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Lakefront II Rental

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

REGULATORY AND OPERATING AGREEMENT

AMONG

CHICAGO HOUSING AUTHORITY

AND

LAKEFRONT PHASE II, 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, 2012 is made by and among the Chicago Housing Authority, an Illinois municipal corporation (the "Authority") and Lakefront Phase II, LLC, an Illinois limited liability company (the "Owner").

RECITALS

A. The Owner intends to develop a one hundred thirty-two (132) unit mixed income, multi-family residential rental development pursuant to 24 CFR Part 941, Subpart F, to be known as Lakefront Phase II Rental (the "Development") and which will consist of thirteen (13) buildings. The Owner has agreed to dedicate forty-seven (47) 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. The Owner will finance the Development with a combination of public and private sources pursuant to a mixed-finance proposal submitted by the Authority to the United States Department of Housing and Urban Development ("HUD") for approval in accordance with 24 CFR Section 941.608. HUD has provided its written approval of the mixed-finance proposal to the Authority, as provided in 24 CFR Section 941.608(c).

B. In consideration of the Authority's agreement to ground lease the land upon which the Development will be constructed and to participate in the mixed-finance proposal by making a construction and/or permanent loan of Development and Capital funds in an amount of not to exceed \$13,925,000 to pay a portion of the costs of the PHA-Assisted Units (the "CHA Loan") and by providing an annual operating subsidy 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 Act during the Term of this Agreement. The Owner intends, subject to All Applicable Public Housing Requirements, to operate and maintain forty-two (42) of the forty-seven (47) 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. The remaining five (5) PHA-Assisted Units will be leased to families whose income is up to 80% of the Chicago-area median income ("AMI").

D. The Authority will make the CHA Loan to Owner by lending Development and Capital 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 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.

E. 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; (ii) the Consolidated Annual Contributions Contract C-1150, dated December 11, 1995, between HUD and the Authority; or (iii) 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 Reserve" shall mean the ACC Reserve 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 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 Proposal dated April 23, 2012, as amended, the Declaration of Restrictive Covenants, this Agreement, Gautreaux Court Orders, the Amended and Restated Moving to Work Demonstration Agreement, 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:

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

The parties acknowledge that the land and/or improvements, or portions thereof or of the assessed values thereof, may be exempt from real estate taxes and/or subject to total or partial 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 exemptions and 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) "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.

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

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

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

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

(p) "Construction Loan" shall mean during construction that certain loan of U.S. Bank National Association to the Owner in the amount of \$21,500,000.

(q) "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.

(r) "Declaration of Restrictive Covenants" shall mean the recorded declaration, dated as of June 1, 2012, 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.

(s) "Developer" shall mean Davis Lakefront LLC, an Illinois limited liability company.

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

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

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

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

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

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

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

(aa) "Estimated PHA-Assisted Units Income" shall mean the PHA-Assisted Units Income estimated for any period.

(bb) "Excess Operating Subsidy" shall have the meaning given in Section 4(i) hereof.

(cc) "Extended Use Period" shall have the meaning given in Section 42 of the Code.

(dd) "First Mortgage Lender" shall mean U.S. Bank National Association, its successors, assigns and transferees including, without limitation, the lender under any Permitted Refinancing.

(ee) "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).

(ff) "Ground Lease" shall mean that certain Ground Lease by and between the Authority and Stateway Community Partners, an Illinois not-for-profit corporation, which has been assigned by Stateway Community Partners to Owner pursuant to that certain Assignment and Assumption and Amendment to Ground Lease, by and among Stateway Community Partners, Owner and the Authority dated as of June 1, 2012 as amended from time to time in accordance with their terms relating to the land described in Exhibit A hereto.

(gg) "HUD" shall have the meaning given in the Recitals.

(hh) "Initial Operating Deficit Reserve" shall mean the Operating Reserve Account required to be established and maintained in accordance with the Operating Agreement.

(ii) "Investor" shall mean Centerline Investor LP III LLC, a Delaware limited liability company.

(jj) "Management Agent" shall mean the Management Agent acting under the Management Agreement in effect from time to time.

(kk) "Management Agreement" shall mean the Management Agreement covering the PHA-Assisted Units in effect from time to time in accordance with Section 3(e) hereof.

(ll) "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.

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

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

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

(pp) "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.

(qq) "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, as amended.

(rr) "Operating Agreement" shall mean that certain Operating Agreement of the Owner, dated as of June 1, 2012 as the same may be amended from time to time.

