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CONTROL AGREEMENT

between

NEW YORK CITY HOUSING AUTHORITY

and

_____**OWNER, LLC**

Dated as of _____, 20__

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CONTROL AGREEMENT

THIS CONTROL AGREEMENT (this “**Agreement**”) is entered into as of _____, 20____, by and between the NEW YORK CITY HOUSING AUTHORITY, a public body corporate and politic, organized and existing under the laws of the State of New York (the “**Authority**”), and _____, a New York [limited liability company/partnership] (“**Owner**”).

RECITALS:

WHEREAS, the Authority, _____ Housing Development Fund Corporation (“**HDFC**”), and Owner entered into the Lease Agreement (as hereinafter defined), which conveys a leasehold interest in those low-income housing developments commonly known as _____ (collectively, the “**Development**”) to Owner and HDFC;

WHEREAS, the Development includes _____ residential buildings, containing _____ rental units (each a “**Rental Unit**”, and collectively, the “**Rental Units**”), _____ dwelling units for on-site superintendent staff, _____ community facility space(s), _____ management office(s), and _____ community center(s), as further described in the Lease Agreement;

WHEREAS, the Authority has requested that Owner modernize or cause the modernization of the Development;

WHEREAS, _____ Rental Units will receive rental subsidy pursuant to those certain Section 8 Project-Based Voucher Program PBV Housing Assistance Payments Contracts by and between the Authority and Owner, effective as of _____, as may be amended, and _____ Rental Units will receive rental subsidy pursuant to those certain Section 8 Project-Based Voucher Program PBV Housing Assistance Payments Contracts by and between the Authority and _____, dated _____, as assigned to Owner and amended (collectively, the “**PBV HAP Contract**”);

WHEREAS, _____ Rental Units will receive rental subsidy pursuant to those certain Rental Assistance Demonstration (RAD) for the Conversion of Public Housing to Section 8 Project-Based Voucher Program Housing Assistance Payments Contracts by and between the Authority and Owner, effective as of _____ (collectively, the “**RAD HAP Contract**”);

WHEREAS, on _____, the U.S. Department of Housing and Urban Development (“**HUD**”) issued a Rental Assistance Demonstration (RAD) Conversion Commitment (Public Housing and Section 8 Moderate Rehabilitation (Mod Rehab) Program Conversions; First Component), as amended (the “**RCC**”), for the RAD Units;

WHEREAS, the RCC obligates the Authority to ensure that the RAD Units are developed and operated in accordance with all RAD Requirements (as hereinafter defined), including those contained in the RCC;

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WHEREAS, the Authority is obligated to ensure that the entire Development is developed and operated in accordance with the PACT Principles (as hereinafter defined);

WHEREAS, the Authority and Owner enter into this Agreement in order to ensure that the Development is developed and operated in accordance with the RAD Requirements, the PACT Principles, the PBV Requirements, and other requirements of the Authority and HUD described herein; and

WHEREAS, Owner has entered into financing and regulatory arrangements approved by Authority that impose use restrictions on Owner as stated in recorded agreements, [including a regulatory agreement requiring compliance with Section 142 of the Internal Revenue Code, as amended.] Requirements of such agreements are referred to herein as “**Other Requirements**”.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties incorporate the above Recitals and hereto covenant and agree as follows:

ARTICLE I DEFINITIONS

As used herein, the following terms have the following meanings. Certain other capitalized terms are defined when they first appear.

“**Approved Mortgage Lenders**” has the meaning ascribed to Permitted Leasehold Mortgagees in the Lease.

“**Approved Mortgage Loan**” has the meaning ascribed to Permitted Leasehold Mortgages in the Lease.

“**Development**” has the meaning set forth in the Recitals.

“**Development Fiscal Year**” means the calendar year.

“**Grievance Procedures**” means the New York City Housing Authority Termination of Tenancy Procedures, as may be amended from time to time, a copy of which is attached at Exhibit F.

“**Guarantor**” means, collectively, _____.

“**HAP Contract**” means, collectively, the PBV HAP Contract and the RAD HAP Contract.

“**HDFC**” has the meaning set forth in the Recitals.

“**HUD**” means the United States Department of Housing and Urban Development and any successors in interest.

“**HUD Declaration**” means those certain Declarations of Restrictive Covenants and Use Agreements executed by the Authority, Owner, and HDFC and recorded against that portion of the Development that is undergoing subsidy conversion pursuant to Section 18 of the U.S. Housing Act of 1937, as amended, or is being retained outside of the public housing program pursuant to 2 CFR Part 200, with respect to permitted uses of such portions of the Development

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and rights of potential beneficiaries, which use restriction governs in case of any conflict with this Agreement.

“HUD Requirements” means, collectively, the RAD Requirements and the PBV Requirements, as applicable.

“Lease Agreement” means, collectively, those certain Lease Agreements by and among the Authority, Owner, and HDFC, dated as of even date herewith.

“Net Cash Flow” has the meaning set forth in the Partnership Agreement.

“Other Requirements” has the meaning set forth in the Recitals.

“PACT Principles” means the Principles for the Rental Assistance Demonstration: Supplemental Resident Rights and Protections under RAD Conversion, dated June 13, 2016, as may be amended from time to time, a copy of which is attached at Exhibit E.

“Partnership Agreement” means Owner’s Amended and Restated Agreement of Limited Partnership, dated on or about the date hereof.

“PBV” means Project-Based Vouchers.

“PBV HAP Contract” has the meaning set forth in the Recitals.

“PBV Requirements” mean all requirements of the PBV program, including without limitation applicable requirements of Section 8 of the U.S. Housing Act of 1937, regulations at 24 CFR Part 983, the PBV HAP Contract, and the Authority’s Section 8 Administrative Plan, but subject to any waivers issued by HUD.

“PBV Units” mean the _____ Rental Units in the Development to be covered under the PBV HAP Contract.

“Quarterly Report” means the report required by Section 5.1 herein.

“RAD Conversion” means the conversion of a portion of the Development’s rental subsidy in accordance with the RAD Program effective as of the date hereof.

“RAD HAP Contract” has the meaning set forth in the Recitals.

“RAD Program” means the Rental Assistance Demonstration (RAD) Program created by the Consolidated and Further Continuing Appropriations Act of 2012, and [RAD Notice Revision 4 (H 2019-09 PIH 2019-23) (Published September 5, 2019)], as further amended from time to time.

“RAD Requirements” means the requirements applicable to the RAD Program created by the Consolidated and Further Continuing Appropriations Act of 2012, including but not limited to (1) the Consolidated and Further Continuing Appropriations Act of 2012, as amended, all applicable statutes and any regulations issued by HUD for the RAD Program, as they become

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effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices (including but not limited to, [RAD Notice Revision 4 (H 2019-09 PIH 2019-23) (Published September 5, 2019)], as it may be further amended from time to time), and Mortgagee letters (if any) for the RAD Program, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Development only to the extent that they interpret, clarify and implement terms in the applicable closing document rather than add or delete provisions from such document.

“RAD Units” means the _____ Rental Units in the Development covered under the RAD HAP Contract.

“RAD Use Agreement” means, collectively, those certain agreements executed by HUD, the Authority, Owner, and HDFC and recorded against that portion of the Development that is undergoing subsidy conversion pursuant to the RAD Program] with respect to permitted uses of such portions of the Development and rights of potential beneficiaries, which use restriction governs in case of any conflict with this Agreement.

“Rental Units” means, collectively, the RAD Units and the PBV Units.

“Replacement Reserve” means that reserve established in accordance with Section 4.2 herein and the requirements of HUD and Approved Mortgage Lenders.

ARTICLE II HUD COMPLIANCE

Section 2.1 HUD Compliance Agreements.

The Authority has informed Owner that the Development is subject to those certain voluntary compliance agreements, consent decrees and/or compliance agreements, as further described at Exhibit D, copies of which have been provided to Owner (the **“HUD Compliance Agreements”**). Owner shall comply with, and shall require Management Agent (as such term is defined below) to comply with, the HUD Compliance Agreements. Owner shall also promptly provide any documentation evidence as requested by the Authority to demonstrate compliance with this Article II; provided, however, that Owner shall provide any documentation evidence related to the repair or replacement of elevators and boilers and lead abatement work within five (5) business days of the completion of such work.

Section 2.2 Hiring Requirements.

(a) The Authority and Owner acknowledge and agree that the Development is subject to Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (**“Section 3”**). Owner shall, to the greatest extent feasible, require its general contractor (the **“General Contractor”**) and subcontractors to use Section 3 covered assistance to fill at least thirty percent (30%) of the new jobs created (construction and non-construction) in connection with the Development (the **“Section 3 Hiring Requirements”**).

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(b) The Section 3 Hiring Requirements shall be met as set forth below:

(i) Owner must cause the General Contractor to directly hire (to the greatest extent feasible) candidates in the following order of priority: (x) Authority residents of the Development as of the date hereof; (y) Authority residents from its other public housing developments (tenancy to be verified by the Authority); and (z) other low-income persons residing in the New York City metropolitan area.

(ii) In meeting the Section 3 Hiring Requirements, Owner shall cause the General Contractor to take steps at least as extensive as the following:

(i) Submit a completed NYCHA Section 3 Hiring Plan form to the Authority's Resident Economic Empowerment and Sustainability Division ("REES") as attached hereto Exhibit G-1;

(ii) Submit a completed NYCHA Wage Detail Form (attached as Exhibit G-2) to REES projecting hires for Section 3 positions only;

(iii) Submit completed job order forms (attached as Exhibit G-3) to REES to advertise Section 3 employment opportunities (with eligibility requirements) to the Authority residents (Owner and General Contractor will receive NYCHA resident candidate referrals from REES and provide candidate dispositions in an agreed-upon timeframe);

(iv) Cooperate with REES to perform employment opportunity outreach at the Development and other Authority-owned public housing developments in the _____ Community District _____;

(v) To the extent that there are any union-affiliated positions, forward, or cause to be forwarded, to each labor organization or representative of workers, which has a collective bargaining agreement or other contract or understanding, a notice advising said labor organization or workers' representative of the contractors or subcontractors, as the case may be, of the Section 3 Hiring Requirements and request that priority be given to Authority residents to provide labor for the Development work; and

(vi) To the extent that there are any union positions, request referrals of unemployed apprentices/trainees from REES, the NYCHA Resident Training Academy, the affiliated unions, and applicable apprentice program administrators who are Authority residents.

(iii) Owner shall require its General Contractor and/or subcontractor(s) to demonstrate compliance with the terms set forth above as follows:

(i) Submission to the Authority of signed NYCHA Hiring Summary Forms (attached as Exhibit G-4), setting forth the names, addresses, titles, wages, and hours worked of new hires, and certified payrolls. Hiring summaries and certified payrolls should be submitted not less than once per month;

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(ii) Submission to REES of signed NYCHA Employment Verification Forms (attached as Exhibit G-5) for each individual Section 3 hire; and

(iii) Attachment of the Rider in Exhibit G-6 to the General Contract.

Section 2.3 Hiring of Authority Residents.

Owner will cooperate with the Authority and use commercially reasonable efforts to undertake the activities set forth in this Section 2.3 with the goal of attracting qualified Authority residents to apply for jobs with the Management Agent (the “**Employment Representative**”) and tracking Employment Representative’s hiring of qualified Authority residents (the “**NYCHA Resident Hiring Program**”) pursuant to the Employment and Training Plan attached hereto as Exhibit H as may be amended from time to time and submitted to REES to REES’ satisfaction.

The NYCHA Resident Hiring Program shall be undertaken as follows:

(a) Owner will cause the Employment Representative to use commercially reasonable efforts to complete the following steps in partnership with the Authority to achieve a mutual goal of hiring the agreed upon number of Authority residents during and post construction:

(i) Submit completed Employment and Training Plan form attached hereto as Exhibit I-1 to REES to REES’ satisfaction;

(ii) Submit completed job order forms attached hereto as Exhibit I-2 to REES;

(iii) Receive and consider qualified Authority resident candidate referrals from REES for employment opportunities. Provide written feedback within three (3) business days to REES on all referrals;

(iv) Collaborate with REES to perform employment opportunity outreach in the Development and other Authority-owned public housing developments in _____ Community District ____ (in-person outreach shall occur no more than once per quarter);

(v) In collaboration with the Authority’s Department of Community Development, meet with the local resident councils at a reasonable location determined by the Employment Representative, no more than twice per calendar year, in a meeting to include all local resident councils within _____ Community District ____ to inform such entities of applicable eligibility requirements for existing or impending employment opportunities and to request the cooperation of such resident councils in the advertisement of such opportunities;

(vi) Collaborate with REES to advertise job opportunities using various outreach options including REES’s website and REES bi-weekly e-newsletter, as appropriate;

(vii) In addition to collaborating with REES, use additional outreach strategies to further recruit Authority residents in the community and advertise open opportunities;

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(viii) Commit to sponsoring a training program to help achieve the employment outcomes established above. REES should be used as a source to help inform the training; and

(ix) Provide a dedicated point person to the Employment Representative to facilitate referrals, tracking and reporting for permanent employment opportunities.

