

**§ 903.25**

**§ 903.25 How does HUD ensure PHA compliance with its plan?**

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

**PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES**

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AUTHORITY: 42 U.S.C. 1437-1437ee and 3535(d).

SOURCE: 39 FR 10966, Mar. 22, 1974, unless otherwise noted. Redesignated at 40 FR 15580, Apr. 7, 1975, and 49 FR 6714, Feb. 23, 1984.

**Subpart A—Introduction to Low-Rent Housing Homeownership Opportunity Program [Reserved]**

**Subpart B—Turnkey III Program Description**

**§ 904.101 Introduction.**

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities Program for Low-Income Families (Turnkey III).

(b) *Applicability.* This subpart is applicable to Turnkey III developments operated by LHA. For Turnkey III developments operated by an Indian Housing Authority, applicable provisions are found at 24 CFR part 905, subpart G.

(1) With respect to any development to be operated as Turnkey III, the Annual Contributions Contract (ACC) shall contain the "Special Provisions for Turnkey III Homeownership Opportunity Project" as set forth in Appendix I. A Turnkey III development may include only units which are to be operated as such under Homebuyers Ownership Opportunity Agreements. If for any reason it is determined that certain units should be operated as conventional rental units, such units must comprise or be made part of a conventional rental project.

(2) With respect to Turnkey III developments pursuant to an executed ACC where no Agreements with Homebuyers have been signed, the ACC shall be amended (i) to include the "Special Provisions" set forth in Appendix I, (ii) to extend its term to 30 years, and (iii) to reduce its Maximum Contribution Percentage to a rate that will amortize the debt in 30 years at the minimum Loan Interest Rate specified in the ACC for the specific Turnkey III project involved. Further development and operation shall be in accordance with this subpart including use of the form of Homebuyers Ownership Opportunity Agreement set forth in Appendix II.

(3) With respect to developments where Agreements with homebuyers have been signed, the following steps shall be taken:

(i) The ACC shall be amended to include the Special Provisions" set forth in Appendix I; further development and operation of the Project shall be in accordance with this subpart.

(ii) The LHA shall offer all qualified homebuyers in the development a new Homebuyers Ownership Opportunity Agreement as set forth in Appendix II with an amendment to section 16a to refer to "the latest approved Development Cost Budget, or Actual Development Cost Certificate if issued," in lieu of "the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale," and, if the ACC for the Project has a term of 25 years, an amendment to section 16(b) to refer to a term of 25 years, instead of 30, for the Purchase Price Schedule. Each Purchase Price Schedule shall commence

with the first day of the month following the effective date of the initial Agreement. No other modification in the new Agreement may be made. In the event the homebuyer refuses to accept the new Agreement, no modifications may be made in the old Agreement and the matter shall be referred to HUD.

(4) With respect to Projects which were under ACC on the effective date of this subpart, the Total Development Cost Budget shall be revised, if financially feasible, to include the cost of the appraisals which are necessary for computation of the initial purchase prices pursuant to §904.113. In the event this is not financially feasible, the matter shall be referred to HUD, which may, if necessary, authorize a different method for computation of such initial purchase prices on an equitable basis.

(5) With respect to all developments which were completed by the effective date of this subpart, the appraisals which are necessary for computation of the initial purchase prices pursuant to §904.113 shall be made as of the date of completion of the development.

[39 FR 10966, Mar. 22, 1974. Redesignated at 40 FR 15580, Apr. 7, 1975, and 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 922, Jan. 9, 1991]

#### § 904.102 Definitions.

(a) The term *common property* means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development: *Provided, however*, That in the case of a development that is organized as a condominium or a planned unit development (PUD), the term *common property* shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms *common areas, common facilities, common elements, common estate*, or other similar terms.

(b) The term *development* means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

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(c) The term *EHPA* means the Earned Home Payments Account established and maintained pursuant to § 904.110.

(d) The term *homebuyer* means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the LHA.

(e) The term *homebuyers association* (HBA) means an organization as defined in § 904.106.

(f) The term *homeowner* means a homebuyer who has acquired title to his home.

(g) The term *homeowners association* means an association comprised of homeowners, including condominium associations, having responsibilities with respect to common property.

(h) The term *LHA* means the local housing authority which acquires or develops a low-rent housing development with financial assistance from HUD, owns the homes until title is transferred to the homebuyers, and is responsible for the management of the homeownership opportunity program.

(i) The term *NRMR* means the Non-routine Maintenance Reserve established and maintained pursuant to § 904.111.

(j) The term *Project* is used to refer to the development in relation to matters specifically related to the Annual Contributions Contract.

[39 FR 10966, Mar. 22, 1974, as amended at 61 FR 5214, Feb. 9, 1996]

## § 904.103 Development.

(a) *Financial framework.* The LHA shall finance development or acquisition by sale of its notes (bond financing shall not be used) in the amount of the Minimum Development Cost. Payment of the debt service on the notes is assured by the HUD commitment to provide annual contributions.

(b) *Maximum total development cost.* The maximum total development cost stated in the ACC is the maximum amount authorized for development of a project and shall not exceed the amount approved in accordance with § 941.406(a) of this chapter.

(c) *Contractual framework.* There are three basic contracts:

(1) An Annual Contributions Contract containing "Special Provisions For Turnkey III Homeownership Op-

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portunity Project," Form HUD-53010C (see Appendix I);

(2) A Homebuyers Ownership Opportunity Agreement (see Appendix II) which sets forth the respective rights and obligations of the low-income occupants and the LHA, including conditions for achieving homeownership; and

(3) A Recognition Agreement (see Appendix II of Subpart D of this part) between the LHA and the HBA under which the LHA agrees to recognize the HBA as the established representative of the homebuyers.

(d) *Community Participation Committee (CPC).* In the necessary development of citizens' participation in and understanding of the Turnkey III program, the LHA should consider formation and use of a CPC to assist the community and the LHA in the development and support of the Turnkey III program. The CPC shall be a voluntary group comprised of representatives of the low-income population primarily and may also include representatives of community service organizations.

[39 FR 10966, Mar. 22, 1974. Redesignated at 40 FR 15580, Apr. 7, 1975, and amended at 47 FR 39482, Sept. 8, 1982. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 41598, Oct. 24, 1988]

## § 904.104 Eligibility and selection of homebuyers.

(a) *Announcement of availability of housing; fair housing marketing.* (1) The availability of housing under Turnkey III shall be announced to the community at large. Families on the waiting list for LHA conventional rental housing who wish to be considered for Turnkey III must apply specifically for that program (see paragraph (d) of this section).

(2) The LHA shall submit to HUD an Affirmative Fair Housing Marketing Plan and shall otherwise comply with the provisions of the Affirmative Fair Housing Marketing Regulations, 24 CFR part 200, subpart M, as if the LHA were an applicant for participation in an FHA housing program. This Plan shall be submitted with the development program, and no development program may be approved without prior approval of the Plan pursuant to HUD procedures under said Affirmative

Fair Housing Marketing Regulations. If the development program has been approved, but the Annual Contributions Contract has not been executed, prior to the effective date of this subpart, an Affirmative Fair Housing Marketing Plan must be approved prior to execution of said contract.

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 5 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. The HUD-approved standards for admission to low-rent housing, including the LHA's established priorities and preferences and the requirements for administration of low-rent housing under Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241, 42 U.S.C. 2000d), shall be applicable except that the procedures used for homebuyer selection under Turnkey III shall be those set forth in this section. In carrying out these procedures the aim shall be to provide for equal housing opportunity in such a way as to prevent segregation or other discrimination on the basis of race, creed, color or national origin in accordance with the Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241, 42 U.S.C. 2000d) and 1968 (Pub. L. 90-284, 82 Stat. 73, 42 U.S.C. 3601).

(2) An LHA may establish income limits for Turnkey III which are different from those for its conventional rental program: *Provided* That those limits are in accord with all applicable statutory and administrative requirements and are approved by HUD.

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), must determine the eligibility of each applicant family in respect to the income limits for the development (including the requirement that the applicant family disclose and verify Social Security Numbers, as provided by 24 CFR part 750, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), and

must then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with §904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in §904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference, and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

(d) *List of applicants.* A separate list of applicants for Turnkey III shall be maintained, consisting of families who specifically apply and are eligible for admission to such housing.

(1) *Dating of applications.* All applications for Turnkey III shall be dated as received.

(2) *Effect on applicant status.* The filing of an application for Turnkey III by a family which is an applicant for LHA conventional rental housing or is an occupant of such housing shall in no way affect its status with regard to such rental housing. Such an applicant shall not lose his place on the rental housing waiting list until his application is accepted for Turnkey III and shall not receive any different treatment or consideration with respect to conventional rental housing because of having applied for Turnkey III.

(e) *Determination of potential for homeownership*—(1) *Recommending committee.* The LHA should consider use of a recommending committee to assist in the establishment of objective criteria for the determination of potential for homeownership and in the selection of homebuyers from the families determined to have such potential. If a recommending committee is used, it should be composed of representatives of the CPC (if any), the LHA and the HBA. The LHA shall submit to the committee prompt written justification of any rejection of a committee recommendation, stating grounds, the reasonableness of which shall be in accord with applicable LHA and HUD regulations. Each member of such a committee, at the time of appointment, shall be required to furnish the LHA with a signed statement that the member will (i) follow selection procedures and policies that do not automatically deny admission to a particular class, that insure selection on a nondiscriminatory and nonsegregated basis, and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan, and (ii) maintain strict confidentiality by not divulging any information concerning applicants or the deliberations of the committee to any person except to the LHA as necessary for purposes of the official business of the committee.

(2) *Potential for homeownership.* In order to be considered for selection, a family must be determined to meet at least all of the following standards of potential for homeownership:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRM, and the estimated average monthly cost of utilities attributable to the home;

(ii) Ability to meet all the obligations of a homebuyer under the Homebuyers Ownership Opportunity Agreement;

(iii) At least one member gainfully employed, or having an established source of continuing income.

(f) *Selection of homebuyers.* Homebuyers shall be selected from those families determined to have potential

for homeownership. Such selection shall be made in sequence from the waiting list established in accordance with this section, provided that the following shall be assured:

(1) Selection procedures that do not automatically deny admission to a particular class; that ensure selection on a nondiscriminatory and nonsegregated basis; that give a Federal preference in accordance with § 904.122; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan.

(2) Achievement of an average monthly payment for the Project, including consideration of the availability of the Special Family Subsidy, which is at least 10 percent more than the breakeven amount for the Project (see § 904.108). This standard shall be complied with both in the initial selection of homebuyers and in the subsequent filling of vacancies at all times during the life of the Project. If there is an applicant who has potential for homeownership but whose required monthly payment under the LHA's Rent Schedule would be less than the break-even amount for the suitable size and type of unit, such applicant may be selected as a homebuyer, provided that the incomes of all selected homebuyers shall result in the required average monthly payment of at least 10 percent more than the break-even amount for the Project. Such an average monthly payment for the Project may be achieved by selecting other low-income families who can afford to make required monthly payments substantially above the break-even amounts for their suitable sizes and types of units.

(g) *Notification to applicants.* (1) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (f)(2) of this section are met, the selected applicant shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an information hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR part 5.

(h) *Eligibility for continued occupancy.*

(1) A homebuyer shall cease to be eligible for continued occupancy with the aid of HUD annual contributions when the LHA determines that the homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the current amount of the homebuyer's Total Tenant Payment, determined in accordance with part 913 of this chapter, equals or exceeds the monthly housing cost (see paragraph (h)(2) of this section). In such event, if the LHA determines, with HUD approval, that suitable financing is available, the LHA shall notify the homebuyer that he or she must either: (1) Purchase the home or (ii) move from the development. If, however, the LHA determines that, because of special circumstances, the family is unable to find decent, safe, and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent an amount equal to Tenant Rent, as determined in accordance with part 913 of this chapter. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

(2) The term "monthly housing cost," as used in this paragraph, means the sum of:

(i) The monthly debt service amount shown on the Purchase Price Schedule (except where the homebuyer can pur-

chase the home by the method described in §904.113(c)(1) of this part);

(ii) One-twelfth of the annual real property taxes which the homebuyer will be required to pay as a homeowner;

(iii) One-twelfth of the annual premium attributable to fire and extended coverage insurance carried by the LHA with respect to the home;

(iv) The current monthly per unit amount budgeted for routine maintenance (EHPA), and for routine maintenance-common property; and

(v) The current LHA and HUD approved monthly allowance for utilities paid for directly by the homebuyer plus the monthly cost of utilities supplied by the LHA.

(Approved by the Office of Management and Budget under control number 2577-0083)

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#### § 904.105 Counseling of homebuyers.

The LHA shall provide counseling and training as provided in subpart C of this part, with funding as provided in §904.206 of this part. Applicants for admission shall be advised of the nature of the counseling and training program available to them and the application for admission shall include a statement that the family agrees to participate and cooperate fully in all official pre-occupancy and post-occupancy training and counseling activities. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

#### § 904.106 Homebuyers Association (HBA).

An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement or who are homeowners. It is formed and organized for the purposes set forth in §904.304 of this part. The HBA shall be funded as provided in §904.305 of this part. In the absence of a duly organized HBA, the LHA shall be

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free to act without the HBA action required by this subpart.

**§ 904.107 Responsibilities of homebuyer.**

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the LHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing code and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating equipment and other component parts of the dwelling. It also includes all interior painting and the maintenance of grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the NRMR described in §904.111.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by him, members of his family, or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the LHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the LHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the LHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the LHA and the HBA.

(e) *Use of home.* A homebuyer shall not (1) sublet the home without the prior written approval of the LHA and HUD, (2) use or occupy the home for

any unlawful purpose nor for any purpose deemed hazardous by insurance companies on account of fire or other risks, or (3) provide accommodations (unless approved by the HBA and the LHA) to boarders or lodgers. The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the LHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of his family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the LHA has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the development as a whole, or (2) affect the use of the home for residential purposes, or (3) violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the LHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the LHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the LHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant (see §904.110(j)(1)). The homebuyer, his representative, and a representative of the HBA may join in any such inspections by the LHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of his home and in maintenance of common property as discussed in §904.110(d) and §904.111(c).

(j) *Homebuyer's required monthly payment.* (1) The term "required monthly payment" as used herein means the

monthly payment the homebuyer is required to pay the LHA on or before the first day of each month. The homebuyer's required monthly payment, which is based upon family income, shall be an amount equal to the Tenant Rent as determined in accordance with part 913 of this chapter. If the Utility Allowance, as defined in part 913 of this chapter, exceeds the Homebuyer's Total Tenant Payment, as determined in accordance with part 913, the LHA will pay a utility reimbursement equal to that excess to the Homebuyer, or as provided in § 913.108 of this chapter.