(ss) "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.

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

(uu) "Permanent Loan" shall mean the conversion of the Construction Loan into an amortizing term loan in an amount not to exceed \$2,450,000 upon completion of the Development and the satisfaction of certain other conditions, including the partial payment of the Construction Loan.

(vv) "Permitted Refinancing" shall mean the refinancing of any Mortgage Loan to be made to the Owner by a Mortgage Lender pursuant to loan documents approved by CHA and HUD, including the conversion of the Construction Loan to the Permanent Loan.

(ww) "PHA-Assisted Units" shall mean the multifamily rental units in the Development that are required to be operated and maintained as "public housing" units in accordance with All Applicable Public Housing Requirements, as further described in Section 2 hereof.

(xx) "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).

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

(zz) "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.

(aaa) "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).

(bbb) "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.

(ccc) "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.

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

(eee) "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.

(fff) "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 and Tenant Housing Payments paid by tenants of the PHA-Assisted Units.

(ggg) "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.

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

(iii) "Reserves" shall mean the Subsidy Carryover Reserve Account and the PHA Tenant Rent Reserve Account, as established pursuant to Section 5.

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

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

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

(mmm) "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.

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

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

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

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

(rrr) "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.

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

(ttt) "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 Developer shall develop, construct and sell to the Owner who will continuously set aside the PHA-Assisted Units as "public housing" units, for occupancy by public housing-eligible households who will be obligated to pay Tenant Housing Payments in compliance with and subject to All Applicable Public Housing Requirements. Provided that the Developer has developed and 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:

New Construction

1 Bedroom Units	16	2 Bedroom Units	14
3 Bedroom Units	17	4 Bedroom Units	0

Total Units 47

(b) **Location of Units.** There shall be not less than forty-seven (47) total PHA-Assisted Units within the Development. The location of the PHA-Assisted within the Development may float among the 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 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. The Owner agrees to pay the Authority's cost for processing any amendment to the Mixed Finance Amendment to accommodate changes in unit location.

(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, where applicable. During the Compliance Period, the PHA-Assisted Units which are covered by Low Income Housing Tax Credits shall be subject to the 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. The Owner acknowledges and agrees to, minimally, provide of the 47 PHA-Assisted Units to be constructed, at least 5.3% mobility and 2.1% hearing/visual impaired units.

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 the Relocation Rights Contract (relating to lease compliance and grievance procedure) 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 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(p) 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.

(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. Owner shall cause the Management Agent to be responsible 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 4(d) 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 Creative Computer Solutions system (CCS) purchased by the Authority, including, but not limited to, work orders, housing eligibility, tenant accounting, accounts payable, general ledger, bank reconciliation, payroll, purchasing, fixed assets, inventory control and modernization/development. Owner shall cause the Management Agent to use the system of record (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. 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 DV Property Management LLC.

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 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 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 ("Former Residents"), subject to the income tiering requirements of the tax credit application to 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 Former 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 Former 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.

(ii) The Authority delegates to the Owner, subject to re-delegation to the Management Agent, all administrative functions in connection with 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) during the Compliance Period and Extended Use Period for 42 of the 47 units, Eligible Occupants must meet the applicable requirements for occupancy under

the Tax Credit Requirements; and (C) applicable requirements under Section 142(d) of the Code; and (D) for all Eligible Occupants, 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, which approval shall not be unreasonably withheld, delayed or conditioned, 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 the Authority approves the Owner's request, the payment of Operating Subsidy shall cease at the end of the thirtieth year after the date of first occupancy of the last PHA-Assisted Unit. 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 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 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 Development or 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 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) and other applicable law. In addition, such leases shall be subject to any required HUD approval of variations from the 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, where 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) 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 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.

(l) **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 grievance procedures set forth in the Tenant Leases 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 with the Authority's consent, which consent shall not be unreasonably withheld.

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

(i) The Authority acknowledges that 42 of 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 these 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 42 PHA-Assisted Units that are also LIHTC 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 PHA-Assisted Units, if the effect of such action or inaction would cause the Owner to violate the Tax Credit Requirements as applied to the 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 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 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.

(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 Operating Budget or provide to the Owner in writing an explanation as to the reasons the proposed Operating Budget has not been approved. The parties shall make reasonable good faith efforts to agree on the Operating Budget, subject to All Applicable Public Housing Requirements.

