into the system of record, provided that any extraordinary operating cost related thereto shall be paid by the Authority. The Owner shall cause the Management Agent to inspect all PHA-Assisted Units annually utilizing the required Uniform Physical Inspection Standard ("UPIS") form in conjunction with the annual tenant recertification process, as incorporated in the Management Plan. All UPIS results must be entered into the system of record.

Subject to All Applicable Public Housing Requirements, the Management Plan must be approved in writing by the Owner, the Authority and HUD prior to its implementation and shall not be amended in any respect material to the performance of the Owner's obligations hereunder without the prior written approval of the Authority and, to the extent required HUD. The Authority shall not unreasonably withhold its approval of the Management Plan or amendment thereto. The Management Agreement will contain appropriate provisions providing access by the Authority, upon request therefor, to books and records maintained by the Management Agent with respect to the PHA-Assisted Units. The Authority agrees that the initial Management Agent retained by the Owner will be Mercy Housing Management Group.

Subject to All Applicable Public Housing Requirements, the Owner may replace the Management Agent at any time with the prior approval of the Authority and, to the extent required, HUD; provided, however, during the Compliance Period, if Owner shall propose a Management Agent in writing, the Authority may disapprove such proposed Management Agent only in writing specifying the grounds for such disapproval, which grounds shall be limited to reasonable cause, ordinarily restricted to: (i) insufficient prior experience in managing affordable or public multifamily rental housing; (ii) demonstrated poor performance in managing affordable or public multifamily rental housing; (iii) litigation or other controversy affecting the Authority; (iv) having been debarred or otherwise held to have violated any law, or (v) any actual or potential conflict of interest. Failure by the Authority to state objections to a proposed Management Agent, in writing, consistent with the standards established in this Agreement, within thirty (30) days of receipt of Owner's written proposal and supporting documentation, shall constitute the Authority's approval. Pending receipt by Owner of the Authority's written objections or disapproval as aforesaid, and a reasonable time thereafter 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, including the PHA-Assisted Units directly or through its Authority-approved Management Agent so long as it shall do so in full compliance with the terms of this Agreement. Notwithstanding the foregoing, following foreclosure, sheriff's sale upon execution of a judgment or deed-in-lieu of foreclosure of any Mortgage, or during any period in which any of the Mortgage Lenders shall be in possession of the PHA-Assisted Units as mortgagee-in-possession, any of the Mortgage Lenders or any successor and/or assign in title thereto shall be entitled to appoint a Management Agent with prior approval by the Authority not to be unreasonably withheld or delayed for so long as any Mortgage Lender or its successors and/or assigns shall discharge the obligations of the Owner in full compliance with the terms of this Agreement and the Management Agent shall

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perform its obligation in accordance with the Management Plan and the Management Agreement.

f. **Admission to Occupancy.**

(i) The Owner shall comply (or cause the Management Agent to comply) with the Tenant Selection Plan and the Management Plan. The Authority will furnish to the Owner a list of persons who shall have first priority to be offered a replacement PHA-Assisted Unit in the Development (as expressly provided in the Tenant Selection Plan) ("First Priority Residents"), subject to the income tiering requirements of the low-income housing tax credit application to the City, the Low Income Housing Tax Credit Regulatory Agreement with the City, and the provisions of the Relocation Rights Contracts. All other occupancy referrals shall be obtained by the Owner through the development of a site-based (subjurisdictional) waiting list derived from the Authority's current public housing waiting list or, if no such waiting list exists, from a waiting list created by the Owner in conformity with All Applicable Public Housing Requirements (the "Waiting List"). All prospective tenants, including First Priority Residents, shall complete housing applications and comply with required procedures within the time given (all such procedures and times to be developed in consultation with the Authority). The Authority agrees, subject to any required HUD approval and to the extent permitted by law, to defend, protect and hold harmless the Owner, each person who controls the Owner and the Management Agent against all losses, claims, damages, penalties, judgments, liabilities and expenses (including but not limited to attorney's fees and expenses) that the Owner, each person who controls the Owner and the Management Agent may pay or incur arising out of: (a) any claim relating to the exclusion or alleged exclusion of any individual from the list of First Priority Residents, as such list may be revised from time to time; (b) any claim (i) alleging that the Authority has failed to comply with the Relocation Rights Contracts, or (ii) alleging that the Tenant Selection Plan, the Lease, the Waiting List, the Management Plan or any of the other documents contemplated hereunder violate the Relocation Rights Contracts; provided, however, that (i) the Owner notifies the Authority in writing of such a lawsuit promptly upon the institution of any such claim against the Owner, any person who controls the Owner or the Management Agent; and (ii) the Authority reserves the right to participate in the defense of any suit related to such claims; and provided, further, however, that this indemnification shall not apply or be available if and to the extent any such losses, claims, damages, penalties, judgments, liabilities and expenses (including associated legal fees) have resulted from the failure on the part of the Owner and/or the Management Agent to comply with All Applicable Public Housing Requirements or the terms of the Tenant Selection Plan, the Management Plan or the Lease approved by the Authority (unless such failure results from the failure by the Authority to comply with waiting list or other requirements for which it is responsible).

(ii) The Authority delegates to the Owner, subject to re-delegation to the Management Agent, all administrative functions in connection with

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admission of applicants to occupancy of the PHA-Assisted Units, including application intake, applicant interview and screening, verification procedures, determination of eligibility for admission and qualification for preference, record maintenance, waiting list maintenance, unit assignment and execution of leases, all in accordance with criteria and procedures approved by the Authority, HUD and in accordance with All Applicable Public Housing Requirements, the Tenant Selection Plan and the Management Plan.

(iii) Admission to occupancy into PHA-Assisted Units shall be limited to First Priority Residents and any other prospective occupants (collectively, "Eligible Occupants") who meet the following requirements: (A) for the Term, the eligibility and occupancy rules for admission to public housing under All Applicable Public Housing Requirements; (B) with respect to the Tax Credit PHA-Assisted Units, during the Compliance Period and Extended Use Period, applicable requirements for occupancy under the Tax Credit Requirements; and (C) the Tenant Selection Plan. The Management Agent shall establish procedures, which shall be set forth in the Tenant Selection Plan, for informal review of eligibility or suitability determinations or denial of preferences for applicants for admission to the PHA-Assisted Units, consisting of an opportunity for a meeting with a person or persons designated by the Management Agent other than the person who made the initial determination.

(iv) Unless the additional ten (10) year "tail" term set forth in the Declaration of Restrictive Covenants is amended or waived, the system for administering admissions to the PHA-Assisted Units shall be revised, subject to Authority approval and All Applicable Public Housing Requirements, if and only to the extent necessary such that by no later than the end of the thirtieth year after the date of first occupancy of the last PHA-Assisted Unit (the "Effective Date"), there shall be no need for the Authority to provide Operating Subsidies to the PHA-Assisted Units, and the Owner shall be able to demonstrate a reasonable likelihood of repaying all debt on the Development (including all debt owed to the Authority) in accordance with their respective terms; provided, however, that prior to amending the system for preferences, Owner will avail itself of any alternative arrangements which are then available in order to demonstrate such reasonable likelihood. If the Owner wishes to make such a determination, the Owner shall submit to the Authority for approval a plan scheduled to become effective as of the Effective Date, subject to All Applicable Public Housing Requirements, to eliminate such need for Operating Subsidy by the end of the thirtieth year after the date of first occupancy of the PHA-Assisted Units. In the event that, despite the reasonable efforts of the Owner, such plan is inadequate and is resulting in a PHA-Assisted Units Shortfall, the Owner may request, subject to Authority approval, not to be unreasonably withheld, that Operating Subsidy payments be reinstated in accordance with this Agreement. Nothing herein is intended to authorize any deviation from All Applicable Public Housing Requirements or any preference for families that are not eligible for public housing. PHA-Assisted Unit Shortfalls that occur during any period during

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which the Owner has voluntarily elected not to receive Operating Subsidies shall not form the basis for any right of transformation under Section 6(f).

(v) The Authority will ensure that the material elements of this Agreement (including but not restricted to, the Waiting List, any site-based resident selection preferences, and transformation remedies) are reflected in duly adopted policies of the Authority or duly adopted exceptions to such policies, effective no later than one hundred and twenty (120) days before units are first available for occupancy. The Authority will ensure that its Public Housing Agency Plan, prepared in accordance with Section 5A of the Act, as it may be amended during the Term of this Agreement, includes such references to and provisions for the PHA-Assisted Units and their operation as may be necessary or appropriate to ensure that the provisions of this Agreement and the operating policies of the PHA-Assisted Units (including, but not restricted to, the Waiting List, any site-based resident selection preferences, and transformation remedies) are recognized by HUD. To the extent not provided at the Authority's website, the Authority will provide to Owner (1) a copy of any proposed Public Housing Agency Plan, or a amendment thereto, no later than the time public notice is given pursuant to Section 5A(e)(2) of the Act, and (2) a copy of its Public Housing Agency Plan and all amendments thereto, as adopted, within thirty (30) days of adoption, and shall make good faith efforts to provide earlier notice of contemplated changes to the PHA Plan which would materially affect the Owner.

g. **Preference System.** The Authority, in accordance with All Applicable Public Housing Requirements, hereby authorizes the Owner to establish the Waiting List. The Owner shall select prospective tenants from the Waiting List subject to All Applicable Public Housing Requirements, the Tenant Selection Plan, the Tax Credit Requirements (as applicable) and the Affordable Housing Tax Credit Restrictive Covenant. The Authority shall provide the Owner in a timely manner with its waiting list of qualified tenants for occupancy of the PHA-Assisted Units.

h. **Screening Criteria.** Screening Criteria and procedures established by the Owner to be utilized by the Management Agent with respect to admissions to all units in the PHA-Assisted Units are set forth in the Tenant Selection Plan (the "Screening Criteria"). The Screening Criteria will not necessarily be identical to those utilized by the Authority with respect to traditional public housing units owned by the Authority. The Screening Criteria and procedures shall comply with the Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, advertising guidelines and All Applicable Public Housing Requirements.

i. **Tenant Leases.** Tenant Leases executed for PHA-Assisted Units shall be on forms proposed by the Owner and approved by the Authority which meet the terms and conditions of this Agreement, conform to All Applicable Public Housing Requirements and the City of Chicago Residential Landlord and Tenant Ordinance (Chicago Municipal Code, Title 5, Chapter 12), the Tax Credit Requirements and other applicable law (each a "Tenant Lease"). In addition, such leases shall be subject to any required HUD approval of variations from the

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requirements of 24 CFR Part 966, Subparts A and B, as amended or replaced from time to time. All Tenant Leases for the PHA-Assisted Units shall include provisions stipulating to (1) the respective lease provisions exclusively applicable to the PHA-Assisted Units by HUD regulations and requirements, including those lease and grievance procedures under 24 CFR Part 966, Subparts A and B, and (2) notice and lease termination provisions involving diminution or termination of Operating Subsidies, excluding termination caused by Owner default. It shall be the responsibility of the Owner to revise the tenant lease as required by changes in All Applicable Public Housing Requirements and applicable law.

To the extent that applicable statutes and HUD regulations governing the calculation of rent payable by tenants of public housing currently or hereafter in effect provide discretion to public housing authorities in matters such as inclusions or exclusions from income, minimum or ceiling rents, or other matters affecting the calculation of rents, such discretionary determinations made by the Authority with respect to all public housing units assisted by the Authority shall be applicable to the PHA-Assisted Units, except as otherwise provided in the approved Management Plan, Management Agreement or form of tenant lease for the PHA-Assisted Units.

