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## **1. Definitions**

**Act** - The United States Housing Act of 1937 (42 U.S.C. 1437 et., al), as amended.

**Annual Contributions Contract (ACC)** - This grant agreement between HUD and the HA which establishes the basic terms and conditions for the HA's public housing program.

**Consolidated Annual Contributions Contract (consolidated ACC or CACC)** - HUD's annual Grant Funding Exhibits to the ACC, which together with the ACC, constitute the annual grant agreement for the HA's public housing program.

**Cooperation Agreement** - Agreement(s) prescribed by HUD for execution by the HA and the local governing body relative to the cooperation of the local governing body in the development and operation of the project(s) and the obligation of the HA for payments in lieu of taxes (PILOT).

**Fiscal Year** - The HA fiscal year.

**Grant Funding Exhibit** - Exhibits to the ACC, in a form prescribed by HUD, reflecting HUD's commitment to provide grant funding that states the amount and term of Operating Fund and Capital Fund grant funding.

**Grant Funding Increment** - Each annual commitment of Operating Fund and Capital Fund by HUD to the HA for its public housing program.

**Housing Agency (HA)** - The entity that meets the statutory definition set forth under the Act, and which is subject to the CACC.

**HUD** - The U.S. Department of Housing and Urban Development.

**Mixed-Finance** - Development or modernization of public housing units where the public housing units are owned in whole or in part by an entity other than a PHA (i.e., Owner-Entity).

**Operating Costs (Operating Expenditures or Operating Expenses)** - Costs incurred by the HA for the necessary administration, operation and maintenance of a public housing Project; and which may be charged against operating receipts in accordance with the CACC and HUD requirements. Except as allowed by HUD, such costs do not include: any costs, expenses, expenditures, or charges incurred as part of the development or modernization of a public housing Project; or payment of principal or interest of bonds or notes related to the development or modernization of public housing.

**Operating Receipts** - All rents, revenues, income, and receipts accruing from, out of, generated by, or in connection with the ownership or operation of public housing, including grant funds received pursuant to HUD Requirements and is not limited to income from fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under the grant, license fees and royalties on patents and copyrights, and principal and interest on loans made with grant funds. Operating Receipts shall not include any funds received for the development or modernization of a Project, annual contributions pledged for payment of bonds or notes, or proceeds from the disposition of real property or rebates, credits, discounts and interest earned on any of them.

Interest on the Operating Receipts (including the investment of Operating Receipts), constitutes Operating Receipts.

**Operating Reserve Account** - An account allowed by HUD for a PHA from amounts by which the maximum payment of grant funds from the Operating Fund formula to the HA under the CACC (during a HA fiscal year) exceeds Operating Costs. This account may be used as the source of additional payments.

**Owner Entity** - An entity, including the HA, that owns Mixed-finance public housing units.

**Project (Public Housing Project)** - Low-income housing, developed, acquired, or assisted by HUD under the Act, other than under section 8 of the Act, and the improvement of such housing, and necessary appurtenances thereto. The term shall include all real and personal property, tangible and intangible, which is acquired or held by a HA in connection with a Project covered under the CACC.

**Program (Public Housing program)** - The HA's public housing program.

**Program Receipts** - Program receipts shall mean Operating Receipts and any other funds received by the HA for the development, modernization, sale or transfer of public housing projects. Subject to HUD Requirements, as defined in Paragraph 3, interest on the program receipts (including the investment of program receipts) constitutes program receipts. Program receipts shall only be used to pay for public housing program expenditures, unless otherwise allowed by HUD Requirements.

**Public Housing** - The term shall include public housing projects, as well as all other real and personal property, tangible and intangible, which is acquired, or held by, the HA in connection with its public housing program covered under a CACC.

**Replacement Reserve Account** - An account established by the HA, as approved by HUD. This account may be used as a source to fund any of the eligible capital activities outlined in its Capital Fund 5 Year Action Plan as approved by HUD under the Act.