(b) The Authority acknowledges that it is committed to helping the Employment Representative find qualified residents to fill available employment positions. Accordingly, the Authority will:

(i) Through REES, provide ongoing referrals of qualified Authority residents for vacant employment positions;

(ii) Distribute announcements and advertisements through existing Authority communication channels to Authority residents and local tenant associations, advising them of available employment positions and eligibility requirements, and post and advertise opportunities within local development management offices; and

(iii) Through REES, provide Authority resident referrals from applicable training and partner workforce programs including the Authority Resident Training Academy and Jobs-Plus.

The Employment Representative will dedicate a point of contact for referral and submission of a quarterly report tracking candidates referred by REES to the Employment Representative. Employment Representative will work with the Authority and the hired employee to complete the NYCHA Employment Verification Forms (attached as Exhibit G-5) and submit the form to REES for each individual new hire placed in construction and post-construction/management positions. The Employment Representative will ensure that each employee consents to the release of personal information to the Authority.

The Employment Representative shall send the Authority annual reports summarizing the details of all personnel hires and specifying whether such hires are Authority residents.

Section 2.4 Minority, Women and Small Business Enterprises.

(a) The Authority has a policy to ensure that all business entities have an equal opportunity to benefit from participation in Authority procurement, consulting and construction activities.

(b) When issuing solicitations for contractors and subcontractors, Owner shall take affirmative steps to include Minority Business Enterprises and Women Business Enterprises. Owner will, in all solicitations or advertisements for bids, state that all qualified applicants will receive consideration for subcontracts without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service. As used in this Section 2.4, these terms have the following definitions:

(i) Minority Business Enterprise (“**MBE**”) means a business that is at least fifty-one percent (51%) owned by one or more minority group members; or, in the case of a

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publicly-owned business, one in which at least fifty-one percent (51%) of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members include (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (c) Native American or (d) Alaskan native persons having origins in any of the original peoples of North America; (e) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (f) those groups of United States citizens or resident legal aliens designated by the Small Business Administration or any group designated in regulations developed by the Secretary of HUD.

(ii) Women Business Enterprise (“**WBE**”) means a business that is at least fifty-one percent (51%) owned by one or more women who are United States citizens or resident legal aliens; or, in the case of publicly owned businesses, one in which at least fifty-one percent (51%) of the stock is owned by one or more women who are United States citizens or resident legal aliens and whose management and daily operations of the business are controlled by one or more such women.

(iii) Small Business Enterprise (“**SBE**”) means a business that is owned by one or more persons who are United States citizens or resident legal aliens, with a place of business located in the United States, operates primarily within the United States and is sized consistently with the requirements set forth in 13 CFR Section 121.201, which defines size standards for small businesses, based on either annual receipts or the number of employees.

(c) Owner shall take all appropriate affirmative steps to achieve to the greatest extent possible, that thirty percent (30%) of all firms sought for consideration for award of subcontracts are either MBE, WBE and/or SBE firms.

(d) Affirmative steps will include:

- (i) Placing qualified SBE, MBE and WBE enterprises on solicitation lists;
- (ii) Assuring that SBE, MBE and WBE enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by SBE, MBE and WBE enterprises;
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by SBE, MBE and WBE enterprises;
- (v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (vi) Requiring prime contractors, if subcontracts are to be let, to take the above affirmative steps.

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(e) Owner shall submit monthly reports to the Authority's Real Estate Development Department at the address stated in Section 7.3 showing the name of the contractors or subcontractors, federal tax id, the date of the contract, the amount of the contract and identifying whether such contractor or subcontractor is a MBE, SBE or WBE.

Section 2.5 Davis-Bacon Requirements.

Owner shall comply with the labor standards set forth in HAP Contracts and will cause its General Contractor and subcontractors to certify to the Authority that contractors and subcontractors have complied with the Davis-Bacon Act at [Substantial Completion], as such term is defined in Partnership Agreement. Failure to do so will be an Event of Default under this Agreement. To the extent that the General Contractor and/or its subcontractors utilize an electronic or automated labor compliance and prevailing wage reporting system, Owner shall cause the General Contractor and/or its subcontractors to provide the Authority with access to the reporting system for purposes of monitoring compliance with the Davis-Bacon Act. Periodic prevailing wage compliance reports shall be provided to the Authority as required.

ARTICLE III MANAGEMENT AND OPERATIONS

Section 3.1 HUD Requirements. Owner shall cause the RAD Units to be operated in accordance with RAD Requirements, including but not limited to the RAD HAP Contract and the RAD Use Agreement. Owner shall cause the PBV Units to be operated in accordance with PBV Requirements, including but not limited to the PBV HAP Contract and the HUD Declaration.

Section 3.2 Authority Requirements. Owner shall cause the Rental Units to be operated in accordance with the PACT Principles and the Grievance Procedures.

Section 3.3 Management and Operation of the Rental Units. Owner shall undertake eligibility determinations for the RAD Units in accordance with the RAD Requirements and the PACT Principles. Owner shall also undertake eligibility determinations for the PBV Units in accordance with the PBV Requirements and the PACT Principles.

Section 3.4 Unit Leases. The leases for the Rental Units must comply with the PACT Principles and the HUD Requirements, as applicable, including, but not limited to, the right to a grievance hearing in accordance with a procedure approved by the Authority, and the Grievance Procedures. Any change to the form of unit lease, as approved by the Authority and attached hereto as Exhibit C, must be approved in writing by the Authority, which approval shall not be unreasonably withheld, conditioned or delayed and, if required, by HUD prior to implementation.

Section 3.5 Management Agent and Management Agreement.

(a) Owner may appoint a management agent (the "**Management Agent**") to perform day-to-day management functions for the Development. The Authority must approve Owner's selection of a Management Agent in writing before any entity performs any management duties with respect to the Development, provided that such approval shall not be unreasonably

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withheld, conditioned or delayed. The Authority has approved _____ as the initial Management Agent for the Development.

(b) The approvals required in this Section 3.5 do not impose liability upon the Authority with respect to the Management Agent's performance, nor do they impose any ongoing monitoring obligations on the Authority.

Section 3.6 Management Agreement. The agreement between the Management Agent and Owner must be in writing and must be approved by the Authority prior to any initial or replacement Management Agent performing any duties with respect to the Development (the "**Management Agreement**"), provided that such approval shall not be unreasonably withheld, conditioned or delayed. All changes to the Management Agreement must be approved in writing by the Authority before implementation, provided that such approval shall not be unreasonably withheld, conditioned or delayed. The Authority acknowledges and agrees that the Management Agreement shall be form and substance satisfactory to the Approved Mortgage Lenders. At a minimum, the Management Agreement must include the provisions of this Section 3.6. The Authority has approved the initial form of Management Agreement by and between Owner and _____.

(a) The Management Agreement will provide that (i) the Authority, HUD, and their respective agents, upon request therefor, shall be provided access to all books, documents, papers or other records maintained by the Management Agent with respect to the Development in order to make audits, examinations, excerpts and transcripts and (ii) all books and records shall be kept in accordance with generally accepted accounting principles. The books and records must relate to or affect the Development or any of the Management Agent's activities as the manager for the Development.

(b) The Management Agreement shall include the management plan for the Development (the "**Management Plan**") as an exhibit.

(c) The Management Agent will be required to operate and manage the Development in accordance with the terms of this Agreement, the Authority-approved Management Agreement, the HUD Requirements, the PACT Principles, and the Grievance Procedures. The Management Plan shall provide that the Development will be operated in compliance with all applicable HUD Requirements, the PACT Principles and the Grievance Procedures.

(d) The HUD Requirements to be reflected in the Management Plan include the following: (i) as of the date hereof, existing tenants shall not be rescreened except for rescreening required by statute nor shall their income eligibility be redetermined, provided that they will be subject to ongoing income eligibility requirements after conversion, and provided that tenants in units shall be required to provide income certifications for purposes of satisfying such requirements, including but not limited to the LIHTC requirements; (ii) a right to return for all relocated tenants of the Property; (iii) a phase-in of tenant rent increases in accordance with a HUD-prescribed formula as determined by the Authority; (iv) a description of continued Family Self-Sufficiency eligibility for current participants, if applicable; (v) a right to establish and operate a resident organization and to be eligible for resident participation funding; (vi) additional procedural rights pertaining to termination and grievance; (vii) a continued earned

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income disregard (“EID”) for existing eligible tenants subject to the EID as of the date hereof and who are identified by the Authority as being subject to the EID; and (viii) special wait list provisions.

(e) Reserved.

(f) The Management Agreement shall provide that Owner may terminate the Management Agreement without penalty on not more than thirty (30) days’ notice if the Management Agent: (i) fails to comply, whether by act or omission, with the HUD Requirements (as applicable), the PACT Principles, the Grievances Procedures, or the Management Agreement; or (ii) causes Owner to be in default under this Agreement. Such termination provision may contain notice and opportunity to cure language for curable defaults, or for such other reasons as set forth in the Management Agreement. At any time, the Authority may determine in its reasonable discretion, that the Management Agent is no longer acceptable because of failure to operate the Development in compliance with this Agreement. If so, the Authority may provide a written demand to Owner to terminate the Management Agreement or cure the non-compliance. Upon receipt of a demand to terminate the Management Agreement, Owner shall do so immediately and the existing management services shall be fully discontinued within a period of not more than thirty (30) days from Owner’s receipt of the Authority’s demand. In addition, Owner shall make timely arrangements for the continuing management of the Development subject to prior approval in writing by the Authority until a replacement Management Agent is appointed pursuant to Section 3.6(g) below.

(g) Owner shall at all times diligently enforce the Management Agreement. Owner shall provide the Authority with any and all notices related to the enforcement of or termination of the Management Agreement at the time they are issued. In the event of a termination of the Management Agreement, Owner must obtain the Authority’s prior written approval of a replacement Management Agent which shall not be unreasonably withheld. In order to obtain such approval, Owner shall provide the Authority with full and complete copies of the following: (i) the replacement Management Agent’s resume, experience in managing properties serving similar resident populations; (ii) last two (2) years of financial audits; (iii) list of key personnel proposed for the Development; (iv) at least three (3) references and (v) the new Management Agreement. The Authority shall respond to Owner’s written request for approval of the replacement Management Agent within forty-five (45) days of receipt of such request, delivered in accordance with Section 7.3; provided that Owner shall submit to the Authority the request for approval and supporting information with a notice that bears a bold face legend substantially as follows: **“Important: Your Response is Required in 45 Days”**. After such 45-day period, if the Authority has not responded to Owner’s request in writing, the replacement Management Agent shall be deemed approved by the Authority.

(h) The approvals required in this Section 3.6 do not impose liability upon the Authority with respect to the Management Agent’s performance, nor do they impose on the Authority or any ongoing monitoring obligations with respect to Management Agent’s performance.

Section 3.7 Transfers. Owner shall not, without prior written approval of the Authority, make any transfers requiring HUD approval pursuant to the RAD HAP Contract and

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Authority approval pursuant to the PBV HAP Contract. Owner shall not, without prior written notice to Authority, make any transfers requiring prior written notice to HUD, including such transfers described in the RAD HAP Contract or the PBV HAP Contract.

Section 3.8 Tenant Participation. Owner shall comply with the PACT Principles, the HUD Requirements, and all other applicable HUD requirements governing tenant participation requirements, and Housing notices or guidance pertaining to such regulation (collectively, the “**Tenant Participation Requirements**”). The Authority and Owner acknowledge and agree that, as of the date hereof, the Authority transferred \$71,178.79 in tenant participation funds to Owner, and Owner agrees that such funds shall be used for tenant participation activities in accordance with the Tenant Participation Requirements.

Section 3.9 Other Requirements. Notwithstanding any provision of this Agreement, Owner shall be entitled to determine eligibility for any applicant or referred resident (but not returning residents) for eligibility or continued occupancy consistent with Other Requirements (including without limitation income eligibility).