Tenant Leases shall provide for increases in Tenant Housing Payments and other actions required to increase income from the PHA-Assisted Units under the circumstances contemplated in Section 6 hereof, subject to All Applicable Public Housing Requirements, applicable statutes and HUD regulations, and the Tax Credit Requirements (as applicable). These other actions contemplated by Section 6 may include (1) an increase in Tenant Housing Payments and an option to the then currently residing tenant(s), if eligible, to remain residing in the PHA-Assisted Unit at the Development paying the higher rent; or (2) the Authority issuing Housing Choice vouchers or any successor arrangement to the then currently residing tenant; or (3) relocation to a public housing unit at another location (to the extent available). Tenant leases shall advise tenants of the potential impact on them if a public housing transformation occurs as described in Section 6 hereof.

j. **Tenant Housing Payments, Tenant Rents and Utility Allowances.** The tenant housing payments ("Tenant Housing Payments") for occupancy in the PHA-Assisted Units shall be the greater of (i) \$75.00 per month or (ii) at the tenant's election, the flat rent established under 24 C.F.R. 960.253(b) or 30% of the total tenants' adjusted income or such other limit on total tenants' adjusted income in accordance with All Applicable Public Housing Requirements, provided that any higher limit on total tenants' adjusted income shall not be used unless and until such higher limit has been approved by the Authority and such higher limit does not violate the requirements of Section 42 of the Code. The Tenant Rent ("Tenant Rent") is equal to the total Tenant Housing Payment minus the Utility Allowance (if any) applicable to the PHA-Assisted Unit and shall be paid to the Owner by the tenants for deposit as provided in Section 5(c). If the Utility Allowance is greater than the Tenant Housing Payment, the tenant shall be entitled to a Utility Reimbursement equal to the amount by which the Utility Allowance exceeds the Tenant Housing Payment. The Authority shall pay the amount of such excess (i.e. "negative rent") directly to the applicable utility company from operating funds available to the Authority.

k. **Procedure for Requesting Waivers.** If at any time during the Term of this Agreement HUD shall, by regulation or other administrative rule applicable to the PHA-Assisted Units (which regulation or rule is not required by statute), modify the eligibility or suitability

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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 PHA-Assisted Units and which, in the judgment of the Owner would be adverse to the PHA-Assisted Units, the Authority shall request a waiver from HUD from such regulation; provided, however, the Authority need not request such waiver if in the Authority's reasonable judgment the waiver would be inconsistent with then-current Authority policies or procedures applicable to mixed-finance developments of the Authority. If the Authority does not seek a waiver as contemplated by the immediately preceding sentence, the Authority agrees to work with the Owner to mitigate any adverse economic consequences of such regulation or other administrative rule for the PHA-Assisted Units.

The benefits and effects of any applicable waivers, pursuant to the Moving To Work Program, or other legislative and regulatory changes affecting Mixed-Finance public housing units, may be made applicable to this Development after following any procedural requirements.

1. **Tenant Grievance Procedure.** The Owner, with Authority approval, shall establish a tenant grievance procedure, in accordance with All Applicable Public Housing Requirements (including, but not limited to, HUD's implementing regulations at 24 CFR Part 966, Subpart B, as may be amended from time to time), for tenants of the PHA-Assisted Units in compliance with the requirements of Section 6(k) of the Act and consistent, to the maximum extent feasible, with the intent stated in Section 3(b) above. Such procedures will provide for informal discussion and settlement of grievances by the Management Agent and hearing before a hearing officer appointed in accordance with procedures described in the Tenant Selection Plan. It shall be the responsibility of the Owner to revise the tenant lease as required by changes in All Applicable Public Housing Requirements and State law. In the event of repeal or modification of Section 6(k) of the Act, the grievance procedures made available by the Owner to tenants of the PHA-Assisted Units may be terminated or modified in conformity with such changes, to the extent not inconsistent with All Applicable Public Housing Requirements, with the Authority's consent, which consent shall not be unreasonably withheld.

m. **Low Income Housing Tax Credit Requirements.**

(i) The Authority acknowledges that the PHA-Assisted Units are also subject to the Tax Credit Requirements and will be operated in accordance therewith. The Authority will not disapprove (with respect to the PHA-Assisted Units) any policy of Owner that is permitted under All Applicable Public Housing Requirements and required for compliance with the Tax Credit Requirements. The Owner and the Authority will take such actions as are necessary to set ceiling rents or "flat rents" for the Tax Credit PHA-Assisted Units at a level not to exceed that permissible for qualified low-income units under the Tax Credit Requirements, and the Owner will not collect rents for such units in excess of such levels.

(ii) The Authority agrees not to take any action, or to omit to take any action, within its control and power under the laws of the State of Illinois, with respect to the Tax Credit PHA-Assisted Units, if the effect of such action or

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inaction would cause the Owner to violate the Tax Credit Requirements as applied to the Tax Credit PHA-Assisted Units.

(iii) Notwithstanding anything to the contrary in this Agreement, it is the intent of the Authority and the Owner that payments will be made to and retained by the Owner under this Agreement only to the extent they constitute "qualifying rental assistance" as defined in Section 142-16 of the Treasury Regulations.

n. **Real Estate Tax Abatement/Exemption.** The Authority shall take such action as may be required to enable the PHA-Assisted Units to qualify for an abatement and/or exemption of real estate taxes, including approval of a certificate of Real Estate Tax Abatement in accordance with the Illinois Revenue Code, 35 ILCS 200/18-177 (1999), as the same may hereafter be amended; provided that the Authority's obligation shall be conditioned on the timely submission to the Authority by the Owner of all required documentation.

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

4. PHA-Assisted Units Operating Subsidy.

a. **Annual Submission of Operating Budget and Schedule of Capital Expenditures.** For purposes limited to documentation and annual budget projections with respect to the PHA-Assisted Units, a Development Operating Budget is required as described herein. No reconciliation of income and expenses shall be required with respect to the Development as a whole.

Not later than sixty (60) days prior to the anticipated date of first availability for occupancy of any PHA-Assisted Unit, and not later than ninety (90) days before the first day of each subsequent Authority Fiscal Year, the Owner shall submit to the Authority its proposed Development Operating Budget for the following Development Fiscal Year (or, in the case of the year in which first availability for occupancy occurs, the remainder thereof). The Development Operating Budget shall include projections of Estimated Allowed PHA-Assisted Units Expenses, Estimated PHA-Assisted Units Expenses and Estimated PHA-Assisted Units Income for the period (collectively referred to herein as the "PHA-Assisted Units Operating Budget") and may include proposed withdrawals from Reserves to meet operating requirements. In addition to the PHA-Assisted Units Operating Budget, the Owner shall submit to the Authority a schedule of any Capital Expenditures proposed to be made during the next Development Fiscal Year with respect to the PHA-Assisted Units, together with a schedule of existing balances in, and anticipated deposits to be made into, the Replacement Reserve allocable to the PHA-Assisted Units.

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b. **Authority Review and Approval of Operating Budget.** Not later than sixty (60) days after receipt thereof, the Authority shall approve the Owner's proposed PHA-Assisted Units Operating Budget or provide to the Owner in writing an explanation as to the reasons the proposed PHA-Assisted Units Operating Budget has not been approved. The parties shall make reasonable good faith efforts to agree on the PHA-Assisted Units Operating Budget, subject to All Applicable Public Housing Requirements.

If following reconciliation efforts, the Authority does not approve the Owner's proposed PHA-Assisted Units Operating Budget, the Methodology to Determine Reasonableness of Proposed Expenses as set forth in Exhibit B attached hereto shall be implemented promptly. Pending the results of such methodology, if the total Estimated PHA-Assisted Units Expenses set forth in the proposed budget do not exceed the total Estimated PHA-Assisted Units Expenses for the current Development Fiscal Year by more than 10%, the proposed budget shall constitute the PHA-Assisted Units Operating Budget for the next Development Fiscal Year. Pending the results of such methodology, if the total Estimated PHA-Assisted Units Expenses set forth in the proposed budget exceed the total Estimated PHA-Assisted Units Expenses for the current Development Fiscal Year by more than 10%, the PHA-Assisted Units Operating Budget for the next Development Fiscal Year shall be the total Estimated PHA-Assisted Units Expenses for the current Development Fiscal Year increased by 10%. The parties agree that the results of such methodology shall be the basis for determining total Estimated PHA-Assisted Units Expenses in the Owner's PHA-Assisted Units Operating Budget for the next Development Fiscal Year.

To the extent an approved Development Operating Budget includes withdrawals from Reserves to meet operating requirements, no additional Authority approval shall be required with respect to the release of such Reserves on a monthly basis concurrent with payment of Operating Subsidy. Funds for such purpose shall be transferred first from the Subsidy Carryover Reserve Account to the extent of available funds and next from the PHA Tenant Rent Reserve Account.

c. **Authority Review and Approval of Proposed Capital Expenditures.** Not later than sixty (60) days after receipt thereof, the Authority shall either approve the Owner's proposed schedule of Capital Expenditures to be paid or incurred with respect to the PHA-Assisted Units or the Development during the next Development Fiscal Year or provide to the Owner in writing an explanation as to the reasons the proposed expenditures have not been approved. The parties shall make reasonable efforts to agree on a schedule of Capital Expenditures. The Authority shall be responsible for paying, or reimbursing the Owner for, the cost of approved Capital Expenditures set forth on such schedule in a manner to be agreed upon by the Owner and the Authority at such time, except to the extent the funding therefor is available from the Replacement Reserve. In addition, if at any time during a Development Fiscal Year unscheduled or unbudgeted Capital Expenditures are required to be paid or incurred with respect to the PHA-Assisted Units, the Owner may submit a request to the Authority to pay the same; provided, however, the Authority agrees to approve any Capital Expenditure proposed by the Owner only if (i) such Capital Expenditure is required to cause the PHA-Assisted Units to comply with any applicable building or housing code, and (ii) funding therefor is not available from the Replacement Reserve. With the exception of Capital Expenditures required to comply with applicable building and housing codes, the Authority shall not be required to advance funds under this Section 4(c) unless the Authority has received not less than five (5) months' prior written notice thereof.

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d. **Authority Payment of Operating Subsidy.** During the Term of this Agreement, Owner shall develop the Development and operate the PHA-Assisted Units at rents and subject to all other conditions of All Applicable Public Housing Requirements. Provided that the Owner continues operating the PHA-Assisted Units in accordance with All Applicable Public Housing Requirements, and in accordance with the terms of this Agreement, such units shall be eligible to receive the benefit of the Operating Subsidy to the extent such funds are appropriated by the Congress and otherwise made available to the Authority pursuant to Section 9(e) of the Act, or pursuant to any successor legislation, and as more specifically set forth in this Section 4. If these conditions precedent have been met, the Authority shall pay to the Owner on a current basis for each month no later than the eighth calendar day of such month (prorated for any partial month) by electronic wire transfer, an Operating Subsidy in the amount of \$400.00 per month, as may be adjusted under this Section 4(d), for each PHA-Assisted Unit that meets the following criteria (i) a temporary certificate of occupancy has been issued for the building in which the PHA-Assisted Unit is located, (ii) the PHA-Assisted Unit was inspected and approved by the Authority for initial occupancy, including a determination that the PHA-Assisted Unit meets HUD's Housing Quality Standards, and (iii) except as provided below, the PHA-Assisted Unit is actually occupied under an executed lease with an Eligible Occupant. The Owner's right to receive payments of the Operating Subsidy due after the then-current month is not assignable by the Owner, and any attempted assignment thereof is void and of no force or effect. Operating Subsidies shall also be payable with respect to vacant PHA-Assisted Units, but only for a period not to exceed sixty (60) days. A PHA-Assisted Unit shall be deemed vacant (i) commencing on the first day for which rent is not charged for the unit following completion or termination of occupancy as a PHA-Assisted Unit, and (ii) ending on the day preceding the first day for which rent is charged for such unit based on occupancy or re-occupancy as a PHA-Assisted Unit, or the first day for which rent is charged for occupancy as a PHA-Assisted Unit of a different unit which was not previously occupied as a PHA-Assisted Unit, whichever shall first occur.