## **2. Mission of HUD and HA.**

a. HUD shall administer its Federal public housing program for the provision of decent, safe, and sanitary housing to eligible families in accordance with the CACC and all applicable HUD Requirements. HUD shall provide maximum responsibility and flexibility to HAs in making administrative decisions within all applicable statutes, executive orders, regulations and this ACC. HUD shall provide annual contributions, in the form of grants, to the HA in accordance with all applicable statutes, executive orders, regulations, and the CACC.

b. The HA shall use Program Receipts to provide decent, safe, and sanitary housing for eligible families in compliance with the Act and all HUD requirements. HA shall at all times develop and operate public housing projects in a manner that promotes serviceability, economy, efficiency, and stability of the projects, and the economic and social well-being of the tenants.

c. Except as otherwise provide by law the HA shall develop, modernize and operate all Projects covered by the CACC, in accordance with HUD Requirements. The HA shall also ensure compliance with such requirements by any other Owner Entity, contractor or subcontractor engaged in the development or operation of a project covered under the CACC.

## **3. HUD Requirements.**

Except as otherwise provided by law, the HA must comply with the following "HUD Requirements", including all such requirements as amended from time to time:

a. The Act,

b. Regulations at Title 2 of the Code of Federal Regulations, and regulations issued by HUD at Title 24 of the Code of Federal Regulations);

c. Other federal statutes (including appropriations acts), executive orders and regulatory requirements and;

d. HUD-issued notices, and HUD-required forms, or agreements.

#### **4. Cooperation Agreement(s).**

During the development and operation of the project(s), the HA shall perform and comply with all applicable provisions of a Cooperation Agreement in the form prescribed by HUD, including the making of PILOT provided therein (or such lesser amount as may be prescribed by State law or agreed to by the local governing body); and shall at all times preserve and enforce its rights thereunder, and shall not terminate or amend the Cooperation Agreement(s) without the written approval of HUD.

#### **5. Declaration of Restrictive Covenants.**

a. *Record of Obligation* Upon the acquisition, development, or assistance of any real property with funds covered by the CACC, the HA shall execute and file for record against the Project and/or the owner's leasehold interest an instrument (which may be in the form of a declaration of trust, declaration of restrictive covenant, or such other document as approved or prescribed by HUD), confirming and further evidencing, but not limited to, (1) the obligation of the HA not to convey or encumber the Project except as expressly authorized in the CACC, (2) the obligation of the HA to develop, maintain and operate such Project in compliance with the CACC and HUD Requirements.

1. Such instrument and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The HA shall furnish HUD with appropriate evidence of such recording or filing. From time to time, as additional real property is acquired, assisted, or disposed of (or removed from the public housing program) by the HA in connection with its public housing program, the HA shall promptly amend such instrument to incorporate all such real property and shall record the instrument, as amended. The HA shall furnish

HUD with appropriate evidence of such recording or filing.

b. *Mixed-Financed Projects.* The HA shall require the Owner Entity to execute and file for record against the Project, prior to the recordation of any other encumbrance, a declaration in the form approved by HUD.

1. The declaration shall confirm and evidence the Owner Entity's obligation, during the term of CACC covering the Project units and during such further period when such approval may be required by law as then in effect, to develop, maintain and operate the Project Units in compliance with the HUD Requirements. Such declaration and all amendments shall be duly recorded or filed for record to give public notice of their contents and to protect the rights and interests of HUD.

2. The declaration shall provide further that it may not be modified, amended or released without the prior written approval of HUD. The HA shall furnish HUD with appropriate evidence of such recording or filing.

#### **6. Disposition and Encumbrances.**

a. *Covenant Against Disposition and Encumbrances.* The HA shall not demolish or dispose of any project, or portion thereof, other than in accordance with the terms of the CACC and applicable HUD Requirements. With the exception of entering into dwelling leases with eligible families for dwelling units in the Projects covered by the CACC, and normal uses associated with the operation of the Project(s), the HA shall not in any way encumber any project, or portion thereof, without the prior written approval of HUD. In addition, unless approved in advance and in writing by HUD, the HA shall not pledge as collateral for a loan the assets of any Project covered under the CACC.

b. *Mixed-Finance Projects.* No transfer, conveyance, or assignment shall be made without the prior written approval of HUD of: (i) any interest of a managing member, general partner,

or controlling stockholder (any such interest being referred to as a "Controlling Interest") of the Owner Entity; or (ii) a Controlling Interest in any entity which has a Controlling Interest in the Owner Entity; or (iii) prior to the payment in full of all equity contributions described in the approved evidentiary documents, any other interest in the Owner Entity, or in any partner or member thereof.