If following reconciliation efforts, the Authority does not approve the Owner's proposed 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 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 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 Operating Budget for the next Development Fiscal Year.

To the extent an approved 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 Sales Proceeds Account to the extent of available funds, next 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 (A) to cause the PHA-Assisted Units to comply with any applicable building or housing code; (B) to cause the PHA-Assisted Units to comply with changes to the accessibility requirements described in Section 2(e) above that are enacted after the date hereof; (C) to cause any PHA-Assisted Units to comply with changes required by the Authority after the date of acceptance of such PHA-Assisted Unit by CHA; or (D) to cause any PHA-Assisted Unit to be converted; with the prior written consent of CHA from a "Type A" unit to a UFAS unit, 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.

(d) **Authority Payment of Operating Subsidy.** During the Term of this Agreement, Developer shall develop the Development and the Owner shall acquire 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 \$375.00 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 of 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 an 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 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.

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 Unit, 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 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, or (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.

(d) Operating Deficit Reserve Account.

(i) *Deposits.* In accordance with the Operating Agreement, the Owner will create an operating reserve and a lease-up reserve (collectively, the "Operating Deficit Reserve Account"). The Operating Deficit Reserve Account will be funded initially with equity in the amount of \$350,000 and will not be replenished with Public Housing Funds.

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

(iii) *Withdrawals.* The Operating Agreement governs withdrawals made from the Operating Deficit Reserve Account. The Operating Deficit 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 Deficit 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) Affordability/ACC Reserve Account.

(i) *Deposits.* In accordance with the Operating Agreement, the Owner will create an Affordability Reserve Account ("ACC Reserve"). The ACC Reserve will be funded from equity as described in the Operating Agreement in the amount of \$225,600. No Public Housing Funds will be used to fund or replenish the ACC Reserve.

(ii) *Establishment and Ownership.* The ACC 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 4.5.10, 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 CHA Loan upon disposition of the Development, expiration of the Compliance Period, and/or expiration of the Declaration of Restrictive Covenants. If not used for any such purpose, upon the sale or transfer of the PHA-Assisted Units, amount in the ACC Reserve shall be returned to the Owner to be applied in accordance with the Operating Agreement.

(f) **Replacement Reserve Account.**

(i) *Deposits.* As required by the Operating Agreement, the Owner will create a Replacement Reserve Account ("Replacement Reserve"). The Replacement Reserve will be funded initially with equity in the amount of \$19,600, then thereafter at (i) \$300 per dwelling unit per year (increasing annually as provided in the Operating Agreement) or (ii) an amount required by the First Mortgage Lender.

(ii) *Establishment and Ownership.* The Replacement Reserve is established by the Owner. The Replacement Reserve 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 Replacement Reserve shall continue to be used for replacement expenditures with respect to the Development in accordance with clause (iii) below. Upon casualty or condemnation without restoration of the PHA-Assisted Units, or in the event the PHA-Assisted Units are no longer operated as such, the Replacement Reserve allocable to the PHA-Assisted Units will be paid to the Authority and constitute funds of the Authority with no obligation on the part of the Authority to return or remit such funds. If and to the extent the number of PHA-Assisted Units assisted under this Agreement decreases for any reason whatsoever, the amount required to be held hereunder in the Replacement Reserve shall be proportionately reduced, and the excess shall be paid to the Authority and constitute funds of the Authority with no obligation on the part of the Authority to return or remit such funds.

(iii) *Withdrawals.* The Operating Agreement governs withdrawals from the Replacement Reserve. The Replacement Reserve is to be used for replacement expenditures approved by the lenders (including the Authority) and, in certain cases, the Investor.

(g) *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.

(h) **Restriction on Public Housing Funds.** Public Housing Funds shall not be used by Owner or any managing member 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 Section 6 is to ensure that in the event there should be any legislative changes, diminished appropriations, uncontrollable cost increases, or other circumstances not the fault of 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(d), 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 Reserve Fund for Replacements) 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 ACC Reserve in accordance with the Operating Agreement, and to use and apply the ACC Reserve only for purposes relating to 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 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 Section 42 of the Code 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.

(iv) *Adjust Income Mix on Turnover.* The Owner and the Authority shall take such steps as may be necessary and in accordance with 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, 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 the parties hereto acknowledge that the Development is such a project), the Owner and the Authority acknowledge that HUD has not issued regulations as of this time to implement the authority set forth in Section 35(h) and, thus, has not yet established a regulatory standard for determining which mixed income developments may qualify for the flexibility provided by Section 35(h); 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) **Preservation and Transformation Plan.**

(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:

(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 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 ACC 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 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 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 Lender, 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 its 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 any leasehold estate under any of the Ground Leases or 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 mortgages approved by HUD as evidentiary documents.