Section 3.10 Resident Protection Plan. Owner shall comply and shall cause the Management Agent to comply with the Resident Protection Plan, attached hereto as Exhibit J and incorporated herein.

ARTICLE IV BUDGETING AND RESERVES

Section 4.1 Operating Budget.

(a) The Owner must operate the Development in accordance with the annual operating budget, such budget to be approved by the Authority (the “**Operating Budget**”). The initial, Authority-approved Operating Budget (for the first year of operations) is attached hereto as Exhibit B.

(b) For each Development Fiscal Year, the Owner shall provide the Authority, not later than one hundred twenty (120) calendar days before the beginning of each Development Fiscal Year, a proposed Operating Budget for the Development for review and approval. Upon approval of the Operating Budget, any proposed withdrawals from reserves shall be deemed approved by the Authority. The Operating Budget shall be subject to the Authority’s written approval, including approval by the members of the Authority’s Board of Commissioners (the “**Board**”) to the extent required by RAD Requirements.

(c) The parties agree to cooperate to resolve any differences regarding the proposed Operating Budget. If the Authority and the Owner dispute a proposed Operating Budget, then the Owner shall use the prior year’s numbers with a 3% escalation until the dispute is resolved and the Operating Budget is approved by the Board.

(d) Except as provided below, the Owner shall only expend funds in accordance with the approved Operating Budget and may request an amendment to the Operating Budget should any variances be predicted. Any increase in the approved Operating Budget in excess of ten percent (10%) of the overall budget must be approved by the Authority

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prior to expenditure. The Owner shall provide quarterly reports indicating actual expenses over such quarter and identify all variances from the approved Operating Budget, including but not limited to any decrease in the approved Operating Budget in excess of ten percent (10%) of the overall budget.

(e) No prior approval of the Authority shall be required for expenditures in emergency situations involving manifest danger to persons or property or required to avoid suspension of any necessary service, in which the Authority cannot be contacted. In such cases, the Owner shall notify the Authority in writing of the situation and what actions were taken to abate the problem within forty-eight (48) hours of such expenditures.

Section 4.2 Replacement Reserve. At closing, or such later time as may be authorized by HUD in the RCC, Owner shall establish the Replacement Reserve.

(a) Restricted Funds. Unless otherwise authorized by the Approved Mortgage Lenders and HUD, if required, funds placed in the Replacement Reserve (including interest thereon and additional amounts deposited therein from time to time pursuant to the terms hereof) shall constitute restricted trust funds to be applied during the term of this Agreement solely for the benefit of the Development in accordance with the terms and conditions hereof, the loan documents and the PBV Requirements.

(b) Disposition. Subject to the provision of the Approved Mortgage Loan documents approved by Authority with respect to the Development, in the event of a disposition of the Development by sale, lease, assignment, foreclosure or otherwise, or upon the dissolution of Owner, any funds remaining in the Replacement Reserve will be transferred to the new Owner or otherwise continue to be used in connection with the Development in accordance with the HUD Requirements.

(c) Use. Disbursements from the Replacement Reserve shall only be made in accordance with the requirements of the Approved Mortgage Lenders and any applicable HUD Requirements.

(d) Confirmation of Deposits. For each Development Fiscal Year, the Owner shall provide the Authority, not later than one hundred twenty (120) calendar days following the end of Development Fiscal Year, sufficient evidence that the Owner made the required deposits into the Replacement Reserve in accordance with the RCC for review by the Board, as required by RAD Requirements.

ARTICLE V REPORTING, RECORDS AND AUDIT

Section 5.1 Reports to the Authority.

(a) Quarterly Reports. As soon as available, but not later than thirty (30) days after the end of each fiscal quarter, Owner shall submit to the Authority a Quarterly Report, commencing on the first quarter in which any of the units are occupied; provided, however, that with respect to the final quarter of each fiscal year, a Quarterly Report shall not be required though Owner may nonetheless elect to prepare and submit such a Quarterly Report. The

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Quarterly Report shall consist of all narratives, reports and statements provided to the Approved Mortgage Lenders and will include, at a minimum, a balance sheet, an income statement, a narrative summary describing any significant financial activity that is not captured in the balance sheet and income statement, and the current balance in each account maintained by Owner pursuant to this Agreement, including without limitation the Replacement Reserve and any deposit to or withdrawal from such account.

Section 5.2 Annual Audited Financial Statements. Not later than one hundred twenty (120) days following the end of each Development Fiscal Year, Owner shall deliver to the Authority a copy of the audited financial statements of Owner for such year prepared in accordance with the Partnership Agreement's requirements with respect to audited financial statements delivered by Owner to its members or partners and accompanied by the report of independent certified public accountants thereon, testing for compliance with this Agreement, together with a copy of any additional financial statements or reports delivered by Owner to its members or partners. The Board will use the audited financial statements of Owner and the supplemental annual submission to assess the financial health of the Development in accordance with the RAD Requirements.

Section 5.3 Supplemental Annual Submission. Together with the audited financial statement, Owner shall submit the following information for the Development: (a) rent roll; (b) all required insurance certifications; (c) copies of all required licenses for operating a multifamily development; (d) copies of any property inspection reports; (e) copies of any other third party inspections or other reports by Federal, State, local, or other entities from the completed fiscal year; (f) net deposits to the Replacement Reserve; (g) Net Cash Flow; (h) the balance at the end of the period of the Replacement Reserve and any other project reserve; and (i) aggregate stated lease rents and the amounts thereof uncollected from the Rental Units and other units for which no eviction actions have been commenced.

Section 5.4 Records for Audit Purposes. Without limitation on any other provision of this Agreement, Owner shall maintain all records concerning the Rental Units for three (3) years subsequent to the expiration date of this Agreement, unless a longer period is required under 2 CFR §200.333 or the HUD Monitor Agreement. Owner shall maintain records required by 24 CFR Part 35, 24 CFR Part 135 and 24 CFR Part 983 for the period that HUD requires such records to be maintained.

ARTICLE VI DEFAULT AND REMEDIES

Section 6.1 Events of Default. Each of the following shall constitute an "Event of Default" for purposes of this Agreement:

(a) Owner fails to perform any obligation required by or arising from, this Agreement and such failure continues uncured beyond a period of sixty (60) days for financial defaults or ninety (90) days for non-financial defaults following written notice of such failure by the Authority to Owner; which written notice shall be simultaneously provided by the Authority to the Approved Mortgage Lenders, provided, however, that if performance cannot be completed within sixty (60) days for financial defaults or ninety (90) days for non-financial defaults, and

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Owner has commenced and is diligently pursuing a cure, there shall be no default if such cure is completed within one hundred twenty (120) days;

(b) Owner shall file, or have filed against it, a petition of bankruptcy, insolvency or similar action pursuant to state or federal law, or shall file any petition or answer seeking, consenting to, or acquiescing in, any reorganization, arrangement, readjustment, liquidation, filing; or shall be adjudicated bankrupt or insolvent, under any present or future statute, law, regulation, either state or federal, and such judgment or decree is not vacated or set aside within one hundred twenty (120) calendar days after such determination;

(c) Owner shall make an assignment for the benefit of creditors, or shall submit in writing its inability to pay its debts generally as they become due; provided however that Owner shall not be considered in default if any Guarantor is satisfying such debts;

(d) Owner is in default of the Lease Agreement, and Owner fails to cure such default, or other entities identified in such documents as authorized to effectuate a cure fail to cure such default, within applicable time periods described in such documents;

(e) Owner consents to, or acquiesces in, the appointment of a receiver, liquidator, or trustee of itself or of the whole or any substantial part of its properties or assets or a court of competent jurisdiction enters an order, judgment or decree appointing a receiver, liquidator or trustee of Owner, or of the whole or any substantial part of the property or assets of Owner, and such order, judgment or decree shall remain unvacated or not set aside or unstayed for one hundred twenty (120) days; or

(f) Owner is in default of the RAD HAP Contract or the PBV HAP Contract following receipt of notice and the expiration of all applicable cure periods provided in such contract.

Section 6.2 Remedies. Upon the occurrence of an Event of Default and following applicable notice and cure periods provided herein, at its option the Authority may (but shall not be required to) institute any action, suit, or other proceeding of law or equity, which the Authority shall deem necessary or proper for the protection of its interest. Notwithstanding anything to the contrary contained herein, Authority hereby agrees that any cure of any default made or tendered by one or more of Owner's members, Guarantor, or Approved Mortgage Lenders, within one hundred twenty (120) days of the expiration of the period provided to Owner to cure such default set forth in Section 6.1(a) herein shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner.

Section 6.3 Remedies Cumulative. Upon the occurrence of an Event of Default, the rights, powers, and privileges provided in this Article VI and all other remedies available to the Authority under this Agreement or otherwise at law or in equity may be exercised by the Authority at any time and shall not constitute a waiver of any of the Authority's other rights and remedies thereunder.

Section 6.4 Owner's Waiver of Presentment, Etc. Owner hereby waives, to the extent permitted by applicable law: (a) all presentments, demands for performance, notices of nonperformance (unless required by the terms hereof), protests, and/or notices of dishonor, and

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(b) any requirement of diligence or promptness on the Authority's part in the enforcement of its rights under this Agreement

Section 6.5 Course of Dealing Not Operatives as Waiver. No course of dealing between Owner and the Authority shall operate as a waiver of the Authority's rights under this Agreement. A waiver on one occasion shall not be deemed a waiver of such right or any other right hereunder. Any waiver by the Authority must be in writing and signed by the Authority to be effective. The making of a disbursement during the existence of an Event of Default shall not constitute a waiver of such Event of Default.

ARTICLE VII MISCELLANEOUS

Section 7.1 Term of Agreement. This Agreement shall continue in full force and effect so long as the Lease Agreement is in effect; provided however that the Owner shall only be required to comply with the RAD Requirements and the PBV Requirements, as applicable, so long as the RAD HAP Contract and/or the PBV HAP Contract, as applicable, remain in effect.

Section 7.2 Decision Standards.

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

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

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

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

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

Section 7.3 Notices. All notices, requests, demands, approvals, or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed given when (i) delivered by hand, or (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by recognized overnight courier, addressed as follows:

To the Authority:

New York City Housing Authority
90 Church Street, 5th Floor
New York, New York 10007
Attention: Vice President for Real Estate Development

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With copies to:

New York City Housing Authority
90 Church Street, 11th Floor
New York, New York 10007
Attention: Associate General Counsel for Real Estate and Economic Development

If to Owner:

With a copy to:

If to the Approved Mortgage Lenders:

At the addresses set forth at Exhibit C of the Lease

Such addresses may be changed by notice to the other party given in the same manner as provided in this Agreement. Any notice, demand, request or other communication sent pursuant to subsection (i) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (ii) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (iii) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

Section 7.4 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. Notwithstanding the foregoing sentence, in no event shall Owner be required to execute and deliver any document or perform any act otherwise required pursuant to the foregoing sentence to the extent such document or act imposes a material additional obligation or liability on Owner or materially adversely affects the rights of Owner under any loan documents except as may be required by HUD or future changes in applicable law, subject to Section 7.15.

Section 7.5 No Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties. Owner may not assign its interest in this Agreement without the prior written consent of the Authority.

Section 7.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

Section 7.7 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by both

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parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of New York. It is the intention of the parties that each and every provision of law required to be inserted and set forth in this Agreement shall be so inserted and, if any such provision has not been inserted, by mistake or otherwise, it shall be deemed incorporated herein.

Section 7.8 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement, provided such severability does not materially affect the basic understanding of the parties hereto as reflected in this Agreement.

Section 7.9 No Personal Liability. No officer, director, shareholder, member, 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.

Section 7.10 Modification of Agreement. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto. Amendments require the prior written approval of HUD only if the HUD Requirements mandate such approval.

Section 7.11 Owner's Employees and Liabilities. It is understood that persons engaged or employed by Owner as employees, agents, or independent contractors shall be engaged or employed by Owner and not by the Authority; and Owner alone is responsible for their work, direction, compensation and personal conduct. Nothing included in any provision of this Agreement shall impose any liability or duty upon the Authority to persons, firms, or corporations employed or engaged by Owner in any capacity whatsoever, or make the Authority liable to any such persons, firms, or corporations, or to any government, for the acts, omissions, liabilities, obligations, and taxes, of whatsoever nature, of Owner or of its employees, agents, or independent contractors.