1. Notwithstanding the foregoing, HUD consent is not required where a business organization that has a limited interest (non-controlling and non-managing) in the Owner Entity transfers a non-controlling and non-managing interest in the business organization provided that the Owner Entity: (i) provides HUD with written notice of such transfer; and (ii) certifies to HUD that the new owner of the limited interest remains obligated to fund its equity contribution in accordance with the terms of the HUD-approved organizational documents of the Owner Entity.

2. HUD will not unreasonably withhold, delay, or condition a request by the Owner Entity for HUD's consent to an internal reorganization of the corporate or partnership structure of the Owner Entity or any of the partners, members or stockholders of the Owner Entity.

3. Notwithstanding the foregoing, the prior approval of HUD and the HA will not be required for the exercise by any investor partner of the Owner Entity ("Investor") of its right pursuant to the Amended and Restated Limited Partnership Agreement of the Owner Entity ("Partnership Agreement") to remove the general partner of the Owner Entity and appoint the Investor or its Affiliate (i.e., any entity which directly or indirectly controls, or is controlled by, or is under common control with, the specified entity) as an interim general partner of the Owner Entity so long as the Investor gives prompt written notice to HUD of such removal and appointment ("Removal Notice"); provided that HUD and the HA consent will be required for the appointment of such interim general partner to extend beyond a ninety (90) day period and for the appointment of any entity (including the Investor or an affiliate thereof) as the permanent replacement general partner. Such 90-day period

will commence on the date of the Removal Notice ("Interim Replacement Period"). With the prior written approval of HUD and the HA, the Interim Replacement Period may be extended for an additional 90 days to allow the substitute general partner of the Owner Entity to find a replacement general partner acceptable to HUD and all other parties, provided that prior to the expiration of such additional 90-day period, the substitute general partner demonstrates that the Investor is continuing to fund (or has already funded) capital as required under the Partnership Agreement and that the Project continues to be operated in a manner consistent with HUD Requirements.

4. The consent of HUD and the HA will not be required for (i) any exercise by the Investor of its right to require the repurchase of its limited partnership interests as against the General Partner, any guarantor, and/or any affiliate thereof ("Repurchaser") pursuant to the Partnership Agreement, provided that the Investor provides prompt written notice to HUD and the HA at the time of its exercise of such right, and further provided that any resale of the limited partnership interests by the Repurchaser will be subject to the approval of HUD and the HA, such approval not to be unreasonably withheld, delayed or conditioned, or (ii) the exercise by the HA (or any approved Affiliate thereof) of its rights to acquire interests or the Property pursuant to the Right of First Refusal and Purchase Option Agreement of approximately even date herewith.

## **7. Insurance Requirements.**

a. Except as otherwise provided by HUD, and in accordance with the CACC and HUD regulations and requirements, the HA shall procure adequate insurance to protect the HA from financial loss resulting from various hazards.

b. *Mandatory Insurance Coverage.* The following types of insurance are required:

1. Commercial Property. Each policy must be written with a blanket limit, on a replacement cost basis, and with an agreed value clause eliminating any coinsurance provision.

2. Commercial General Liability.  
3. Workers Compensation and Employers Liability.

4. Owned and Non-Owned Automobile Liability.

5. Theft, Disappearance, and Destruction, only if the amount of cash and checks on hand at any one time exceeds the amount prescribed by HUD.

6. Employee Dishonesty.

7. Boiler and Machinery if steam boilers have been installed.

8. Flood Insurance for property located in a flood plain, as determined in the Federal Government's National Flood Insurance Program.

9. Lead-Based Paint Liability for HAs undergoing lead-based paint testing and abatement.

10. Fidelity Bond Coverage. The HA must carry adequate fidelity bond coverage, as required by HUD, of its officers, agents, or employees handling cash or authorized to sign checks.

c. *Optional Insurance Coverage.* The following insurance coverage are recommended and should be purchased if the HA determines that exposure exists:

1. Boiler and Machinery coverage is recommended if there is extensive central air conditioning, electrical transformers, or similar equipment.