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 5 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 5 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated in this paragraph and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 5. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 5 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

(3) The LHA shall not refuse to accept monthly payments because of any other charges (other than overdue monthly payments) owed by the homebuyer to the LHA; however, by accepting monthly payments under such circumstances the LHA shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

(k) *Application of monthly payment.* The LHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA (see § 904.110);

(2) To the credit of the homebuyer's NRMR (see § 904.111); and

(3) For payment of monthly operating expense including contribution to operating reserve (see § 904.109).

(1) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, it shall be used only to house a family of low income. Therefore:

(1) A homebuyer shall not assign any right or interest in the home or under the Homebuyers Ownership Opportunity Agreement without the prior written approval of the LHA and HUD;

(2) In the event of death, mental incapacity or abandonment of the family by the homebuyer, the person designated as the successor in the Homebuyers Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the home at the time of the event and is determined by the LHA to meet all of the standards of potential for homeownership as set forth in § 904.104(e)(2). Such person shall be designated by the homebuyer at the time the Homebuyers Ownership Opportunity Agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the LHA may consider as the homebuyer any family member who was an occupant at the time of the event and who meets the standards of potential for homeownership.

(3) If there is no qualified successor in accordance with paragraph (1) (2) of this section, the LHA shall terminate

the Agreement and another family shall be selected except under the following circumstances: where a minor child or children of the homebuyer family are in occupancy, then in order to protect their continued occupancy and opportunity for acquisition of ownership of the home, the LHA may approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyers Ownership Opportunity Agreement in their interest and behalf.

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 5; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 5, the requirements of 24 CFR parts 5 and 966 shall apply.

(2) Notice of termination by the LHA shall be in writing. Such notice shall state

- (i) The reason for termination,
- (ii) That the homebuyer may respond to the LHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination,

(iii) That in such response he may be represented or accompanied by a person of his choice, including a representative of the HBA,

(iv) That the LHA will consult the HBA concerning this termination, and

(v) That unless the LHA rescinds or modifies the notice, the termination shall be effective at the end of the 30-day notice period.

(n) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyers Ownership Opportunity Agreement by giving the LHA 30 days notice in writing of this intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the LHA, the Agreement shall be terminated automatically and the LHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(o) *Transfer to rental unit.* (1) Inasmuch as the homebuyer was found eligible for admission to the Project on the basis of having the necessary elements of potential for homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. Accordingly, in the event it should develop that the homebuyer no longer meets one or more of these elements of homeownership potential, the LHA shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from the date of evaluation of the results of the investigation, the LHA shall make a re-evaluation as to whether the family has regained the potential for homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the reevaluation. Further extension of time may be granted in exceptional cases, but in any event, a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The LHA shall invite the HBA to participate in all investigations and evaluations.

(2) If the final determination of the LHA, after considering the views of the

HBA, is that the homebuyer should be transferred to a suitable dwelling unit in an LHA rental project, the LHA shall give the homebuyer written notice of the LHA determination of the loss of homeownership potential and of the offer of transfer to a rental unit. The notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice, provided that an eligible successor for the homebuyer unit has been selected by the LHA. The notice shall also state that if the homebuyer should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice. The notice shall include a statement (i) that the homebuyer may respond to the LHA in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response he may be represented or accompanied by a person of his choice including a representative of the HBA, and (iii) that the LHA has consulted the HBA concerning this determination and offer of transfer.

(3) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph (o), the amount in the homebuyer's EHPA shall be paid in accordance with the provisions of § 904.110(j).

(Approved by the Office of Management and Budget under control number 2577-0083)

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#### § 904.108 Break-even amount.

(a) *Definition.* The term "break-even amount" as used herein means the minimum average monthly amount required to provide funds for the items listed in the illustration below. A separate break-even amount shall be established for each size and type of dwelling unit, as well as for the Project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit; similar vari-

ations as to other line items may be made if the LHA deems this equitable.

*Illustration.* The following is an illustration of the computation of the break-even amount based upon hypothetical amounts.

(1) Operating Expense (see § 904.109):		
Administration .....	\$8.50	
Homebuyer services .....	2.00	
Project supplied utilities .....	3.00	
Routine maintenance—common property .....	3.00	
Protective services .....	2.00	
General expense .....	6.50	
Nonroutine maintenance—common property (Contribution to operating reserve) .....	2.00	\$27.00
(2) Earned Home Payments Account (see § 904.110) .....		12.00
(3) Nonroutine Maintenance Reserve (see § 904.111) .....		7.50
Break-Even Amount .....		46.50

The break-even amount does not include the monthly allowance for utilities which the homebuyer pays for directly, nor does it include any amount for debt service on the Project notes.

(b) *Excess over break-even.* When the homebuyer's required monthly payment (see § 904.107(j)) exceeds the applicable break-even amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

(c) *Deficit in monthly payment.* When the homebuyer's required monthly payment is less than the applicable break-even amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (i. e., as a reduction of Project income). In all such cases, the EHPA and the NRMR shall be credited with the amount included in the break-even amount for these accounts.

#### § 904.109 Monthly operating expense.

(a) *Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telephone and telegraph, etc.;

(2) *Homebuyer services.* LHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any, to be furnished by the LHA as part of operating expense;

(4) *Routine maintenance—common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the LHA's responsibility for maintenance (see also § 904.109(c));

(5) *Protective services.* The cost of supplemental protective services paid by the LHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for non-dwelling structures (see § 904.112).

(b) *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the LHA's HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the difference (see § 904.112(b)). Such adjustment may result in a change in the required monthly payment, see § 904.107(j)(3).

(c) *Provision for common property maintenance.* During the period the LHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis

of the total number of homes in the development (i. e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of homes in the development, resulting in the annual amount for each home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property). After the home owners association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the LHA (see § 904.112(b) for nonroutine maintenance of common property).

(d) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

**§ 904.110 Earned Home Payments Account (EHPA)**

(a) *Credits to the account.* The LHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of his required monthly payment equal to the LHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homebuyer's home, shall be set aside in his EHPA. In addition, this account shall be credited with

(1) Any voluntary payments made pursuant to paragraph (f) of this section, and

(2) Any amount earned through the performance of maintenance as provided in paragraph (d) of this section and § 904.111(c).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in § 904.107(a), the LHA shall arrange to have the

work done in accordance with the procedures established by the LHA and the HBA and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the LHA and the HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the LHA (see § 904.111), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* The homebuyer may exercise his option to buy the home, by paying the applicable purchase price pursuant to § 904.113 or § 904.115, only after satisfying the following conditions precedent:

(1) Within the first two years of his occupancy, he has achieved a balance in his EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section;

(2) He has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement;

(3) He has rendered, and is continuing to render, satisfactory performance of his responsibilities to the HBA.

When the homebuyer has met these conditions precedent, the LHA shall give the homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of his occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to his EHPA. If the homebuyer fails to meet either his obligation to achieve the minimum EHPA balance, as specified, or his obligation thereafter to continue adding to the EHPA, the LHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the LHA in accordance with § 904.107(m).

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to

a prior written agreement between the homebuyer and the LHA (or the home owners association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the LHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the LHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the LHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances; (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and (iii) the aggregate uninvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to his home within a shorter period, he may, either periodically or in a lump sum, voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the LHA, a homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for

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this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the LHA or the HBA.

(h) *Annual statement to homebuyer.* The LHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his NRMR. During the year, any maintenance or repair done on the dwelling by the LHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive a copy of all such work orders for his home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in § 904.113 and § 904.115.

(j) *Application of EHPA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the LHA is terminated or if the homebuyer vacates the home (see § 904.107 (m), (n) and (o)), the LHA shall charge against the homebuyer's EHPA the amounts required to pay

(i) The amount due the LHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with § 904.107; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with § 904.107.

(2) If the EHPA balance is not sufficient to cover all of these charges, the LHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has

been determined (see paragraph (j)(1)(iii) of this section), provided that the LHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repair has not yet been determined, if he has given the LHA notice of intention to vacate at least 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the LHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

### § 904.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The LHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the LHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyers Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing,

heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the LHA and approved by HUD as part of the submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The LHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the LHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the home-

buyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer's Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the LHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the LHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the LHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

#### § 904.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures,

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty,

(3) Working capital for payment of a deficit in a homebuyer's NRMR, until such deficit is offset by future monthly payments by the homebuyer or at settlement in the event the homebuyer should purchase, and

(4) A deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly payments totaling less than the break-even amount for the Project.

(b) *Nonroutine maintenance—common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see § 904.108 and § 904.109) shall be determined by the LHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the LHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in § 904.109(c). When the operating reserve reaches the maximum authorized in paragraph (c) of this section, the break-even (monthly operating expense) computations (see §§ 904.108 and 904.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may

be retained by the LHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, LHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see § 904.109 above for explanation of various categories of expense).

(d) *Transfer to homeowners association.* The LHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see §§ 904.118(c) and 904.119(f)). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners association a portion of the operating reserve then held by the LHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (c) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: Obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve; and multiply the actual operating reserve balance by this percentage.

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve this excess shall be applied to the operating deficit of the Project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last home has been conveyed

by the LHA, the balance of the operating reserve held by the LHA shall be paid to HUD, provided that the aggregate amount of payments by the LHA under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

**§ 904.113 Achievement of ownership by initial homebuyer.**

(a) *Determination of initial purchase price.* The LHA shall determine the initial purchase price of the home by two basic steps, as follows:

*Step 1:* The LHA shall take the Estimated Total Development Cost (including the full amount for contingencies as authorized by HUD) of the development as shown in the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management facilities including the land, equipment, and furnishings attributable to such facilities as set forth in the development program for the development. The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

*Step 2:* The LHA shall apportion the Estimated Total Development Cost for Homebuyers among all the homes in the development. This apportionment shall be made by obtaining an FHA appraisal of each home and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost for Homebuyers. The adjusted amount for each home shall be the initial purchase price for that home.

(b) *Purchase price schedule.* Each homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period,<sup>1</sup> commencing with the initial purchase price on the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement and (2) the monthly debt service amount upon which the Schedule is based. The Schedule and debt service amount shall be computed on the basis of the initial

purchase price, a 30-year period,<sup>2</sup> and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph (a) of this section, rounded up, if necessary, to the next multiple of one-fourth of one percent ( $\frac{1}{4}$  percent).

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs (Incidental Costs mean the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the LHA's attorney, mortgage application and organization, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the homebuyer shall be refunded (i) the net additions, if any, credited to his EHPA subsequent to such month, and (ii) such part of the monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the unit and the interest portion of the debt service shown in the Purchase Price Schedule.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the homebuyer's

<sup>2</sup>Under section 234(c) of the National Housing Act, as of the date of publication of this subpart, mortgage insurance for a condominium unit in a multi-family project is generally authorized only if the project is currently or has been covered by a mortgage insured under another section of the National Housing Act. There is, however, a proviso which authorizes mortgage insurance for a condominium unit in a multi-family project even though the project is not or has not been covered by such a project mortgage, if the project involves eleven or less units.

<sup>1</sup>Change to 25-year period where appropriate pursuant to § 904.101(b)(3).

EHPA and NRMR as described in paragraph (c)(1) of this section, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on his Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

(d) The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyers income and the amount of credit which the homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

**§904.114 Payment upon resale at profit.**

(a) *Promissory note.* (1) When a homebuyer achieves ownership (regardless of whether ownership is achieved under §904.113 or §904.115), he shall sign a note obligating him to make a payment to the LHA, subject to the provisions of paragraph (a)(2) or this section, in the event he resells his home at a profit within 5 years of actual residence in the home after he becomes a homeowner. If, however, the homeowner should purchase and occupy another home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III home, the LHA shall refund to the homeowner the amount previously paid by him under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homebuyer pursuant to paragraph (a)(1) of this section shall be a non interest-bearing promissory note (see Appendix IV) to the LHA. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the home, deter-

mined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as a homeowner, with the note terminating at the end of the five-year period of residency, as determined by the LHA. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (A) the homebuyer's purchase price plus the Incidental Costs, (B) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (C) the increase in value of the home, determined by appraisal, due to improvements paid for by him as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the LHA under such notes shall be retained by the LHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (i) to reduce the LHA's capital indebtedness on the Project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the LHA may then have with HUD.

*Illustration.* If the homeowner's purchase price is \$10,000, the Incidental Costs are \$500, the value added by improvements is \$1,000, and the FHA appraised value at the time he acquires ownership is \$17,000, the note computation would be as follows:

FHA appraised value .....		\$17,000
Homeowner's purchase price .....	\$10,000	.....
Incidental costs .....	500	.....
Improvements .....	1,000	11,500
<hr/>		
Initial note amount .....		5,500

In this example, the amount of the note during the first year of residence is \$5,500. In the second year, the amount of the note is \$4,400, and in the third year, it is \$3,300, etc. The note shall terminate at the end of the fifth year.

If the homeowner in this example resells his home during the first year for a sales

price of \$17,500, has resale costs of \$1,600 (including a sales commission), and has added \$1,500 value by further improvements, he would be required to pay the LHA \$2,900 rather than the \$5,500, as indicated in the following computations:

Resale price .....		\$17,500
Resale costs .....	\$1,600	.....
Purchase price and incidental costs .....	10,500	.....
All improvements .....	2,500	14,600
<hr/>		
Payable to LHA .....		2,900

(b) *Residency requirements.* The five-year note period does not end if the homeowner rents or otherwise does not use the home as his principal place of residence for any period within the first five years after he achieves ownership. Only the actual amount of time he is in residence is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request the LHA to release him from the note, and the LHA shall do so.

**§ 904.115 Achievement of ownership by subsequent homebuyers.**

(a) *Definition.* In the event the initial homebuyer and his family vacate the home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to § 904.107(1)(2) is herein called a "subsequent homebuyer."

(b) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be an amount equal to (1) the purchase price shown in the initial homebuyer's Purchase Price Schedule as of the date of this Agreement with the subsequent homebuyer plus (2) the amount, if any, by which the appraised fair market value of the home, determined or approved by HUD as of the same date, exceeds the purchase price specified in paragraph (b)(1) of this section.

(c) *Purchase price schedule.* The subsequent homebuyer's Purchase Price Schedule shall be the same as the unexpired portion of the initial homebuyer's Purchase Price Schedule except that where his purchase price includes an additional amount as specified in paragraph (b)(2) of this section, the initial homebuyer's Purchase Price Schedule shall be followed by an Additional Purchase Price Schedule for

such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial homebuyer's Purchase Price Schedule.

(d) *Residual receipts.* After payment in full of the LHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the LHA shall continue to pay to HUD all residual receipts from the operation of the Project, including payments received on account of any Additional Purchase Price Schedules applicable to the homes, provided the aggregate amount of such payments of residual receipts does not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

**§ 904.116 Transfer of title to homebuyer.**

When the homebuyer is to obtain ownership as described in § 904.113 or § 904.115, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer shall pay the required amount of money to the LHA, sign the promissory note pursuant to § 904.114, and receive a deed for the home.