Section 7.12 Neither Party an Agent. Nothing in this Agreement shall be deemed to appoint either Owner or the Authority as an agent for or representative of the other, and neither one shall be authorized to act on behalf of the other with respect to any matters except those specifically set forth in this Agreement. Neither Owner nor the Authority shall have any liability or duty to any person, firm, corporation, or governmental body for any act of omission or commission, liability, or obligation of the other, whether arising from Owner's or the Authority's actions under this Agreement or otherwise.

Section 7.13 Waivers. The failure of either party to insist in any one or more cases upon the strict performance of any of the other party's obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the waiving party.

Section 7.14 Total Agreement. This instrument and the documents referenced herein embody the whole agreement of the parties with respect to the matters set forth herein. There are

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no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representation, or agreements, either verbal or written between the parties.

Section 7.15 Future Changes in Applicable Laws. The parties hereto agree that in the event any of the federal or other legal requirements currently applicable hereto are amended, modified or repealed subsequent to the date hereof, it is the intent of the parties that, to the greatest extent permitted by law, nothing herein shall be construed or interpreted to apply such amendments, modifications, or new requirement in a manner more restrictive of the operation of the Development than those requirements currently applicable to the Development.

Section 7.16 Calendar Days. Unless otherwise stated, all references herein to a numbered period of days means calendar days.

Section 7.17 Temporary Interests. Any rights granted hereunder to any third party shall exist and be effective only for so long as such party maintains an otherwise enforceable interest in the Development, as through a currently effective loan, regulatory, or Partnership Agreement. Any approval rights of HUD referenced herein shall be required only if and to the extent required by then-current HUD Requirements.

Section 7.18 Obligations to Third Parties. Owner and Authority acknowledge that pursuant to loan documents with third party lenders and the Partnership Agreement, the Approved Mortgage Lenders have requirements and approval rights in addition to requirements and approval rights contained herein, and that Owner has the obligation to comply with such additional requirements and to obtain any such additional approvals, regardless of whether the Approved Mortgage Lenders are recited herein as having approval rights.

Section 7.19 Exhibits. All exhibits attached to this Agreement are incorporated herein by reference.

[SIGNATURES ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, Authority and Owner have each duly executed this Agreement as of the date first written above.

AUTHORITY

NEW YORK CITY HOUSING AUTHORITY,
a New York public benefit corporation

By: _____
Name:
Title:

OWNER:

By: _____
Name:
Title:

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Exhibit A

Legal Description

TEMPLATE

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Exhibit B

Year 1 Operating Budget

TEMPLATE

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Exhibit C

Unit Lease

TEMPLATE

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Exhibit D

HUD Compliance Agreements

TEMPLATE

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Exhibit E

PACT Principles

TEMPLATE

PRINCIPLES FOR THE RENTAL ASSISTANCE DEMONSTRATION:
SUPPLEMENTAL RESIDENT RIGHTS AND PROTECTIONS UNDER RAD CONVERSION

*Prepared by the New York City (NYC) Rental Assistance Demonstration (RAD) Roundtable on
Resident Rights and Protections*

The RAD Principles are intended as supplemental to rights and protections already provided by federal and state statute, U.S. Department of Housing and Urban Development (HUD) regulations, and HUD notices. The HUD notice related to resident protections is included as an appendix.

These Guiding Principles were developed by the RAD Roundtable in partnership with the New York City Housing Authority (NYCHA) in order to ensure that the rights of tenants are protected as NYCHA preserves properties through RAD. The RAD Roundtable included participants who are residents of NYCHA public housing and who represent community-based organizations, including:

Bernadette McNear, President, Ralph J. Rangel Houses Tenant Association, Manhattan
Lolita Miller, Treasurer, Ocean Bay (Bayside) Tenant Association, Queens
Ann Cotton Morris, President, Woodside Houses Tenant Association, Queens, and Chair, NYCHA City-Wide Council of Presidents (CCOP)
Charlene Nimmons, Resident, Wyckoff Gardens, Brooklyn, and Founder & Executive Director of Public Housing Communities, Inc.
Diana Blackwell, President, Fred Samuels Houses Tenant Association, Manhattan
Community Service Society
Community Voices Heard
Enterprise Community Partners, Inc.
FUREE
Good Ole Lower East Side
Local Initiative Support Corporation
New York Housing Conference
The Legal Aid Society
Urban Upbound

The RAD Principles have been endorsed by Roundtable participants: Bernadette McNear, President, Ralph J. Rangel Houses Tenant Association, Manhattan, Lolita Miller, Treasurer, Ocean Bay (Bayside) Tenant Association, Queens, Charlene Nimmons, Resident, Wyckoff Gardens, Brooklyn, and Founder & Executive Director of Public Housing Communities, Inc., Diana Blackwell, President, Fred Samuels Houses Tenant Association, Manhattan, Community Service Society, Enterprise Community Partners, Inc., FUREE, Good Ole Lower East Side, Local Initiative Support Corporation, New York Housing Conference, The Legal Aid Society, and Urban Upbound

PRINCIPLES FOR THE RENTAL ASSISTANCE DEMONSTRATION

Residents:

- ***Notice of RAD Candidacy***
Residents and Resident Associations (RAs) will have notice that their development is under NYCHA consideration for RAD conversion. NYCHA will begin outreach and education with residents while HUD considers NYCHA applications to ensure residents have the opportunity to learn about RAD in advance of HUD approval of developments.
- ***Resident Education***
A RAD handbook shall be distributed to all affected residents, providing comprehensive information about RAD conversion, including how RAD will differ from public housing and the potential impacts for residents and the community.
- ***Right to Organize***
Residents have the right to form a resident organization (RO) to represent all residents in the development, which the developer/property manager (PM) must recognize. If there is a RA (964-compliant and NYCHA-certified) that exists prior to RAD conversion, the RA will be recognized as the RO after conversion. If only part of the development with an RA will convert, the RA will continue to exist and the converted portion may form an RO. If no RA exists, NYCHA shall encourage the residents to form one prior to RAD conversion. If, upon conversion, there is no RO, the PM should encourage residents to form one and support them in doing so.
- ***Resident Participation Funding***
The RO will decide on how to use the RO portion of Resident Participation Funds, within the uses permitted under RAD including discretion over engaging community organizations for technical assistance and education. If the RA exists, funding should be allocated prior to conversion and transferred to the RO after conversion. If only part of a development is converting, the amount of funding to be transferred to a new RO will be prorated based on the number of units.
- ***Communications Among ROs***
In order to promote communication among ROs once a number of RAD conversions take place, NYCHA will provide ROs with contact information for other RAD property managers to enable organizations to communicate.
- ***Grievances and Lease Terminations***
NYCHA will develop a set of procedures for resident grievances and lease termination proceedings that will take effect upon conversion. The procedures will be uniform for each converted development and must be implemented by each PM. The PM must provide ongoing orientation to the procedures for residents.
- ***Succession Rights***
Households of a unit prior to conversion shall continue to have the same succession rights after conversion as NYCHA public housing residents. Persons who become residents of a unit after conversion shall have succession rights according to Section 8 rules.
- ***Resident Businesses***
Residents may engage in legal profit-making activities, including the operation of a home-based business, in their dwelling unit, provided that such activities are incidental to the primary use of the dwelling unit as a residence

RAD Developer/Property Manager (PM):

- ***RO Recognition and Meetings***
The PM must recognize a legitimate RO as the residents' representative. The PM must invite the RO to all resident engagements. The PM must meet regularly with ROs to discuss emerging property-wide issues, particularly during the construction/rehabilitation process. The PM and RA/RO should agree on

the frequency of these meetings. If there is no RA to become an RO after conversion, the PM should support residents in forming one.

- ***Right to Stay: Keeping Current Residents***
The PM shall not rescreen current households upon conversion for the purpose of maintaining tenancy including for income eligibility, income targeting provisions, criminal background, or credit history. Pets registered with NYCHA prior to conversion must also be allowed to stay.
- ***Keeping Residents Informed***
The PM must provide clear and accessible information to residents (in accord with HUD RAD guidance) regarding income recertification, eligible uses of Resident Participation Funds, rehabilitation and unit work schedules, and other PM expectations of residents. The PM should also create a system for responding to resident concerns or complaints and communicate how that process will work to residents.
- ***Language Access***
The PM will provide language assistance to residents who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings, per RAD guidelines and HUD regulations.
- ***Plan for Resident Services***
The PM must provide a plan for assessing and responding to resident social service needs, including employment training and job opportunities. The PM must maintain community centers and the provision of services when the community center is part of the converting development. PM must consult with residents and the RO about their preferences in the choice of service providers and activities.
- ***Training and Employment Opportunities***
The PM must provide training and employment opportunities to residents both during and after construction and collaborate with NYCHA to finalize a plan. The PM must ensure that employees at the development are able to apply for positions with the new property management company.
- ***Rehabilitation Needs***
The PM should keep a record of rehabilitation needs, concerns about the structure and quality of buildings, which are raised by residents in the engagement process.
- ***Coordinated Income Reviews***
In order not to subject households to multiple income reviews—such as for HUD recertification and the Low Income Housing Tax Credit (LIHTC)—the PM and NYCHA must work to combine them into a single process where feasible.
- ***Temporary Relocation***
If any relocation is necessary, NYCHA and the PM must provide residents with the written relocation plans and inform them of their right to return and protections from relocation costs.
- ***Procedures for Handling Grievances and Lease Terminations***
NYCHA will develop a set of procedures for resident grievances and lease termination proceedings that will take effect upon conversion. The procedures will be uniform for each converted development and must be implemented by each PM. The PM must provide ongoing orientation to the procedures for residents.
- ***Language Access***
The PM will provide language assistance to residents of the project who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings, per RAD guidelines.
- ***Enforcement of Principles***
NYCHA will implement these principles, including all items related to resident protections, services, and ongoing tenancy rights into appropriate transactional documents in consultation with the RAD Roundtable members. Tenant rights as described in these principles will be appropriately delineated in a required rider to resident leases with the PM. These rights will be part of the lease by incorporation.

NYCHA:

- ***Notice of RAD Candidacy***
NYCHA will provide residents and RAs with notice that a development is under consideration for RAD conversion. NYCHA will begin outreach and education with residents while HUD considers NYCHA applications to ensure residents have the opportunity to learn about RAD in advance of HUD approval of developments.
- ***Recognition of the RA Role***
If there is an RA prior to RAD conversion, NYCHA must involve the RA in all resident engagements. If no RA exists, prior to RAD conversion, NYCHA shall encourage the residents to form one prior to conversion.
- ***Resident Participation Funding***
RA funding should be allocated prior to conversion and transferred to the RO after conversion. If only part of a development is converting, the amount of funding to be transferred to a new RO will be prorated based on the number of units.
- ***Communications Among ROs***
In order to promote communication among ROs once a number of RAD conversions take place, NYCHA will provide ROs with contact information for other RAD property managers to enable organizations to communicate.
- ***Training and Employment Opportunities***
NYCHA will collaborate with the PM on a plan to provide training and employment opportunities to residents, both during and after construction.
- ***Coordinated Income Reviews***
In order not to subject households to multiple income reviews—such as for HUD recertification and the Low Income Housing Tax Credit (LIHTC)—the PM and NYCHA must work to combine them into a single process where feasible.
- ***Rehabilitation Needs***
NYCHA should keep a record of rehabilitation needs, concerns about the structure and quality of buildings, which are raised by residents in the engagement process or in the unit-by-unit Physical Needs Assessment.
- ***Temporary Relocation***
If any relocation is necessary, NYCHA and the PM must provide residents with the written relocation plan and inform them of their right to return and protections from relocation costs.
- ***Waiting List Responsibility***
NYCHA will administer site-based Section 8 Voucher waiting lists, which will be used to fill all vacancies in RAD-converted developments. NYCHA will notify applicants on the public housing waiting list about how to be placed on the Section 8 waiting list in accordance with HUD guidelines.
- ***Pet Policy***
NYCHA will recommend that all PMs adopt NYCHA's pet policy as a minimum standard. Residents with pets registered with NYCHA prior to conversion will be allowed to stay.
- ***Resident Selection Criteria***
NYCHA will require PMs to comply with a resident selection plan provided by NYCHA to ensure that all PMs in RAD-converted developments use standard resident selection criteria, pertaining to criminal background checks and rent payment and credit history.
- ***Processing Applications Pre-Conversion***
NYCHA will process requests for adding household members to a lease and interim re-certifications by an established deadline related to the anticipated date of conversion. NYCHA will approve requests that are eligible according to NYCHA's policy. NYCHA will announce the date in advance to RAs and residents. NYCHA will process requests for transfers in accordance with its established policies at the time.

