

BY-LAWS  
OF  
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ARTICLE I. NAME AND LOCATION OF CORPORATION

Section 1. The name of this corporation is Lindenwood Gardens Cooperative, Inc. Its principal office is located in the City of New York, County of Queens, State of New York.

ARTICLE II. PURPOSE

Section 1. The purpose of this Corporation is to provide its stockholders (hereinafter referred to as "Members") with housing and community facilities, if any, on a nonprofit basis consonant with the provisions set forth in its Certificate of Incorporation.

ARTICLE III. MEMBERSHIP

Section 1. Eligibility. Any natural person approved by the Board of Directors shall be eligible for stock ownership (hereinafter referred as "Membership"), provided that he or she executes a Subscription Agreement and Occupancy Agreement in the usual form employed by the Corporation covering a specific unit in the housing project.

Section 2. Application for Membership. Application for membership shall be presented in person on a form prescribed by the Board of Directors, and all such applications shall be acted upon promptly by the Board of Directors.

Section 3. Subscription Funds. All subscription funds (except funds required for credit reports) received from applicants prior to the acquisition of title to the Project by the Corporation from the Federal Housing Administration (hereinafter sometimes referred to as the "Administration") shall be deposited promptly without deduction in a special account or accounts (savings or checking) of the Corporation as escrowee or trustee for the Subscribers to Membership, which monies shall not be general corporate funds, but shall be held solely for the benefit of the Subscribers until transferred to the account of the Corporation as hereinafter provided. Such special account or accounts shall be established with such bank or banks or savings and loan association or associations (whose deposits are insured by an agency of the Federal Government) as may be approved by the Administration. Such account or accounts may be interest bearing, with the interest earned to be retained and owned by the Corporation. Such funds shall be subject to withdrawal, or transfer to the account of the Corporation or disbursed in a manner directed by the Corporation only upon certification (which certification shall appear on the face of any check, if such funds have been deposited in a checking account) by the President or Vice President and Secretary or any Assistant Secretary of the Corporation to the above-named institution or institutions that:

- (a) The Subscription Agreement of a named applicant has been terminated pursuant to its terms and such withdrawal is required to repay the amount paid by him under such agreement; or

- (b) Applicants for at least 80% of the dwelling units to be covered by the mortgage have not been procured within the period specified in the Contract of Sale between the Cooperative and FHA, or any extension thereof, and such withdrawal is required to repay to the applicants the amount paid by them; or
- (c) Applicants for at least 80% of the dwelling units to be covered by the mortgage (or such lesser number as may be approved by the Administration) have signed Subscription Agreements, have been approved as to their credit by the Administration, and have paid the subscription price in full and when, in addition, there is sufficient occupancy to assure that the Project can meet its obligations. If these requirements have been met and the purchase money mortgage loan has been scheduled for closing with the approval of the Administration, the entire amount of the funds in the subscription escrow account may be transferred to the Corporation, at which time the Corporation shall issue and deliver stock certificates to all members.

Section 4. Members, Authorized Memberships, and Occupancy Agreements. The members shall consist of the individuals comprising the first Board of Directors, as identified in the Certificates of Incorporation, or their successors and such subscribers as have been approved for membership by the Board of Directors and who have paid for their membership and received their stock certificates. The status of the Directors named in the Certificates of Incorporation (or their successors elected by them) as members shall terminate at the first annual membership meeting, unless they have executed Subscription Agreements and, where required, by the Administration, Occupancy Agreements, and paid the subscription price in full.

Section 5. Stock Certificates. Each stock certificate shall state that the Corporation is organized under the laws of the State of New York, the name of the registered holder of the stock represented thereby, the Corporation lien rights as against such stock as set forth in this Article, and the preferences and restrictions applicable thereto, and shall be in such form as shall be approved by the Board of Directors. Stock certificates shall be consecutively numbered, bound in one or more books, and shall be issued therefrom upon certification as to full payment. Every stock certificate shall be signed by the President or Vice President, and the Secretary or Assistant Secretary, and shall be sealed with the corporate seal.

Section 6. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the Corporation and alleged to have been destroyed or lost upon the making of an affidavit of that fact by the person claiming the certificate to be lost or destroyed. When authorizing such issuance of a new certificate or certificates, the Board of Directors may, in its discretion, and as a condition precedent to the issuance thereof, require the registered owner of such lost or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and to give the Corporation a bond in such sum as the Board of Directors may require as indemnity against any claim that may be made against the Corporation.