**§ 904.117 Responsibilities of homebuyer after acquisition of ownership.**

After acquisition of ownership, each homeowner shall be required to pay to the LHA or to the homeowners association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas and, (c) such other purposes as determined by the LHA or the homeowners association, as appropriate, including taxes and a provision for a reserve. This requirement shall be set out in the planned unit development or condominium documents which shall be recorded prior to the date of full availability, or in an LHA-homeowner contract in this regard.

**§ 904.118 Homeowners association—planned unit development (PUD).**

If the development is organized as a planned unit development:

**§ 904.119**

**24 CFR Ch. IX (4-1-02 Edition)**

(a) *Ownership and maintenance of common property.* The common areas, sidewalks, parking lots, and other common property in the development shall be owned and maintained as provided for in the approved planned unit development (PUD) program except that the LHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 904.112(d)).

(b) *Title restrictions.* The title ultimately conveyed to each homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other owners. The homeowners association shall have the right and obligation to enforce such restrictions and encumbrances and to assess owners for the costs incurred in connection with common areas and property and other responsibilities.

(c) *Votes in association.* There shall be as many votes in the association as there are homes in the development, and, at the outset, all the voting rights shall be held by the LHA. As each home is conveyed to the homebuyer, one vote shall automatically go to the homeowner so that, when all the homes have been conveyed, the LHA shall no longer have any interest in the homeowners association.

(d) *Voting control.* The LHA shall not lose its majority voting interest in the association as soon as a majority of the homes have been conveyed, unless the law of the state requires control to be transferred at a particular time, or the LHA so desires. If permitted by state law, provision shall be made for each home owned by the LHA to carry three votes, while each home owned by a homeowner shall carry one vote. Under this weighted voting plan, the LHA shall continue to have voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the LHA may transfer voting control to the homeowners when at least 50 percent of the homes have been acquired by the homeowners.

**§ 904.119 Homeowners association—condominium.**

If the development is organized as a condominium:

(a) The LHA at the outset shall own each condominium unit and its undivided interest in the common areas;

(b) All the land, including that land under the housing units, shall be a part of the common areas;

(c) The homeowners association shall own no property but shall maintain and operate the common areas for the individual owners of the condominium units except that the LHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 904.112(d));

(d) The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the units to the value of all units and shall be fixed when the development is completed. This percentage shall determine the homeowner's liability for the maintenance of the common areas and facilities;

(e) Each homeowner's vote in the homeowners association shall be identical with the percentage of undivided interest attached to his unit; and

(f) The LHA shall not lose its majority voting interest in the association as soon as units representing 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the LHA so desires. For voting purposes, until units representing 75 percent of the value of all units have been acquired by homeowners, the total undivided interest attributable to the homes owned by the LHA shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the LHA shall continue to maintain voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the LHA may transfer voting control to the homeowners when units representing at least 50 percent of the value of all units have been acquired by the homeowners.

**§ 904.120 Relationship of homeowners association to HBA.**

The HBA and the LHA may make arrangements to permit homebuyers to participate in homeowners association matters which affect the homebuyers. Such arrangements may include rights

to attend meetings and to participate in homeowners association deliberations and decisions.

**§ 904.121 Use of appendices.**

Use of the following Appendices is mandatory for Projects developed under this subpart:

**§ 904.122 Statutory preferences.**

In selecting applicants for assistance under this part, the LHA must give preference, in accordance with the authorized preference requirements described in 24 CFR 5.410 through 5.430. Notwithstanding those preferences, the LHA can limit homeownership admission to eligible homeownership candidates.

[59 FR 36651, July 18, 1994, as amended at 61 FR 9048, Mar. 6, 1996]

APPENDIX I—ANNUAL CONTRIBUTIONS CONTRACT “SPECIAL PROVISIONS FOR TURNKEY III HOMEOWNERSHIP OPPORTUNITY PROJECT”  
APPENDIX II—HOMEBUYERS OWNERSHIP OPPORTUNITY AGREEMENT (TURNKEY III)  
APPENDIX III—CERTIFICATE OF ACHIEVEMENT OF HOMEBUYER STATUS  
APPENDIX IV—PROMISSORY NOTE FOR PAYMENT UPON RESALE BY HOMEBUYER AT PROFIT

No modification may be made in format, content or text of these Appendices except (1) as required under state or local law as determined by HUD or (2) with approval of HUD.

APPENDIX I TO SUBPART B OF PART 904—  
ANNUAL CONTRIBUTIONS CONTRACT

(Subpart B)

( ) Special Provisions for Turnkey III Homeownership Opportunity Project No.

(1) The Local Authority agrees to operate the Project in accordance with requirements for the Homeownership Opportunity Program for Low-Income Families (Turnkey III) as prescribed by the Government. The Local Authority shall enter into an agreement with the occupant of each dwelling unit in the Project which agreement shall be in the form of the Homebuyers Ownership Opportunity Agreement approved by the Government, which form provides an opportunity for the acquisition of ownership of the dwelling unit by each occupant who has performed all of the obligations and conditions precedent imposed upon him by such agreement. Upon conveyance of any such dwelling unit, the Local Authority's outstanding obliga-

tions in respect to the Project shall be reduced by the amount received for such conveyance, and the Government's obligation for payment of annual contributions in respect to the Project shall be reduced by the amount allocable to the initial purchase price of the dwelling unit. The term “initial purchase price” as used in these Special Provisions shall have the same meaning as in the Homebuyers Ownership Opportunity Agreement, and the term “dwelling unit” shall have the same meaning as the term “Home” used in the Homebuyers Ownership Opportunity Agreement.

(2) Failure of the Local Authority to enter into such Homebuyers Ownership Opportunity Agreements at the time and in the form as required by the Government, failure to perform any such agreement, and failure to meet any of its obligations under these Special Provisions shall constitute a Substantial Default under this Contract.

(3) The books of account and records of the Local Authority shall be maintained to meet the requirements of the Homebuyers Ownership Opportunity Agreement as well as the other provisions of this Contract and in such manner as will at all times show the operating receipts, operating expenditures, reserves, residual receipts, and other required accounts for the Project separate and distinct from all other Projects under this Contract.

(4) As of the Date of Full Availability, or at such earlier date as the Government may require, the Local Authority shall determine and submit to the Government for its approval the amount below which the Development Cost of the Project will in no event fall. Upon approval thereof by the Government, such amount shall constitute and be known as the “Minimum Development Cost” of the Project. The Local Authority shall issue its Project Loan Notes, Permanent Notes or Project Notes as the Government may require to finance the Minimum Development Cost. On each Annual Contribution Date the Government shall pay an annual contribution for the Project in an amount equal to the Maximum Contribution Percentage of the latest approved Minimum Development Cost. The first annual contribution shall be paid or made available as of the next Annual Contribution Date following the approval of the Minimum Development Cost of the Project.

(5) Notwithstanding section 403(A)(4), the term “Development Cost” shall include interest on that portion of borrowed monies allocable to the Project for the period ending with the Date of Full Availability or such earlier date as may be specifically approved by the Government.

(6) (a) During the   <sup>1</sup> year Maximum Contribution Period established for the Project, the Local Authority shall, within 60 days after the end of each Fiscal Year, pay to the Government all Residual Receipts of the Project for such Fiscal Year for application to the reduction of Annual Contributions payable by the Government with respect to the Project.

(b) During the period of years immediately following and equal to the Maximum Contribution Period established for the Project, the Local Authority shall, within 60 days after the end of each Fiscal Year, pay to the Government all Residual Receipts of the Project for such Fiscal Year.

(c) Following the end of the Fiscal Year in which the last dwelling unit has been conveyed by the Local Authority, the balance of the operating reserve held by the Local Authority shall be paid to the Government, provided that the aggregate amount of payments under (b) and (c) of this paragraph shall not exceed the aggregate amount of annual contributions paid by the Government with respect to the Project.

(7) No part of the Funds on deposit in the Debt Service Fund or the Advance Amortization Fund with respect to any other Project under this Contract or the funds available for deposit in such Funds for such other Projects, shall be applied to the retirement of Notes issued for this Project, nor shall any such funds on deposit for this Project be used with respect to any other Project or Projects under this Contract.

(8) To the extent that the provisions of this section conflict with other provisions of this Contract, the provisions of this section shall be controlling with respect to the Project.

APPENDIX II TO SUBPART B OF PART 904—HOMEBUYERS OWNERSHIP OPPORTUNITY AGREEMENT (TURNKEY III)

(Subpart B)

PART I

This Agreement, made and entered into   , 19  , by and between    (herein called the "Authority"), and    (herein called the "Homebuyer");

WITNESSETH:

In consideration of the agreements and covenants contained in this Agreement and in Homebuyers Ownership Opportunity Agreement Part II, which is hereby incorporated into this Agreement by reference, the Authority leases to the Homebuyer the following described land and improvements thereon together with an undivided interest in all common areas and property (herein

called the "Home") located in the    Development (Project No.   ), which Home is identified and located as follows: [Insert address and legal description of location of Home, including rights with respect to common areas and property, and making reference to Book and Page No. in Recorder of Deeds Recorded].

A. *Term of Agreement.* The term of this Agreement shall commence on   , 19  , and shall expire at midnight on the last day of this same calendar month. Said term shall be extended automatically for successive periods of one calendar month for a total term of   <sup>1</sup> years from the first day of the next calendar month unless the Homebuyer acquires title to the home pursuant to section 16 or 17 of Part II, as applicable, or unless this Agreement is terminated pursuant to section 24 of Part II.

B. *Monthly Payment.* 1. Until changed in accordance with this Agreement, the Homebuyer's Monthly Payment shall be \$   per month, due and payable on or before the first day of each month. If liability for the Monthly Payment shall start on a day other than the first day of a calendar month, or if for any reason the effective date of termination occurs on other than the last day of the month, the Monthly Payment for such month shall be proportionate to the period of occupancy during that month.

2. The amount of the Monthly Payment may be increased or decreased only by reason of changes in the Rent Schedule (see section 7c of Part II) or changes in the Homebuyer's family income or other circumstances (see section 7b of Part II). Any change in Monthly Payment shall become effective by written notice from the Authority to the Homebuyer as of the date specified in such notice, and such notice shall be deemed to constitute an Amendment to this Agreement.

C. *Option to Purchase.* In consideration of the covenants contained herein, the Authority grants the Homebuyer an option to purchase the Home for the applicable purchase price, to be exercised in accordance with section 10d of Part II.

D. *Purchase Price.* The Initial Purchase Price of this Home is \$   (this price has been determined in accordance with section 16 or 17 of Part II as applicable); this amount shall be reduced periodically in accordance with the schedule (hereinafter called Purchase Price Schedule) for that amount, which Schedule is hereby furnished the Homebuyer.

<sup>1</sup> Fill in term of years equal to term of Purchase Price Schedule (and Additional Purchase Price Schedule, if applicable) (see Section 16 or 17 of Part II as applicable).

<sup>1</sup> 25 or 30, as applicable.

E. Amount of NRMR. The balance (or deficit) in the NRMR on the date of this Agreement is \$ \_\_\_\_\_.

F. Homebuyers Association. Upon the signing of this Agreement, the Homebuyer's family automatically becomes a member of the Homebuyers Association, as provided in section 5 of Part II.

G. Designation of Successor. For the purpose of section 25 of Part II, the designee and his address are: \_\_\_\_\_

First Name	Initial	Last Name	Relationship

H. Entire Agreement. THIS AGREEMENT (COMPRISING PARTS I AND II, THE PURCHASE PRICE SCHEDULE, THE NONROUTINE MAINTENANCE SCHEDULE, AND THE PROMISSORY NOTE) IS THE ENTIRE AGREEMENT BETWEEN THE AUTHORITY AND THE HOMEBUYER, AND, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NO CHANGES SHALL BE MADE OTHER THAN IN WRITING SIGNED BY THE AUTHORITY AND THE HOMEBUYER.

THIS AGREEMENT is signed in duplicate, original for all purposes. The Homebuyer hereby acknowledges receipt of one of these signed copies.

WITNESSES: \_\_\_\_\_

The Authority:  
By \_\_\_\_\_  
(Official Title)

The Homebuyer(s):  
Initial \_\_\_\_\_  
Subsequent \_\_\_\_\_

PART II

TERMS AND CONDITIONS

1. Introduction— a. The Home. The Home described in Part I of this Agreement is part of a Development, which the Authority has acquired or caused to be constructed. This Development contains a number of dwelling units including related land, and may also include common areas and property as described in Part I for occupancy by low-income families under lease-purchase agreements, each in the form of this Homebuyers Ownership Opportunity Agreement. This Development is financed by sale of the Authority's notes which will be amortized over the period of years specified in the Annual Contributions Contract relating to this Development.

b. Annual Contributions Contract. The Authority has entered into an Annual Contributions Contract ("ACC") with the Department of Housing and Urban Development ("HUD")

under which the Authority will receive Annual Contributions provided by HUD, and will perform certain operational functions, to provide housing for the Homebuyers and assist the Homebuyers in achieving homeownership.

c. Management. The Authority may enter into a contract or contracts for management of the Development or for performance of management functions, by the Homebuyers Association (see section 5) or others.

d. Definitions.

(1) The term "Authority" means the local housing authority which acquires or develops a low-rent housing development with financial assistance from HUD, owns the Homes until title is transferred to the Homebuyers, and is responsible for the management of the homeownership opportunity program.

(2) The term "common property" means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the Development: Provided, however, That in the case of a Development that is organized as a condominium or a planned unit development (PUD), the term "common property" shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms, "common areas," "common facilities," "common elements," "common estate," or other similar terms.

(3) The term "Development" means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

(4) The term "EHPA" means the Earned Home Payments Account established and maintained pursuant to section 10 of the Agreement.

(5) The term "Homebuyer" means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the Authority.

(6) The term "Homebuyers Association" (HBA) means an organization as defined in section 5 of this Agreement.

(7) The term "Homeowner" means a Homebuyer who has acquired title to his Home.

(8) The term "Homeowners Association" means an association comprised of Homeowners, including condominium associations, having responsibilities with respect to common property.

(9) The term "HUD" means the Department of Housing and Urban Development which provides the Authority with financial assistance through loans and annual contributions and technical assistance in development and operation.

(10) The term "NRMR" means the Nonroutine Maintenance Reserve established and

maintained pursuant to section 11 of this Agreement.

(11) The term "Project" is used to refer to the Development in relation to matters specifically related to the Annual Contributions Contract.

2. *The Homebuyers Ownership Opportunity Agreement.* Under this Homebuyers Ownership Opportunity Agreement, the Homebuyer may achieve ownership of the home described in Part I by making the required monthly payments and providing maintenance and repairs to build up a credit in his Earned Home Payments Account (hereinafter called "EHPA"). While the Homebuyer is performing his obligations, the purchase price will be reduced in accordance with the Purchase Price Schedule, so that, while this purchase price is being reduced, the Homebuyer is increasing the amount of his EHPA. The Homebuyer may also make voluntary payments to his EHPA which will enable him to acquire ownership more quickly. The Homebuyer may take title to his Home when he is able to finance or pay in full the balance of the purchase price as shown on the Purchase Price Schedule plus the costs incidental to acquiring ownership, as provided in section 16 or 17, as applicable.