- ***Post-Conversion Development-Wide Problems***
NYCHA will provide a contact person, with whom ROs can register development-wide, systemic problems that may emerge.
- ***Language Access***
NYCHA will provide language assistance to residents who are Limited English Proficient (LEP) to ensure that they have meaningful access to RAD resident notifications and meetings, per RAD guidelines.
- ***Security Deposits***
NYCHA will transfer the security deposits paid by residents for their public housing unit to the PM upon conversion.
- ***Utility Payments***
Utility allowances will be provided to residents where applicable in accordance with Section 8 program rules.
- ***Enforcement of Principles***
NYCHA will implement these principles, including all items related to resident protections, services, and ongoing tenancy rights into appropriate transactional documents in consultation with the RAD Roundtable members. Tenant rights as described in these principles will be appropriately delineated in a required rider to resident leases with the PM. These rights will be part of the lease by incorporation.

Attachment 1B – Resident Provisions in Conversions of Assistance from Public Housing to PBRA and PBV

This Attachment contains two sections, describing:

- 1B.1 Summary of Resident Provisions
 - 1B.2 Resident Participation and Funding
-

1B.1 Summary of Resident Provisions

The following is a summary of special provisions and alternative requirements related to tenants of public housing projects converting under RAD:

- Conversion will be considered a significant amendment to a PHA Plan (see Section 1.5(E) of this Notice);
- Notification of proposed conversion, meetings during the conversion process, written response to residents comments on conversion, and notification of conversion approval and impact (see Section 1.8 of this Notice);
- No rescreening at conversion (see Section 1.6(C)(1) of this Notice for conversions to PBV and Section 1.7(B)(1) for conversions to PBRA);
- Right to return after temporary relocation to facilitate rehabilitation or construction (see Section 1.6(C)(2) of this Notice for conversions to PBV and Section 1.7(B)(2) for conversions to PBRA);
- Phase-in of tenant rent increases (see Section 1.6(C)(4) of this Notice for conversions to PBV and Section 1.7(B)(3) for conversions to PBRA);
- Continued participation in the ROSS-SC and FSS programs (see Section 1.6(C)(5) of this Notice, for conversions to PBV and Section 1.7(B)(4) for conversions to PBRA);
- Continued Earned Income Disregard (see Section 1.6(C)(8) of this Notice, for conversions to PBV and Section 1.7.(B)(7) for conversions to PBRA);
- Continued recognition of and funding for legitimate residents organizations (see Section 1.6(C)(6) of this Notice for conversions to PBV, Section 1.7(B)(5) of this Notice for conversions to PBRA, and below in Attachment 1B.2 for additional requirements for both programs);
- Procedural rights consistent with section 6 of the Act (see Section 1.6(C)(7) of this Notice for conversions to PBV and Section 1.7(B)(6) of this Notice for conversions to PBRA); and
- Choice-mobility option allowing a resident to move with a tenant-based voucher after tenancy in the Covered Project (see 24 CFR § 983.260 for conversions to PBV and Section 1.7(C)(5) of this Notice for conversions to PBRA).

Attachment 1B: Resident Provisions in Conversions of Assistance from Public Housing

- For additional information, refer to Notice H2014-09; PIH 2014-17 for additional information on relocation requirements under RAD.

1B.2 Resident Participation and Funding⁷³

The following provisions contain the resident participation and funding requirements for public housing conversions to PBRA and PBV, respectively.

A. PBRA: Resident Participation and Funding

Residents of Covered Projects converting assistance to PBRA will have the right to establish and operate a resident organization in accordance with 24 CFR Part 245 (Tenant Participation in Multifamily Housing Projects). In addition, a Project Owner must provide \$25 per occupied unit annually for resident participation, of which at least \$15 per occupied unit shall be provided to the legitimate tenant organization at the covered property. These funds must be used for resident education, organizing around tenancy issues, and training activities.

In the absence of a legitimate resident organization at a Covered Project:

1. HUD encourages the Project Owner and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owners are also encouraged to actively engage residents in the absence of a resident organization; and
2. Project Owners must make resident participation funds available to residents for organizing activities in accordance with this Notice. Residents must make requests for these funds in writing to the Project Owner. These requests will be subject to approval by the Project Owner.

B. PBV: Resident Participation and Funding

To support resident participation following conversion of assistance, residents of Covered Projects converting assistance to the PBV program will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development.

1. **Legitimate Resident Organization.** A Project Owner must recognize legitimate resident organizations and give reasonable consideration to concerns raised by legitimate resident

⁷³ For the purposes of this Attachment, HUD uses the term “Project Owner” to refer to the owner of a converting or Covered Project. In some instances the owner of a project could be a public, non-profit, or for-profit, e.g., mixed-finance projects).

organizations. A resident organization is legitimate if it has been established by the residents of a Covered Project, meets regularly, operates democratically, is representative of all residents in the project, and is completely independent of the Project Owner, management, and their representatives.

In the absence of a legitimate resident organization at a Covered Project, HUD encourages the Project Owner and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owners are also encouraged to actively engage residents in the absence of a resident organization; and

- 2. Protected Activities.** Project Owners must allow residents and resident organizers to conduct the following activities related to the establishment or operation of a resident organization:
 - a. Distributing leaflets in lobby areas;
 - b. Placing leaflets at or under residents' doors;
 - c. Distributing leaflets in common areas;
 - d. Initiating contact with residents;
 - e. Conducting door-to-door surveys of residents to ascertain interest in establishing a resident organization and to offer information about resident organizations;
 - f. Posting information on bulletin boards;
 - g. Assisting resident to participate in resident organization activities;
 - h. Convening regularly scheduled resident organization meetings in a space on site and accessible to residents, in a manner that is fully independent of management representatives. In order to preserve the independence of resident organizations, management representatives may not attend such meetings unless invited by the resident organization to specific meetings to discuss a specific issue or issues; and
 - i. Formulating responses to Project Owner's requests for:
 - i. Rent increases;
 - ii. Partial payment of claims;
 - iii. The conversion from project-based paid utilities to resident-paid utilities;
 - iv. A reduction in resident utility allowances;
 - v. Converting residential units to non-residential use, cooperative housing, or condominiums;
 - vi. Major capital additions; and
 - vii. Prepayment of loans.

In addition to these activities, Project Owners must allow residents and resident organizers to conduct other reasonable activities related to the establishment or operation of a resident organization.

Project Owners shall not require residents and resident organizers to obtain prior permission before engaging in the activities permitted in this section.

- 3. Meeting Space.** Project Owners must reasonably make available the use of any community room or other available space appropriate for meetings that is part of the multifamily housing project when requested by:
 - a.** Residents or a resident organization and used for activities related to the operation of the resident organization; or
 - b.** Residents seeking to establish a resident organization or collectively address issues related to their living environment.

Resident and resident organization meetings must be accessible to persons with disabilities, unless this is impractical for reasons beyond the organization's control. If the project has an accessible common area or areas, it will not be impractical to make organizational meetings accessible to persons with disabilities.

Project Owners may charge a reasonable, customary and usual fee, approved by the Secretary as may normally be imposed for the use of such facilities in accordance with procedures prescribed by the Secretary, for the use of meeting space. A PHA may waive this fee.

- 4. Resident Organizers.** A resident organizer is a resident or non-resident who assists residents in establishing and operating a resident organization, and who is not an employee or representative of current or prospective Project Owners, managers, or their agents.

Project Owners must allow resident organizers to assist residents in establishing and operating resident organizations.

- 5. Canvassing.** If a Covered Project has a consistently enforced, written policy against canvassing, then a non-resident resident organizer must be accompanied by a resident while on the property of the project.

If a project has a written policy favoring canvassing, any non-resident resident organizer must be afforded the same privileges and rights of access as other uninvited outside parties in the normal course of operations. If the project does not have a consistently

enforced, written policy against canvassing, the project shall be treated as if it has a policy favoring canvassing.

A resident has the right not to be re-canvassed against his or her wishes regarding participation in a resident organization.

- 6. Funding.** Project Owners must provide \$25 per occupied unit annually for resident participation, of which at least \$15 per occupied unit shall be provided to the legitimate resident organization at the covered property. These funds must be used for resident education, organizing around tenancy issues, and training activities.

In the absence of a legitimate resident organization at a Covered Project:

- a.** HUD encourages the Project Owner s and residents to work together to determine the most appropriate ways to foster a constructive working relationship, including supporting the formation of a legitimate residents organization. Residents are encouraged to contact the Project Owner directly with questions or concerns regarding issues related to their tenancy. Project Owner are also encouraged to actively engage residents in the absence of a resident organization; and
- b.** Project Owner s must make resident participation funds available to residents for organizing activities in accordance with this Notice. Residents must make requests for these funds in writing to the Project Owner. These requests will be subject to approval by the Project Owner.

Disclaimer: This is a template document as of 12-12-19, which is subject to change by NYCHA based on changing legal requirements or to the extent otherwise acceptable to NYCHA.

Exhibit F

Grievance Procedures

TEMPLATE

NEW YORK CITY HOUSING AUTHORITY

GRIEVANCE PROCEDURES

1. APPLICABILITY

The following procedures are not intended to replace prior practices relating to communications between management and tenants, but rather to supplement them. Requests for services, repairs or other routine matters should continue to be handled diligently and in accordance with standard procedures. These procedures shall be applicable to all individual grievances, as hereinafter defined, between a tenant and the Authority. The grievance procedures shall not be applicable to disputes between tenants not involving the Authority or to class grievances. The procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the Authority.

2. DEFINITIONS

- a. "Grievance" shall mean any dispute which a tenant may have with respect to Authority action or failure to act in accordance with the individual tenant's lease or Authority regulations which adversely affect the individual tenant's rights, duties, welfare or status. It does not include a cause of action against the Authority for damages for injuries to real or personal property or for destruction thereof, or for damages for personal injury, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the Authority, or any member, officer, employee or agent thereof, embraced within Section 157 of the New York State Public Housing Law or Section 50-e of the General Municipal Law, or any matter which does not directly concern an Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations.
- b. "Complainant" shall mean any tenant whose grievance is presented at the project management office in accordance with these procedures.
- c. "Hearing Officer" shall mean a person selected in accordance with Section 8 of these procedures.
- d. "Tenant" shall mean any lessee or remaining head of the household of any tenant family residing in an Authority housing accommodation covered by these procedures.

SUBDIVISION "A"

3. APPLICABILITY OF SUBDIVISION "A"

This subdivision shall be applicable to all grievances EXCEPT those involving holdover eviction proceedings based upon Non-desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in the Payment of Rent, Non-verifiable Income, Assignment or Transfer of Possession, and Misrepresentation, which proceedings are governed by the procedures contained in "Subdivision B" herein.

4. INFORMAL SETTLEMENT

All grievances shall be personally presented, either orally or in writing, to the Management Office so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one copy retained in the project folder. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons thereof, and shall specify the procedures by which the Manager's disposition may be reviewed by the Borough Management Office and, if the disposition is still not to the tenant's satisfaction, the procedure by which a hearing may be obtained. In addition, if the grievance is related to a person's disability, a copy of the Housing Authority ADA/Section 504 grievance procedure shall be supplied.

5. REVIEW OF MANAGER'S DISPOSITION

In the event that the disposition by the manager does not satisfy the tenant, the tenant shall request, in writing within 10 days of notice of such disposition, that the matter be reviewed by the Borough Management Office and the manager shall thereupon transmit a copy of the summary to the Borough Management Office for review. The Borough Management Office shall then indicate in writing its agreement with the Manager's disposition, or, if it does not agree, its own disposition, and such disposition after review shall be sent to the tenant within a reasonable time. When the Manager's unsatisfactory determination relates to a person's disability and a request for review has been made, the case shall be referred to the Housing Authority designated ADA/Section 504 coordinator, who shall consult with the appropriate Borough Management Office in determining the appeal.

6. REQUEST FOR HEARING

The complainant may pursue the matter further on condition that the complainant submit a written request for a hearing to the project Management Office within ten (10) days after receipt of the disposition of the Borough Management Office review pursuant to the preceding Section. The written request shall specify:

- a. the reason for the grievance; and
- b. the action or relief sought.