Section 7. Lien. The Corporation shall have a lien on the outstanding regular shares of common stock in order to secure payment of any sums which shall be due or become due from the holders thereof for any reason whatsoever, including any sums due under any Occupancy Agreements.

Section 8. Transfer of Membership. Except as provided herein, membership shall not be transferable and, in any event, no transfer of membership shall be made upon the books of the Corporation within ten (10) days next preceding the annual meeting of the members.

- (a) Death of Member. If, upon death of a member, his stock in the Corporation passes by will or intestate distribution to a member of his immediate family, such legatee or distributee may, by assuming in writing the terms of the Subscription Agreement and Occupancy Agreement, where required by the Administration, within sixty (60) days after member's death, and paying all amounts due thereunder, become a member of the Corporation. If member dies and the obligations are not assumed in accordance with the foregoing, then the Corporation shall have an option to purchase the stock from the deceased member's estate in the manner provided in paragraph (b) of this Section, written notice of the death being equivalent to notice of intention to withdraw. If the Corporation does not exercise such option, the provisions of paragraph (c) of this Section shall be applicable, the references to "member" therein to be construed as references to the legal representative of the deceased member.
- (b) Option of Corporation to Purchase. If the member desires to leave the project, he shall notify the Corporation in writing of such intention and the Corporation shall have an option for a period of thirty (30) days thereafter, but not the obligation, to purchase the membership, together with all of the member's rights with respect to the dwelling unit, at an amount to be determined by the Corporation as representing the transfer value thereof, less any amounts due by the member to the Corporation under the Occupancy Agreement, and less the cost or estimated cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the Corporation to place the dwelling unit in suitable condition for another occupant. The purchase by the Corporation of the membership will immediately terminate the member's rights and the member shall forthwith vacate the premises.
- (c) Procedure Where Corporation Does Not Exercise Option. If the Corporation waives in writing its right to purchase the stock under the foregoing option, or if the Corporation fails to exercise such option within the thirty (30) day period, the member may sell his stock to any person who has been duly approved by the Corporation as a member and occupant. If the Corporation agrees, at the request of the member, to assist the member in finding a purchaser, the Corporation shall be entitled to charge the member a fee it deems reasonable for this service. When the transferee has been approved for membership and has executed the prescribed Occupancy Agreement, the retiring member shall be released of his obligations under his Occupancy Agreement, provided he has paid all amounts due the Corporation to date.

(d) Transfer Value. Whenever the Board of Directors elects to purchase a member's stock the term "transfer value" shall mean the sum of the following:

- (1) The consideration (i.e. purchase price) paid for the stock by the first occupant of the unit involved as shown on the books of the Corporation;
- (2) The value, as determined by the Directors, of any improvements installed at the expense of the member with the prior approval of the Directors, under a valuation formula which does not provide for reimbursement in an amount in excess of the typical initial cost of the improvements; and
- (3). The amount of principal amortized by the Corporation on its mortgage indebtedness and attributable to the dwelling unit involved as paid by the member involved and previous holders of the stock representing the same apartment.

Section 9. Termination of Membership for Cause. In the event the Corporation has terminated the rights of a member under the Occupancy Agreement, the member shall be required to deliver promptly to the Corporation his stock certificate and his Occupancy Agreement, both endorsed in such manner as may be required by the Corporation. The Corporation shall thereupon at its election either (1) repurchase said stock at its transfer value (as hereinabove defined) or the amount the retiring member originally paid for the acquisition of his stock certificate, whichever is the lesser, or (2) proceed with reasonable diligence to effect a sale of the stock to a purchaser, and at a sales price acceptable to the Corporation. The retiring member shall be entitled to receive the amount so determined, less the following amounts (the determination of such amounts by the Corporation to be conclusive):

- (a) any amounts due to the Corporation from the member under the Occupancy Agreement;
- (b) the cost or estimated cost of all deferred maintenance, including painting, re-decorating, floor finishing, and such repairs and replacements as are deemed necessary by the Corporation to place the dwelling unit in suitable condition for another occupant; and
- (c) legal and other expenses incurred by the Corporation in connection with the default of such member and the resale of his stock. In the event the retiring member for any reason should fail for a period of 10 days after demand to deliver to the Corporation his endorsed stock certificate, said stock certificate shall forthwith be deemed to be cancelled and may be reissued by the Corporation to a new purchaser.