3. *Status of Homebuyer.* Until the Homebuyer satisfies the conditions set forth in section 10d precedent to the exercise of his option to purchase the Home for the applicable purchase price, the Homebuyer shall have the status of a lessee of the Authority from month to month with an obligation to build up such balance in his EHPA within the first two years of his occupancy and to continue adding to his EHPA thereafter. For convenience the term "Homebuyer" also refers to the occupant during his status as a lessee.

4. *Counseling of Homebuyers.* The Authority shall provide training and counseling, as required and approved by HUD. The Authority's own staff and resources, existing community resources, a private agency under contract with the Authority, or any combination of the three, shall be utilized to prepare Homebuyers for the rights, responsibilities, and obligations of homeownership including participation in the Homebuyers Association. The Homebuyer agrees to participate in and cooperate fully in all official training and counseling activities.

5. *Homebuyers Association.*<sup>2</sup> Upon the signing of this Agreement, the Homebuyer's fam-

<sup>2</sup>There may be cases, such as where the homes are on scattered sites, where there is no Homebuyers Association but an alternative method for homebuyer representation and counseling is provided (see 24 CFR 904.307). In such cases, section 5 and other portions of this Agreement referring to the Homebuyers Association should be modified to reflect the alternative method provided

ily automatically becomes a member of the Homebuyers Association having membership and purposes as set forth in the Articles of Incorporation of said Association. In the absence of a duly organized Homebuyers Association, the Authority shall be free to act without the HBA action required by this Agreement.

6. *Routine maintenance, repair and use of premises.* a. *Routine maintenance.* The Homebuyer shall be responsible for the routine maintenance of his dwelling and grounds, to the satisfaction of the Homebuyers Association and the Authority. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heaters, heating equipment and other component parts of the dwelling. It also includes all interior painting and maintenance of the grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the Nonroutine Maintenance Reserve described in Section 11.

b. *Repair of damage.* In addition to his obligation for routine maintenance, the Homebuyer shall be responsible for repair of any damage caused by the Homebuyer, members of his family, or visitors.

c. *Care of Home.* The Homebuyer agrees to keep his dwelling in a sanitary condition; to cooperate with the Authority and the Homebuyers Association in keeping and maintaining the common area and property, including fixtures and equipment, in good condition and appearance; and to follow all rules of the Authority and of the Homebuyers Association concerning the use and care of the dwellings and the common areas and property.

d. *Inspections.* The Homebuyer agrees to permit officials, employees, or agents of the Authority, and of the Homebuyers Association to inspect his Home at reasonable hours and intervals in accordance with rules established by the Authority and the Homebuyers Association.

e. *Use of Home.* The Homebuyer shall not (1) sublet his Home without the prior written approval of the Authority and HUD, (2) use or occupy his home for any unlawful purpose nor for any purpose deemed hazardous by insurance companies on account of fire and

for homebuyer representation and counseling.

other risks, or (3) provide accommodations (unless approved by the Homebuyers Association and the Authority) to boarders or lodgers. The Homebuyer agrees to use the Home only as a place to live for himself and his family (as identified in his initial application or by subsequent amendment with the approval of the Authority), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the Homebuyer or spouse who may join the household.

f. *Obligations with respect to other persons and property.* Neither the Homebuyer nor any member of his family shall interfere with rights of other occupants of the Development, or damage the common property or the property of others, or create physical hazards.

g. *Structural changes.* A Homebuyer shall not make any structural changes in or additions to his Home unless the Authority has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the Development as a whole, or (2) affect the use of the Home for residential purposes, or (3) violate HUD requirements as to construction and design. Any changes made in accordance with this paragraph shall be at the Homebuyer's expense, and in the event of termination of this Agreement before the Homebuyer acquires title to the Home, whether by reason of the Homebuyer's default or otherwise, the Homebuyer shall not be entitled to any compensation on account of his having made such changes.

h. *Statement of condition and repair.* When the Homebuyer moves in, the Authority shall inspect the Home and shall give the Homebuyer a written statement, to be signed by the Authority and the Homebuyer, of the condition of the Home and the equipment in it. Should the Homebuyer vacate, the Authority shall inspect the Home and give the Homebuyer a written statement of the repairs and other work, if any, required to put the Home in good condition for the next occupant (see section 10k). The Homebuyer or his representative, or both, may join in any such inspections with the Authority and the Homebuyer Association.

7. *Monthly payments by Homebuyer— a. Termination of amount.* Except as otherwise provided hereinafter, the Homebuyer agrees to pay to the Authority, so long as this Agreement is in effect, a required Monthly Payment as lease rental in an amount determined in accordance with a schedule adopted by the Authority and approved by HUD. Although the total monthly housing cost consists of the sum of the break-even amount (see section 8) and the debt service (payment of principal and interest) on the applicable share of the capital cost of the Development, the Homebuyer, so long as he qualifies as low income, is not required to pay the full

amount, but is assisted by HUD annual contributions. The schedule shall provide for payments to be based upon a percentage of the family's adjusted monthly income and shall indicate allowances for those utilities which the Homebuyer will pay for directly.

b. *Changes in monthly payment due to changes in family income or other circumstances.* The required Monthly Payment may be adjusted as a result of the Authority's regularly or specially scheduled reexamination of the Homebuyer's family income and family composition. Interim changes may be made in accordance with the Authority's policy on reexaminations, or under unusual circumstances, at the request of the Homebuyer, if both the Authority and the Homebuyers Association agree that such action is warranted.

c. *Changes in monthly payment due to changes in rent schedules.* The required Monthly Payment may also be adjusted by changes in the required percentage of income to reflect (1) changes in operating expense as described in section 9b and (2) changes in utility allowances.

d. *Acceptance of monthly payment.* The Authority shall not refuse to accept monthly payments because of any other charges (i.e., other than overdue monthly payments) owed by the Homebuyer to the Authority; however, by accepting monthly payments under such circumstances the Authority shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

e. *Application of monthly payment.* The Homebuyer's Monthly Payment shall be applied by the Authority as follows: First, to the credit of the Homebuyer's EHPA pursuant to section 10 below; second, to the credit of the Nonroutine Maintenance Reserve for the Home pursuant to Section 11 below; and third, for payment of Monthly Operating Expense, including contribution to Operating Reserve, as provided in section 9 below.

8. *Break-even amount— a. Definition.* The term "Break-even Amount" means the minimum monthly amount needed to provide funds for:

(1) Monthly Operating Expense, including provision for a contribution to Operating Reserve, pursuant to section 9a below;

(2) The monthly amount to be credited to the Homebuyer's EHPA pursuant to Section 10 below; and

(3) The monthly amount to be credited to the Nonroutine Maintenance Reserve for the Home pursuant to section 11 below.

b. *Monthly payment in excess of break-even amount.* When the Homebuyer's required Monthly Payment exceeds the applicable Break-even Amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

c. *Monthly payment below break-even amount.* When the Homebuyer's required Monthly Payment is less than the applicable Break-even Amount, the deficit shall be applied as a reduction of that portion of the Monthly Payment designated for Operating Expense (i.e., as a reduction of project income). In all such cases, the EHPA and the NRMR shall be credited with the amount included in the Break-even Amount for these accounts.

9. *Monthly operating expense— a. Definition and categories of monthly operating expense.* The term "monthly operating expense" means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telephone and telegraph, etc.;

(2) *Homebuyer services.* Authority expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any to be furnished by the Authority as part of operating expense;

(4) *Routine maintenance—Common property.* For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the Development and the extent of the Authority's responsibility for maintenance (see also section 9c);

(5) *Protective services.* The cost of supplemental protective services paid by the Authority for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—Common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for non-dwelling structures (see section 12).

b. *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the Authority's HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expense to be established for the next fiscal year may be adjusted to account for the difference (see section 12). Such adjustment may result in a change in the required monthly payment (see section 7c).

c. *Provision for common property maintenance.* During the period the Authority is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the Development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the Development (i.e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of Homes in the Development, resulting in the annual amount for each Home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property). After the Homeowners Association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the Authority (see section 11 for nonroutine maintenance of common property).

d. *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and a copy shall be provided to the Homebuyer upon request.

10. *Earned Home Payments Account (EHPA)— a. Credits to the account.* The Authority shall establish and maintain a separate EHPA for each Homebuyer. Since the Homebuyer is responsible for maintaining his Home as provided in section 6, a portion of his required Monthly Payment equal to the Authority's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the Home, shall be set aside in his EHPA. In addition, this account shall also be credited with (1) any voluntary payments made pursuant to section 10g and (2) any amount earned through the performance of maintenance pursuant to paragraph e of this section. All amounts received by the Authority for credit to the Homebuyer's account, including credits for performance of maintenance pursuant to paragraph e of this section, shall be held by the Authority for the account of the Homebuyer.

b. *Use of EHPA funds.* The unused balance in the Homebuyer's EHPA may be used toward purchase of the Home as provided in section 16 or 17 as applicable, or shall be payable to the Homebuyer if he leaves the Project as provided in paragraph k of this section.

c. *Charges to the account.* (1) If for any reason the Homebuyer is unable or fails to perform any item of required maintenance as described in section 6, the Authority shall arrange to have the work done in accordance with the procedures established by the Authority and the HBA and the cost thereof shall be charged to the Homebuyer's EHPA. Inspections of the Home shall be made jointly by the Authority and the HBA.

(2) To the extent nonroutine maintenance expense is made necessary by the negligence of the Homebuyer as determined by the HBA and the Authority (see section 11), the cost thereof shall be charged to the EHPA.

d. *Exercise of option; required amount in EHPA.* The Homebuyer may exercise his option to buy the Home, by paying the applicable purchase price pursuant to section 16 or 17, only after satisfying the following conditions precedent:

(1) Within the first two years of his occupancy, he has achieved a balance in his EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph a of this section;

(2) He has met, and is continuing to meet, the requirements of this Agreement;

(3) He has rendered, and is continuing to render, satisfactory performance of his responsibilities to the HBA.

When the Homebuyer has met these conditions precedent, the Authority shall give the Homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of his occupancy, the Homebuyer shall continue to be obligated to provide the required maintenance, thereby continuing to add to his EHPA. If the Homebuyer fails to meet either his obligation to achieve the minimum EHPA balance as specified or his obligation thereafter to continue adding to the EHPA, the Authority and the HBA shall investigate and take appropriate corrective action, including termination of this Agreement by the Authority in accordance with section 24.

e. *Additional equity through other maintenance.* Besides the maintenance which the Homebuyer must provide pursuant to section 6, the Homebuyer may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the Development or maintenance for which the Nonroutine Maintenance Reserve is established (see section 11). Such maintenance may be provided by the Homebuyer and credit earned therefor only pursuant to a prior written agreement between the Homebuyer and the Authority (or the Homeowners Association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the Homebuyer is to receive. Upon completion of such work, the agreed amount shall

be charged to the appropriate maintenance account and credited to the Homebuyer's EHPA.

f. *Investment of excess.* When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the Authority shall notify the HBA and shall invest the excess in federally-insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program it should submit periodically to the Authority a list of HUD approved securities, bonds, or obligations which the HBA recommends for investment by the Authority of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each Homebuyer's EHPA in proportion to the amount in each such reserve account.

Periodically, but not less often than semi-annually, the Authority shall prepare a statement showing: (1) the aggregate amount of all EHPA balances; (2) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the Homebuyers' EHPAs, and (3) the aggregate uninvested balance of all the Homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

g. *Voluntary payments.* To enable the Homebuyer to acquire title to the Home within a shorter period, he may either periodically or in a lump sum voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

h. *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the Authority, the Homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the Homebuyer agrees to cooperate in such counseling as may be made available by the Authority or the HBA.

i. *Annual statement to homebuyer.* The Authority shall provide an annual statement to the Homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his Nonroutine Maintenance Reserve. During the year, any maintenance or repair done on the dwelling by the Authority which is chargeable to the EHPA or to the Nonroutine Maintenance Reserve, shall be accounted for through a work order. The Homebuyer shall receive a copy of all such work orders for his Home.

j. *Withdrawal and assignment.* The Homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in his EHPA except as provided in this section or in sections 16 and 17.

k. *Application of EHPA upon vacating of dwelling.* (1) In the event this Agreement is terminated or if the Homebuyer vacates the Home, the Authority shall charge against the Homebuyer's EHPA the amounts required to pay; (i) The amount due the Authority, including the monthly payments the Homebuyer is obligated to pay up to the date he vacates; (ii) the monthly payment for the period the Home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or if the Homebuyer failed to give notice of intention to vacate, 30 days from the date the Home is put in good condition for the next occupant in conformity with section 6; and (iii) the cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the Homebuyer, required to put the Home in good condition for the next occupant in conformity with section 6.

(2) If the Homebuyer's EHPA balance is not sufficient to cover all of these charges, the Authority shall require the Homebuyer to pay the additional amount due. If the amount in the EHPA exceeds these charges, the excess shall be paid the Homebuyer.

(3) Settlement with the Homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph k(1)(iii) of this section), provided that the Authority shall make every effort to make such settlement within 30 days from the date the Homebuyer vacates. The Homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repairs has not yet been determined, if he has given the Authority notice of intention to vacate 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the Authority's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

11. *Nonroutine maintenance reserve (NRMR)*— a. *Purpose of reserve.* The Authority shall establish and maintain a separate nonroutine maintenance reserve (NRMR) for the Home, using a portion of the Homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the Home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the Home (see paragraph b of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the Home to the extent such maintenance is attributable to the

Homebuyer's negligence or to defective materials or workmanship.

b. *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the Authority, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount estimated to be needed for nonroutine maintenance of the Home during the term of this Agreement, taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the Authority and approved by HUD as part of the Submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

c. *Charges to reserve.* (1) The Authority shall provide the nonroutine maintenance necessary for the Home and the cost thereof shall be funded as provided in paragraph c(2) and c(3) of this section. Such maintenance may be provided by the Homebuyer but only pursuant to a prior written agreement with the Authority covering the nature and scope of the work and the amount of credit the Homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the Homebuyer's EHPA and charged as provided in paragraph c(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the Home except that (i) to the extent such maintenance is attributable to the fault or negligence of the Homebuyer, the cost shall be charged to the Homebuyer's EHPA after consultation with the HBA if the Homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for through no fault or negligence of the Homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the Homebuyer's monthly payments. If there is still a deficit when the

Homebuyer acquires title, the Homebuyer shall pay such deficit at settlement.

d. *Transfer of NRMR.* (1) In the event this Agreement is terminated, the Homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent Homebuyer moves in, the NRMR shall continue to be applicable to the Home in the same amount as if the preceding Homebuyer had continued in occupancy.