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.

(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 the CHA Loan and transfer of the Development and the PHA-Assisted Units to the mortgagee 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 this 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 (a) HUD and the Authority receive prior written notice of such Permanent Loan Conversion; (b) the mortgage and related documents securing such financing shall be in the form approved by HUD and the Authority;

(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; and

(vi) The Donations Tax Credit Regulatory Agreement between the Owner, Stateway Community Partners, an Illinois not-for-profit corporation and the City of Chicago; and the Regulatory Agreement between the Owner and the City of Chicago;

(vii) Normal uses associated with the operation of the Project, to the extent authorized by the ACC.

(d) Transfers of Interests in Owner.

(i) No transfer, conveyance, or assignment shall be made, without the prior written approval of HUD and the Authority, of: (A) any interest of a manager, managing member, general partner, or controlling stockholder (any such interest being referred to as a "Controlling Interest") (as defined in the Regulatory and Operating Agreement); or (B) a Controlling Interest in any entity which has a Controlling Interest in the Owner; or (C) prior to the payment in full of all equity contributions described in the approved evidentiary documents listed in the Mixed Finance ACC Amendment, any other interest in the Owner or 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's and the Authority's consent is not required 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) a non-controlling and non-managing interest in the business organization, provided that the Owner: (x) provides HUD and the Authority with written notice in advance 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. It is hereby acknowledged that the interest of Centerline Investor LP III LLC ("Investor") and Centerline SLP LLC ("Special Member") in Owner shall be considered a limited interest for purposes hereof and that the prior consent of HUD or the Authority shall not be

required for the transfer of the Investor's or Special Member's respective interest in Owner. Additionally, notwithstanding the foregoing, the consent of HUD and the Authority shall not be required for the pledge and assignment by the Investor and Special Member of their respective interests in Owner to U.S. Bank National Association and Bank of America N.A., pursuant to the Operating Agreement.

(iii) Notwithstanding the foregoing, HUD and the Authority consent to (1) the collateral pledge and assignment of the non-controlling, non-managing membership interest in the Owner to the Owner and the managing member of Owner as security for the obligation of the Investor to make its capital contributions to the Owner pursuant to the HUD-approved Operating Agreement (the "Operating Agreement") and (2) the collateral pledge and assignment by the Owner and its managing member of their respective security interest in the non-controlling, non-managing investor membership interest in the Owner granted to U.S. Bank National Association or its nominee under the security agreements approved by HUD as described in Exhibit E to the Mixed Finance ACC Amendment, provided HUD and the Authority are provided with (x) prior written notice of the foreclosure or other enforcement action with respect to any such security agreements, and (y) the transferee pursuant to any such foreclosure or enforcement action certifies to HUD and the Authority that the new owner of the limited interest is obligated to fund the portion of the remaining equity contributions, if any, in accordance with the terms of the HUD-approved Operating Agreement, which are to be used for construction and acquisition of the Development and to otherwise comply with the terms of the HUD-approved Operating Agreement.

(iv) 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 partnership structure of Owner or any member of the Owner, including the exercise of a right to remove the managing member or general partner and to designate a substitute managing member or general partner under the terms of the Owner's Operating Agreement.

(v) Notwithstanding the foregoing, HUD and the Authority agree that no prior approval is required for (i) the exercise by the Investor or Special Member or their respective affiliate of their rights to remove the managing member and to designate the Investor, Special Member or their respective affiliates as the substitute managing member under the terms of the Owner's Operating Agreement, provided that HUD and the Authority are given prior written notice of the default under the Operating Agreement and of the exercise of the removal and appointment right therein (the "Notice").

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 and the Project continues to be operated in a manner consistent with All Applicable Public Housing Requirements.

(vii) Notwithstanding the foregoing, HUD's and the Authority's consent is not required to the transfer of the Controlling Interest of the Managing Member of the Owner to the Bank or its nominee pursuant to foreclosure or other enforcement of the security agreements approved as evidentiary documents by HUD and the Authority, provided the Bank or its nominee assumes to the satisfaction of the Authority all of the Managing Member's rights, responsibilities, and obligations under the evidentiary documents set forth in Exhibit E to the Mixed Finance Amendment, provided, however, that the exclusion of such pledge or enforcement action from the transfer restrictions contained in Section 9(d)(i) of the Regulatory and Operating Agreement shall not permit the admission of a new or substitute managing member of the Owner (with the exception of the Bank or its nominee) without the prior written consent of the Authority and HUD, such consent not to be unreasonably withheld.