7. FAILURE TO REQUEST A HEARING

If the complainant does not request a review of any disposition, as provided in paragraphs 5 and 6 hereof, such disposition shall become final. The failure to request a hearing shall not constitute a waiver by the complainant of his/her right thereafter to contest the Authority's action in disposing of the complaint in an appropriate judicial proceeding.

8. SELECTION OF HEARING OFFICER

The Hearing Officer shall be an impartial disinterested attorney admitted to practice before the Courts of New York State appointed in a Civil Service title approved by the New York City Civil Service Commission. Until such title is so approved, the Hearing Officer shall continue to be appointed in accordance with the existing procedure for the appointment of Hearing Officers (Tenancy).

9. HEARING PREREQUISITES

All grievances shall be personally presented either orally or in writing pursuant to the foregoing paragraphs; provided, that if the complainant shall show good cause why he/she failed to proceed in accordance with said paragraphs to the Hearing Officer, the provisions of said informal procedures may be waived by the Hearing Officer. Before a hearing is scheduled in any grievance involving the amount of rent which the Authority claims is due, the complainant shall pay to the Authority an amount equal to the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The complainant shall thereafter pay to the Authority the same amount of the rent, monthly, which shall be placed by the Authority in an escrow account, until the complaint is resolved by the decision of the Hearing Officer. These requirements may be waived by the Authority or its designee in extenuating circumstances. Unless so waived, the failure to make such payments shall result in a termination of the grievance procedure, provided, that failure to make payment shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of his/her grievance in any appropriate judicial proceeding.

10. PROCEDURE GOVERNING THE HEARING

- a. Upon complainant's compliance with the procedures specified above, a hearing shall be scheduled promptly and a written notice specifying the time, place, and the procedures governing the hearing shall be delivered to the complainant and notice delivered to the Hearing Officer. The Hearing Officer shall be liberal in granting reasonable adjournments requested by either party, for good cause shown, to a more convenient date.
- b. The hearing shall be held before a Hearing Officer.
- c. The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:
 1. the opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records and regulations of the Authority that are relevant to the hearing. Any document not so made available after request therefore by the complainant may not be relied on by the Authority at the hearing;
 2. the right to be represented by counsel or other person chosen as complainant's representative;
 3. the right to a private hearing unless the complainant requests a public hearing;
 4. the right to present evidence and arguments in support of the complaint, to controvert evidence relied on by the Authority or project management and to confront and cross-examine all witnesses on whose testimony or information the Authority or project management relies; and
 5. a decision based solely and exclusively on the facts presented at the hearing.
- d. The Hearing Officer may render a decision without proceeding with the hearing if the Hearing Officer determines that the issue has been previously decided in another proceeding.
- e. If the complainant or the Authority fail to appear at a scheduled hearing the Hearing Officer may make a determination to postpone the hearing for a period not to exceed five (5) business days or make a determination that the party has waived his/her right to a hearing. Both the complainant and the Authority shall be notified of the determination by the Hearing Officer; provided, that a determination that complainant has waived his/her right to a hearing shall not constitute a waiver of any right the complainant may have to contest the Authority's disposition of the grievance in an appropriate judicial proceeding.

- f. At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the Authority must sustain the burden of justifying the Authority's action or failure to act against which the complaint is directed.
- g. The hearing shall be conducted informally by the Hearing Officer and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The Hearing Officer shall require the Authority, the complainant, counsel, and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the Hearing Officer may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denying the relief sought, as appropriate.
- h. The complainant or the Authority may arrange in advance and at the expense of the party making the arrangement, for a transcript of the hearing, provided that he/she deposits with the Authority an amount estimated by the Authority to cover the cost thereof prior to the transcription of the record. Any interested party may purchase a copy of such transcript.

11. DECISION OF HEARING OFFICER

The Hearing Officer shall prepare a written decision setting forth the reasons therefore within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the Authority. The Authority shall retain a copy of the decision in the tenant's folder. A copy of such decision, with any names and identifying references deleted, shall also be maintained on file by the Authority at Central Office and made available for inspection by a prospective complainant, his/her representative, or a Hearing Officer.

The decision of the Hearing Officer shall be binding on the Authority, which shall take all action, or refrain from any action, necessary to carry out the decision, unless the members of the Authority determine within a reasonable time and promptly notify the complainant of their determination that:

1. the grievance does not concern Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations, which adversely affect the complainant's rights, duties, welfare or status, or the grievance embraces or the decision awards damages for an alleged cause of action against the Authority for damages for injuries to real or personal property or for destruction thereof, or for damages for personal injury, alleged to have been sustained by reason of the negligence of, or by the creation or maintenance of a nuisance by the Authority, or any member, officer, employee or agent thereof, embraced within Section 157 of the New York State Public Housing Law or Section 50-e of the General Municipal Law, or any matter which does not directly concern an Authority action or failure to act in accordance with or involving complainant's lease or Authority regulations; OR

2. the decision of the Hearing Officer is contrary to applicable Federal, State or local law; HUD regulations; or requirements of the Annual Contributions Contract between HUD and the Authority.

A decision by the Hearing Officer or the members of the Authority in favor of the Authority, or which denies the relief requested by the complainant, in whole or in part, shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

12. NOTICE OF NON-PAYMENT PROCEEDINGS

If a tenant has requested a hearing on a complaint involving non-payment of rent and the Hearing Officer upholds the Authority's proposed commencement of a non-payment dispossession proceeding, the Authority shall not commence such proceeding until it has served a notice to the tenant requiring that he/she pay the rent due or vacate the premises and that in the event that the tenant fails to do so a dispossession proceeding will be commenced. The notice must be in writing and may not be issued until the decision of the Hearing Officer has been mailed or delivered to the tenant.

SUBDIVISION "B"

The purpose of publishing these procedures is to enable a tenant who faces termination of tenancy proceedings by the New York City Housing Authority to know the legal basis of such administrative proceedings, the procedures which the Authority will follow, and to enable the tenant to prepare an appropriate defense to such termination of tenancy proceedings.

The following procedures apply to termination of tenancy by the New York City Housing Authority to conform with the opinion of the United States Court of Appeals for the Second Circuit and the action of the United States District Court for the Southern District of New York in the case of *Escalera, et al v. New York City Housing Authority*, 425 F. 2d 853, certiorari denied, 400 U.S. 853 (1970), consent decree on remand docketed March 25, 1971, 67 Civ. 4307 (S.D.N.Y. 1971, D.J. Mansfield), and the consent judgements of January 26, 1976 in the United States District Court for the Southern District of New York cases of *Joseph Tyson Sr. v. New York City Housing Authority* and *Myrdes Randolph v. New York City Housing Authority*, 73 C 859, 74 C 1856, 74 C 2556, 74 C 2617 (S.D.N.Y. 1976, Metzner, J.).

GROUNDS FOR TERMINATION OF TENANCY

1. These procedures will deal with termination of tenancy brought on any of the following grounds: Non-Desirability, Breach of Rules and Regulations, Chronic Breach of Rules and Regulations, Chronic Delinquency in the Payment of Rent, Non-Verifiable Income, Assignment or Transfer of Possession, and Misrepresentation.

- A. NON-DESIRABILITY** is defined by the Authority as the conduct or behavior of the tenant or any person occupying the premises of the tenant which constitutes:
- (1) a danger to the health and safety of the tenant's neighbors
 - (2) conduct on or in the vicinity of the Authority premises which is in the nature of a sex or morals offense
 - (3) a source of danger or a cause of damage to the employees, premises or property of the Authority
 - (4) a source of danger to the peaceful occupation of other tenants, or
 - (5) a common law nuisance.
- B. BREACH OF RULES AND REGULATIONS.** The violation by the tenant or any person occupying the premises of the tenant of any applicable rule, regulation or resolution of the Authority. The tenant will be given an opportunity to cure the breach.
- C. CHRONIC BREACH OF RULES AND REGULATIONS.** The repeated violation by the tenant or any person occupying the premises of the tenant of Authority rules and regulations or a single repetition of a violation of an Authority rule or regulation which the tenant previously had reported to have been cured by compliance. The tenant will not be given an opportunity to cure the breach.
- D. CHRONIC DELINQUENCY IN THE PAYMENT OF RENT.** The repeated failure or refusal of the tenant to pay rent when due.
- E. NON-VERIFIABLE INCOME.** The failure, neglect or refusal of a tenant to furnish the Authority verification satisfactory to the Authority of the income of the tenant, or to keep records of income and disbursements or submit the same to an audit in accordance with the requirements and directives of the Authority.
- F. ASSIGNMENT OR TRANSFER OF POSSESSION.** The possession and use of a project apartment by a person or persons other than the tenant of record, without Authority permission or consent after the tenant of record has moved from or no longer resides in the apartment.
- G. MISREPRESENTATION.** The willful misstatement to or concealment from the Authority by the tenant of any material fact bearing or relating to any determinant of the tenant's eligibility for admission or continued occupancy or bearing upon or relating to the rent to be paid by the tenant.

PROJECT MANAGER INTERVIEW

2. The project manager or his/her representative will interview the tenant in order to discuss the problem which may lead to termination of tenancy, seek to ascertain the facts involved, and, when appropriate, seek to assist the tenant by securing outside help.

THE TENANCY ADMINISTRATOR

3. If remedial action by the Manager fails, or if the Manager believes that termination of tenancy is the appropriate course of action, he/she shall submit the entire file, together with his/her written recommendations and the reason therefore, to the Tenancy Administrator for review and appropriate action. If the case is based on non-desirability, the Manager shall consider in reviewing the file, among other things, the extent of the impact of the behavior of the tenant's family upon the project. If the Tenancy Administrator finds, after review of the file that a basis for termination of tenancy proceedings exists, the file shall be referred to the Authority's Law Department for the preparation of a Notice of Charges.

NOTICE OF CHARGES

4. The Law Department shall prepare a Notice of Charges in which there shall be set forth the specific grounds for the proposed termination action. Where the charges involve non-desirability, the specific subsection(s) of the regulation shall be set forth which are claimed to have been violated. A copy of these procedures shall be enclosed with the Notice to the tenant. Such Notice shall give the tenant at least 15 days advance notice of the date fixed for a hearing to be held before a Hearing Officer designated by the Authority. It shall request the tenant to answer the charges and to signify his/her intention to attend the hearing, in writing, at least five days prior to the date set for the hearing. The Notice shall be served upon the tenant or any adult member of his/her family, or by certified mail, postpaid, and addressed to his/her apartment in the project. A copy of the Notice shall be furnished to the Hearing Officer, who shall calendar the hearing for the time specified therein.

THE HEARING

5. Such Hearing Officer shall be an impartial disinterested attorney admitted to practice before the Courts of New York State appointed in a Civil Service title approved by the New York City Civil Service Commission. Until such title is so approved, the Hearing

Officer shall continue to be appointed in accordance with the existing procedures for the appointment of Hearing Officers (Tenancy). Prior to the completion of the hearing and his/her written decision upon the charges set forth in the Notice, the Hearing Officer shall not have had any part in the proceeding or access to the files, information, records or recommendation upon which the proposed termination action is to be based. The Hearing Officer shall be liberal in granting reasonable adjournments requested by the tenant or his/her representative for good cause shown, to assure that there be no doubt that the tenant is afforded every due process right provided by the federal court decree.

6. The Hearing Officer shall conduct a hearing at which the Law Department shall present the case.

- (a) The Hearing Officer shall hear witnesses and receive oral and written evidence in proof by the Authority of the grounds specified in the Notice, and of like evidence of the answer offered by the tenant. Cross-examination shall be permitted. Technical rules of evidence shall not be enforced, but the proof offered shall be relevant to and based upon the grounds involved.
- (b) The Authority will permit the tenant's attorney or his/her representative (or, with the specific permission of the Authority, which shall not be unreasonably withheld, the tenant pro se) to examine such matter in the tenant folder as relates to the issues in the administrative termination proceeding (excluding names of persons not involved in the pending proceeding), upon request, in advance of the hearing, by appointment at the Authority's Central Office. Any matter not so made available after request therefore may not be relied on by the Authority at the hearing.
- (c) Subpoenas shall be issued at the request of the tenant or his/her representative, where appropriate.
- (d) If the charges brought against the tenant are based upon the non-desirable acts, conduct or behavior of a person (the "Offender") other than the tenant, it is the Housing Authority's responsibility to prove that the offender occupied the premises at the time of the offense. However, even if the Housing Authority proves this, the tenant may still show that the offender has permanently moved out by the time of the hearing.