(2) In the event the Homebuyer purchases the Home, and there remains a balance in the NRMR, the Authority shall pay such balance to the Homebuyer at settlement. In the event the Homebuyer purchases the Home and there is a deficit in the NRMR, the Homebuyer shall pay such deficit to the Authority at settlement.

e. *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the Homes exceeds the estimated reserve requirements for 90 days, the Authority shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each Homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the Authority shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMR and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

12. *Operating reserve— a. Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceeds total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for (1) the infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and, in certain cases, common elements of dwelling structures, (2) nonroutine maintenance for the Homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, (3) working capital for payment of a deficit in a Homebuyer's NRMR, until such deficit is offset by future monthly payments by the Homebuyer or at settlement in the event the Homebuyer should purchase, and (4) a deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly pay-

ments totaling less than the break-even amount for the Project.

b. *Nonroutine maintenance— common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see sections 8 and 9) shall be determined by the Authority, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph a(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the Operating Reserve shall be made only during the period the Authority is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the Development in a manner similar to that explained in Section 9. When the Operating Reserve reaches the maximum authorized in paragraph c of this Section, the break-even (monthly operating expense) computations (see Sections 8 and 9) for the next and succeeding fiscal years need not include a provision for this contribution to the Operating Reserve unless the balance of the Reserve is reduced below the maximum during any such succeeding fiscal year.

c. *Maximum operating reserve.* The maximum operating reserve that may be retained by the Authority at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyer services, Authority-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see section 9 above for explanation of various categories of expense).

d. *Transfer to Homeowners Association.* The Authority shall be responsible for and shall retain custody of the Operating Reserve until the Homeowners acquire voting control of the Homeowners Association (see sections 21c and 22f). When the Homeowners acquire voting control, the Homeowners Association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the Homeowners Association a portion of the Operating Reserve then held by the Authority, as determined by the Authority with the approval of HUD.

e. *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum Operating Reserve, this excess shall be applied to the operating deficit of the Project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last Home has been conveyed by the Authority, the balance of the Operating Reserve held by the Authority shall be paid to HUD, provided that the aggregate amount of payments by the Authority under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

13. *Annual statement and copies of work orders to homebuyer.* a. The Authority shall maintain books of accounts and provide a statement at least annually to each Homebuyer which will show (1) the amount in his EHPA, and (2) the amount in the NRMR for his Home.

b. During the year, any maintenance or repair done on the dwelling by the Authority, which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. The Homebuyer shall receive a copy of all such work orders for his Home.

14. *Insurance.* a. Until transfer of title to the Homebuyer, the Authority shall carry all insurance prescribed by HUD including fire and extended coverage insurance upon the Home in such form and amount and with such company or companies as it determines. The Authority shall not carry any insurance on the Homebuyer's furniture, clothing, automobile, or any other personal property, or personal liability insurance covering the Homebuyer.

b. In the event the Home is damaged or destroyed by fire or other casualty, the Authority shall consult with the Homebuyer as to whether the Home shall be repaired or rebuilt. If the Authority determines that the Home should not be repaired or rebuilt but the Homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the Home should not be repaired or rebuilt, the Authority shall terminate this Agreement upon reasonable notice to the Homebuyer. In such case, the Homebuyer shall be paid the balance in his EHPA and (to assist him in connection with relocation expenses) the balance in his NRMR, less amounts, if any, due from him to the Authority, including Monthly Payments he may be obligated to pay.

c. In the event of termination or if the Home must be vacated during the repair period, the Authority will use its best efforts to assist in relocating the Homebuyer. If the Home must be vacated during the repair period, Monthly Payments shall be suspended during the vacancy period.

15. *Eligibility for continued occupancy.* a. The Homebuyer shall cease to be eligible for continued occupancy with the aid of HUD

annual contributions when the Authority determines the Homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the Homebuyer's total payment equals or exceeds the monthly housing cost (see paragraph b of this section). In such an event, if the Authority determines, with HUD approval, that suitable financing is available, the Authority shall notify the Homebuyer that he or she must either: (1) Purchase the Home; or (2) move from the Development. If, however, the Authority determines that, because of special circumstances, the family is unable to find decent, safe and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent a monthly payment consistent with its adjusted monthly income, in accordance with applicable HUD regulations prescribing rental payments for families in housing assisted under the United States Housing Act of 1937. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

b. The term "monthly housing cost," as used in this section means the sum of: (1) The monthly debt service amount shown on the Purchase Price Schedule (except where the Homebuyer can purchase the Home by the method described in section 16 below); (2) one-twelfth of the annual real property taxes which the Homebuyer will be required to pay as a Homeowner; (3) one-twelfth of the annual premium attributable to fire and extended coverage insurance carried by the Authority with respect to the Home; (4) the current monthly per unit amount budgeted for routine maintenance (EHPA) and routine maintenance-common property; and (5) the current Authority and HUD approved monthly allowance for utilities paid for directly by the Homebuyer plus the monthly cost of utilities supplied by the Authority.

16. *Achievement of ownership by initial homebuyer—* a. *Determination of initial purchase price.* The Authority shall determine the initial purchase prices of the Homes by two basic steps, as follows:

*Step 1.* The Authority shall take the Estimated Total Development Cost (including the full amount for contingencies as authorized by HUD) of the Development as shown in the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management facilities including the land, equipment and furnishings attributable to such facilities as set forth in the development program for the Development.

The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

*Step 2.* The Authority shall apportion the Estimated Total Development Cost for Homebuyers among all the Homes in the Development. This apportionment shall be made by obtaining an FHA appraisal of each Home, and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost for Homebuyers. The adjusted amount for each Home shall be the Initial Purchase Price for that Home.

b. *Purchase Price Schedule.* The Homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period,<sup>3</sup> commencing with the initial purchase price on the first day of the month following the effective date of this Agreement and (2) the monthly debt service amount upon which the Schedule is based. This Schedule and debt service amount shall be computed on the basis of the initial purchase price, a 30-year period,<sup>3</sup> and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph a of this section, rounded up, if necessary, to the next multiple of one-fourth of one percent ( $\frac{1}{4}$  percent).

c. *Methods of Purchase.* (1) The Homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs ("Incidental Costs" means the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey title examination, title insurance, and inspections, the fees for attorneys other than the LHA's attorney, mortgage application and organization, closing and recording, and the transfer taxes and loan discount payment if any). If for any reason title to the Home is not conveyed to the Homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the Homebuyer shall be refunded (i) the net additions, if any, credited to his EHPA subsequent to such month, and (ii) such part of the monthly payments made by the Homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the Home and the interest portion of the debt service shown in the Purchase Price Schedule.

<sup>3</sup>Change to 25-year period where appropriate pursuant to §904.101(b)(3) of this subpart.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the Homebuyer's EHPA and NRMR, the Homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on his Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

d. The maximum period for achieving ownership shall be 30 years, but depending upon increases in the Homebuyer's income and the amount of credit which the Homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

17. *Achievement of Ownership by Subsequent Homebuyer—*a. *Definition.* In the event the initial Homebuyer and his family vacate the Home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to section 25 is herein called "Subsequent Homebuyer."

b. *Determination of Initial Purchase Price.* The initial purchase price for a subsequent Homebuyer shall be an amount equal to (1) the purchase price shown in the initial Homebuyer's Purchase Price Schedule as of the date of this Agreement with the subsequent Homebuyer plus (2) the amount, if any, by which the appraised fair market value of the Home determined or approved by HUD as of the same date, exceeds the purchase price specified in (1). In the event such appraised value has not been determined by the date of execution of this Agreement, the amount of the Initial Purchase Price shall be inserted in part I, section D after this determination has been made, with appropriate initialing or signing by the parties.

c. *Purchase Price Schedule.* The Subsequent Homebuyer's Purchase Price Schedule shall be the same as the unexpired portion of the initial Homebuyer's Purchase Price Schedule except that where his purchase price includes an additional amount as specified in paragraph b(2) of this section, the initial Homebuyer's Purchase Price Schedule shall be followed by an Additional Purchase Price Schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial Homebuyer's Purchase Price Schedule.

18. *Transfer of Title to Homebuyer.* When the Homebuyer is to obtain ownership, a closing date shall be mutually agreed upon by the parties. On the closing date, the Homebuyer shall pay the required amount of money to the Authority, sign the promissory note pursuant to section 19, and receive a deed for the Home.

19. *Payment Upon Resale at Profit—*a. *Promissory Note.* (1) When a Homebuyer (whether Initial or Subsequent Homebuyer) achieves ownership, he shall sign a note obligating

him to make a payment to the Authority, subject to the provisions of paragraph (a)(2) of this section, in the event he resells his Home at a profit within 5 years of actual residence in the Home after he becomes a Homeowner. If, however, the Homeowner should purchase and occupy another Home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III Home, the Authority shall refund to the Homeowner the amount previously paid by him under the note, less the amount, if any, by which the resale price of the Turnkey III Home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the Homebuyer pursuant to paragraph (a)(1) of this section shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the Home at the time the Homebuyer becomes a Homeowner and subtracting (i) the Homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the Home, determined by appraisal, caused by improvements paid for by the Homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as Homeowner, with the note terminating at the end of the five-year period of residency, as determined by the Authority. To protect the Homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (i) the Homebuyer's purchase price plus the Incidental Costs, (ii) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (iii) the increase in value of the Home, determined by appraisal, resulting from improvements paid for by him as a Homebuyer (with funds other than from the EHPA or NRMR) or as a Homeowner.

(b) *Residency requirements.* The five-year note periods does not end if the Homeowner rents or otherwise does not use the Home as his principal place of residence for any period within the first five years after he achieves ownership. Only the actual amount of time he is in residence is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the Homeowner may request the Authority to release him from the note, and the Authority shall do so.

20. *Responsibilities of Homeowner.* After acquisition of ownership, the Homeowner shall pay to the Authority or to the Homeowners Association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facili-

ties, if any, (b) the maintenance of grounds and other common areas, and (c) such other purpose as determined by the Authority or the Homeowners Association, as appropriate, including taxes and a provision for a reserve.

21. *Homeowners Association—Planned Unit Development (PUD)*<sup>4</sup>

If the Development is organized as a planned unit development:

a. The common areas, sidewalks, parking lots and other common property in the Development shall be owned and maintained as provided for in the approved planned unit development (PUD) program, except that the Authority shall be responsible for maintenance until such time as the Homeowners Association assumes such responsibility (see section 12 above).

b. The title ultimately conveyed to the Homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other Homeowners. The Homeowners Association shall have the right and obligation to enforce such restrictions and encumbrances and to assess Homeowners for the costs incurred in connection with common areas and property and other responsibilities.

c. There shall be as many votes in the Association as there are Homes in the Development, and at the outset all the voting rights will be held by the Authority. As each Home is conveyed to a Homebuyer, one vote shall automatically go to that Homebuyer so that when all the Homes have been conveyed, the Authority shall no longer have any interest in the Homeowners Association.

d. The Authority shall not lose its majority voting interest in the Association as soon as a majority of the Homes have been conveyed, unless the law of the state requires control to be transferred at a particular time or the Authority so desires. If permitted by state law, provisions shall be made for each Home owned by the Authority to carry three votes while each Home owned by a Homeowner shall carry one vote. Under this weighted voting plan, the Authority will continue to have voting control until 75 percent of the Homes have been acquired by Homeowners. However, at its discretion, the Authority may transfer voting control to the Homeowners when at least 50 percent of the Homes have been acquired by the Homeowners.

22. *Homeowners Association—Condominium.*<sup>5</sup> If the Development is organized as a condominium:

<sup>4</sup>If this Home is a Development of scattered sites, delete both sections 21 and 22. If this Home is in a Planned Unit Development, delete section 22. If this Home is in a Condominium, delete section 21.

<sup>5</sup>If this Home is a Development of scattered sites, delete both sections 21 and 22. If

a. The Authority at the outset shall own each condominium unit and the undivided interest of such unit in the common areas.

b. All the land, including that land under the housing units, shall be a part of the common areas.

c. The Homeowners Association shall own no property and shall merely maintain and operate the common areas for the individual owners of the condominium units, except that the Authority shall be responsible for maintenance until such time as the Homeowners Association assumes such responsibility (see section 12 above).

d. The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the unit to the value of all units and shall be fixed when the Development is completed. This percentage shall determine the Homeowner's liability for the maintenance of the common areas and facilities.

e. Each Homeowner vote in the Homeowners Association will be identical with the percentage of undivided interest attached to his unit.

f. The Authority shall not lose its majority voting interest in the Association as soon as units representing more than 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the Authority so desires. For voting purposes, until units representing 75 percent of the value of all units have been acquired by Homeowners, the total undivided interest attributable to the Homes owned by the Authority shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the Authority will continue to have voting control until units representing 75 percent of the value of all units have been acquired by Homeowners. However, at its discretion the Authority may transfer voting control to the Homeowners when units representing at least 50 percent of the value of all units have been acquired by the Homeowners.

23. *Relationship of Homeowners Association to Homebuyers Association.* The Homebuyers Association and the Authority may make arrangements with the Homeowners Association to permit Homebuyers to participate in Homeowners Association matters which affect the Homebuyers. Such arrangements may include rights to attend meetings and to participate in Homeowners Association deliberations and decisions.

24. *Termination of Agreement—* a. *Termination by the Authority—*(1) In the event the Homebuyer should breach this Agreement by failure to make a required Monthly Payment

this Home is in a Planned Unit Development, delete section 22. If this Home is in Condominium, delete section 21.

within 10 days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any other Homebuyer obligation under this Agreement, the Authority may terminate this Agreement 30 days after giving the Homebuyer notice of its intention to do so in accordance with paragraph (2) of this section.

(2) Notice of termination by the Authority shall be in writing. Such notice shall state (i) the reason for termination, (ii) that the Homebuyer may respond to the Authority, in writing or in person, within a specified reasonable period of time regarding the reason for termination, (iii) that in such response he may be represented or accompanied by a person of his choice, including a representative of the HBA, (iv) that the Authority will consult the HBA concerning the termination, and (v) that, unless the Authority rescinds or modifies the notice, the termination will be effective at the end of the 30-day notice period.

b. *Termination by the Homebuyer.* The Homebuyer may terminate this Agreement by giving the Authority 30 days notice in writing of his intention to terminate and to vacate the Home. In the event that the Homebuyer vacates the Home without notice to the Authority, this Agreement shall be terminated automatically and the Authority may dispose of, in any manner deemed suitable by it, any items of personal property left by the Homebuyer in the Home.

c. *Transfer to rental unit.* (1) Inasmuch as the Homebuyer was found eligible for admission to the Project on the basis of having the necessary elements, of potential for Homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. The standards of potential for Homeownership are the following:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRMR, and the estimated average monthly cost of utilities attributable to the Home;

(ii) Ability to meet all the obligations of a Homebuyer under the Homebuyers Ownership Opportunity Agreement;

(iii) At least one member gainfully employed, or having an established source of continuing income.