The Operating Subsidy shall be subject to annual increases at each anniversary of the date of the execution and delivery of this Agreement. The rate of each annual increase shall equal the lesser of (i) two percent (2%), or (ii) the annual percentage increase, if any, in the Price Index. In the event the Price Index is discontinued, a comparable index shall be used to determine any increase. The amount of annual increase shall be the product of (i) the Operating Subsidy for the year just ended multiplied by (ii) the rate of annual increase. Any annual increase in Operating Subsidy approved by the Authority in connection with the Owner's annual submission of the Operating Budget pursuant to Section 4(a) shall operate in lieu of the automatic annual increase herein provided.

e. **Security Deposits.** The Owner will require all tenants of PHA-Assisted Units to provide a security deposit in accordance with the approved Management Agreement, Management Plan and form of tenant lease for the PHA-Assisted Units. The Owner shall deposit the security deposits in an interest-bearing security deposit escrow account for the benefit of the tenant and the Owner. At the Owner's option and with Authority approval, if and to the extent that applicable law would permit, these funds may be used to pay rent or make repairs to any assigned PHA-Assisted Unit for tenant-caused damages beyond normal wear and tear where the tenant or the Authority fails to make timely payments or for any other purpose permitted by the form of tenant lease for the PHA-Assisted Units. Any written request for Authority approval shall be acted on by the Authority within 30 days of receipt. Authority approval of each such

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request shall not be unreasonably withheld. The Owner agrees to provide to the Authority prompt written notice describing any use of security deposit moneys for the purposes described in this Section 4(e). Any payments made by Authority or the tenant to reimburse the Owner for rent or damages, for which the Owner had used funds deposited in the security deposit escrow account, shall be used to replenish the security deposit escrow account. Within forty-five (45) days after the expiration or earlier termination of each Lease, the Owner shall return the unused portion of the security deposit to the tenant in accordance with applicable law, subject to the terms and conditions of the applicable lease.

f. **Operating Account.** Operating Subsidy payments received from the Authority and funds in lieu thereof drawn from the Subsidy Carryover Reserve Account or the PHA Tenant Rent Reserve Account, as provided herein, together with all other PHA-Assisted Units Income, shall be deposited by the Owner in one or more operating accounts maintained in a financial institution whose deposits are insured by an agency of the Federal Government.

g. **Public Housing Capital Fund.** If capital assistance is available to the Authority from time to time under Section 9(d) of the Act or any successor thereto, which the Authority may discretionarily provide to the PHA-Assisted Units, then the Authority agrees to give reasonable consideration to any request by Owner for such assistance.

h. **Other HUD Funds.** If the PHA-Assisted Units are eligible for federal assistance other than under the Operating Fund or Capital Fund provided for in Section 9 of the Act or any successor thereto (including, but not restricted to, funds for resident participation, resident services, drug elimination activities, or security), at the Owner's request the Authority may endeavor, in its absolute discretion, to obtain such assistance (separately or as part of a general Authority funding request) and shall pass through to the Owner (or directly provide services representing) any portion thereof received and properly allocable (with due regard for need factors applicable to such assistance) to the PHA-Assisted Units, upon receipt from the Owner of such plans, documentation or assurances as are necessary to comply with All Public Housing Requirements relating to such assistance.

i. **Section 42 Compliance.** In order to assure compliance with Tax Credit Requirements, notwithstanding anything to the contrary set forth in this Agreement, in any Development Fiscal Year all or part of which is included in the Compliance Period and in which Operating Subsidy payments are made to Owner, the sum of PHA-Assisted Units Income, Operating Subsidy payments and any net withdrawals from the Subsidy Carryover Reserve Account and the PHA Tenant Rent Reserve Account for operating purposes shall not exceed the PHA-Assisted Units Expenses for such Development Fiscal Year. In the event that the annual financial statements required to be provided by the Owner to the Authority pursuant to Section 7(b) below demonstrate that the above-described sum exceeded the PHA-Assisted Units Expenses for any year covered by the preceding sentence, then any portion of the Operating Subsidy payment causing such overage ("Excess Operating Subsidy") shall be promptly deposited into the Subsidy Carryover Reserve Account.

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5. Reserves.

a. **Administration.** The Owner or the Authority, as the case may be, shall establish any reserve described in this Section 5 in one or more financial institutions reasonably acceptable to the Authority and such reserves shall be used as permitted by this Agreement. To the extent a PHA-Assisted Units Shortfall occurs or is budgeted to occur with the approval of the Authority as provided herein, funds shall first be drawn from the Subsidy Carryover Reserve Account as provided herein to remedy such Shortfall until the Subsidy Carryover Reserve Account has been reduced to zero; and then, funds shall be drawn from the PHA Tenant Rent Reserve Account as provided herein until the PHA Tenant Rent Reserve Account has been reduced to zero.

b. **Subsidy Carryover Reserve Account.**

(i) *Deposits.* The Owner shall return to the Authority any excess of PHA-Assisted Units Income (plus Operating Subsidies) over PHA-Assisted Units Expenses, up to the amount of Operating Subsidy payments received by the Owner for such year, for deposit into a "Subsidy Carryover Reserve Account." Such amount shall be deposited on an annual basis within thirty (30) days after the date audited financial statements are provided by Owner to Authority in accordance with Section 7(b) hereof. Interest earned on this account shall be reinvested in the account and shall be available for use as described herein.

(ii) *Establishment and Ownership.* The Subsidy Carryover Reserve Account shall be maintained as a subaccount of the Authority's general fund. Funds placed in the Subsidy Carryover Reserve Account (including interest thereon) shall constitute restricted trust funds to be applied during the Term of this Agreement solely for the benefit of the PHA-Assisted Units in accordance with the terms and conditions hereof. Unless and until paid over to the Owner for use in operations, funds in the Subsidy Carryover Reserve Account shall remain the property of the Authority. Upon any sale or transfer of the Owner's interest in the Development during the Term of this Agreement, amounts remaining in the Subsidy Carryover Reserve Account shall continue to be available to assist the PHA-Assisted Units, in accordance with this Agreement. Upon termination of this Agreement, any funds in the Subsidy Carryover Reserve Account shall be released to the Authority free of any trust established pursuant to this Agreement.

(iii) *Withdrawals.* The Owner may request withdrawals from the Subsidy Carryover Reserve Account in connection with its annual budget in accordance with Section 4(a), or in accordance with the annual reconciliation described in Section 7(c) or at any other time. In any case, the Owner will provide to the Authority documentation establishing the need therefor, and the Authority shall disburse the amount of the PHA-Assisted Units Shortfall which is demonstrated to exist to the reasonable satisfaction of the Authority pursuant to Sections 4 and 7 hereof. Any disapproval by the Authority shall be accompanied by sufficient documentation so as to enable the Owner to determine the Authority's rationale for such disapproval. All withdrawals from the Subsidy

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Carryover Reserve Account are subject to the annual reconciliation process set forth in Section 7(c).

c. **PHA Tenant Rent Reserve Account.**

(i) *Deposits.* All Tenant Rents shall be collected by the Owner and deposited into a non-assignable, interest bearing account designated as the "PHA Tenant Rent Reserve Account." Rent collected by the Owner during a month shall be deposited no later than the fifth business day of the next succeeding month. Interest earned on this account shall be reinvested in the account and shall be available for use as described herein.

(ii) *Establishment and Ownership.* The PHA Tenant Rent Reserve Account shall be maintained as a subaccount of the Authority's general fund. Funds placed in the PHA Tenant Rent Reserve Account (including interest thereon) shall constitute restricted trust funds to be applied during the Term of this Agreement solely for the benefit of the PHA-Assisted Units in accordance with the terms and conditions hereof. Unless and until paid over to the Owner for use in operations, funds in the PHA Tenant Rent Reserve Account shall remain the property of the Authority. Upon any sale or transfer of the Owner's interest in the Development during the Term of this Agreement, amounts remaining in the PHA Tenant Rent Reserve Account shall continue to be available to assist the PHA-Assisted Units, in accordance with this Agreement. Upon termination of this Agreement, any funds in the PHA Tenant Rent Reserve Account shall be released to the Authority free of any trust established pursuant to this Agreement.

(iii) *Withdrawals.* The Owner may request withdrawals from the PHA Tenant Rent Reserve Account (A) in connection with its annual budget in accordance with Section 4(a), (B) in accordance with the annual reconciliation described in Section 7(c), (C) as required to pay capital costs attributable to the PHA-Assisted Units in accordance with All Applicable Public Housing Requirements, (D) at any other time. In any case, the Owner will provide to the Authority documentation establishing the need therefor, and the Authority shall disburse the amount of the PHA-Assisted Units Shortfall (or required withdrawal for capital costs) which is demonstrated to exist to the reasonable satisfaction of the Authority pursuant to Sections 4 and 7 hereof. Any disapproval by the Authority shall be accompanied by sufficient documentation so as to enable the Owner to determine the Authority's rationale for such disapproval. All withdrawals from the PHA Tenant Rent Reserve Account are subject to the annual reconciliation process set forth in Section 7(c).

(iv) *Ceiling.* If at any time the fund balance in the PHA Tenant Rent Reserve Account together with the fund balance of the Subsidy Carryover Reserve Account shall exceed an amount equal to two times the current year's budgeted PHA-Assisted Units Expenses, such excess shall be released from the PHA Tenant Rent Reserve Account to the Authority free of any trust.

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d. **Operating Reserve Account – nonPHA units .**

(i) *Deposits.* In accordance with the Operating Agreement, the Owner will create an operating reserve (the “Operating Reserve Account”). The Operating Reserve Account will be funded initially with equity in the amount of \$642,800 in accordance with the Operating Agreement and will not be replenished with Public Housing Funds.

(ii) *Establishment and Ownership.* The Operating Reserve Account will be established by the Owner and owned by the Owner.

(iii) *Withdrawals.* The Operating Agreement governs withdrawals made from the Operating Reserve Account. The Operating Reserve Account will be administered by the Owner in accordance with the Operating Agreement. The Owner covenants to the Authority to use all withdrawals from the Operating Reserve Account only for purposes relating to the Development, which may include the repayment of the CHA Loan upon disposition of the Development, expiration of the Compliance Period, and/or expiration of the Declaration of Restrictive Covenants.

e. **Replacement Reserve Account.**

(i) *Deposits.* As required by the Operating Agreement, the Owner will create a Replacement Reserve. The Replacement Reserve Account will be initially funded in the amount of \$65,350 in accordance with the Operating Agreement and upon completion of the Development will be funded annually at \$350 per dwelling unit per year (increasing periodically as provided in the Operating Agreement).

(ii) *Establishment and Ownership.* The Replacement Reserve Account is owned and controlled pro rata by the Owner and CHA. The funds deposited into the Replacement Reserve Account for the PHA-Assisted Units shall be accounted for separately from the non-PHA-Assisted Units. The Replacement Reserve Account is considered to “belong to the development” and upon disposition of the PHA-Assisted Units, expiration of the Tax Credit Requirements, and/or expiration of the Declaration of Restrictive Covenants, amounts in such reserve fund shall continue to be used for replacement expenditures with respect to the Development, including the PHA-Assisted Units.

(iii) *Withdrawals.* The Operating Agreement governs withdrawals from the Replacement Reserve Account. Withdrawals from the Replacement Reserve Account are to be used for replacement expenditures and requires the consent of the Authority and approval by the lenders, and in certain cases, the Investor and/or its affiliate.

f. **CHA Initial Operating Deficit Reserve Account**

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(i) *Deposits.* The Owner will establish and maintain a CHA initial operating deficit reserve account (the “CHA Initial Operating Deficit Reserve Account”). The CHA Initial Operating Deficit Reserve Account will be funded in full from Public Housing Funds in the amount of \$79,200 and will not be replenished..

(ii) *Establishment and Ownership.* The CHA Initial Operating Deficit Reserve Account will be established by the Owner and owned by the Authority.

(iii) *Withdrawals.* The Owner may request to withdraw funds from the CHA Initial Operating Deficit Reserve Account upon the issuance of a certificate of occupancy by the City of Chicago for the PHA-Assisted units.

g. **ACC Affordability Reserve Account** (i) *Deposits.* In accordance with the Operating Agreement, the Owner will create an affordability reserve account (“ACC Affordability Reserve”). The ACC Affordability Reserve will be funded from equity as described in the Operating Agreement in the amount of \$180,300.

(ii) *Establishment and Ownership.* The ACC Affordability Reserve will be established and owned by the Owner.

(iii) *Withdrawals.* As provided in the Operating Agreement, the ACC Reserve may be used by the Owner to cover operating deficits on the PHA-Assisted Units. The Operating Agreement governs withdrawals from this Reserve. In accordance with Section 4.02(q), the Owner covenants to the Authority to use all withdrawals from the ACC Reserve only for purposes relating to the Development, which may include the repayment of the CHA Loan upon disposition of the Development, expiration of the Compliance Period and/or expiration of the Declaration of Restrictive Covenants.

h. **Lease-Up Reserve Account – non-PHA-Assisted units.** Owner agrees to establish and maintain a lease-up reserve account (“Lease-Up Reserve”) in accordance with the Operating Agreement in an amount of \$275,000 and to use the Lease-Up Reserve during the lease-up period to cover operating deficits that may occur during the lease-up period. The Lease-Up Reserve is owned by the Owner. Withdrawals from the Lease-Up Reserve shall be governed by the Operating Agreement. Any funds remaining in the Lease-Up Reserve Account upon attainment of Rental Achievement shall be deposited into the Operating Reserve Account.

i. **Debt Service Reserve Account.** Owner agrees to establish and maintain a Debt Service Reserve account (“Debt Service Reserve”) in accordance with the Operating Agreement in an amount of \$137,200 and to use the Debt Service Reserve to meet the debt service requirements of the Owner. The Debt Service

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Reserve is owned by the Owner and withdrawals from the Debt Service Reserve shall be governed by the Operating Agreement.

j. **Replenishment of Reserves.** To the extent that any operating or replacement reserve funded with private equity is depleted and is subsequently replenished with Operating Subsidies, Tenant Rent or other sources of funds available to the Authority, such replenishment funds shall be deposited into a segregated sub-account within the applicable reserve, and the use of such funds shall be subject to the prior approval of the Authority and All Applicable Public Housing Requirements.

k. **Restriction on Public Housing Funds.** Public Housing Funds shall not be used by Owner to satisfy any guaranty under the Operating Agreement or any obligations to the Investor.