2. Directors and Officers or Public Officials Liability.

3. Law Enforcement Liability: highly recommended where the exposure exists, and the Commercial General Liability insurer has excluded coverage.

d. *Authorized Insurance Companies.* Insurance must be purchased from an insurance company or other entity that is licensed or duly authorized to write insurance in the State where the HA is located.

e. *Certificates of Insurance.* At each renewal, the HA shall promptly have certificates of insurance submitted by the insurers to HUD describing the types of coverage, limits of insurance, policy numbers, and inception and expiration dates.

f. *Waivers and Self-Insurance Funds.* Requests for waivers of this section not to purchase any form of required insurance, or to establish a self-insurance fund in lieu of purchasing insurance, must be submitted in writing to HUD for approval with a justification as to why the request should be approved.

g. *Restoration.* The HA shall, to the extent that insurance proceeds permit, promptly restore, reconstruct, and/or repair any damaged or destroyed property of a Project, in accordance with all HUD Requirements, except with the written approval of HUD to the contrary.

h. *Mixed Finance Projects.* The HA, to the extent that insurance proceeds or condemnation award proceeds ("Proceeds") permit, shall promptly cause the restoration, reconstruction, and/or repair ("Restoration") of any damaged or destroyed property of the Project. The obligation for Restoration, to the extent Proceeds and other funds (if any are made available by the Owner Entity or the HA) permit, is a requirement with which the Owner Entity must comply to the extent Restoration is feasible. Each mortgagee must permit Restoration if feasible (rather than require application of Proceeds to reduction of debt). If Restoration is not feasible, then the following requirements, which shall be incorporated into the Regulatory and Operating Agreement (or other such agreement) between the HA and the Owner Entity (and ground lease, if applicable), and with which all mortgage documents encumbering the Project shall be consistent, shall apply:

1. *Partial loss.* In the event that less than all of the dwelling units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) If the Proceeds are less than, or equal to, the sum of the existing outstanding mortgage debt secured by the Project, excluding any such debt held by the HA to secure a loan of Capital Funds, other public housing development funds, or Program Receipts for the Project ("Existing Mortgages"), and such Proceeds are applied to reduction of Existing Mortgages, the number of Project units in the Project shall remain the number required immediately prior to the occurrence of the casualty or condemnation.

(B) If the Proceeds are less than, or equal to, the sum of the Existing Mortgages but, at the election of the holders of the Existing Mortgages, are distributed among the holders thereof and the Authority, by application first to reduction of the Existing Mortgages in an aggregate amount not to exceed the proportion of the Proceeds equal to the ratio of non-Project units to all dwelling units in the Project, and then by payment to the HA of the balance of the Proceeds; then the percentage of units in the Project (and the percentage of bedrooms contained therein) which shall be Project units shall remain the same as required immediately prior to the casualty or condemnation.

(C) If the Proceeds are more than sufficient to pay off the Existing Mortgages, Proceeds in excess of the aggregate amount of the Existing Mortgages shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for a loan of Capital Funds, other public housing development funds, or Program Receipts;

(ii). To reimburse the HA for any Development Grant Funds, Capital Funds or HOPE VI Grant Funds disbursed to the Owner Entity for development of the Development other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above; and

(iv). To the Owner Entity.

(D) Following application of Proceeds in accordance with this subparagraph the percentage of dwelling units in the Project which shall be Project units (and the percentage of bedrooms contained therein) shall remain the same as required immediately prior to the casualty or condemnation; provided, however, that to the extent that the payment to the HA pursuant to clauses (A), (B), and (C) shall be less than the "cost of construction" attributable to the Project units, the number of remaining units in the Development which shall be Project units shall be increased by a number of units (rounded down) equal to (1) the amount by which such payments to the HA shall be less than the cost of construction, divided by (2) the quotient of (x) cost of construction, divided by (y) the number of Project units immediately prior to the occurrence of the casualty or condemnation.