The tenant may be able to avoid the penalty of losing his or her apartment if:

- (i) at the hearing on the charge(s), the tenant claims the offender has left the tenant's apartment permanently; and
- (ii) the tenant presents evidence to the Hearing Officer to support this claim.

Evidence that the tenant presents in support of this claim (that either the offender did not occupy the apartment at the time of the offense or has since permanently moved out), such as a signed lease and/or rent receipts at another address, or a letter from Welfare or Social Security showing the offender's new address, shall be proof that the offender did not or does not occupy the tenant's apartment, except that the Authority may challenge this evidence before the Hearing Officer. Nothing contained in this paragraph 6 (d) is meant to limit the tenant's right to offer any evidence to the Hearing Officer that an offender is no longer occupying the tenant's apartment, including any spoken or written statement by the tenant or other persons.

- (e) If the tenant introduces character testimony or claims that his/her prior record as a tenant is unblemished, the Authority may at the hearing confront the tenant with adverse material in its possession, such as entries in the tenant folder, probation reports, other convictions, police records, etc., and cross-examine the tenant as to such information.
- (f) Before the close of the hearing, the tenant or his/her representative shall be permitted to make a general statement, in mitigation, as to why his/her tenancy should not be terminated. This will enable the Authority to consider matters which do not strictly pertain to the stated grounds for termination, but relate more properly to the family situation or other extenuating circumstances. The Authority may reply thereto for the record.

7. The proceedings shall be recorded by mechanical device. The tenant or the Authority may arrange in advance and at the expense of the party ordering the transcript, for a transcript of the hearing; provided, however, that in the event that the tenant orders the transcript he/she must deposit with the Authority an amount estimated by the Authority to cover the cost thereof prior to the making of the transcript. The other party may purchase a copy of such transcript. In the event judicial review is undertaken by the tenant he/she shall be furnished with a copy of the transcript without charge.

8. If the tenant fails to answer or appear at the hearing the Hearing Officer shall note the default upon the record and shall make his/her written decision on the record before him/her. Upon application of the tenant made within a reasonable time after his/her default in appearance, the Hearing Officer may, for a good cause shown, open such default and set a new hearing date.

THE DECISION OF THE HEARING OFFICER

9. The Hearing Officer shall prepare a written decision, which shall contain the reasons therefore, within a reasonable time after the hearing. The decision shall set forth with respect to each of the charges, the answers thereto, and all relevant issues raised at the hearing, his/her specific findings including findings as to whether the charges have been proven. Such decision shall be based solely upon the testimony, documents and physical evidence admitted into evidence at the hearing. If any charge is found to have been proven, the decision shall set forth the penalty to be imposed or the action to be taken. Where the tenant has introduced character testimony or has claimed that his/her prior record as a tenant is unblemished, the Hearing Officer may consider all the testimony and documents admitted into evidence at the hearing on this subject as well as the tenant's general statement, if any, in mitigation, and the Authority's reply

thereto, in making his/her decision as to the penalty to be imposed. The Hearing Officer's decision together with the testimony, documents and physical evidence admitted into evidence at the hearing shall constitute the Record. A copy of the decision shall be sent to the tenant or his/her representative and the Authority. The Authority shall retain a copy of the decision in the tenant's folder. A copy of such decision with all names and identifying references deleted, shall also be maintained on file by the Authority at Central Office and made available for inspection by tenants, their representatives, or Hearing Officers.

10. In the event that any charge is found to have been proven, the Hearing Officer may make any of the following dispositions:

- (a) Termination of tenancy
- (b) Probation
- (c) Eligible subject to permanent exclusion of one or more persons in the household
- (d) Eligible
- (e) Eligible with referral to Social Services.

11. The decision of the Hearing Officer shall be binding on the Authority, which shall take all action, or refrain from any action, necessary to carry out the decision, unless notice is mailed to the tenant or his/her representative within ten (10) days from the date of such decision that the decision is under review by the members of the Authority. In reviewing the decision, the members of the Authority shall consider and rely only upon the Record, and such review shall be limited to whether the decision of the Hearing Officer is contrary to applicable federal, state or local law, HUD regulations, requirements of the Annual Contributions Contracts between HUD and the Authority, or violates these Authority procedures by reason of procedural irregularity. The determination by the members shall be made within a reasonable time, and where such determination is less favorable to the tenant than that of the Hearing Officer, the Authority shall include therewith a written statement setting forth the specific bases, including the basis in law, regulations, contracts, or procedure, for making such determination. The Authority must promptly notify the tenant or his/her representative of the determination.

12. A decision by the Hearing Officer or a determination by the members of the Authority in favor of the Authority or which denies the relief requested by the tenant, in whole or in part, SHALL CONSTITUTE A WAIVER of the rights of the tenant to a trial *de novo* or judicial review in any judicial proceedings, except a judicial proceeding to review said decision or determination pursuant to Article 78 of the New York State Civil Practice Law and Rules.

13. Where the offender or offenders has (have) been removed from the household, it is mandatory that the disposition be: "eligible"; "probation"; or "eligible subject to permanent exclusion of one or more persons in the household". If there is more than one offender involved, the Hearing Officer may in such case make a disposition of both probation and permanent exclusion, each applicable to a different offender. Where a violation of probation or permanent exclusion is alleged, a hearing shall be accorded to the tenant on the alleged violation, according to the procedures set forth below.

PROBATION

14. Where any substantial charge of non-desirability has been proven and the disposition is "eligible subject to permanent exclusion of one or more persons in the household", the provisions of this paragraph and of Pars. 15 and 16 shall not be applicable. In all other cases, where any substantial charge of non-desirability has been proven, a tenant may be given probation for a specified term not to exceed a year when the conditions set forth in subparagraph (a) exist, and must be given probation for a specified term when the conditions set forth in subparagraph (b) exist:

- (a) There is reason to believe that the conduct or condition which led to the charge of non-desirability may not recur or may have been cured, or that the tenant is taking or is prepared to take steps to correct or cure such conduct or condition.
- (b) Absence of the offending family member from the household (confinement in jail, away in the Armed Services, participation in residential drug program, etc.).

15. The Authority may set forth, in addition to the duration of probation, which shall be for not more than one year, other specific conditions to probation, such as the continued absence of an offending family member from the project grounds, the continued treatment of a drug addict, etc.. Where a specific condition of probation is the continued absence of an offending family member, the family undertakes to do anything it reasonably can to keep the offending member away from the project premises. If the offending member returns to the premises during the period of probation, the burden is on the tenant family to show that they had done all they could to keep him/her from returning.

16. A violation of the general condition of probation shall consist of an act or omission on the part of a tenant or a member of his/her household occurring after an award of probation, which constitutes a ground for termination of tenancy under these procedures. Such act or omission may be one which, had it been the first infraction by the tenant, might have resulted in an award of probation, but may now be sufficient to warrant immediate termination of tenancy. Where an act which may constitute a violation of the general condition of probation has occurred, the provisions of Par. 14(b), above, are inapplicable.

VIOLATION OF PROBATION

17. In the event that in the opinion of the Manager during the term of probation the tenant has violated any condition of probation, he/she shall submit the tenant's folder together with a statement of the acts purportedly constituting the violation of probation to the Tenancy Administrator who shall forward the tenant folder and statement to the Law Department if he/she finds there is a

basis for a possible Violation of Probation. The Law Department shall prepare a summary of such alleged violations and notice of a hearing pursuant to Paragraph 4 above, and mail a copy thereof to the tenant or his/her representative.

18. A hearing to determine whether a Violation of Probation has occurred shall be conducted in accordance with paragraphs 5 through 10 above, except that only one adjournment shall be granted for good cause at the request of the tenant or his/her representative. Any further adjournment may be granted only on an affidavit setting forth a legal excuse. If the Hearing Officer finds there has been no violation of probation, he/she shall recommend that probation be continued as prescribed. If the Hearing Officer finds there has been a violation of probation, he/she may make any of the following dispositions:

- (a) Immediate termination of tenancy
- (b) Continuation of probation already prescribed
- (c) Probation for an additional prescribed period not to exceed a year on such additional terms or conditions as may be appropriate.

A copy of the Decision and Report on the alleged violation of probation shall be mailed to the tenant or his/her representative.

CHANGE OF CONDITIONS OF PROBATION

19. The tenant may apply for review, modification or termination of probation at any time a substantial change has occurred bearing on the need for probation, such as a definitive change in family composition. The tenant's application shall be in writing, addressed to the Tenancy Administrator, who shall submit such application to the Hearing Officer. The Hearing Officer may in his/her discretion:

- (a) Continue the probationary period unchanged
- (b) Modify the duration or terms of probation, or
- (c) Remove the condition of probation from the tenant's status.

The tenant or his/her representative shall be informed in writing of the action on the application.

HOW PROBATION ENDS

20. (a) Where no proceeding on an alleged violation of probation is pending nor any violation of probation is known to the Manager, he/she shall prepare a report at least thirty (30) days prior to the end of the prescribed year of probation which certifies to such facts and recommends the removal of the condition of probation from the tenant's status. The Manager's report and recommendation shall be sent to the Tenancy Administrator, who shall note the removal of the condition of probation from the tenant's status. A copy of the Tenancy Administrator's memorandum shall be mailed to the tenant or his/her representative.
- (b) If at any point during the year of probation an Authority employee other than the Manager discovers that there is evidence that a violation of probation may have occurred, the procedures set forth in Pars. 17 through 18, above, shall be followed.
- (c) If the probationary period is concluded and the Manager shall have failed to make the report as provided in subparagraph (a) hereof, and no proceeding on an alleged violation of probation is pending, the condition of probation to the tenant's status shall be automatically removed at the conclusion of four months after the end of the year of probation and the tenant or his/her representative shall be so informed in writing by the Tenancy Administrator.

21. Anything to the contrary herein notwithstanding:

- (a) Any member of the Authority may at any time during the term of probation direct the Manager to submit a probationary report.
- (b) The procedures in cases where a member or members of the Authority request a probationary report shall be the same as if the Manager had submitted the report on his/her own initiative. If it appears that a violation of probation may have occurred during the term thereof, the procedures set forth in Pars. 17 through 18, above, shall be followed.

PERMANENT EXCLUSION

22. In the event that in the opinion of the Manager the tenant shall have violated the condition of permanent exclusion of one or more persons in the household which shall have been placed upon his/her eligibility, the procedures set forth in Pars. 17 through 18, above, shall be followed.

23. If the Hearing Officer decides that the condition of permanent exclusion of one or more persons in the household has been violated he/she may:

- (a) Make a final decision that the tenant is ineligible for continued occupancy forthwith, or
- (b) May continue the condition on such additional terms or conditions as may be appropriate.

The tenant or his/her representative shall immediately be informed in writing of such decision.

REMOVAL OF PERMANENT EXCLUSION

24. The tenant found eligible subject to permanent exclusion of one or more persons in the household may apply for removal of the condition at any time a substantial change has occurred bearing on the need for such condition for eligibility. The tenant's application shall be in writing, addressed to the Tenancy Administrator, who shall submit such application to the Hearing Officer. The Hearing Officer may in his/her discretion:

- (a) Continue the condition unchanged, or
- (b) Remove the condition of permanent exclusion of one or more persons in the household from the tenant's status of eligible.

The tenant or his/her representative shall be informed in writing of the Authority's action on the application.

EVICTIOIN PROCEEDINGS

25. If a hearing has been held hereunder and the Hearing Officer has determined to terminate the tenancy, the Authority shall not commence an eviction action in a state or local court until it has served a Notice to Vacate, which shall not be served prior to the mailing or other delivery to the tenant of a copy of the Hearing Officer's decision or the Authority's determination. The Notice to Vacate must be in writing and specify that if the tenant fails to quit the premises by the date specified in the Notice, which date shall be not less than one calendar month from the date of the mailing or other delivery thereof, appropriate eviction action will be brought against the tenant and he/she may be required to pay court costs and attorney's fees.

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Exhibit G

Section 3 Compliance Forms

TEMPLATE

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Exhibit G-1

Section 3 Hiring Plan Form

TEMPLATE

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Exhibit G-2

Wage Detail Form

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Exhibit G-3

Job Order Form

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Exhibit G-4

NYCHA Hiring Summary Forms

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Exhibit G-5

NYCHA Employment Verification Form

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Exhibit G-6

Section 3 Rider

ADD SECTION 8.7 TO A101

§ 8. 7 Contractor shall comply with all Section 3 requirements applicable to the Project, including, without limitation, those set forth in Exhibit Q. Without limiting the generality of the foregoing, Contractor shall, within two (2) weeks after Owner confirms to Contractor that its financing has closed, complete the Modified Section 3 Hiring Plan attached hereto as Exhibit Q and submit them to Owner. In addition, Contractor shall prepare, update and submit to Owner with each Application for Payment Section 3 Hiring Summary documents attached hereto as Exhibit Q.