(2) Accordingly, in the event it should develop that the Homebuyer no longer meets one or more of these elements of Homeownership potential, the Authority shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from

the date of evaluation of the results of the investigation, the Authority shall make a re-evaluation as to whether the family has regained the potential for Homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the re-evaluation. Further extension of time may be granted in exceptional cases, but in any event a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The Authority shall invite the HBA to participate in all investigations and evaluations.

(3) If the final determination of the Authority, after considering the views of the HBA, is that the Homebuyer should be transferred to a suitable dwelling unit in an Authority rental project, the Authority shall give the Homebuyer written notice of the Authority determination of the loss of Homeownership potential and of the offer of transfer to a rental unit. The notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy but no earlier than 30 days from the date of the notice, provided that an eligible successor for the Homebuyer unit has been selected by the Authority. The notice shall also state that if the Homebuyer should refuse to move under such circumstances, the family may be required to vacate the Homebuyer unit, without further notice. The notice shall include a statement (i) that the Homebuyer may respond to the Authority in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response he may be represented or accompanied by a person of his choice including a representative of the HBA, and (iii) that the Authority has consulted the HBA concerning this determination and offer of transfer.

(4) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph 24c, the amount in the Homebuyer's EHPA shall be paid in accordance with the provisions of paragraph 10k of this Agreement.

25. *Survivorship.* (1) In the event of death, mental incapacity or abandonment of the family by the Homebuyer, the person designated as the successor in part I of this Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the Home at the time of the event and is determined by the Authority to meet all of the standards of potential for homeownership as set forth in section 24a. This designation may be changed by the Homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the Home or does not meet the standards of potential for homeownership, the Authority may consider as the Homebuyer any family member who was in

occupancy at the time of the event and who meets the standards of potential for homeownership.

(2) If there is no qualified successor in accordance with the above, the Authority shall terminate the Agreement and another family shall be selected, except under the following circumstances: where a minor child or children of the Homebuyer family are in occupancy, then in order to protect their continued occupancy and opportunity for acquisition of ownership of the Home, the Authority may approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyers Ownership Opportunity Agreement in their interest and behalf.

26. *Nonassignability and Use of Reserves and Accounts— a. Nonassignability.* The Homebuyer shall not assign this Agreement, or assign, mortgage or pledge any right or interest in the Home or in this Agreement including any right or interest in any reserve or account, except with the prior written approval of the Authority and HUD.

b. *Use of Reserves and Accounts.* It is understood and agreed that the Homebuyer shall have no right to receive or use the money in any reserve or account created pursuant to this Agreement except for the limited purposes and under the special circumstances set forth by the terms of this Agreement. It is further understood and agreed that both the Authority and HUD have a financial and a governmental interest in the Earned Home Payments Account and other reserves as security for the financial integrity of the Development, as a means of savings in cost to the Government by minimizing the amount and period over which HUD annual contributions must be paid, and as a means of advancing the public interest and welfare by assisting low-income families to achieve homeownership.

27. *Notices.* Any notice required hereunder or by law shall be sufficient if delivered in writing to the Homebuyer personally or to an adult member of his family residing in the dwelling unit or if sent by certified mail, return receipt requested, properly addressed to the Homebuyer, postage prepaid. Notice to the Authority shall be in writing, and either delivered to any Authority employee at the office of the Authority or sent to the Authority by certified mail, properly addressed, postage prepaid.

28. *Grievance Procedure.* All grievances or appeals arising under this Agreement shall be processed and resolved pursuant to the grievance procedure of the Authority, which procedure shall provide for participation of

Office of the Assistant Secretary, HUD

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the HBA in the grievance process. This grievance procedure shall be posted in the Authority's Office.

[39 FR 10966, Mar. 22, 1974. Redesignated at 49 FR 15580, Apr. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 49 FR 21490, May 21, 1984]

APPENDIX III TO SUBPART B OF PART 904—CERTIFICATION OF HOMEBUYER STATUS

(Subpart B)

State of \_\_\_\_\_  
County of \_\_\_\_\_

This is to certify that \_\_\_\_\_  
(Homebuyer)

of the Home located at \_\_\_\_\_:

(1) Has achieved, within the first two years of his occupancy a balance in his Earned Home Payments Account (EHPA) of at least \_\_\_\_\_ dollars (representing 20 times the amount of the monthly EHPA credit applicable to said Home);

(2) Has met and is continuing to meet the requirements of his Homebuyers Ownership Opportunity Agreement; and

(3) Has rendered and is continuing to render satisfactory performance of his responsibilities to the Homebuyers Association.

Accordingly, said Homebuyer may, upon payment of the purchase price, exercise the option to purchase the Home in accordance with and subject to the provisions of his Homebuyers Ownership Opportunity Agreement.

Housing Authority \_\_\_\_\_  
By \_\_\_\_\_  
(Signature and official title)

(Date) \_\_\_\_\_  
Homebuyers Association \_\_\_\_\_  
By \_\_\_\_\_  
(Signature and official title)

(Date) \_\_\_\_\_

APPENDIX IV TO SUBPART B OF PART 904—PROMISSORY NOTE FOR PAYMENT UPON RESALE BY HOMEBUYER AT PROFIT

(Subpart B)

FOR VALUE RECEIVED, \_\_\_\_\_ (Homeowner) promises to pay to \_\_\_\_\_ (Authority) or order, the principal sum of \_\_\_\_\_<sup>1</sup> Dollars (\$ \_\_\_\_\_), without interest, on the date of resale by the Homeowner of the property conveyed by the Authority to the Homeowner.

<sup>1</sup>Amount determined in accordance with section 19 of the Homebuyers Ownership Opportunity Agreement.

Such principal sum shall be reduced automatically by 20 percent of the initial amount at the end of each year of such residency, as a Homeowner, and this note shall terminate at the end of five years of such residency, as determined by the Authority; Provided, however, that the amount payable under this note shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (1) the Homeowner's purchase price, (2) the costs incidental to his acquisition of ownership, (3) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (4) the increase in value of the Home, determined by appraisal, due to improvements paid for by the Homeowner whether as a Homebuyer (with funds from sources other than his Earned Home Payments Account or his Nonroutine Maintenance Reserve) or as a Homeowner.

If the Homeowner shall pay this note at the time and in the manner set forth above, or if, by its provisions, the amount of this note shall be zero, then the note shall terminate and the Authority shall, within thirty (30) days after written demand therefor by the Homeowner, execute a release and satisfaction of this note. The Homeowner hereby waives the benefits of all statutes or laws which require the earlier execution or delivery of such release and satisfaction by the Authority.

Presentment, protest, and notice are hereby waived.

Dated \_\_\_\_\_, 19\_\_\_\_  
Local Housing Authority \_\_\_\_\_

By: \_\_\_\_\_ (Homeowner)  
\_\_\_\_\_ (Homeowner's Spouse)

Subpart C—Homeownership Counseling and Training

§ 904.201 Purpose.

The purpose of the counseling and training program shall be to assure that the homebuyers, individually and collectively through their homebuyers association (HBA), will be more capable of dealing with situations with which they may be confronted, making decisions related to these situations, and understanding and accepting the responsibility and consequences that accompany those decisions.

§ 904.202 Objectives.

The counseling and training program should seek to achieve the following objectives:

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(a) Enable the potential homebuyer to have a full understanding of the responsibilities that accompany his participation in the Homeownership Opportunity Program;

(b) Enable the potential homebuyer to have an understanding of homeownership tasks with specific training given to individuals as the need and readiness for counseling or training indicates;

(c) Assure that the role of the HBA is understood and plans for its organization are initiated at the earliest practical time;

(d) Develop an understanding of the role of the LHA and of the need for a cooperative relationship between the homebuyer and the LHA;

(e) Encourage the development of self-help by the homebuyer through reducing dependency and increasing independent action;

(f) Develop an understanding of mutual assistance and cooperation that will develop a feeling of self-respect, pride and community responsibility;

(g) Develop local resources that can be of assistance to the individual and the community on an on-going basis.

**§ 904.203 Planning.**

(a) The counseling and training program shall be flexible and responsive to the needs of each prospective homebuyer. While many subjects lend themselves to group sessions, consideration shall be given to individual counseling. Individuals should not be required to attend training classes on subject matter they are familiar with unless they can actively participate in the instructional process.

(b) The program may be provided by contract with an outside organization, or by the LHA staff, in either case with voluntary involvement and assistance of groups and individuals within the community. It is essential that the training entity be completely knowledgeable and supportive of the entire Homeownership Opportunity Program. It may be recognized that most of the objectives stated require specialized instructional skill and content knowledge. There shall be recognition of the differences in communication and in value systems, and an understanding and respect for past experience of the

individual. Maximum possible use shall be made of indigenous trainers to insure good communication and rapport. Special attention shall be directed to the needs of working members of the family for counseling and training sessions to be held where and during the time they can attend. Where the services of outside contractors are utilized, there shall be a close working relationship with the LHA and a program for phasing in LHA staff who will have the on-going responsibility for the program. The value of local agencies, educational institutions, etc., for implementing the program rather than an outside firm shall be carefully considered since the continuing presence of such agencies and institutions in the community can often develop into an on-going resource beyond the contract period.

(c) In planning a homeownership counseling and training program, whether self-administered or contracted, the LHA shall consult with HUD for advice and information on programs, qualified contractors, local resources, reasonable costs, and other similar matters.

(d) Where the program is to be contracted to an outside group, proposals shall be secured either by public advertising or by sending requests for proposals to a number of competent public or private organizations.

(e) In areas where there are large concentrations of homebuyers who do not read, write, or understand English fluently, the native language of the people shall be used. If feasible all instructional materials shall be in both languages.

**§ 904.204 General requirements and information.**

(a) The counseling and training program shall be designed to meet the needs of the homebuyers and be sufficiently flexible to meet new needs as they arise. The nature of the program suggests four phases of counseling: (1) Pre-occupancy; (2) move-in; (3) post-occupancy; (4) assistance to the HBA. While some elements of the program lend themselves more to one phase than another, the program areas shall be coordinated and interrelated. It is recommended that the entity providing

these services work closely with the participants and ensure that policies established are agreeable to both the LHA and the homebuyer.

(b) The following is a description of major elements of the program which experience thus far has shown to be relevant. More detailed information is set forth in Appendix I, "Content Guide for Counseling and Training Program."

(1) *Pre-occupancy phase.* The purpose of this phase is to prepare the selected families to assume the responsibilities of homeownership, and to provide an opportunity for the LHA and each family to reassess the family's potential for successful participation in the homeownership development.

(i) An overload of information should be avoided in this phase since many of the subjects will be dealt with in greater depth after the family is in occupancy, and experience has shown that much of the information will be more relevant at that time.

(ii) This phase should be completed for each family before the beginning of its occupancy.

(2) *Move-in phase.* During this phase, the counseling and training staff should be available to the homebuyers on an individual basis. Services may include (i) inspecting the units, interior and exterior, with the homebuyers and a representative of the LHA, (ii) testing appliances and equipment, (iii) providing information on the moving process (packing, trucks, etc.), and (iv) assisting homebuyers in making adjustments occasioned by the move, serving as liaison among homebuyers, LHA, builder and other agencies, and assisting homebuyers in meeting new neighbors.

(3) *Post-occupancy phase.* Before this phase begins, a period (possibly one month) should elapse to allow homebuyers an opportunity to adjust to their new surroundings. This is a time when new questions and problems come to light that can be dealt with in further counseling and training. This phase should be designed to cover many of the same basic subjects as the pre-occupancy phase, both by review and refresher where necessary but in much greater depth.

(4) *Assistance to the HBA.* The parties responsible for the counseling and

training program shall be responsible for the formation, incorporation, and development of the HBA, including the execution of the Recognition Agreement between the LHA and HBA, as provided in subpart D of this part.

#### § 904.205 Training methodology.

Equal in importance to the content of the pre- and post-occupancy training is the training methodology. Because groups vary, there should be adaptability in the communication and learning experience. Methods to be utilized may include group presentations, small discussion groups, special classes, and workshops. Especially important to a successful program are individual family home visits for discussion and instruction on unique problems and operation of equipment.

#### § 904.206 Funding.

(a) *Source of funds.* For purpose of funding counseling and training pursuant to this subpart and for establishing the HBA, the LHA shall include an amount equal to \$500 per dwelling unit in the development cost budget. If additional funds should be needed for any of these purposes, the LHA with the assistance of the CPC, if any, shall explore all other possible sources of services and funds.

(b) *Planned use of \$500-per-unit funds.* These funds are to be used to pay for:

(1) Pre- and post-occupancy counseling and training;

(2) Establishment and initial operation of the HBA (for operation in the management phase, see § 904.305).

In planning the use of these funds, the LHA shall recognize that for a number of years after the initial counseling and training there is likely to be some turnover and follow-up counseling and training needs. Therefore, the LHA shall limit the amounts for the counseling and training of the initial homebuyers and shall reserve a reasonable amount for future counseling and training needs during the management phase of the development.

(c) *Period of availability of \$500-per-unit funds.* These funds shall be available during the development phase, and a specific amount shall be set aside, in accordance with paragraph (b) of this section, to be used for ongoing needs

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after the close of the development period.

(d) *Budgeting of \$500-per-unit funds.* (1) The Development Cost Budget submitted with the Development Program shall include an estimated amount for counseling and training program costs. However, such costs shall not be incurred until after HUD approval of the counseling and training program.

(2) Upon HUD approval of the counseling and training program, the LHA shall include the approved amount in its Contract Award Development Cost Budget. This amount shall constitute the maximum amount that may be included for such purposes in the project development cost; provided that, if the approved amount is less than \$500 per dwelling unit, it may, if necessary, be amended with HUD approval, but not later than the Final Development Cost Budget and subject to the \$500-per-unit limitation.

(e) *Application for approval of counseling and training program.* (1) The LHA shall submit an application for approval of a counseling and training program and for approval of funds therefor. This application shall be submitted to HUD at the time of the submission of the development program or as soon thereafter as possible but no later than the submission of the working drawings and specifications.