2. *Total loss.* In the event that all of the units in the Project are damaged, destroyed or lost as a result of casualty or condemnation, the following provisions shall apply:

(A) The Proceeds shall be used to reduce the amount of the outstanding indebtedness of any mortgage(s) secured by the Project, including any mortgage(s) held by the HA, based on the priority recorded order of such mortgage(s);

(B) If the Proceeds are more than sufficient to pay off the amount of the outstanding indebtedness of all mortgage(s) secured by the Project, including any mortgage(s) held by the HA, then the amount of the Proceeds in excess of such indebtedness shall be applied in the following order of priority:

(i). To reduce any outstanding indebtedness to the HA for an unsecured loan of Capital Funds, or other HUD Development Funds or Program Receipts;

(ii). To reimburse the HA for any Capital Funds, other public housing funds or Program Receipts disbursed to the Owner Entity for development of the Project other than by loan;

(iii). To the HA an amount equal to the total "cost of construction" attributable to the Project units, less the sum of (a) and (b) above, and

(iv). To the Owner Entity;

For the purposes of this subsection, the term "cost of construction" shall mean the total cost of developing the Project, less land acquisition costs, if any, and non-capitalized soft costs.

## **8. Employer Requirements.**

The HA shall comply with all State and Federal laws applicable to employee benefit plans and other conditions of employment. No Program Receipts may be used to pay any compensation for the services of members of the HA Board of Commissioners. None of the funds made available by the Act, for purposes authorized under section 8 and section 9 of the Act may be used by the HA for any amount of salary, including bonuses, for the chief executive officer of which, or any other official or employee of which, that exceeds the annual rate of basic pay payable for a position at level IV of the Executive Schedule.

## **9. Accounts, Records, and Government Access.**

a. The HA shall maintain complete and accurate books of account for the Projects of the HA in such a manner as to permit the preparation of statements and reports in accordance with HUD Requirements, and to permit timely and effective audit.

b. The HA shall furnish HUD such financial and program data, reports, records, statements, and documents at such times, in such form, and accompanied by such supporting data as required by HUD. The HA is required to submit or access HUD's system of records (SORN). HUD's SORN is subject to the Privacy Act, the Freedom of Information Act, and other such applicable law. The HA must not release, without prior HUD approval, any and all information contained in such records.

c. The United States Government, including HUD and the Comptroller General, and its duly authorized representatives, shall have full and free access to all HA offices and facilities, and to all books, documents, and records of the HA relevant to the administration of the projects under this CACC, including the right to audit and make copies.

d. The HA shall engage and pay an independent public accountant to conduct audits that are required by HUD and HUD Requirements. The cost of audits required by HUD may be charged against program receipts.

e. The foregoing (a)-(d) shall apply to any records and/or any facilities operated or maintained by an agent or independent contractor for the HA that assists in fulfilling any obligation under this CACC. Any such agent or independent contractor that denies HUD or its duly authorized representatives from reviewing records, or denies HUD or its duly authorized representative entry to an office or facility, or prevents access to any office or facility, will be considered a denial made by the PHA.

## **10. Grant Funding**

a. HUD shall make annual contributions in the form of grant funding in the amounts provided for the Public Housing Program as stated in the grant funding exhibits.

b. Grant funding is subject to each year's annual appropriations act and the requirements will be set forth in the grant funding exhibits. Appropriations may be reduced by HUD as directed by the Congress in an appropriations act. Grant funding may be reduced by an offset of a HA's funding, pursuant to a formula prescribed by Congress in an appropriations act. Grant funding may also be reduced or offset pursuant to a formula devised by HUD if Congress has invested HUD with the discretion to devise and implement a funding formula in the appropriations act. Grant funding may also be terminated, recaptured, withheld, suspended, reduced or such other actions taken in accordance with HUD Requirements.

c. Grant funding is calculated by applying applicable regulations in Title 24 of the Code of Federal Regulations unless Congress provides otherwise. HUD will grant funding to the HA in accordance with HUD Requirements, unless modified by an appropriations act. The appropriations act, not the Title 24 of the Code of Federal Regulations, will always take precedence in formulating each year's grant funding. Each year's grant funding exhibits will set forth the requirements. Any change in funding or requirements to a grant funding exhibit will be provided in a written notice to the HA.

d. The HUD notice of a revised funding exhibit(s) constitutes an amendment of the CACC.

#### **11. Term**

The grant funding exhibits state the first date and last dates of the terms for each funding increment.