6. Public Housing Transformation.

a. **General.** The parties recognize that they are structuring a long-term relationship premised on, among other things, the continuation without substantial change of the Act and the maintenance of full federal appropriations to support the government's obligations under the Act and the Authority's obligations under this Agreement. 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 which create a PHA-Assisted Unit Shortfall, the viability of the PHA-Assisted Units can be maintained without unnecessary hardship to low-income residents or excessive claims on scarce resources of the Authority.

b. **Application of the Act.** Subject to Section 6(4), nothing contained herein shall prevent or diminish the full application to the PHA-Assisted Units of any legislation enacted after the date hereof, including provisions for the termination of operating subsidies under Section 9 of the Act or of 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 tenants in such PHA-Assisted Units.

c. **Owner Contribution Not Required.** It is of the essence of this Agreement that, during the Term hereof, the Owner will operate and maintain the PHA-Assisted Units in accordance with All Applicable Public Housing Requirements; *provided, however*, except in the case of an Owner default hereunder, the Owner shall at no time be required to contribute from its own funds (including reserves established under the Operating Agreement other than the Replacement Reserve) toward PHA-Assisted Units Expenses in order to preserve the PHA-Assisted Units as required hereunder. Notwithstanding the foregoing, the Owner agrees to hold and maintain the Replacement Reserve in accordance with the Operating Agreement, and to use and apply the Replacement Reserve only for purposes relating to the Development, including the PHA-Assisted Units.

d. **Initial Remedies.** In the event that legislative changes or diminished appropriations reduce the amount of operating subsidy provided by HUD to the Authority under Section 9 of the Act as in effect on the date hereof, or in the event that there is a PHA-Assisted

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Units Shortfall for any reason, subject to the provisions of Section 12(d), the Authority shall remain obligated to pay the Operating Subsidies to Owner in accordance with Section 4 hereof and Owner shall continue to operate and maintain the PHA-Assisted Units as required hereunder; provided, however, that:

(i) *Withdrawals from Reserves.* If the PHA-Assisted Units Income plus all forms of financial assistance made available in respect of such units (including, without limitation, the Operating Subsidies, other project-based or tenant-based operating or rental assistance or subsidies, or other contributions by or on behalf of the Authority), are less than PHA-Assisted Units Expenses, the Owner shall request withdrawals from the Subsidy Carryover Reserve Account, and the PHA Tenant Rent Reserve Account (in that order of priority) in order to assure that such PHA-Assisted Units Income plus withdrawals from reserves is sufficient to cover PHA-Assisted Units Expenses and to insure continued operation of the PHA-Assisted Units as required hereunder. Amounts due to the Owner shall be paid within thirty (30) days following receipt of appropriate documentation.

(ii) *Adjustments to Income and Expenses.* If (A) the quarterly statements of income and expenses for the PHA-Assisted Units delivered pursuant to Section 7(a) shall indicate a PHA-Assisted Units Shortfall over a period of two successive quarterly periods, taking into account all payments of Operating Subsidies made by the Authority during such period, and the Owner reasonably forecasts that such operating loss will continue for the next two quarterly periods, or (B) if a cumulative operating loss attributable at least in part to the PHA-Assisted Units Shortfall is reasonably forecasted to occur for the next two quarterly periods, then the Owner may avail itself of the provisions of Paragraph (iv) and Paragraph (v) below, but only if the Owner also utilizes Paragraph (iii).

(iii) *Cost Cutting Plan.* The Owner shall undertake in good faith to develop a plan to reduce operating expenses (but not to the physical, operational or financial detriment of the PHA-Assisted Units). However, the Owner shall not be required to seek to reduce maintenance, renewal and replacement and other operating expenses below a prudent level or below the level of such expenses incurred for other comparable units managed by the Management Agent subject to Tax Credit Requirements as a condition to, or as a preferred corrective action to, seeking to increase income from Tenant Rents in accordance with the following paragraphs, nor shall the Owner be required to reduce the management fee below market levels; to reduce resident services expenditures below that required to support the resident population; to reduce services and amenities below that required to competitively market to, and retain, residents; or in a manner which would violate any Mortgage Loan obligations, any of the All Applicable Public Housing Requirements or the Tax Credit Requirements.

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(iv) *Adjust Income Mix on Turnover.* The Owner and the Authority shall take such steps as may be necessary, to the extent permitted by All Applicable Public Housing Requirements, and subject to the Tax Credit Requirements, to increase the minimum income level of new tenants admitted to the PHA-Assisted Units including admitting public housing-eligible families having higher income levels than would otherwise receive priority under the system of preferences used by the Authority and/or applicable to the PHA-Assisted Units.

(v) *Cooperation of the Authority and the Owner.* In order to facilitate the rental of PHA-Assisted Units to public housing-eligible families having higher income levels as provided in the preceding paragraph, the Authority will offer other public housing units or Housing Choice Vouchers or certificates, to the extent available to the Authority, to sufficient tenants of the PHA-Assisted Units so as to encourage lower-income tenants to vacate the PHA-Assisted Units in favor of higher income public housing eligible families. This preference shall be reflected in the Authority's Housing Choice Voucher plan. In addition, in order to facilitate such purpose, the Owner agrees to use reasonable efforts to make available (subject to income and other qualifications) a designated tax credit unit to any lower income tenant affected as a consequence of actions taken pursuant to this Section 6.

e. **Transformation.** In the further event that at least six months after delivery of the quarterly statements referred to in Section 6(d)(ii)(A) or (B), all such actions by the Owner and the Authority are insufficient to eliminate the PHA-Assisted Units Shortfall on an ongoing basis, and in accordance with Section 35(h) of the Act (42 U.S.C. 1437z-7(h)), if as a result of a reduction in appropriations under Section 9 of the Act, or any other change in applicable law, the Authority is unable to fulfill its contractual obligations to the Owner with respect to the PHA-Assisted Units under this Agreement, and the measures taken pursuant to paragraph (d) of this Section have proven to be insufficient to preserve the viability of the PHA-Assisted Units, the Owner may deviate, under procedures and requirements developed through regulations by HUD in 24 CFR 905.604(k)(2), or successor regulations, from otherwise applicable restrictions under the Act regarding rents, income eligibility and other areas of public housing management with respect to a portion or all of the PHA-Assisted Units, to the extent necessary to preserve the viability of these PHA-Assisted Units while maintaining the low income character of the PHA-Assisted Units to the maximum extent practicable; *provided, however,* (A) the flexibility provided by Section 35(h) of the Act is limited to mixed income projects involving a "significant number of units other than public housing units"; and (B) HUD expects to require housing authorities that have entered into regulatory and operating agreements with qualifying mixed income developments to submit for HUD approval a Transformation Plan (as defined below) specifying how the Section 35(h) remedies will be implemented with respect to the project. The requirements governing the content of the Transformation Plan, and HUD's standards for reviewing and approving these plans, will be established as part of a notice and comment rulemaking.

f. **Transformation Plan.**

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(i) Before the Owner may exercise its rights under Section 6(e), the Owner and the Authority shall develop and agree upon a plan which satisfies All 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 "Transformation Plan"). Such plan must be reasonably likely to eliminate any PHA-Assisted Units Shortfall while maximizing the availability of PHA-Assisted Units for low-income and very-low income families and minimizing 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.

(ii) The Owner and the Authority shall make diligent efforts in good faith to agree upon the Transformation Plan, after notice to and appropriate discussion with the residents of the PHA-Assisted Units. If the Owner and the Authority shall fail to agree prior to the Owner being entitled to exercise remedies in accordance with Section 6(e) or within sixty (60) days of the Owner proposing the Transformation Plan (whichever is later), the Owner may proceed to implement the Transformation Plan. All such plans shall be specifically subject to HUD's approval to the extent required by All Applicable Public Housing Requirements.

(iii) The Transformation Plan shall provide as follows, in addition to any provisions required by (and to the extent not inconsistent with) All Applicable Public Housing Requirements and all applicable Tax Credit requirements:

(A) Revisions in the rent structure may require some households to pay more than 30% of their adjusted household income and/or may impose a higher minimum rent applicable to all households. The Owner shall give the Authority and each affected household at the Development written notice of the new rent structure, which shall be effective no sooner than thirty (30) days following such notice.

(B) To the extent that the Authority is reasonably able to provide substitute housing (Section 8 or public housing) to households unable to pay the rent which the Owner has specified for such household's adjusted gross income, the Authority shall offer such substitute housing and the Owner may require such household to vacate its unit at the Development during or at the end of the lease term, but no sooner than permitted under All Applicable Public Housing Requirements.

(C) All expenses to be incurred in relocating residents shall be provided for in the Transformation Plan.

g. **Restoration of Units.** If, subsequent to institution of remedial steps described above, the Operating Subsidies, the resources provided hereunder, and any other resources made

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available shall support operation on a continuing basis of all or a portion of the number of PHA-Assisted Units in a manner that prevents a PHA-Assisted Unit Shortfall, the obligation of Owner to so operate such number of units as public housing in accordance with the terms hereof shall be reinstated, subject to continuing rights of existing tenants.

7. Financial Statements and Reports.

a. **Quarterly Statements.** Not later than sixty (60) days after the end of each successive quarterly period, commencing with the calendar quarter in which the first PHA-Assisted Unit is available for occupancy, the Owner shall deliver to the Authority, itemized statements of income and expenses, prepared on an accrual basis, based on the Owner's general accounting records, including the receipt of any reserve funds made available by the Authority, in form substantially comparable to "Statement of Profit and Loss" (formerly Form HUD-92410), or any successor thereto, certified by the general partner/manager/chief financial officer of the Owner, for the quarterly period and from the beginning of the Development Fiscal Year to the end of such quarterly period. Such quarterly statements shall be supplemented by such additional quarterly financial information as may be reasonably requested by the Authority.

b. **Annual Financial Statements.** Not later than one hundred and twenty (120) days after the end of each Development Fiscal Year, the Owner shall deliver to the Authority and, on behalf of the Authority, to HUD a copy of the independently audited financial statements of the Owner for such year and the period then ended, prepared in accordance with generally accepted accounting principles and accompanied by the report of independent public accountants thereon, together with a copy of any additional financial statements or reports delivered by the Owner to its partners/members. Such financial statements shall be accompanied by supplemental data, together with the report of independent public accountants thereon, which shall show on an accrual basis for such period (i) PHA-Assisted Units Income, (ii) actual PHA-Assisted Units Expenses, (iii) the amount of the Operating Subsidy received by the Owner, (iv) any deposits to and withdrawals from the Reserves and any other operating revenues or assistance attributable to the PHA-Assisted Units, (v) the balance at the end of the period of the Subsidy Carryover Reserve Account, the PHA Tenant Rent Reserve Account, the Affordability Reserve, and any other reserve or special account relating specifically to the PHA-Assisted Units, (vi) aggregate stated lease Tenant Housing Payments and the amounts thereof uncollected from PHA-Assisted Units for which no eviction actions have been commenced, and (vii) deposits to and withdrawals from any Replacement Reserve, together with a summary of all Capital Expenditures made, in each case based on the Owner's general accounting records. If, after thirty (30) days written notice from the Authority, the Owner shall fail to deliver such financial statements to the Authority, the Authority shall have the right to retain an independent auditor to conduct an audit of the financial statements of the Owner and to charge the reasonable cost thereof to the Owner.

c. Annual Reconciliation.