(2) The application shall include a narrative statement outlining the counseling and training program, including any services and funds to be obtained from other sources, together with copies of any proposed contract and other pertinent documents. This statement shall include the following:

(i) Indication that the training entity is completely knowledgeable of the Homeownership Opportunity Program and is aware of the needs and problems of prospective homebuyers;

(ii) The method and/or instruments to be used to determine individual training and counseling needs;

(iii) The scope of the proposed program, including a detailed breakdown of tasks to be performed, products to be produced, and a time schedule, including provision for progress payments for specific tasks;

(iv) An outline of the proposed content of the counseling and training to

be provided, and the local community resources to be utilized;

(v) The methods of counseling and training to be utilized;

(vi) The experience and qualifications of the organization and of personnel who will directly provide the counseling and training;

(vii) The estimated cost, source of funds, and methods of payment for the tasks and products to be performed or produced, including estimates of costs for each of the following categories:

(a) Counseling and training during development phase:

- Salaries
- Materials, supplies and expendable equipment
- Contract costs
- Other costs

(b) Establishment and initial operation of HBA

(c) Counseling and training during management phase

**§ 904.207 Use of appendix.**

A Content Guide for Counseling and Training Program (Appendix I) is provided as further detailed information for consideration in designing the counseling and training program. The items set forth therein are not to be considered mandatory.

**APPENDIX I—CONTENT GUIDE FOR COUNSELING AND TRAINING PROGRAM**

**(Subpart C)**

Inclusion of the following items in the Counseling and Training Program should be considered, keeping in mind that the extent to which they are covered will depend on specific needs of homebuyers in the given development.

**PREOCCUPANCY PHASE**

1. *Explanation of program.* Includes the background and a full description of the program with special emphasis on the financial and legal responsibilities of the homebuyers, the HBA, and the LHA; and a review for homebuyers of the computation of the monthly payment and of the accumulation and purpose of EHPA and reserves.

2. *Property care and maintenance.* Includes making homebuyers generally familiar with the overall operation of the home, including fixtures, equipment, interior designing, and building and equipment warranties, and the appropriate procedures for obtaining services and repairs to which the homebuyers may be entitled. (This aspect will probably have to

be covered in more detail during the Post-Occupancy Phase.)

3. *Money management.* Includes budgeting, consumer education, credit counseling, insurance, utility costs, etc.

4. *Developing community.* Includes a view of the surrounding community, and especially how the homebuyer relates to it as an individual and as a member of the HBA.

5. *Referrals.* Includes information as to community resources and services where assistance can be obtained in relation to individual or family problems beyond the scope of the contract agency. This may include referrals to community services that can upgrade employment skills, provide legal services, offer educational opportunities, care for health and dental needs, care for children of working mothers, provide guidance in marital problems and general family matters, including drugs and alcohol.

#### POST-OCCUPANCY PHASE

1. *Home maintenance.* This should include builder responsibility, identification of minor and major repairs, instructions on do-it-yourself repairs and methods of having major repairs completed.

2. *Money management.* This should involve an in-depth study of the legal and financial aspects of consumer credit, savings and investments, and budget counseling.

3. *Developing community.* This will consist primarily of creating an awareness on the part of the homebuyer of the nature and function of the HBA and the value of his participation in, and working through, the HBA as a responsible member of his community. By this means much will be learned about relationships with neighbors, community cooperation, and the ways in which individual and group problems are solved.

#### OTHER ITEMS

In addition to the above, there are other needs and concerns, especially those expressed by the homebuyers, that may be dealt with in special classes or workshops. These may include such topics as child care, selection of furnishings, decorating and furnishing, refinishing of furniture, upholstery, sewing, food and nutrition, care of clothing, etc.

### Subpart D—Homebuyers Association (HBA)

#### § 904.301 Purpose.

(a) It is essential that the homebuyers have an organized vehicle for pursuing their common interests, for effectively representing the needs of residents in dealing with the LHA, and for undertaking eventual management

responsibility for the development. Although this organization, called the homebuyers association (HBA), shall be representative of the homebuyers and independent of the LHA, it shall be the responsibility of the LHA and the training and counseling staff to assist the homebuyers in their initial efforts at organization.

(b) Except as noted in § 904.307, each Turnkey III development shall have an HBA. There shall be a separate HBA for each development or developments where there is a physical and financial community of interest.

#### § 904.302 Membership.

Every family entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement and every family which is a homeowner shall automatically be a member of the HBA.

#### § 904.303 Organizing the HBA.

(a) The HBA should be organized and incorporated as early in the life of the development as is feasible, in order to allow selected homebuyers an opportunity to meet each other and begin forging a sense of community, but in any case the HBA shall be organized and incorporated no later than the date on which 50 percent of the homebuyers have been selected. Interim officers and directors shall be designated as part of the initial organization of the HBA to serve until full-term officers and directors are elected. Such full-term officers and directors shall be elected when 60 percent of the homebuyers are in occupancy, but, in any event, not later than one year from the date the first home is occupied.

(b) The LHA, in cooperation with the CPC, if any, shall be responsible for assuring that competent counseling and training assistance pursuant to Subpart C of this part will be provided in organizing the HBA. These services shall be continued until the HBA is fully operational.

(c) The provision of such services shall include at least the following functions:

- (1) Assembling homebuyers for initial orientation and planning;
- (2) Explaining to homebuyers the structure and functions of an HBA and

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the rights and responsibilities of the HBA and the LHA;

(3) Aiding in the preparation of charters, by-laws, contracts with the LHA and other appropriate documents;

(4) Assisting in the formation of the organization, including such things as the initial designation of interim officers and directors and subsequent election of full-term HBA officers and directors, and the establishment of necessary committees, if any.

(d) The LHA and the HBA shall execute an agreement recognizing the HBA as the official representative of the homebuyers, and establishing the functions, rights, and responsibilities of both parties (see Appendix II). This agreement shall be executed as soon as possible after incorporation of the HBA.

**§ 904.304 Functions of the HBA.**

(a) Subject to possible variations agreed to by the HBA and approved by HUD, the functions of the HBA shall include the following:

(1) Representing its members, individually and collectively, with respect to any deficiencies in the development or in the homes and with respect to fulfillment of the construction contract and related warranties;

(2) Representing its members, individually and collectively, in their relationships with the LHA and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating the home, acquisition of ownership, and other matters pertaining to operation and management of the development;

(3) Recommending policies and rules to the LHA for operation and management including rules concerning use of the common areas and community facilities;

(4) Participating in the operation of official grievance mechanisms;

(5) Advising and assisting its members regarding procedures and practices relative to the Earned Home Payments Account and the acquisition of homeownership;

(6) Participating with the LHA in periodic maintenance inspections of homes after occupancy, and making recommendations in case of disagree-

ments arising out of maintenance inspections;

(7) Participating with the LHA in the selection of subsequent homebuyers;

(8) Coordinating, supervising, or managing the operation of credit union, child care, or other supportive services established for the development;

(9) Participating with the LHA in the establishment and implementation of policies related to collection of monthly payments, termination of occupancy, and resolution of hardship situations; and

(10) Performing management services as specified under contract with the Authority or with the Homeowners Association and participating in other activities pursuant to agreement with the LHA or with the Homeowners Association.

(b) In addition, the HBA may offer such special services as the following:

(1) The development of self-help such as consumer clubs, furniture and other co-ops, credit unions, transportation pools, and skill pools;

(2) Assisting homebuyers in acquiring group insurance;

(3) Developing programs and contracting for services such as child care centers to be located in the community facility where such a facility exists;

(4) Assisting homebuyers in their employment, especially by participating in skill development and apprenticeship programs in cooperation with local educational organizations;

(5) Assisting homebuyers in planning the management role of the HBA and in negotiating any contract for management services with the LHA.

**§ 904.305 Funding of HBA.**

(a) In addition to providing the HBA with noncash contributions such as office space and duplicating services, the LHA shall make cash contributions for operating expenses of the HBA, in the amount provided for in paragraph (b) of this section. Until the project goes into management, these contributions shall be made from the development funds budgeted for the counseling and training program (see § 904.206). Thereafter, these contributions shall be provided for in the annual operating budgets of the LHA.

(b) The cash contributions pursuant to paragraph (a) of this section shall be in the amount provided for in the LHA budget (development cost budget or annual operating budget, as the case may be) and approved by HUD. Such contributions shall be subject to whatever restrictions are applied by HUD to the funding of tenant councils generally, but they shall not exceed \$3 per year per dwelling unit; provided that as an incentive to the HBA to provide additional funds from other sources such as homebuyer's dues, contributions, revenues from special projects or activities, etc., the LHA shall, to the extent approved by HUD in the LHA budget, match such additional funds beyond the \$3 up to a maximum of \$4.50, for a total LHA share of \$7.50 where the total funding for the HBA is \$12 or more. The HBA shall not be precluded from seeking to achieve total funding in excess of \$12 per unit where this can be done with additional funds from sources other than the LHA. Furthermore, funding by the LHA for the normal expenses of the HBA is not to be confused with fees paid pursuant to management services contracts as described in §904.306.

**§904.306 Performing management services.**

The LHA may also contract with the HBA to perform some or all of the functions of project management for which the HBA may be better suited or located than the LHA. Such functions may include security, maintenance of common property, or collection of monthly payments. For this purpose, the HBA may form a management corporation and the officers of the HBA shall be the directors of such corporation. This corporation and the LHA shall then negotiate a management services contract. Such arrangements are consistent with the objective of providing for maximum participation by residents in the management of their developments. As an alternative, the HBA and the LHA may elect to undertake any other arrangement approved by HUD.

**§904.307 Alternative to HBA.**

Where the homes are on scattered sites (noncontiguous lots throughout a

multi-block area, with no common property), or where the number of homes may be too few to support an HBA, and where an alternative method for homebuyer representation and continuing counseling is provided, an HBA shall not be required. For such cases, a modified form of homebuyers association may be called for or a less formal organization may be desirable. This decision shall be made jointly by the LHA and the homebuyers, acting on the recommendation of HUD.

**§904.308 Relationship with homeowners association.**

The HBA and the homeowners association are, in legal terms, separate and distinct organizations with different functions. The homeowners association may hold title to and be responsible for maintenance of common property (see §§904.119 and 904.120), while the HBA has more general service and representative functions. While all residents are members of the HBA, only those who have acquired title to their homes are members of the homeowners association.

**§904.309 Use of appendices.**

Use of the Articles of Incorporation (Part I of Appendix I) and the Recognition Agreement between the Local Housing Authority and Homebuyers Association (Appendix II) is mandatory for projects developed under subpart B of this part which have homebuyers associations. No modification may be made in format, content or text of these Appendices except (1) as required under state or local law as determined by HUD or (2) with approval of HUD. The By-Laws of the Homebuyers Association is provided as a guide for such projects and it may be used or modified to the extent required by the HBA and LHA respectively to meet local needs and desires.

APPENDIX I TO SUBPART D OF PART 904—  
ARTICLES OF INCORPORATION AND  
BY-LAWS OF \_\_\_\_\_ HOME-  
BUYERS ASSOCIATION

(Subpart D)

Part I—*Articles of Incorporation*

In compliance with the requirements of —  
fxsp0; \_\_\_\_\_

(reference to statute under which incorporation is sought) the undesigned, all of whom are natural persons, residents of \_\_\_\_\_, of full age, have this day voluntarily associated themselves together for the purpose of forming a Corporation, not-for-profit, and do hereby certify:

ARTICLE I—NAME

The name of the corporation is \_\_\_\_\_ Homebuyers Association (hereinafter referred to as the "Association").

ARTICLE II—OFFICE

The principal office of the Association is located at \_\_\_\_\_

ARTICLE III—AGENT

\_\_\_\_\_, whose address is \_\_\_\_\_, is hereby appointed the initial registered agent of the Association.

ARTICLE IV—DURATION

The period of duration of the Association is perpetual.

ARTICLE V—MEMBERSHIP

Membership in the Association shall be limited to families who are entitled to occupancy of a Home in the Development pursuant to a Homebuyers Ownership Opportunity Agreement and families who are Homeowners in the Development, and all such families shall automatically be members so long as they are in occupancy of a Home. For purposes of these Articles, the term "Development" includes the following described Development or Developments in the Homeownership Opportunity Program of \_\_\_\_\_ (hereinafter referred to as the Authority):

ARTICLE VI—PURPOSES

The purposes for which this Association is formed shall not result in pecuniary gain or profit to the members thereof. These purposes are to provide organization and representation for its members in their relationships with the Authority in all matters regarding the homeownership opportunity program and, if appropriate, to perform management responsibilities for the Development under contract with the Authority.

1. In order to carry out these purposes, the Association shall perform the following functions:

a. Represent its members, individually and collectively, with respect to any deficiencies in the Development or in the Homes and with respect to fulfillment of the construction contract and related warranties;

b. Represent its members, individually and collectively, in their relationships with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating a Home, and acquisition of ownership, and other matters pertaining to operation and management of the development;

c. Recommend policies and rules to the Authority for operation and management including rules concerning use of the common areas and community facilities;

d. Participate in the operation of official grievance mechanisms;

e. Advise and assist its members regarding procedures and practices relative to their Earned Home Payments Accounts and to their acquisition of homeownership;

f. Participate with the Authority in periodic maintenance inspections of the Homes after occupancy and make recommendations in case of disagreement arising out of maintenance inspections;

g. Participate with the Authority in the selection of subsequent homebuyers;

h. Coordinate, supervise, or manage the operation of credit union, child care, or other supportive services established for the Development;

i. Participate with the Authority in the establishment and implementation of policies related to collection of monthly payments, termination of occupancy, and resolution of hardship situations;

j. Perform management services as specified under contract with the Authority or with the Homeowners Association and participate in other activities pursuant to agreement with the Authority or with the Homeowners Association.

2. The Association may also offer special services such as:

a. The development of self-help such as consumer clubs, furniture and other co-ops, credit unions, transportation pools, and skill pools;

b. Assisting Homebuyers in acquiring group insurance;

c. Developing programs and contracting for services such as child care centers to be located in the community facility, where such a facility exists;

d. Assisting Homebuyers in their employment, especially by participating in skill development and apprenticeship programs in cooperation with local educational organizations; and

e. Assisting Homebuyers in planning the management role of the Association and in negotiating any contract for management services with the Authority.

ARTICLE VII—POWERS

This Association shall have all the powers, privileges, rights and immunities which are necessary or convenient for carrying out its

purposes and which are conferred by the provisions of all applicable laws of the State of \_\_\_\_\_ pertaining to non-profit corporations.

ARTICLE VIII—VOTING

There shall be only one vote per Home regardless of the number of persons in the family that occupies the Home.

ARTICLE IX—BOARD OF DIRECTORS AND BY-LAWS

The affairs of the Association shall be managed by a Board of Directors, all of whom shall be members of the Association. The number of Directors shall be as provided in the By-Laws of the Association. The following persons shall serve as the first Board of Directors and as the first officers:

Table with 2 columns: Office, Address. Includes dotted lines for entries.

This Board shall manage the affairs of the Association until election of their successors by the membership.

Promptly after 60 percent of the Homes are occupied, or one year from the date the first Home is occupied, whichever occurs sooner, the Board shall call the first annual meeting of the Association at which the members shall adopt By-Laws and elect one-third of the Board for a term of one year, one-third for a term of two years, and one-third for a term of three years. At each annual meeting thereafter the members shall elect one-third of the Board for a term of three years.