#### **12. Depository**

a. The HA shall deposit and invest program receipts and investment securities received by or held for the account of the HA in connection with the development, operation and improvement of the projects under a CACC with HUD in accordance with the terms of the General Depository Agreement(s) and all investment requirements provided in HUD and Treasury Notices and Regulations. The General Depository Agreement shall be in the form prescribed by HUD and must be executed by the HA and the depository. Immediately upon the execution of any General Depository Agreement, the HA shall furnish to HUD such executed or conformed copies thereof as HUD may require. A General Depository Agreement shall not be terminated except after 30 days notice to HUD.

b. The HA shall maintain records that identify the source and application of funds in such a manner as to allow HUD to determine that all funds are and have been expended in accordance with HUD Requirements. The HA may only use Program Receipts for: (1) the payment of the costs of development and operation of the Projects under

the CACC with HUD; (2) the purchase of investment securities as approved by HUD; and (3) such other purposes as may be specifically approved by HUD. Except as approved by HUD, and consistent with HUD Requirements, grant funds are not fungible.

**13. Termination of a Project.** If any Project covered by this ACC is terminated, all related Program Receipts shall, in accordance with the terms of this CACC and HUD Requirements, become part of another Project administered by the HA. If no public housing Project(s) exists, the remaining personal and real property, and program receipts, shall be distributed (including the possible remittance to HUD) as directed by HUD, consistent with HUD Requirements.

#### **14. Notices, Defaults, Remedies.**

a. Any notice required or permitted to be given under this ACC or CACC shall be in writing, signed by a duly authorized official, and addressed, if to the HA, to the principal office of the HA, and if to HUD, to the HUD office with jurisdiction over the HA, unless otherwise directed by regulation or other HUD Requirements.

b. Upon the occurrence of a substantial default by the HA, as determined by HUD, HUD shall be entitled to any or all of the remedies set forth below. A substantial default is a serious and material violation of any one or more of the covenants contained in the CACC. Events of substantial default shall include, but shall not be limited to, any of the following occurrences: (1) failure to maintain and operate the Project(s) under this ACC in a decent, safe, and sanitary manner; (2) the disposition or encumbrance of any Project or portion thereof without HUD approval; (3) failure of the HA to comply with any civil rights requirements applicable to the HA and the Project(s); (4) abandonment of any Project by the HA, or if the powers of the HA to operate the public housing program in accordance with the provisions of this ACC are curtailed or limited to an extent that will prevent the accomplishment of the objectives of this ACC; (5) failure to carry out modernization or development in a timely, efficient and effective



manner; and (6) termination of tax exemption (either real or personal property) on behalf of a Project covered under the CACC.

c. Delivery of a notice of substantial default shall be required before the exercise of any remedy permitted under this ACC. Such notice shall: (1) identify the specific covenants, statutes, executive orders, or regulations alleged to have been violated; (2) identify the specific events, actions, failure to act, or conditions that constitute the alleged substantial default; and (3) provide a specific timeframe for the HA to cure the substantial default, taking into consideration the nature of the default.

d. Except in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, the HA shall have the right to appeal any such notice received from the HUD office with jurisdiction over the HA. Such informal appeals shall be in writing and shall be submitted within ten (10) working days from the date of the HA's receipt of such notice. Appeals of the action of a HUD Office shall be made to the Assistant Secretary for Public and Indian Housing, or such other official as shall be a successor thereto.

e. Upon the occurrence of a substantial default, or the expiration of any applicable cure period provided by HUD, the HA shall: (1) convey to HUD title to the Project(s) as demanded by HUD if, in the determination of HUD (which determination shall be final and conclusive), such conveyance of title is necessary to achieve the purposes of the Act; or (2) deliver possession and control of the Project(s) to HUD.

f. Nothing contained in this ACC shall prohibit or limit HUD from the exercise of any other right or remedy existing under applicable law, or available at equity. HUD's exercise or non-exercise of any right or remedy under this ACC or CACC shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

g. If HUD shall acquire title to, or possession of the Project(s), HUD shall re-convey or redeliver possession of the project(s) to the HA, or to any successor recognized by HUD: (1) upon a determination by HUD that the substantial default has been cured and that the Project(s) will thereafter be operated in accordance with the terms of the CACC; or (2) after the termination of HUD's obligation to make payments, unless there are any obligations or covenants of the HA to HUD that are then in default.

h. HUD may at any time by notice to the HA declare this ACC or the CACC terminated with respect to any project if:

1. The HA has made any fraudulent or willful misrepresentation of any material fact in any document or data submitted to HUD as a basis for the CACC or as an inducement to HUD to enter into the CACC; or

2. a substantial default exists in connection with any of the Projects.

i. *Mixed Finance Projects.* In addition to the above the following shall apply to Mixed-Finance Projects.