(i) If the supplemental data provided pursuant to Section 7(b) shall show an excess of PHA-Assisted Units Income plus Operating Subsidies plus withdrawals from Reserves over actual PHA-Assisted Units Expenses, then not later than thirty (30) days following delivery of such supplemental data to the

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Authority, the Owner shall redeposit into the respective Reserves amounts withdrawn in the subject year up to the amount of any excess shown in the foregoing annual reconciliation. The Owner shall also return to the Authority any Excess Operating Subsidy for deposit into the Subsidy Carryover Reserve Account.

(ii) If the supplemental data provided pursuant to Section 7(b) shall show an excess of actual PHA-Assisted Units Expenses over PHA-Assisted Units Income plus Operating Subsidies plus withdrawals from Reserves, the Owner may request that the deficit amount be remedied from amounts held to the credit of the Subsidy Carryover Reserve Account and the PHA Tenant Rent Reserve Account, in that order of priority, and to the extent of available funds the Authority shall disburse the amount of the deficit demonstrated to exist to the reasonable satisfaction of the Authority. Amounts due to the Owner shall be paid within thirty (30) days following receipt of appropriate documentation.

d. **Additional Reconciliation.** Separately and independently from the reconciliation provided for under Section 7(c), the Owner shall contribute to the Subsidy Carryover Account, not later than 145 days after the end of each Development Fiscal Year, the amount, if any, of Operating Subsidies (including therein any amount paid by the Authority to the Owner in respect of such period pursuant to the last sentence Section 7(c)) received by the Owner during such period attributable to any PHA-Assisted Unit for a period in which such PHA-Assisted Unit was vacant (after having been initially occupied) for a period longer than sixty (60) days, provided that such period of vacancy shall not be attributable to any action or omission by the Authority if, as a result of a change in applicable law or regulation, the Authority shall exercise functions in connection with the selection and admission of applicants for PHA-Assisted Units which are reserved to the Owner, and delegated to the Management Agent pursuant to Section 3(d) hereof:

(i) A PHA-Assisted Unit shall be deemed vacant (i) commencing on the first day for which rent is not charged for such unit following completion or termination of occupancy as an PHA-Assisted Unit, and (ii) ending on the day preceding the first day for which rent is charged for such unit based on occupancy or re-occupancy as a PHA-Assisted Unit, or the first day for which rent is charged for occupancy as a PHA-Assisted Unit of a different unit which was not then previously occupied as a PHA-Assisted Unit, whichever shall first occur; and

(ii) The amount of Operating Subsidy attributable to a unit for a period in which such unit was vacant for a period longer than sixty (60) days shall be determined based on the actual period of the vacancy.

8. Insurance Requirements; Restoration of Property.

a. **Insurance.** Commencing on such date as the Owner acquires any PHA-Assisted Units, the Owner shall procure and maintain or cause to be procured and maintained in force adequate insurance to protect the Owner and the Authority from financial loss resulting from

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hazards, including, without limitation, hazards insured against under such types of coverages as are required by Part B, Attachment VII, of the ACC and Exhibit C attached hereto, or if stricter, such coverages and in such amounts as may be required under the Mortgage Loans and the CHA Loan, and such other hazards to which the Owner determines that exposure exists. Without limiting the generality of the foregoing, the Owner shall maintain all-risk insurance with respect to all insurable property pertaining to the PHA-Assisted Units, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such other hazards as are presently included in so-called "all-risk" coverage, in an amount no less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent the Owner from being a co-insurer, such insurance to be in builder's risk (non-reporting) form during and with respect to any construction on the site of the PHA-Assisted Units.

b. **Restoration.** Subject to the requirements of the Mortgage Lenders, 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 PHA-Assisted Units in whole or in part, and without diminution of any obligation of the Owner in respect thereof under the Mortgage Loans or the CHA Loan, the Owner, to the extent that insurance or condemnation proceeds and other funds, if any, made available by the Owner, shall promptly cause the restoration, reconstruction, and/or repair of the PHA-Assisted Units as nearly as possible to their value, condition and character immediately prior to such taking or casualty. The Authority shall have the right to approve any such restoration, reconstruction and/or repair, such approval not to be unreasonably withheld or delayed. Subject to the rights of the First Mortgage Lender, the provisions of Section 11 of the Mixed-Finance Amendment shall prevail over the provisions of any mortgage encumbering the PHA-Assisted Units with respect to the application of any insurance or condemnation proceeds attributable to such PHA-Assisted Units. Any determination of feasibility of restoration shall be made in accordance with the Mortgage having the highest lien priority approved by HUD as an evidentiary document.

9. Disposition and Encumbrance.

a. **Transfers of Interests in the PHA-Assisted Units.** During the Term of this Agreement and during such further period when such approval may be required by law as then in effect, and subject to Sections 9(c) and 9(d), the Owner shall not demolish or dispose of its interest in the Development or the PHA-Assisted Units (including, without limitation, by conveyance or lease of the PHA-Assisted Units or any portion thereof, or by assignment of the Owner's rights under this Agreement), without the prior written approval of the Authority (which shall not be unreasonably denied, withheld, or delayed) and HUD; *provided, however*, that no approval shall be required for tenant leases entered into in the ordinary course of business and in conformity with the requirements of Section 3 and the Management Plan.

b. **Further Encumbrances.** During the Term of this Agreement, and subject to Sections 9(c), and 9(d), the Owner shall not mortgage, pledge or otherwise encumber its interest, or any portion of its interest, in the PHA-Assisted Units as collateral for a loan, without the prior written approval of the Authority and HUD, nor shall it modify the terms of any of the Mortgage Loans or any other mortgage, pledge or encumbrance which has been previously approved by the Authority and HUD, without the prior written approval of the Authority and HUD.

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c. **Exclusions.** The following actions are expressly excluded from the covenants set forth in Sections 9(a) and 9(b);

(i) The Mortgage of the Owner's interest in the Development and the PHA-Assisted Units pursuant to the Mortgage Loans and transfer of the Development and the PHA-Assisted Units to a Mortgage Lender, or such Mortgage Lender's nominee, under an approved Mortgage Loan, by foreclosure or deed-in-lieu of foreclosure, or to a third-party purchaser pursuant to a foreclosure sale, provided that any such transfer shall be subject to the terms of the Declaration of Restrictive Covenants and the Regulatory and Operating Agreement. Such transfer shall not be deemed to be an assignment of grant funds and shall not constitute a succession to any right to benefits of the Authority under the ACC or Mixed-Finance Amendment, nor shall it constitute attaining any privileges, authorities, interests, or rights in or under the ACC or Mixed-Finance Amendment, and shall be subject to the terms of the Declaration of Restrictive Covenants, other All Applicable Public Housing Requirements and the court orders relating to the PHA-Assisted Units;

(ii) The conversion of the Construction Loan to the Permanent Loan ("Permanent Loan Conversion"), provided that HUD and the Authority receive prior written notice of such Permanent Loan Conversion;

(iii) Dwelling leases with eligible families in the PHA-Assisted Units in conformity with the Management Plan;

(iv) Conveyance or dedication of land for use as streets, alleys, or other public rights-of-way, and grants and easements for the establishment, operation, and maintenance of public utilities that serve the Development;

(v) Subordinate liens approved in writing by the Authority, HUD and by senior lien holders created in connection with purchase or financing of replacements or repairs necessary for the normal use and operation of the PHA-Assisted Units;

(vi) The Tax Regulatory Agreement among the Authority, U.S. Bank National Association and the Owner and the Low Income Housing Tax Credit Regulatory Agreement between the City and the Owner; Retention/Recapture Agreement by and among First Eagle Bank, Mercy Housing Lakefront and New Sterling Park LLC and Citibank, N.A..

(vii) Normal uses and encumbrances associated with the operation of the PHA-Assisted Units;

(viii) The Right of First Refusal Agreement by and among the Authority, Owner and any assignment or exercise by a permitted assignee thereunder; and

(ix) The Managing Member and Mercy Housing Lakefront's purchase option and right of first refusal pursuant to the Purchase Option and Right of First

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Refusal Agreement among the Owner, Mercy Housing Lakefront (“MHL”), Managing Member and RBC Tax Credit Equity, LLC (the “Subordinate Right of First Refusal”), provided that (a) HUD and the Authority receive prior written notice of the exercise of any option or right of first refusal thereunder; (b) that any assignment by Managing Member of its rights and interests under the Subordinate Right of First Refusal shall be subject to the prior written approval of HUD and the Authority; and (c) that any deed or instrument of conveyance delivered to Managing Member (or any assignee of Managing Member approved by HUD and the Authority) upon the exercise of any option or right of first refusal granted pursuant to the Subordinate Right of First Refusal shall acknowledge that such conveyance is made subject to this Regulatory and Operating Agreement, the Declaration of Restrictive Covenants and the Right of First Refusal Agreement between Owner and the Authority.

d. **Transfers of Interests in Owner.**

(i) No transfer, conveyance, or assignment shall be made, without the prior written approval of HUD of: (A) any interest of a manager, managing member, general partner, or controlling stockholder (any such interest being referred to as a “Controlling Interest”) of the Owner; or (B) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (C) prior to payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest in the Owner or any partner or member thereof (each of such transfers, conveyances and assignments, together with the transfers described in this Section, is hereafter referred to as a “Transfer”).

(ii) Notwithstanding the foregoing, HUD and the Authority’s consent is not required, (a) where a business organization that has a limited interest (non-controlling and non-managing) in the Owner or in any partner, member or stockholder thereof transfers a non-controlling and non-managing interest in the business organization provided that the Owner (x) provides HUD with written notice of such transfer; and (y) certifies to HUD and the Authority that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner

(iii) The Authority and HUD will not unreasonably withhold, delay or condition a request by Owner for consent to an internal reorganization of the corporate, company or Operating structure of Owner or any member or general partner and to designate a substitute managing member or general partner under the terms of the Owner’s Operating Agreement.

(iv) Notwithstanding the foregoing, HUD and the Authority agree that no prior approval is required for the exercise by the Investor or its affiliates of their rights to remove the general partner or managing member and to designate a substitute general partner or managing member under the terms of the Owner’s

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Operating Agreement, provided that HUD and the Authority are given written notice of the default under the Operating Agreement and the exercise of the removal and appointment right therein (the "Notice") or (ii) the pledge to the holder of the Construction Loan of the interest of the Managing Member in Owner to secure the Construction Loan and the foreclosure of such pledge.

However, HUD and the Authority consent shall be required, for the appointment of such substitute managing member or general partner to extend beyond a ninety (90) day period. Such 90-day period will commence on the date of the Notice ("Interim Replacement Period").

With notice to HUD and the Authority, the Interim Replacement Period may be extended for an additional 90 days, or other reasonable time period, to allow the substitute managing member or general partner of Owner to find a replacement acceptable to HUD and the Authority, provided that, prior to the expiration of such additional 90-day period, the substitute managing member or general partner demonstrates that the Investor is continuing to fund (or has already funded) all equity contributions required pursuant to the Operating Agreement and the Project continues to be operated in a manner consistent with All Applicable Public Housing Requirements.

10. Non-Discrimination and Other Federal Requirements.

The Owner will comply with all applicable requirements of the following, as the same may be amended from time to time:

- (i) The Fair Housing Act, 42 U.S.C. 3601-19, and regulations issued thereunder, 24 CFR Part 100; Executive Order 11063 (Equal Opportunity in Housing) and regulations issued thereunder, 24 CFR Part 107; the fair housing poster regulations, 24 CFR Part 110, and applicable advertising guidelines;
- (ii) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and regulations issued thereunder relating to non-discrimination in housing, 24 CFR Part 1;
- (iii) Age Discrimination Act of 1975, 42 U.S.C. 6101-07, and regulations issued thereunder, 24 CFR Part 146;
- (iv) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and regulations issued thereunder, 24 CFR Part 8; the Americans with Disabilities Act, 42 U.S.C. 12181-89, and regulations issued thereunder, 28 CFR Part 36;
- (v) Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and its implementing regulations at 24 CFR Part 135; and
- (vi) Wage rates under the Davis-Bacon Act (40 U.S.C. § 276a *et seq.*) to the extent applicable.