Section 10. Non-Speculation on Sales of Memberships.

(a) The Corporation shall observe the basic cooperative principle that purchase and sales of memberships are not for speculative purposes and that investments in the Corporation by members are for the purpose of securing a home for their use and benefit. To this end, the policies established by the Corporation shall be designed to discourage and avoid speculation both in the sale and resale of memberships by members or by the Corporation. Accordingly, the Corporation shall resell memberships and Occupancy Agreements which it acquires at an amount representing:

- (f) The amount paid by the Corporation as the Transfer Value (as provided in Section 8(d) of this Article III);

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- (ii) Such amounts as the Corporation may expend to pay the costs of any improvements made in a dwelling unit to facilitate its resale.

(b) The Corporation may establish from time to time the amount which it deems necessary as a service fee for resale of memberships and Occupancy Agreements in dwelling units. Such service fee shall be uniform in its application to all withdrawing members except that it may take into account varying prices and types of dwelling units: Provided that such service fee shall be computed on a basis which is calculated to reimburse the Corporation for its costs in handling resales generally without realizing profits from its operations.

(c) The determination by the Corporation shall be conclusive as to service fees and costs of improvements for the purposes set forth in subparagraphs (a) and (b).

#### ARTICLE IV. MEETINGS OF MEMBERS

Section 1. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Corporation or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 2. Annual Meetings. The first annual meeting of the Corporation shall be held within 60 days after the acquisition of title to the Project by the Corporation (or such later date as may be established by resolution of the Board of Directors of the Corporation with the prior written approval of the Federal Housing Administration). Thereafter the annual meeting of the Corporation shall be held on the third Thursday of March of each succeeding year. At such meeting there shall be elected by ballot of the members a Board of Directors in accordance with the requirements of Section 3 of Article V of these By-Laws. The members may also transact such other business of the Corporation as may properly come before them.

Section 3. Special Meetings. It shall be the duty of the President to call a special meeting of the members as directed by resolution of the Board of Directors or upon a petition signed by twenty (20) percent of the members having been presented to the Secretary, or at the request of the Federal Housing Commissioner or his duly authorized representative. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths of the members present, either in person or by proxy. Special meetings may not be called by the members until a time subsequent to the date of the first annual meeting except as directed by resolution of the Board of Directors, or by the Federal Housing Commissioner or his duly authorized representative.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each stockholder of record, at his address as it appears on the stock book of the Corporation, or if no such address appears, at his last known place of address, at least ten (10) but not more than forty (40) days prior to such meeting. Service may also be accomplished by the delivery of any such notice to the member at his dwelling unit or last known address. Notice of either such method shall be considered as notice served. Notices of all meetings shall be mailed to the Director of the local insuring office of the Federal Housing Administration.

Section 5. Quorum. The presence, either in person or by proxy, of at least fifteen (15) percent of the members of record of the Corporation shall be requisite for, and shall constitute a quorum for the transaction of business at all meetings of members. If the number of members at a meeting drops below the quorum and the question of a lack of quorum is raised, no business may thereafter be transacted.

Section 6. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, or a meeting has been ended because the number of members at said meeting has dropped below the quorum, the members who are present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called, at which subsequent meeting the quorum requirement shall be ten (10) percent.

Section 7. Voting. At every meeting of the regular members, each member present, either in person or by proxy, shall have the right to cast one vote on each question and never more than one vote. The vote of the majority of those present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by express provision of statute or of the Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control. No member shall be eligible to vote or to be elected to the Board of Directors who is shown on the books or management accounts of the Corporation to be more than 30 days delinquent in payments due the Corporation under his Occupancy Agreement.

Section 8. Proxies. A member may appoint as his proxy only a member of his immediate family (as defined by the Board of Directors) except that an unmarried member may appoint any other member as his proxy. In no case may a member cast more than one vote by proxy in addition to his own vote. Any proxy must be filed with the Secretary before the appointed time of each meeting.

Section 9. Order of Business. The order of business at all regularly scheduled meetings of the regular members shall be as follows:

- (a) Roll call.
- (b) Proof of notice of meeting or waiver of notice.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Report of manager or managing agent.
- (g) Election of inspectors of election.
- (h) Election of directors.
- (i) Unfinished business.
- (j) New business.