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.

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 Developer, 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.

(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, the Developer, HUD, the Investor of (i) the nature of the default, (ii) the actions required to be taken by the 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 actions 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 Reserve, 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, 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, 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 or any Grant Agreement.

(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 Section 12(C) and (D) of the Mixed-Finance Amendment.

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 Floor
Chicago, Illinois 60605
Attention: Chief Executive Officer

with a copy to:

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

If to the Owner:

Lakefront Phase II, LLC.
c/o Davis Lakefront, LLC
3619 S. State Street, Suite 400
Chicago, Illinois 60609
Attention: Robert Koerner

with a copy to:

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

If to Management Agent, to:

DV Property Management LLC
3619 S. State Street, Suite 400
Chicago, Illinois 60609
Attention: Jared Davis

If to Investor, to:

Centerline Capital Group
100 Church Street,
15th Floor
New York, N.Y. 10007
Attention: Michael Riechman (Senior
Managing Director) and General Counsel –
Affordable Housing

with a copy to:

Nixon Peabody LLP
401 9th Street NW
Washington, DC 20004
Attn: Richard S. Goldstein

If to First Mortgage Lender, to:

U.S. Bank National Association Community
Development Lending MK-IL-RY2C
209 S. LaSalle St., Suite 210 Chicago,
Illinois 60604 Attn: Andrew W.
Hugger, Asst. V.P.

with a copy to:

Charity & Associates, P.C.
20 North Clark Street, Suite 1150
Chicago, Illinois 60602
Attention: Elvin E. Charity, Esq.

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 General Counsel

and

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.

(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 may not be amended in any material respect without the prior written consent of the Authority, which shall not be unreasonably withheld.

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: _____

John Gerut
Interim Executive Vice President
Office of Development Management

OWNER

Lakefront Phase II, LLC,
an Illinois limited liability company,

By: Lakefront Phase II Manager, LLC,
an Illinois limited liability company,
its Managing Member

By: Davis Lakefront LLC,
an Illinois limited liability company,
its Sole Member

By: _____

Name:
Manager

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:

John Gerst
Interim Executive Vice President
Office of Development Management

OWNER

Lakefront Phase II, LLC,
an Illinois limited liability company,

By: Lakefront Phase II Manager, LLC,
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its Managing Member

By: Davis Lakefront LLC,
an Illinois limited liability company,
its Sole Member

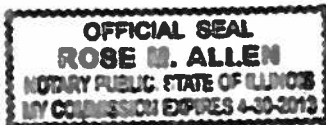
By:

Name: Robert E. Koerner
Manager

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

This instrument was acknowledged before me on June 29, 2012, by John Gerut, as Interim Executive Vice President of the Office of Development Management 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 _____, as Manager of Davis Lakefront LLC, an Illinois limited liability company, member of Lakefront Phase II Manager, LLC, an Illinois limited liability company, managing member of Lakefront Phase II, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as manager of Davis Lakefront LLC, member of Lakefront Phase II Manager, LLC, managing member of Lakefront Phase II, LLC, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and the free and voluntary act of Lakefront Phase II Manager, LLC in its capacity as managing member of Lakefront Phase II, LLC for the uses and purposes therein set forth.

GIVEN UNDER MY HAND, and seal of office, this the ____ day of June, 2012.

Notary Public

ACKNOWLEDGMENT

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 2012, by John Gerut, as Interim Executive Vice President of the Office of Development Management of the Chicago Housing Authority.

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 Robert E. Koerner, as Manager of Davis Lakefront LLC, an Illinois limited liability company, member of Lakefront Phase II Manager, LLC, an Illinois limited liability company, managing member of Lakefront Phase II, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as manager of Davis Lakefront LLC, member of Lakefront Phase II Manager, LLC, managing member of Lakefront Phase II, LLC, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and the free and voluntary act of Lakefront Phase II Manager, LLC in its capacity as managing member of Lakefront Phase II, LLC for the uses and purposes therein set forth.

GIVEN UNDER MY HAND, and seal of office, this the 21st day of June, 2012.

Margaret A. Grassano
Notary Public