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11. Owner Default and Remedies.

a. **Default.** A default by the Owner under this Agreement shall occur if the Owner violates, breaches or fails to comply in any material respect with any provision of, or obligation under, All Applicable Public Housing Requirements or this Agreement (including, without limitation, by reason of its violation, breach, or failure to comply with any agreement referenced in Section 3(a) hereof). A default by the Owner that is attributable to an action or omission of the Management Agent shall be deemed a default by the Owner for purposes of this Section.

b. **Notice and Cure.** Upon a determination by the Authority that a default by the Owner has occurred, the Authority shall notify HUD, the Owner, the First Mortgage Lender, the City and the Investor of (i) the nature of the default, (ii) the actions required to be taken by the Owner, the First Mortgage Lender and/or Investor to cure the default, and (iii) the time (no less than thirty (30) days) within which the Owner, the First Mortgage Lender and/or Investor shall respond with a showing that all required actions have been taken, provided that if the default by its nature cannot be cured within the aforesaid thirty (30) day period, the Owner, the First Mortgage Lender and/or Investor may have additional time, with the Authority's written approval, as may be reasonable given the circumstances to effect a cure of the default. The Authority reserves the right to monitor the Owner's, the First Mortgage Lender's and/or Investor's efforts to cure; and further reserves the right to reduce and/or terminate the time period allowed herein (but in no event less than thirty (30) days) where further actions to cure have not been made by the Owner, the First Mortgage Lender and/or the Investor. Notwithstanding the foregoing, the Investor has the right but not the obligation, to cure any default pursuant to the terms of this Section 11.b.

c. **Remedies.** If the Owner, the First Mortgage Lender and/or the Investor fails to respond or take corrective action to the satisfaction of the Authority as provided herein, the Authority shall have the right to exercise any remedy available to it by reason of such default, including without limitation, to seek appropriate relief in any court having jurisdiction, including but not limited to specific performance, injunctive relief, the termination of Operating Subsidies hereunder, or the appointment of a receiver to take over and operate the PHA-Assisted Units in accordance with the terms of this Agreement without prejudice to the right of the Authority, alternatively or in addition to the foregoing, to exercise any remedy available to it, if any, if the nature of such default hereunder, would constitute a default under Authority Loan Documents, the Declaration of Restrictive Covenants or the Management Agreement.

12. Authority Default and Remedies.

a. **Default.** A default by the Authority under this Agreement shall occur if the Authority materially violates or breaches this Agreement, or fails to comply with any provision of or obligation under All Applicable Public Housing Requirements, including this Agreement (including, without limitation, by reason of its violation, breach, or failure to comply with any governing law, regulation, or agreement referenced in Section 3(a)).

b. **Notice and Cure.** Upon determination by the Owner that a default by the Authority has occurred, the Owner shall notify the Authority, HUD, the First Mortgage Lender and the Investor of (i) the nature of the default, (ii) the actions required to be taken by the

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Authority to cure the default, and (iii) the time (no less than sixty (60) days in the case of a failure to pay Operating Subsidies hereunder and thirty (30) days in all other cases) within which the Authority shall respond with a showing that all required actions have been taken, provided if the default by its nature cannot be cured within the aforesaid thirty (30) day period, the Authority may have an additional ninety (90) days, with the Owner's written approval, and as may be reasonable given the circumstances to effect such a cure of the default; provided, however, no extension of time shall be permitted in the case of a payment or reimbursement for capital items pursuant to Section 4(c). The Owner reserves the right to monitor the Authority's efforts to cure; and further reserves the right to reduce and/or terminate the time period allowed herein where further action to cure have not been made by the Authority.

c. **Remedies.** If the Authority fails to respond or take corrective action to the satisfaction of the Owner, the Owner shall have the right, after exercising its rights under Section 6 in accordance with the provisions thereof, to seek appropriate relief in any court having jurisdiction, including but not limited to, specific performance or injunctive relief, and alternatively or in addition the foregoing, to exercise any remedy available to it.

d. **Nonrecourse.** Notwithstanding anything to the contrary herein, 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 to the Owner, the Owner (i) shall have, as exclusive remedies, the remedies contained in this Agreement, consistent with the Act and applicable HUD Regulations issued pursuant thereto, including, but not limited to, disbursements from the Reserves, and steps taken by the Owner to increase the income levels of tenants in the PHA-Assisted Units and (ii) shall have no recourse under this Agreement against any other project of the Authority, as the term "project" is defined in the ACC, or any other Public Housing Funds (excluding Tenant Housing Payments) available to the Authority.

13. Disclaimer of Relationships.

a. **No Assignment.** The Authority, Owner and Investor acknowledge that any transfer of capital funds, development funds, MTW funds, and/or operating funds by the Authority to the Owner or any other participating party shall not be or be deemed to be an assignment of capital funds, development funds, MTW funds, and/or operating funds, and the Owner and/or Investor or other participating party shall not succeed to any rights or benefits of the Authority under the ACC, and/or Mixed-Finance Amendment, or attain any privileges, authorities, interests, or rights in or under the ACC and/or the Mixed-Finance Amendment.

b. **No Other Relationship.** Nothing contained in the ACC and/or Mixed-Finance Amendment, or in any agreement between the Authority and the Owner and/or Investor, 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 and/or the Mixed-Finance Amendment; provided, however, that the First Mortgage Lender under the mortgage and note secured thereby identified on Exhibit E to the Mixed-Finance Amendment shall be entitled to rely upon Sections 12(C) and (D) of the Mixed-Finance Amendment.

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14. Miscellaneous.

a. **Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns, and heirs of each of the parties; *provided, however*, that neither the Owner nor the Investor may assign any of its interest in this Agreement without the prior written consent of the Authority and HUD. Any Authority consent shall not be denied, withheld or delayed unreasonably.

b. **Entire Agreement.** This Agreement constitutes the entire agreement among the parties and supersedes any prior agreement or understanding among them with respect to the subject matter hereof.

c. **Amendments.** Subject to All Applicable Public Housing Requirements, this Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties and approved in writing by HUD.

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

e. **Notices.** Any notice or other communication given or made pursuant to this Agreement shall be in writing and shall be deemed given if (i) delivered personally or by courier, (ii) telecopied, (iii) sent by overnight express delivery, or (iv) mailed, to the respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party).

If to the Authority:

Chicago Housing Authority
60 E. Van Buren St. 12th Fl.
Chicago, Illinois 60605
Attention: Chief Executive Officer

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with a copy to:

Chicago Housing Authority
Office of the General Counsel
60 E. Van Buren St., 12th Fl.
Chicago, Illinois 60605
Attention: Chief Legal Officer

If to the Owner:

New Sterling Park LLC
c/o Mercy Housing Lakefront
120 South LaSalle Street, Suite 1850
Chicago, Illinois 60603
Attention: President

with a copy to:

Sterling Park Development, L.L.C.
900 West Jackson Boulevard, 8th Floor
Chicago, Illinois 60607
Attention: Mordecai Tessler and David
Tessler

and to:

Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Blvd, Suite 400
Chicago, Illinois 60661
Attention: Ben Applegate

and to:

Faegre Baker Daniels LLP
311 S. Wacker Drive
Suite 4300
Chicago, IL 60606
Attn: Barry R. Nekritz

and to:

RBC Tax Credit Equity, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

and to:

Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Attention: Roger W. Holmes

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UNOFFICIAL COPYIf to Management Agent, to:

Mercy Housing Lakefront
120 South LaSalle Street, Suite 1850
Chicago, IL 60603
Attention: Mark Angelini, President

If to First Mortgage Lender, to:

Citibank, N.A.
390 Greenwich Street, 2nd Floor
New York, N.Y. 10013
Attention: Transaction Management Group
Deal ID# 21909
Facsimile: (212) 723-8209

and to:

Citibank, N.A.
325 East Hillcrest Drive, Suite 160
Thousand Oaks, California 91360
Attention: Operations Manager/Asset
Manager
Deal ID# 21909
Facsimile: (805) 557-0924

with a copy to:

Citibank N.A.
787 W. Fifth Street, 29th Floor
Los Angeles, CA. 90071
Attention: Account Specialist
Deal ID# 21909
Facsimile: (213) 624-3380

with a copy to:

Citi Community Capital
388 Greenwich Street, 17th Floor
New York, N.Y. 10033
Attention: General Counsel's Office
Deal ID# 21909
Facsimile: (646) 291-5754

If to HUD, to:

U.S. Department of Housing and Urban
Development
77 West Jackson Blvd., 26th Floor
Chicago, Illinois 60604
Attention: Office of the Regional Counsel

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and to:

U.S. Department of Housing and Urban
Development
451 Seventh Street, S.W.
Washington, D.C. 20410
Attention: Assistant Secretary of Public and
Indian Housing

All such notices and other communication shall be deemed given on the date of personal or local courier delivery, telecopy transmission, deliver to overnight courier or express delivery service, or deposit in the United States Mail, and shall be deemed to have been received (i) in the case of personal or local courier delivery, on the date of such delivery, (ii) in the case of telecopy, upon receipt of electronic confirmation thereof, (iii) in the case of delivery by overnight courier or express delivery service, on the business day following dispatch, and (iv) in the case of mailing, on the date specified in the return receipt therefor.

f. **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.

g. **No Personal Liability.** No officer, director, board member, 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, except as provided by law, the Authority shall look solely to the Owner, for the satisfaction of any remedy each might have with respect to the other for the other's failure to perform any of its obligations hereunder. Notwithstanding the foregoing, nothing contained herein shall either relieve the Owner or any general partner, shareholder of the Owner from personal liability and responsibility, or limit the Authority's rights and remedies against such parties, either at law or in equity (i) for fraudulent acts; (ii) for insurance proceeds and condemnation awards received by the Owner and not turned over to the Authority or used by the Owner for restoration or repair of the PHA-Assisted Units to the extent required under this Agreement and (iii) for any rents or other income from the PHA-Assisted Units received by the Owner after an event of default under this Agreement and not applied to PHA-Assisted Units Expenses.

h. **Neither Party an Agent.** Nothing in this Agreement shall be deemed to appoint either Owner or the Authority as an agent for or representative of the other, and neither one shall be authorized to act on behalf of the other with respect to any matters. Neither Owner nor the Authority shall have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of the other, whether arising from Owner's or the Authority's actions under this Agreement or otherwise.

i. **Governing Law.** This Agreement shall be governed by and construed in accordance with the law of the State of Illinois applicable to contracts made and to be performed therein.

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j. **Headings; Usage.** All section headings in this Agreement are for convenience of reference only and are not intended to modify the meaning of any section. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter as the identity of the person or persons may require. Where the context admits, the singular forms of terms used herein shall include the plural and the plural shall include the singular.

k. **Severability.** If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

l. **Counterparts; Execution.** This Agreement may be executed in several counterparts, and all counterparts so executed shall constitute one agreement, binding on all parties hereto.

m. **No Third Party Beneficiary.** The provisions of this Agreement shall not be construed for the benefit of or as enforceable by any person or entity not a party hereto, with the exception of HUD.

n. **Conformity with Section 42 Requirements.** Notwithstanding anything to the contrary in this Agreement, it is the intent of the Authority and the Owner that payments will be made to and retained by the Owner under this Agreement only to the extent they constitute "qualifying rental assistance" as defined in Section 142-16 of the Treasury Regulations.

o. **Right of First Refusal Agreement.** The Authority and the Owner are, concurrently with the execution of this Agreement, entering into a Right of First Refusal Agreement with respect to the PHA-Assisted Units. That Right of First Refusal Agreement is binding upon the Owner and each subsequent owner of a PHA-Assisted Unit and shall survive the termination of this Agreement.

p. **Amendment to the Owner's Organizational Documents.** Except for amendments to implement transfers for which the consent of the Authority is not required under Section 9 hereof the Owner's Articles of Organization and the Operating Agreement may not be amended in any material respect without the prior written consent of the Authority, which shall not be unreasonably withheld.

[SIGNATURE PAGE TO FOLLOW]

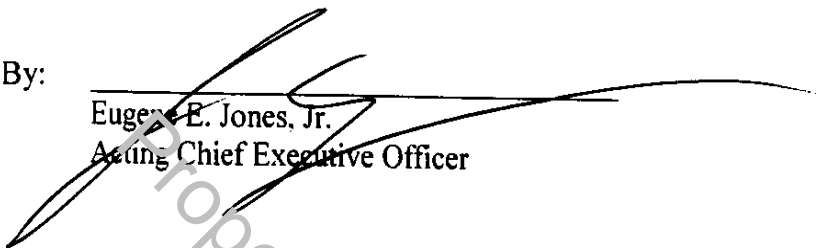
UNOFFICIAL COPY

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

AUTHORITY:

Chicago Housing Authority, an Illinois municipal corporation

By:


Eugene E. Jones, Jr.
Acting Chief Executive Officer

OWNER:

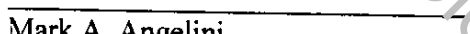
NEW STERLING PARK LLC

an Illinois limited liability company.