1. Each of the following shall also constitute an event of substantial default under the CACC:

(A) The drawdown of Capital Funds, Development Grant Funds, or other public housing funds, as applicable, under a Mixed Finance proposal in amounts greater than authorized, or in amounts greater than allowed by HUD Requirements;

(B) Breach of any approved performance schedule; or

(C) Serious and material breach of any terms, covenants, agreements, provisions, or warranties of:

(i). the HA which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, or other participating parties, Amendment; and

(ii). the Owner Entity, partner, or other participating party, made in any agreement submitted to HUD as part of the evidentiary materials which, in the opinion of HUD, adversely affects the performance obligations of the HA, the Owner Entity, partner, or other participating parties.

2. HUD shall permit an Owner Entity, partner, or lender to participate, and may in its discretion, permit any other participating party to participate, in any appeal from a notice of substantial default delivered by HUD to the HA pursuant to this ACC with respect to a Project.

3. During the term of any agreement between the HA and Owner Entity, and so long as the Owner Entity shall not be in default of its obligations thereunder, HUD agrees that in the event of the substantial default by the HA under the CACC, HUD shall exercise any remedies or sanctions authorized under the CACC, including taking possession of the HA's interest in the Mixed Finance Project, in such manner as not to disturb the Owner Entity's rights under any such agreements.

4. Any rights of the mortgagee under a Note and First Mortgage (if any), including the right to exercise all remedies specified therein, shall not be subordinate to any other obligations imposed upon the Project, except as such obligations (1) shall be reflected in the Declaration of Restrictive Covenants, as required by the CACC, or a memorandum of lease (if applicable), and/or any other recorded instrument which shall have been recorded prior to the lien of the First Mortgage, or (2) shall be the subject of a subordination agreement with such mortgagee.

## **15. HUD in Possession of Project(s).**

a. During any Period in which HUD holds title to or possession of the projects after a substantial default by the HA, HUD shall develop and/or operate such project(s) as nearly as practicable in accordance with the provisions of the CACC.

b. During any such period, HUD may, in the name and on behalf of the HA, or in its own name and on its own behalf (as HUD shall solely determine), exercise any and all rights of the HA under the CACC, and perform any and all obligations of the HA under the CACC. Nothing herein shall be deemed to make the action(s) or omission(s) of the HA attributable to HUD.

## **16. Conflict of Interest.**

a. HAs shall maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts for which program receipts will be or are expended. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The HA's procedures must avoid acquisition of unnecessary or duplicative items. The HA must disclose in writing any potential conflict of interest to HUD.

b. The HA, its contractors and subcontractors shall not enter into any contract, subcontract, or arrangement in connection with a project under the CACC in which any of the following classes of people has an interest, direct

or indirect, during his or her tenure or for one year thereafter:

1. Any present or former member or officer of the governing body of the HA, or any member of the officer's immediate family. There shall be excepted from this prohibition any present or former tenant commissioner who does not serve on the governing body of a resident corporation, and who otherwise does not occupy a policymaking position with the resident corporation, the HA or a business entity.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the Project(s), or any member of the employee's immediate family, or the employee's partner.

3. Any public official, member of the local governing body, or State or local legislator, or any member of such individuals' immediate family, who exercises functions or responsibilities with respect to the project(s) or the HA.

4. Any member of these classes of persons must disclose the member's interest or prospective interest to the HA.

5. The requirements of this subsection may be waived by HUD for good cause, if the prohibited contract, subcontract or arrangement is otherwise permitted under State and local law. No person for whom a waiver is requested may exercise responsibilities or functions with respect to the contract, subcontract or arrangement to which the waiver pertains.