ARTICLE X—DISSOLUTION

After all members have acquired ownership of their Homes, the Association shall be dissolved with the assent given in writing and signed by not less than two-thirds of the members. The dissolution shall be effective when all of the assets of the Association remaining after payment of its liabilities have been granted, conveyed and assigned in such manner as the Association and Authority may mutually agree.

ARTICLE XI—AMENDMENT

Amendment of these Articles shall require the assent of 75 percent of the entire membership.

In witness whereof, for the purposes of incorporating this Association under the laws of the State of \_\_\_\_\_, we, the undersigned constituting the incorporators of this Association, have executed these Articles of Incorporation this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_

[Witness, Notary, or Acknowledgment as required by state law]

NOTE: The following is a suggested form of By-Laws. Different format and content to meet local needs may be used. For example, it may be considered desirable to combine HBA offices, eliminate or change functions of various committees, provide for other committees, etc.

Part II—By-Laws

The members of the \_\_\_\_\_ Homebuyers Association (hereinafter referred to as the "Association") do hereby adopt in accordance with Article IX of the Articles of Incorporation the following By-Laws:

SECTION 1. Organization—The affairs of the Association shall be managed by a Board of Directors elected by and from the members of the Association. The Board shall elect officers of the Association, including a President, Vice President, Secretary, and Treasurer, who shall carry out such functions and duties as are prescribed by these By-Laws and the Board.

SEC. 2. Association meetings— A. Annual meetings. The Association shall have an annual meeting at \_\_\_\_\_ (time) on the \_\_\_\_\_ (day of week and month) each year for the purpose of transacting such business as may be necessary or appropriate. If the date of the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

B. Quarterly and special meetings. Between annual meetings, quarterly meetings shall be called by the President and be held for the purpose of advising the membership of activities of the Board and enabling the members to bring up matters of common concern. Special meetings may be called at any time (1) by the President with the written concurrence of at least two of the other officers or (2) by a petition filed with the Secretary stating the purpose of the meeting and signed by at least one-fifth of the total number of members in the Association.

C. Notice of meetings. Written notice of each annual, quarterly or special meeting of the members shall be given by, or at the direction of, the Secretary by mailing a copy of such notice at least fifteen days before an annual or quarterly meeting or at least seven days before a special meeting, addressed to each member at the member's address shown on the records of the Association. Such notice shall specify the place, date, and hour of the meeting and, in the case of a special meeting, the purpose of such meeting. No business shall be transacted at any special meeting other than that stated in the notice unless by consent of at least one-half of the total number of votes of the Association.

D. *Quorum.* A quorum at any meeting shall consist of members entitled to cast votes which represent at least one-tenth of the votes of the Association. If such a quorum is not present, those present shall have the power to reschedule the meeting from time to time without notice other than an announcement at the meeting until there is a quorum. At any rescheduled meeting at which a quorum is present, the only business which may be transacted is that which might have been transacted at the original meeting.

E. *Voting.* Each family shall designate in writing to the Secretary the family member who is to cast the family vote. That designee may appoint as a proxy for a specific meeting any other member of the Association. A proxy must be in writing and filed with the Secretary not later than the time that meeting is called to order. Every proxy shall be revocable and shall be automatically revoked when the person who appointed the proxy attends the meeting or ceases to have voting privileges in the Association. Votes represented by proxy shall be counted in determining the presence or absence of a quorum at any meeting.

F. *Agenda.* An agenda shall be prepared for every meeting.

SEC. 3. *Board of Directors— A. Number of directors.* The affairs of the Association shall be managed by a Board of \_\_\_\_\_ Directors, all of whom shall be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association.

B. *Term of Office.* The Board of Directors shall be elected at the annual meeting of the Association. At the first annual meeting, the members shall elect \_\_\_\_\_<sup>1</sup> Directors for a term of one year, \_\_\_\_\_<sup>1</sup> Directors for a term of two years, and \_\_\_\_\_<sup>1</sup> Directors for a term of three years. At each annual meeting thereafter the members shall elect \_\_\_\_\_<sup>1</sup> Directors for a term of three years.

C. *Removal and other vacancies of Directors.* Any Director may be removed from the Board, for cause, by a majority of the votes of the Association at any annual or quarterly meeting or any special meeting called for such purpose, provided that the Director has been given an opportunity to be heard at such meeting. In the event of death, resignation or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

D. *Chairman of the Board.* At the first regular Board meeting after each annual meeting, the Board of Directors shall elect a Chairman from among their number.

<sup>1</sup>Each group shall be one-third of the total number of Directors.

E. *Compensation.* No compensation shall be paid to the Board for its services. However, any Director may be reimbursed for his actual expense incurred in the performance of his duties, as long as such expense receives approval of the Board and is within the approved Association budget.

SEC. 4. *Nomination and election of the board— A. Nomination.* Nomination for election to the Board of Directors (other than for filling of vacancies under section 3. C.) shall be made by the Nomination Committee; provided, however, that nominations may also be made from the floor at the annual meeting by motion properly made and seconded, or by a petition which states the name of the person nominated, is signed by members representing at least ten votes, and is filed with the Secretary not later than the day prior to the annual meeting. Persons nominated must be members of the Association.

B. *Election.* Election of the Board of Directors shall be in accordance with Section 2.E., and by secret written ballot. The ballots shall be prepared by the Secretary. Cumulative voting is not permitted (that is, a voter who refrains from voting with respect to one or more vacancies may not on that account cast any extra vote or votes with respect to another vacancy). The persons receiving the largest number of votes shall be elected.

SEC. 5. *Meetings of Directors— A. Regular meetings.* Regular meetings of the Board of Directors shall be held monthly at such time and hours as may be fixed from time to time by resolution of the Board. Notice of time and place of the meetings shall be mailed to each Director no later than seven days before the meeting.

B. *Special meetings.* Special meetings of the Board of Directors shall be held when called by the President of the Association, the Chairman of the Board or by any two Directors, after not less than three days notice to each Director.

C. *Quorum.* A simple majority of the Board shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board present at a duly held meeting shall be regarded as an act of the Board.

D. *Action taken without a meeting.* Any action which could be otherwise taken at a Board meeting may be taken in the absence of a meeting, by obtaining the written approval of all Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

SEC. 6. *Power and duties of the Board of Directors— A. Power and duties generally.* The Board of Directors shall have and exercise all the powers, duties, and authority necessary for the administration of the affairs and to carry out the purposes of the Association, excepting only those acts and things as are

required by law, by the Articles of Incorporation, or by these By-Laws to be exercised and done by the members or their officers.

B. *Powers.* The Board shall have the power to: (1) Adopt and publish such rules and regulations as are appropriate in the exercise of its powers and duties, including but not limited to rules and regulations governing the amount and payment of dues, use of common areas and facilities and the conduct of the members and their guests thereon, and the establishment of penalties for violation of such rules and regulations; (2) appoint or designate officers, agents, and employees, and make such delegations of authority as in its judgment are in the best interest of the Association; (3) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from at least three consecutive regular meetings of the Board of Directors.

C. *Duties.* It shall be the duty of the Board of Directors to: (1) Cause to be kept a complete record of all its acts and Association affairs, and to present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by members representing at least one-fifth of the votes of the Association; (2) cause to be prepared an annual audit of the Association books to be made at the completion of each fiscal year; (3) cause to be supervised all officers, agents, and employees of the Association, and see that their duties are properly performed; (4) procure and maintain adequate liability and hazard insurance on any property owned by the Association; (5) cause such officers or employees having fiscal responsibilities to be bonded as the Board may deem appropriate; (6) cause to be performed the functions listed in Article V of the Articles of Incorporation.

SEC. 7. *Association officers and their duties—*

A. *Election.* The Board of Directors shall elect the following officers of the Association: a President, a Vice President, a Secretary, a Treasurer, and such other special officers as, in the opinion of the Board, the Association may require. The President and Vice President shall be elected from members of the Board. The election of officers shall take place biennially at the first meeting of the Board of Directors following the annual meeting of the members.

B. *Term.* The officers shall hold office for two years unless they shall resign sooner, be removed, or otherwise be disqualified to serve; provided, however, that special officers shall hold office for such period as the Board may determine, but not to exceed one year.

C. *Removal and resignation.* Any officer may be removed from office, for cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of

such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

D. *Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

E. *Multiple Officers.* No person shall simultaneously hold more than one of the offices required by these By-Laws.

F. *Duties.* The duties of the officers are as follows:

(1) *President.* The President shall preside at all Association meetings; shall execute the orders and resolutions of the Board; shall sign all leases, mortgage, deeds, and other written instruments; and shall cosign with the Treasurer all checks and promissory notes.

(2) *Vice President.* The Vice President shall act in place and stead of the President in the event of his absence or disability and shall exercise and discharge such other duties as may be required of him by the Board.

(3) *Secretary.* The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of the meetings of the Board and of the Association; shall keep appropriate current records showing the names and addresses of the members of the Association; and shall perform such duties as may be required by the Board.

(4) *Treasurer.* The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall cosign with the President all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and statement of income and expenditures which shall be approved by the Board before presentation to the Association at its regular annual meeting, and furnish a copy to each of the members.

(5) *Special officers.* Special officers shall have such authority and perform such duties as the Board may determine.

(6) *Compensation.* Officers may not be compensated except as may be determined by the Board, in accordance with the approved Association budget.

SEC. 8. *Committees.*— A. *Committees to be established.* The Board of Directors shall establish the following committees:

(1) *Representation Committee* which shall represent members, individually and collectively, with respect to: any deficiencies in the Development or the individual Homes therein; fulfillment of the construction contract and related warranties; relationships

with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating the home, and acquisition of ownership; matters pertaining to project management; and matters in the Authority's official grievance mechanisms.

(2) *Rules Committee* which shall present to the Board for recommendation to the Authority policies for operation and management and, where appropriate, assist the Board in establishing Association rules in that respect.

(3) *Homeownership Committee* which shall advise and assist members in regard to maintenance and acquisition of ownership of their homes, financial matters and other matters related to homeownership and home management.

(4) *Selection Committee* which shall recommend proposed homebuyers from a list of eligible applicants.

(5) *Nominating Committee* which shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association, none of whom are Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies to be filled.

B. *Other committees.* The Board may establish other committees, permanent or temporary, which it deems necessary or desirable to carry out the purposes of the Association.

C. *Committee Chairman and Members.* The chairmen of all committees, except the Nominating Committee, shall be appointed by and serve at the pleasure of the President. Committee members shall be appointed by the chairman of the committee on which they are to serve and shall serve until a new chairman is appointed.

D. *Committee Reports.* The chairman of each committee shall make a report to the President in writing of committee meetings and activities prior to each regular monthly meeting of the Board of Directors.

E. *Authority.* Unless specifically authorized in writing by the Board of Directors or the President, a committee chairman or a committee shall have no authority to legally obligate the Association or incur any expenditure on behalf of the Association.

SEC. 9. *Suspension of rights.* The Board may suspend, by a majority vote of the Board, the voting rights and rights to use the recreational facilities, of a member, and his family and guests, during any period in

which the member shall be in default in the payment of any dues or assessment imposed by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty days, for violation of the Association's rules and regulations.

SEC. 10. *Books and records.* The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

SEC. 11. *Amendments.* Amendments to these By-Laws may be introduced and discussed at any annual or special meeting of the Association, provided that copies of any proposed amendment shall be mailed to all the members with the notice of the meeting at which such amendment will be introduced. A vote on adopting such amendment shall be taken at the first Association meeting held at least two weeks subsequent to the meeting at which the amendment was introduced. Amendments shall be adopted by a vote of a majority of the members of the Association.

SEC. 12. *Corporate seal.* The Association shall have a seal which shall appear as follows: [SEAL]

SEC. 13. *Fiscal year.* The first fiscal year of the Association shall begin on the date of incorporation and shall end on the last day of \_\_\_\_\_ (month, year). Each successive fiscal year shall begin on the first day of \_\_\_\_\_ (month) and end on the last day of \_\_\_\_\_ (month).

The foregoing By-Laws were adopted at the first annual meeting of the Association held \_\_\_\_\_ by the undersigned members of the Association.

APPENDIX I TO SUBPART D OF PART 904—RECOGNITION AGREEMENT BETWEEN LOCAL HOUSING AUTHORITY AND HOMEBUYERS ASSOCIATION

(Subpart D)

WHEREAS, the \_\_\_\_\_ ("Authority"), a public body corporate and politic, has developed or acquired with the aid of loans and annual contributions from the Department of Housing and Urban Development ("HUD"), the following Development or Developments in its homeownership opportunity program (hereinafter referred to as the "Development"):<sup>1</sup>

WHEREAS, an organization of residents ("Homebuyers") is an essential element in such Development for purposes of effective

<sup>1</sup>List here the specific Development or Developments whose Homebuyers are represented by the Homebuyers Association with which this Agreement is entered into.

participation of the Homebuyers in the management of the Development and representation of the Homebuyers in their relationships with the Authority, and for other purposes; and

WHEREAS, the \_\_\_\_\_ Homebuyers Association ("Association") fully represents the Homebuyers of the Development;

NOW, THEREFORE, this agreement is entered into by and between the Authority and the Association and they do hereby agree as follows:

1. The Association, whose Articles of Incorporation are attached hereto and made a part hereof, is hereby recognized as the established representative of the Homebuyers of the Development and is the sole group entitled to represent them as tenants or Homebuyers before the Authority;

2. For each fiscal year, the Authority shall make available funds to the Association for its normal expenses, in such amounts as may be available to the Authority for such purposes and subject to whatever applicable HUD regulations;

3. The Association shall be entitled to the use of office space in \_\_\_\_\_ at the Development without charge by the Authority for such use;

4. The Authority and the officers of the Association shall meet at a location convenient to both parties on the \_\_\_\_\_ (day) of each month to discuss matters of interest to either party;

5. In the event the parties later agree that the Association should assume management responsibilities now held by the Authority, a contract for such purpose will be negotiated by \_\_\_\_\_ the Association;

\_\_\_\_\_ terminate upon dissolution of the Association.

IN WITNESS HEREOF, the parties have executed this Agreement on \_\_\_\_\_, 19 \_\_\_\_\_.

Local Housing Authority  
By (Official Title) \_\_\_\_\_  
Homebuyers Association  
By (Official Title) \_\_\_\_\_  
WITNESSES: \_\_\_\_\_

**PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM**

AUTHORITY: 42 U.S.C. 1437g and 3535(d).

SOURCE: 65 FR 14426, March 16, 2000, unless otherwise noted.

**§ 905.10 Capital Fund formula (CFF).**

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD:

(i) Shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k) for—

(A) Use for assistance in connection with emergencies and other disasters, and

(B) Housing needs resulting from any settlement of litigation; and

(ii) May reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced subsequently through FEDERAL REGISTER notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *For PHAs greater than or equal to 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);