By: New Sterling Park MM LLC,
an Illinois limited liability company
Its Managing Member

By: Mercy Sterling NFP, an Illinois not for profit
Corporation, its managing member

By:


Mark A. Angelini
President

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

AUTHORITY:

Chicago Housing Authority, an Illinois municipal corporation

By:

Eugene E. Jones, Jr.
Acting Chief Executive Officer

OWNER:

NEW STERLING PARK LLC

an Illinois limited liability company,

By: New Sterling Park MM LLC
an Illinois limited liability company
Its Managing Member

By: Mercy Sterling NFP, an Illinois not for profit
Corporation, its managing member

By: 

Mark A. Angelini
President

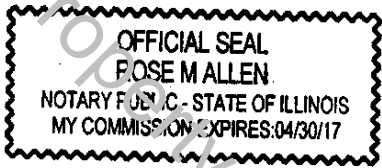
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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

This instrument was acknowledged before me on June 29, 2015, by Eugene E. Jones, Jr., as Acting Chief Executive Officer of the Chicago Housing Authority.



Rose M. Allen
Notary Public

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Mark A. Angelini, personally known to me to be the President of Mercy Sterling NFP, an Illinois not for profit corporation, the managing member of New Sterling Park MM LLC, an Illinois limited liability company (the "Managing Member"), the managing member of New Sterling Park LLC, an Illinois limited liability company (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, on behalf of the managing member of the Managing Member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and the Company, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 2015.

Notary Public

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
 COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2015, by Eugene E. Jones, Jr., as Acting Chief Executive Officer of the Chicago Housing Authority.

 Notary Public

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
 COUNTY OF ~~COOK~~ *Will*)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that Mark A. Angelini, personally known to me to be the President of Mercy Sterling NFP, an Illinois not for profit corporation, the managing member of New Sterling Park MM LLC, an Illinois limited liability company (the "Managing Member"), the managing member of New Sterling Park LLC, an Illinois limited liability company (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such officer, he signed and delivered the said instrument, on behalf of the managing member of the Managing Member, as the free and voluntary act of such person, and as the free and voluntary act and deed of the Managing Member and the Company, for the uses and purposes therein set forth.

Given under my hand and official seal this 21st day of June, 2015.



D. Nendick

 Notary Public

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EXHIBIT A

Legal Description

That part of Lots 7, 8 and 9 in Block 1 in Henry E. Vance's re-subdivision, according to the plat thereof recorded December 21st, 1904, as Document No. 3635041, in the south east quarter of Section 14, Township 39 North, Range 13, East of the Third Principal Meridian, described as follows:

Parcel 1:

Commencing at the Northwest corner of said Block 1, also being the intersection of the east Right-of-way line of South Homan Avenue and the South right-of-way line of West Arthington Street; thence South 89 degrees 14 minutes 04 seconds East along the North line of said Block 1, also being said South right-of-way line of West Arthington Street, a distance of 489.02 feet to the point of beginning; thence continuing South 89 degrees 14 minutes 04 seconds East along said North line of Block 1, also being said South right-of-way of West Arthington Street, a distance of 108.77 feet to the Northeast corner of Lot 7, also being the intersection of said South right-of-way line of West Arthington Street and the West Right-of-way line of vacated South Spaulding Avenue; thence South 00 degrees 26 minutes West along the East line of said Lot 7, also being said West right-of-way line of vacated South Spaulding Avenue, a distance of 337.62 feet to the Southeast corner of said Lot 7 also being the North line of the B. & O. C.T. Railroad (formerly the Chicago and Great Western Railroad); thence North 89 degrees 13 minutes 55 seconds West along said South line of Block 1, also being said North right-of-way line of the B. & O. C.T. Railroad, a distance of 289.32 feet; thence North 00 degrees 40 minutes 38 seconds East, a distance of 157.20 feet to a point on the southerly face of a one story brick building as said brick building existed on September 15, 1997; thence South 89 degrees 40 minutes 36 seconds East along said southerly building face and the easterly extension thereof, a distance of 179.12 feet; thence North 00 degrees 40 minutes 38 seconds East, a distance of 179.02 feet to said point of beginning; all in Cook County, Illinois.

Parcel 2:

All that part of Spaulding Avenue vacated per Document Number 0803703000 recorded February 6, 2008 and lying East of and adjoining Parcel 2 aforesaid, lying South of the South line of Arthington Street and North of the B. & O. C.T. Railroad (formerly the Chicago and Great Western Railroad), located in the East ½ of the Southeast ¼ of Section 14, Township 39 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

Perpetual, non-exclusive easements for the benefit of Parcels 1 and 2 as created by the Amended and Restated Cross-Easement Agreement recorded December 19, 2008 as Document 0835422052, for right-of-way and right to use and utilize all private roads, driveways, alleyways or other paved or concrete pathways for vehicular and pedestrian ingress and egress to and from South Homan Avenue and West Arthington Street; certain water easements, access to sub-

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basement of the Power Plant building; maintenance and restoration easements; and electrical easements; over and upon portions of the land more particularly described on Exhibit "A" and as depicted on other Exhibits attached thereto.

Property Address: 3301 West Asthington Street, Chicago, IL 60624

PIN: 16-14-417-009-0000 and 16-14-417-011-0000

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EXHIBIT B

Methodology to Determine Reasonableness of Proposed Budget

In the event the Owner's proposed Operating Budget is disapproved by the Authority, a process shall be initiated in order to determine the appropriate level of Estimated PHA-Assisted Units Expenses for the following year ("Third Party Determined Expenses").

The Third Party Determined Expenses as determined pursuant to the methodology described herein shall be used to determine the Operating Budget for the following Development Fiscal Year. All determinations shall be supported in writing by underlying data and shall set forth the reasoning and computations relied on and used.

Third Party Determined Expenses shall be the "Allowed PHA-Assisted Units Expenses" determined by an independent real estate management firm experienced in the Chicago apartment market ("Expert") selected jointly by the Authority and the Owner.

If the Authority and Owner are unable to agree on an Expert, Third Party Determined Expenses shall be determined as follows. The Authority and Owner shall each select an Expert and both Experts shall determine Third Party Determined Expenses. If the higher of the two determinations does not exceed the lower by more than ten percent (10%), then the two shall be averaged to determine Third Party Determined Expenses and such averages shall be binding on all parties in interest.

If the two determinations differ by more than ten percent (10%), then the two Experts shall select a third Expert, or if they are unable, a third Expert shall be appointed by a judge of the Circuit Court of Cook County. Such Expert shall then provide a separate determination of Third Party Determined Expenses ("Independent Determination"). The Independent Determination together with that determination made on behalf of one of the parties which is closest in amount to the Independent Determination shall be averaged, and the amount so determined shall thereupon be binding on all parties in interest. If the Independent Determination differs by the same amount from each of the other two determinations, the value set forth in the Independent Determination shall thereupon be binding on all parties in interest. The cost and fees of the appointment of such third Expert shall be borne equally by the Authority and the Owner.

All Third Party Experts shall at the time of appointment be knowledgeable and experienced in the management of apartments in the Chicago market.

The parties and their assigns and successors in interest agree that they will proceed as expeditiously as possible in determining the Third Party Determined Expenses. The procedure shall, if at all possible, be completed in no more than thirty (30) days. If either party fails to appoint a qualified Expert within ten (10) days after requested to do so by the other party, such failure shall constitute a waiver by the party of its right to appoint an Expert, and the determination of the Expert selected by the other party shall be binding on all parties in interest.

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EXHIBIT C

Insurance Requirements

OWNER SHALL PROCURE AND MAINTAIN, OR CAUSE TO BE PROCURED AND MAINTAINED, AT ALL TIMES DURING THE TERM OF THIS AGREEMENT, THE TYPES OF INSURANCE SPECIFIED BELOW:

I. CONSTRUCTION INSURANCE REQUIREMENTS

Except as may be otherwise specifically provided herein and/or in any document evidencing or securing a CHA Mortgage Loan (a "CHA Loan Document"), Owner shall, prior to the date of this Agreement, procure and maintain, directly or through Owner's general contractor for the construction of the Development (the "General Contractor"), at all times the types of insurance specified below in order to protect the Authority, its Commissioners, Board, officers, agents and employees, from the acts, omissions and negligence of Owner, any general contractor (including without limitation the General Contractor), any subcontractor, and their respective officers, officials, subcontractors, shareholders, partners, joint venturers, members, agents or employees. The insurance carriers used must be authorized to conduct business in the State of Illinois and, except where specially provided otherwise, shall have a BEST Rating of not less than an "A". The insurance provided shall cover all operations under this Agreement, whether performed by Owner, any general contractor (including without limitation the General Contractor) or by any subcontractor.

A. Required Insurance Coverage for Subcontractors:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
2. General Liability Insurance General Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with an aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Developer's and/or Owner's and the General Contractor's respective officers, employees, agents, subcontractors, invitees and guests and their personal property. Products/Completed Operations to be maintained in full force and effect for a period of two (2) years following final completion of the Development. The Authority shall be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.

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3. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Development, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority shall be endorsed as an additional insureds on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
4. Professional Liability (Errors & Omissions). When any architects of record and/or lead architectural firm for the Development, engineers of record, construction managers, property managers, security companies or other professional consultants perform work in connection with the Development, Professional Liability insurance covering acts, errors or omissions shall be maintained with limits of not less than Five Million (\$5,000,000) per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of Services under this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
5. Lead/Asbestos Abatement Liability. When any lead and/or asbestos abatement liability work is performed in connection with the contract, Lead/Asbestos Abatement Liability Insurance shall be provided with limits of not less than \$5,000,000 per occurrence insuring bodily injury, property damage and environmental clean-up. The Authority, Developer and/or Owner are to be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.

B. Required Insurance Coverage for the General Contractor:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
2. General Liability Insurance. General Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Per Development aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). Included without limitation, the following coverages: Premises/Operations, including deletion of explosion, collapse and underground (XCU) exclusions; Independent Contractor's Protective Liability; Broad Form Contractual Liability, specifically referring to the indemnity obligations under and pursuant to this Agreement, subject to the standard industry terms, conditions and exclusions of the policy; Broad Form property

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Damage, including Products/Completed Operations, Personal Injury Liability, with employee and contractual exclusions deleted. In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Owner's and the General Contractor's respective officers, employees, agents, subcontractors, invitees and guests and their personal property. The Authority, Developer and Owner ("Additional Insureds") are to be endorsed as additional insureds on the policy and such insurance will be endorsed as primary and non-contributory with any other insurance available to the Additional Insureds.

3. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Development, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority shall be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
4. Excess Liability*. The General Contractor shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000) on a per occurrence. This coverage will be excess of the General Liability, Auto Liability and Employers Liability coverages. The General Contractor's insurance coverage will be excess of the insurance provided by any subcontractor with which it contracts to provide services for the Development. The Authority and Owner shall be endorsed as additional insureds on the General Contractor's Excess Liability policy.
5. Products-Completed Operations. The General Contractor and subcontractors shall procure and maintain (and require subcontractor's subcontractors of any tier to procure and maintain) until expiration of the Sterling Park Apartments Development's warranty period and, with regard to Products/Completed Operations coverage for two (2) years after final completion of the Work.

It is further agreed that the coverage afforded to the Additional Insureds shall exclude indemnification of the architect for claims arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the architects, his agents or employees provided such giving or failure to give is the primary cause of the inquiry or damage.

C. Required Insurance Coverage for Owner :

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1. Excess Liability*. Owner/Developer shall secure Excess Liability insurance in the amount of not less than Ten Million Dollars (\$10,000,000). This coverage will be excess of the General Liability, Auto Liability and Employers Liability coverage. Owner's/Developer's coverage will follow form for all primary, liability and employee liability coverages.
2. Contractors Pollution Liability. If the scope of work covers working with or around hazardous materials or pollutants, Owner shall purchase, directly or through the General Contractor, a separate Contractor's Pollution Liability insurance policy, on an occurrence basis (claims made is not acceptable), covering any bodily injury, liability, and property damage liability, arising out of pollutants including hazardous materials such as asbestos, lead, etc. or contaminated soil, including while in transit to a permanent disposal facility which may arise from activities under or incidental to the contract, whether such activities be by Owner or by the General Contractor or any of its subcontractors or by anyone directly or indirectly employed or otherwise contracted by any of them. This policy shall be maintained with limits of not less than Three Million Dollars (\$3,000,000) per occurrence. The Authority shall be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
3. Workers Compensation and Employer's Liability. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and/or hired) are used in connection with the construction to be performed for the Development, Owner shall provide, directly or through the General Contractor, Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority shall be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
5. Builders Risk. Owner (or Developer) shall provide, directly or through the General Contractor, an All Risk Builders Risk Insurance Policy in accordance with HUD's 5370 form (paragraph 36b), covering new construction, improvements, betterments, and/or repairs, at replacement cost, for all materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent Development. The Authority shall be named as loss payee.