6. The provisions of this subsection (b) shall not apply to the General Depository Agreement entered into with an institution regulated by a Federal agency, or to utility service for which the rates are fixed or controlled by a State or local agency.

c. The HA shall not hire an employee in connection with a project under this ACC if the prospective employee is an immediate family member of any person belonging to one of the following classes:

1. Any present or former member or officer of the governing body of the HA. There shall be excepted from this prohibition any former tenant commissioner who does not serve on the governing body of a resident corporation, and who does not occupy a policymaking position with the HA.

2. Any employee of the HA who formulates policy or who influences decisions with respect to the project(s).

3. Any public official, member of the local governing body, or State or local legislator, who exercises functions or responsibilities with respect to the project(s) or the HA.

d. The prohibition referred to in subsection (c) shall remain in effect throughout the class member's tenure and for one year thereafter.

e. A class member shall disclose to the HA the member's familial relationship to the prospective employee.

f. For purposes of this section, the term "immediate family member" means: the spouse, mother, father, mother-in-law, father-in-law, brother, sister, brother-in-law, or sister-in-law, or child of a covered class member (whether related as a full blood relative, or as a "half" or "step" relative, e.g., a half-brother or stepchild).

g. In addition to any other applicable conflict of interest requirements, including those provided herein, HAs must also maintain written standards of conduct covering conflicts of interest and governing the performance of its Board Member, executives, and employees engaged in the administration and operation of Projects covered by the CACC.

1. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from residents residing in Projects or participating in programs covered by the CACC. However, HAs may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

2. If the HA has a parent, affiliate, or subsidiary organization that is not a state or local government, the HA must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the HA is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization; or in administering or operating a project involving a related organization.

h. Consistent with this section and HUD Requirements, the HA shall ensure that tenants served directly by the HA serve on the governing body of the HA.

## **17. Civil Rights Requirements.**

a. The HA shall comply with all statutory, regulatory, and executive order requirements pertaining to civil rights, equal opportunity, and nondiscrimination, as those requirements now exist, or as they may be enacted, promulgated, or amended from time to time. These requirements include, but shall not be limited to, compliance with at least the following authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601-3619; 24 CFR part 100); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 24 CFR part 8); (the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107; 24 CFR part 146); the Americans with Disabilities Act (Pub. L. 101-336, approved July 26, 1990; 28 CFR part 35); Executive

Order 11063 on Equal Opportunity in Housing (24 CFR part 107); Executive Order 11246 on Equal Employment Opportunity, as amended by Executive Order 11375 (41 CFR part 60); and Executive Order 12892 on Affirmatively Furthering Fair Housing.

b. In connection with the development or operation of any Project, the HA shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The HA shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The HA shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its contracts in connection with the development or operation of any Project, except contracts for standard commercial supplies or raw materials and contracts referred to in subsection (C) of this section, and shall require all contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The HA shall post at the Projects, in conspicuous places available to employees and applicants for employment, notices to be provided by HUD setting forth the provisions of this nondiscriminatory clause.

c. The HA shall incorporate the language required by Executive Order 11246, codified at 41 CFR §60-1.4(b) (or any successor provision), into any contract for construction work, or any modification thereof, which is paid for in whole or in part with funds obtained under this ACC. In addition, the HA agrees that it will be bound by the equal employment opportunity provisions set forth at 41 CFR §60-1.4(b) (or any successor provision) with respect to its own employment practices when it uses its own staff (force account) to carry out Federally assisted construction work.

**18. Members or Delegates to Congress.**

No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this ACC or to any benefits which may arise from it. (As used in this section, the term "resident commissioner" refers to an individual appointed to oversee a territory or possession of the United States of America, e.g., Guam.)

**19. Rights of Third Parties.**

Nothing in this ACC shall be construed as creating any right of any third party to enforce any provision of the ACC, the CACC, or to assert any claim against HUD or the HA.

**20. Waiver or Amendment.**

Any right or remedy that HUD may have under this ACC may be waived in writing by HUD without the execution of a new or supplemental agreement, or by mutual agreement of the parties to this ACC. This agreement may be amended in writing: Provided, that none of the provisions of this ACC may be modified or amended so as to impair HUD's obligation to pay any annual contributions that have been pledged as security for any obligations of the HA.