EXHIBIT Q

SECTION 3 RIDER

SECTION 48 - CONTRACTOR'S EMPLOYEES; LOCAL EMPLOYMENT

(a) Resident Employment and Business Opportunity Generally

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u ("Section 3"), and its implementing regulations, provide certain requirements for contractors to employ low- and very low-income persons and public housing residents and to use business concerns substantially owned by low- and very low-income persons and public housing residents in the performance of work on certain federally assisted Developments as specifically set forth below.

The Contractor must comply with, and must cause its subcontractors to comply with, the provisions of the Section 3 Clause (as hereinafter defined) outlined below.

(b) Definitions

As used in the Section 3 Clause and this section, these terms will have the following definitions:

1. **"HUD"** means the United States Department of Housing and Urban Development.
2. **"Resident"** means an individual or individuals who reside in public housing and are listed on a public housing lease.
3. **"Section 3 Business Concern"** means a business concern that meets either one of the following descriptions:
 - a. that is 51% or more owned by Section 3 Residents; or
 - b. whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 Residents, or who, within three years of the date of first employment with the business concern, were **Section 3 Residents**; or

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c. That provides evidence of a commitment to subcontract in excess of 25% of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (a) and (b) in this definition of "**Section 3 Business Concern.**"

4. "Section 3 Covered Assistance" means:

a. Public and Indian housing development assistance provided under section 5 of the U.S. Housing Act of 1937, as amended (the "1937 Act") [42 U.S.C.1437(c)];

b. Public and Indian housing operating assistance under section 9 of the 1937 Act;

c. Public and Indian housing modernization assistance provided under section 14 of the 1937 Act; and

d. Assistance provided under any HUD housing or community development program that is expended for work arising in connection with: (i) housing rehabilitation; (ii) housing construction; or (iii) other public construction projects (which include other buildings or improvements, regardless of ownership).

5. "**Section 3 Covered Contract**" means a contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Development.

6. "**Section 3 Covered Development**" means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), or of other public construction, which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

7. "Section 3 Resident" means:

a. A Resident; or

b. An individual who resides in the metropolitan area or non-metropolitan County in which the Section 3 Covered Assistance is expended and who is:

(i) A "Low-Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)]. Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary of HUD (with adjustments in the income ceilings by the Secretary of HUD from time to time); or

(ii) A "Very-Low Income Person," as this term is defined in section 3(b)(2) of the 1937 Act [42 U.S.C. 1437a(b)(2)], which defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by HUD (with adjustments by the Secretary of HUD in the income ceilings from time to time).

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(c) The Section 3 Clause

Under 24 Code of Federal Regulations ("CFR") Part 135.38, the Contractor is subject to the following Section 3 clause (the "Section 3 Clause"), and the Contractor must include this clause in any subcontract with any subcontractor. All Section 3 covered contracts must include the following Section 3 Clause:

1. The work to be performed under this contract is subject to the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Developments covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
2. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
3. The Contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 and agrees to take appropriate action such as under subparagraph 6 below, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (i) after the Contractor is selected, but before the contract is executed, and (ii) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

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6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

(d) The "Greatest Extent Feasible" Standard

The Contractor may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth in 24 CFR Part 135, as amended, for providing training, employment and contracting opportunities to Section 3 Residents and Section 3 Business Concerns. The numerical goals represent minimum numerical targets.

(e) Section 3 Affirmative Action Plan

The Contractor must submit, and cause each of its subcontractors to submit, a "Section 3 Affirmative Action Plan" (the "Section 3 AAP") prior to the award of the contract or any subcontract. The provisions of the subcontractor's Section 3 AAP must be consistent with stated objectives of the contractor's Section 3 AAP developed for the contract. The Contractor's and each subcontractor's Section 3 AAP must have two parts:

Part I - Opportunities for Employment and Training

Under the contract and for each subcontract, the Contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting its Section 3 obligations with respect to training and employment opportunities for **Section 3 Residents**. The Contractor must include any activities proposed to be undertaken by it or its subcontractor in the Contractor's Section 3 AAP, which is subject to review and written approval by the New York City Housing Authority (the "Authority"). The Authority may require the Contractor, and cause the Contractor to require each subcontractor, to undertake any of the activities contained in the Appendix to 24 CFR Part 135, if the Authority determines that the Contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3 or otherwise set forth in this Contract. In addition, each Contractor and subcontractor must perform the following tasks, without limitation:

1. Identify the number of positions, by trade and skill level, required to plan and implement the work to be done at the housing development;
2. Identify the number of those positions currently filled and the number of those positions that are not filled by regular permanent employees;
3. Identify the number of positions by trade and skill level that will be targeted to be filled by **Section 3 Residents**;
4. Make to the greatest extent feasible effort to utilize **Section 3 Residents** in filling vacant training and employment positions. In this regard, the Authority has recruited and established lists of applicants for employment, from the residents of the housing

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development where the work under the Contract is being performed and/or from other Authority developments. The successful bidder may utilize such lists in recruiting employees to meet the goals of Section 3. In addition, the successful bidder must take steps at least as extensive as the following:

- a. Send to each labor organization or representative of workers, which has a collective bargaining agreement or other contract or understanding, a notice advising said labor organization or workers' representative of the Contractor's or subcontractor's, as the case may be, commitments under Section 3 and post copies of the notice in conspicuous places available to employees and applicants for employment or training;
- b. Meet with applicable apprentice program administrators to request their cooperation in identifying and referring unemployed apprentices/trainees who reside in the development or other New York City public housing developments and who otherwise meet the definition of Section 3 Resident;
- c. Prominently place a notice of training opportunities and eligibility requirements at the development where the work under the contract is being performed, and/or at other New York City public housing developments and/or other places in New York City where applications for training and employment are taken;
- d. Meet with the resident organization or resident council at the development where the contract work is being performed to inform such resident organization or resident council of applicable eligibility requirements for existing or impending training or employment opportunities and to request the cooperation of such resident organization/council in identifying and referring eligible individuals; and
- e. Maintain a list of all Residents who apply on their own or by referral and the ultimate disposition of those applications.

5. The contractor and subcontractors may demonstrate compliance with Section 3 by committing to employ **Section 3 Residents** as:

- a. 10% of the aggregate number of new hires for the one year period beginning federal fiscal year ("FY") 1995;
- b. 20% percent of the aggregate number of new hires for the one year period beginning in FY 1996; and
- c. 30% of the aggregate number of new hires for the one-year period beginning in FY 1997 and continuing thereafter.

6. The Contractor and subcontractors must provide a preference in hiring and in training to **Section 3 Residents** in the following order of priority:

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a. **Section 3 Residents** of the housing development or developments for which the Section 3 covered assistance is being expended in the performance of the work under the contract (Category I Residents).

b. **Section 3 Residents** of other Authority housing developments (Category 2 Residents);

c. Participants in HUD Youthbuild Programs being carried out in the metropolitan statistical area in which the Section 3 Covered Assistance is being expended (Category 3 Residents); and

d. Other low-income and very-low income persons who are not Residents of public housing, but who reside in the metropolitan area or non-metropolitan County in which Section 3 Covered Assistance is being expended (Category 4 Residents).

7. The Contractor or subcontractor may not circumvent the numerical goals for employing and training new hires of **Section 3 Residents** by filling any vacant employment or training positions generated by the contract or subcontract after the proposed contractor or subcontractor is selected, but before the contract or subcontract is executed.

Part II - Plan to Utilize Section 3 Business Concerns:

For the Contract and for each subcontract, the Contractor and each subcontractor must review and may implement any of the various examples contained in the Appendix to 24 CFR Part 135, as amended, in meeting their Section 3 obligations with respect to utilizing **Section 3 Business Concerns**. The Contractor must include any activities proposed to be undertaken by the Contractor and its subcontractor in the contractor's Section 3 AAP, which is subject to review and written approval by the Authority. The Authority may require that the Contractor undertake, and that the contractor cause its subcontractors to undertake, any of the activities contained in the Appendix to 24 CFR Part 135, as amended, if the Authority determines that the Contractor or subcontractor may not otherwise meet the numerical goals set forth in Section 3. With respect to Section 3, the Contractor and subcontractor must do the following specific tasks:

1. Identify the approximate number and dollar value of subcontracts to be awarded over the duration of the contract or subcontract. This estimate should be broken down by type of business or profession; and

2. Specify a target number and value of subcontracts to be awarded to **Section 3 Business Concerns** based on an analysis of the estimated contract needs. These targets should consider the availability of **Section 3 Business Concerns** within the categories identified in the initial estimate of contract needs.

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3. Take specific steps to ensure that **Section 3 Business Concerns** are notified of pending contractual opportunities; and
4. Outline a strategy for achieving the targets established for awards to **Section 3 Business Concerns**.
5. The Contractor and each subcontractor may demonstrate compliance with Section 3 by committing to award to **Section 3 Business Concerns**:
 - a. At least 10% of the total dollar amount of all Section 3 covered contracts for building trades' work for maintenance, repair, modernization or development of public housing, or for building trades' work arising in connection with housing rehabilitation, housing construction and other public construction; and
 - b. At least 3% of the total dollar amount of all other Section 3 Covered Contracts.
6. The Contractor and each subcontractor must direct their efforts to award Section 3 Covered Contracts, to the greatest extent feasible, to Section 3 Business Concerns in the following order of priority:
 - a. Business concerns that are 51 % or more owned by residents of the housing development or developments for which the Section 3 Covered Assistance is expended, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 1 Businesses);
 - b. Business concerns that are 51 % or more owned by residents of other housing developments or developments managed by the public housing authority that is expending the Section 3 Covered Assistance, or whose full-time, permanent workforce includes at least 30% of these persons as employees (Category 2 Businesses);
 - c. HUD Youthbuild programs being carried out in the metropolitan area (or non-metropolitan county) in which the Section 3 Covered Assistance is expended (Category 3 Businesses); and
 - d. Business concerns that are 51 % or more owned by Section 3 Residents, or whose permanent, full-time workforce includes at least 30% of Section 3 Residents (Category 4 Businesses), or that subcontract in excess of 25% of the total amount of subcontracts to business concerns identified in subparagraphs 6(a) and 6(b) above (also Category 4 Businesses).

(f) Coordination of Equal Opportunity Regulations Implementing Section 3 and Authority Policy Regarding Minority, Women and Small Business Enterprises

In addition to the Contractor's and subcontractor's obligations with respect to Section 3 Business Concerns, the Authority has a policy to ensure that all business entities have an equal opportunity

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to benefit from participation in Authority procurement, consulting and construction activities. When issuing solicitations for subcontractors, the Contractor shall take affirmative steps to include minority- and women-owned business enterprises. The Contractor will, in all solicitations or advertisements for bids for subcontractors placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for subcontracts without regard to race, color, religion, sex, national origin, disability, age, handicap, marital status or military service. As used in this Section (g), these terms have the following definitions:

1. Minority Business Enterprise ("MBE ") means a business that is at least 51 % owned by one or more minority group members; or, in the case of a publicly-owned business, one in which at least 51 % of its voting stock is owned by one or more minority group members, and whose management and daily business operations are controlled by one or more such individuals. For this purpose, minority group members include (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North American; (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (e) those groups of United States citizens or resident legal aliens designated by the Small Business Administration or any group designated in regulations developed by the Secretary of HUD.

2. Women Business Enterprise ("WBE") means a business that is at least 51 % owned by one or more women who are United States citizens or resident legal aliens; or, in the case or publicly owned businesses, one in which at least 51 % of the stock is owned by one or more women who are United States citizens or resident legal aliens and whose management and daily operations of the business are controlled by one or more such women.

3. Small Business Enterprise ("SBE") means a business that is owned by one or more persons who are United States citizens or resident legal aliens, with a place of business located in the United States, operates primarily within the United States and is sized consistently with the requirements set forth in 13 CFR Section 121.201, which defines size standards for small businesses, based on either annual receipts or the number of employees.

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Exhibit H

Employment and Training Plan

TEMPLATE

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Exhibit I

General Hiring Compliance Forms

TEMPLATE

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EXHIBIT I-1

Employment Training

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**Exhibit I-2
Job Order Form**

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Exhibit J

Resident Protection Plan