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6. Railroad Protective Liability Insurance. When, in connection with the Development, any work is to be done adjacent to or on property owned by a railroad or public transit entity, Owner shall procure and maintain, or cause to be procured and maintained, with respect to the operations that Owner, a general contractor or any subcontractor shall perform, railroad protective liability insurance in the name of such railroad or public transit entity. The policy shall have limits of not less than \$2,000,000 per occurrence, combined single limit, and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.
- D. Evidence of Insurance. Prior to the date of this Agreement, and prior to the commencement of Construction activities, Owner directly or through the General Contractor shall furnish the Authority, for record keeping purposes only, with satisfactory evidence that Owner, the General Contractor and all subcontractors have the insurance coverages set forth above. Owner shall ensure, or shall cause the General Contractor to ensure, that all subcontractors comply with the Authority's minimum coverage requirements. It is the responsibility of Owner to secure and maintain, or to cause the General Contractor to secure and maintain, proof of coverage for all entities that it contracts with that provide services to the Development. Proof of insurance records must be available for review by the Authority within twenty-four (24) hours of being requested. Said policies shall not be modified, canceled, non-renewed, or permitted to lapse until final completion and approval of the performance of the General Contractor's contract and shall contain a provision that the policy will not be modified, canceled non-renewed or permitted to lapse until not less than 30 days after the Authority has received written notice, by certified or registered mail, that the modification, cancellation, non-renewal or lapse of such policy is contemplated.

THE REQUIRED DOCUMENTATION MUST BE RECEIVED PRIOR TO OWNER COMMENCING WORK UNDER THIS AGREEMENT AND RECEIVING NOTIFICATION FROM AUTHORITY TO PROCEED.

- E. Owner shall advise, and cause each general contractor for the Development to advise, all insurers of the provisions of this Agreement regarding insurance. The failure of Owner or any general contractor to notify insurers of such provisions shall not relieve Owner from its insurance obligations under this Agreement. Nonfulfillment of the insurance provisions of this Agreement shall constitute a breach of the General Contractor's contract and of this Agreement and the Authority retains the right to stop work until proper evidence of insurance is provided.
- F. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Authority's Risk Management Department, with a copy to the Authority's designated representative under Section 1.7 of the

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Development Agreement, prior to expiration of insurance coverage. At the Authority's option, non-compliance may result in one or more of the following actions: (1) the Authority may purchase insurance on behalf of Owner and charge back all costs to Owner; (2) the General Contractor may be immediately removed from the property and its contract revoked; or (3) all payments due Owner and the General Contractor may be held until Owner has complied with the contract. The receipt of any certificate by the Authority does not constitute agreement by the Authority that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of this Agreement. Owner shall ensure, or cause the General Contractor to ensure, that all subcontractors comply with the Authority's minimum coverage requirements. It is the responsibility of Owner to secure and maintain, or cause the General Contractor to ensure or maintain, proof of coverage for all entities that it contracts with that provide services to the Development. Proof of insurance records must be available for review by the Authority within twenty-four (24) hours of being requested.

G. If any of the required insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the General Contractor's contract, and the Certificate of Insurance shall state the coverage is "claims-made" and also the retroactive date. Any extended reporting period premium (tail coverage) shall be paid by Owner, directly or through the General Contractor. It is further agreed that all insurance policies required hereunder shall provide the Authority with not less than a thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the retroactive date, cancellation and/or non-renewal.

H. Owner shall provide to the Authority, prior to the date of this Agreement and upon each renewal or replacement of a policy required hereunder, and in any event not less than annually, a certified copy of the insurance policies required hereunder and all endorsements.

- I. Owner shall require, directly or through the General Contractor, that all subcontractors performing work for the Development carry the insurance required herein. Owner or the General Contractor may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above. Evidence of such coverage shall be submitted to the Authority for record keeping purposes only.

II. OWNER'S INSURANCE REQUIREMENTS

Owner agrees to procure and maintain, or cause to be procured and maintained, at all times during the term of this Agreement the types of insurance specified below in order to protect the Authority, its Commissioners, Board, officers, agents and employees, from the acts, omissions

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and negligence of Owner, any general contractor (including without limitation the General Contractor), any subcontractor, and their respective officers, officials, subcontractors, shareholders, partners, joint venturers, members, agents or employees. The insurance carriers used by Owner must be authorized to conduct business in the State of Illinois and shall have a BEST Rating of not less than an "A". The insurance provided shall cover all operations under this Agreement, whether performed by Owner, by any general contractor (including without limitation the General Contractor) or by any subcontractor.

A. Required Insurance Coverages:

1. Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois (Statutory) Coverage A, and Employer's Liability, Coverage B, in an amount of not less than \$500,000/\$500,000/\$500,000.
2. All-Risk Property Damage: Owner shall obtain an all-risk property policy in the amount of the full replacement value, including improvements and betterment, covering damage to or loss of the Premises. The insurance shall include the following extensions: business interruption/loss of rents, and boiler and machinery, if applicable. The policy shall list the Authority as loss payee.
3. General Liability Insurance General Liability Insurance provided is to have a limit of not less than One Million Dollars (\$1,000,000) per occurrence with a aggregate of not less than Two Million Dollars (\$2,000,000) (i.e. \$1,000,000/\$2,000,000). In addition to the stipulations outlined above, the insurance policy is to include coverage for Contractual Liability, Products-Completed Operations, Personal & Advertising Injury and will also cover injury to Owner's officers, employees, agents, subcontractors, invitees and guests and their personal property. The Authority is to be endorsed as an additional insured on the policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
4. Automobile Liability Insurance. When any motor vehicles (owned, non-owned and hired) are used in connection with the services to be performed, Owner shall provide Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence CSL, for bodily injury and property damage. The Authority is to be endorsed as an additional insured on Owner's policy and such insurance shall be endorsed as primary and non-contributory with any other insurance available to the Authority.
5. Professional Liability. When any architects (of record), engineers (of record), construction managers, property managers or other professional consultants perform work in connection with this Agreement, Professional

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Liability insurance covering acts, errors or omissions shall be maintained with limits of not less than Five Million Dollars (\$5,000,000) per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of services under this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6. Blanket Crime. Owner shall provide Blanket Crime coverage in a form reasonably acceptable to the Authority, against loss by dishonesty, robbery, burglary, theft, destruction or disappearance, computer fraud, credit card forgery and other related crime risks. The policy limit shall be written to cover losses in the amount of the maximum monies collected, received and/or in Owner's care at any given time, but shall in no event be less than the aggregate amount of two (2) months operating subsidy.

B. Related Requirements

1. Owner shall advise all insurers of the provisions of this Agreement regarding insurance. The failure of Owner to notify insurers of the such provisions shall not relieve Owner from its insurance obligations under this Agreement. Nonfulfillment of the insurance provisions shall constitute a breach of this Agreement and the Authority retains the right to stop work until proper evidence of insurance is provided.
2. Owner shall furnish the Chicago Housing Authority, Risk Management Department, 60 E. Van Buren, 11th Floor, Chicago, Illinois 60661, original Certificates of Insurance evidencing the required coverages to be in force on the date of this Agreement. In addition, copies of the endorsement(s) adding the Authority to the policy as an additional insured is required.
3. Renewal Certificates of Insurance, requested endorsements, or such similar evidence is to be received by the Risk Management Department, with a copy to the Authority's designated representative prior to expiration of insurance coverage. At the Authority's option, non-compliance may result in one of the following actions in addition to any rights or remedies in any Closing Documents: (1) the Authority may purchase insurance on behalf of Owner and charge back all costs to Owner; (2) all payments due Owner may be held until Owner has complied with this Agreement; or (3) Owner may be assessed Five Hundred Dollars (\$500) for every day of non-compliance. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with the requirements of this Agreement. The insurance policies shall provide for thirty (30) days written notice to be given to the Authority in the event coverage is substantially changed, canceled or non-renewed.

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4. If any of the required insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincident with the date of this Agreement and the Certificate of Insurance shall state the coverage is "claims-made" and also the retroactive date. Owner shall maintain coverage for the duration of this Agreement. Any extended reporting period premium (tail coverage) shall be paid by Owner. Owner shall provide to the Authority, annually, a certified copy of the insurance policies obtained pursuant hereto. It is further agreed that Owner shall provide the Authority a thirty (30) days notice in the event of the occurrence of any of the following conditions: aggregate erosion in advance of the retroactive date, cancellation and/or non renewal.

5. Owner shall require any general contractor to require all subcontractors to carry the insurance required herein or Owner may provide the coverage for any or all of its subcontractors, and if so, the evidence of insurance submitted shall so stipulate and adhere to the same requirements and conditions as outlined in Section "A" above.

* Excess Liability can be satisfied by \$10,000,000 each Developer/Owner and General Contractor separately in Excess Liability coverage or any combination equal to \$20,000,000 in total of Excess Liability coverage.

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EXHIBIT D

Location of PHA-Assisted Units

(See Attachment)

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property Cook County Clerk's Office

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Exhibit D to R&O Agreement

STERLING PARK APARTMENTS
3301 W. ARTHINGTON STREET, CHICAGO, IL 60624
ACC UNITS: ACCESSIBILITY MATRIX

SUMMARY

1	24		3	24		2
2	31	1	5	31	1	5
3	9	2	1	9		2
4	2		4	2	1	0

DETAIL

6	1	1	N-09			X	
6	1	1	N-17			X	
4	1	1	W-07			X	
4	1	1	W-14			X	
6	1	2	N-05			X	
6	1	2	N-08			X	
6	1	2	N-21			X	
4	1	2	W-05			X	X
4	1	2	W-15			X	
6	1	3	N-14			X	
6	1	3	N-16	X		X	
6	2	1	N-01			X	conduit
6	2	1	N-15			X	
6	2	1	N-19		X	X	
4	2	1	W-03		X	X	
6	2	2	N-02			X	
6	2	2	N-04			X	
6	2	2	N-06			X	
4	2	2	W-06			X	
4	2	2	W-08			X	
4	2	2	W-13		X	X	
4	2	2	W-18			X	conduit
6	2	3	N-13	X		X	
6	2	3	N-22			X	conduit
4	2	3	W-11			X	
6	2	4	S-02			X	X
6	3	1	N-09			X	
6	3	1	N-12			X	
6	3	1	N-17			X	
4	3	1	W-04			X	
6	3	2	N-02		X	X	
6	3	2	N-04			X	

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Exhibit D to R&O Agreement

STERLING PARK APARTMENTS
3301 W. ARTHINGTON STREET, CHICAGO, IL 60624
ACC UNITS: ACCESSIBILITY MATRIX

DETAIL

6	3	2	N-06			X	
4	3	2	W-02			X	conduit
4	3	2	W-06			X	
4	3	2	W-08			X	
4	3	2	W-09			X	
6	3	3	N-13			X	
4	3	3	W-01			X	
4	3	3	W-10			X	
6	3	4	S-05		X	X	
6	4	2	N-01			X	conduit
6	4	1	N-08		X	X	
6	4	1	N-10			X	
6	4	1	N-19			X	
6	4	2	N-03			X	
6	4	2	N-04			X	
4	4	2	W-04			X	conduit
4	4	2	W-05			X	
4	4	2	W-07			X	
4	4	2	W-13		X	X	
6	4	3	N-13		X	X	conduit
6	5	1	N-07			X	
6	5	1	N-10			X	
6	5	1	N-17			X	
6	5	1	N-19			X	
6	5	2	N-02		X	X	
6	5	2	N-03			X	conduit
6	5	2	N-05			X	conduit
6	6	1	N-01			X	
6	6	1	N-12			X	
6	6	1	N-15			X	
6	6	1	N-18			X	
6	6	2	N-02	X		X	
6	6	2	N-04			X	
6	6	2	N-06			X	