In the case of special meetings, items (a) through (d) shall be applicable and thereafter the agenda shall consist of the items specified in the notice of meeting.

If present, a representative of the Administration will be given an opportunity to address any regular or special meeting.

#### ARTICLE V. DIRECTORS

Section 1. Number and qualification. The affairs of the Corporation shall be governed by a Board of Directors composed of not less than five (5), nor more than nine (9) persons, a majority of whom shall be members of the Corporation.

Section 2. Powers and Duties. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Corporation and may do all such acts and things as are not by law or by these By-Laws directed to be exercised and done by the members. The powers of the Board of Directors shall include, but not be limited:

- (a) To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;
- (b) Subject to the approval of the Administration, to establish monthly carrying charges as provided for in the Occupancy Agreement, based on an operating budget formally adopted by such Board;
- (c) Subject to the approval of the Administration, to engage an agent or employees for the management of the project under such terms as the Board may determine;

- (d) To authorize in their discretion patronage refunds from residual receipts when and as reflected in the annual report;
- (e) To terminate membership and occupancy rights for cause;
- (f) To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and which are consistent with these By-Laws, the Articles of Incorporation, and the Regulatory Agreement; and

Section 3. Election and Term of Office. The term of the Directors named in the Certificate of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called for that purpose: Provided, that any such special meetings to be held prior to the first annual meeting shall be called only as directed by resolution of the Board of Directors or by the Federal Housing Commissioner or his duly authorized representative. At the first annual meeting of the stockholders the Board of Directors shall be increased to 9 and divided into 3 classes. The stockholders shall elect from among themselves 3 directors of the first class for a term of 1 year; 3 directors for a second class for a term of 2 years; and 3 directors of the third class for a term of 3 years. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of three 3 years. The Directors shall hold office until their successors have been elected and hold their first meeting.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the membership shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected by the members at the next annual meeting to serve out the unexpired portion of the term.

Section 5. Removal of Directors. At any regular or special meeting duly called, any Director elected by the members may be removed with or without cause by the affirmative vote of the majority of the entire regular membership of record and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting. The term of any Director who becomes more than 30 days delinquent in payment of his carrying charges shall be automatically terminated and the remaining Directors shall appoint his successor as provided in Section 4, above.

Section 6. Compensation. No compensation shall be paid to Directors for their services as Directors. No remuneration shall be paid to a Director for services performed by him for the Corporation in any other capacity, unless a resolution authorizing such remuneration shall be unanimously adopted by the Board of Directors before the services are undertaken. No remuneration or compensation shall in any case be paid to a Director without the approval of the Administration. A Director may not be an employee of the Corporation.

Section 7. Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order legally to constitute such meeting, providing a majority of the whole Board shall be present.

Section 8. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least four such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors may be called by the President on three days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least three Directors.

Section 10. Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. Where all of the Directors unanimously approve and sign a corporate resolution or authorization (which is to be included in the minute book), this shall be recognized as proper corporate action taken at a duly authorized meeting, without proceeding under the provisions hereof that would otherwise be applicable for calling and holding Directors meetings.

Section 11. Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 12. Fidelity Bonds. The Board of Directors shall require that all officers and employees of the Corporation handling or responsible for corporate or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Corporation.

Section 13. Safeguarding Subscription Funds. It shall be the duty of the Board of Directors to see to it that all sums received in connection with membership subscriptions prior to the admission of title to the housing project by the Corporation, are deposited and withdrawn only in the manner provided for in Article III, Section 3 of these By-Laws.

#### ARTICLE VI. OFFICERS

Section 1. Designation. The principal officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer, all of whom shall be elected by and from the Board of Directors. The Directors may appoint assistant treasurers and assistant secretaries, and such other officers as in their judgment may be necessary.

Section 2. Election of Officers. The officers of the Corporation shall be elected annually by the Board of Directors at the organization meeting of each new board and shall hold office at the pleasure of the Board.

Section 3. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 4. President. The President shall be the chief executive officer of the Corporation. He shall preside at all meetings of the members and of the Board of Directors. He shall have all the general powers and duties which are usually vested in the office of president of a corporation, including but not limited to the power to appoint committees from among the membership from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Corporation.

Section 5. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Corporation; he shall have the custody of the seal of the Corporation; he shall have charge of the membership transfer books and of such other books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of secretary.

Section 7. Treasurer. The Treasurer shall have responsibility for corporate funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Corporation. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit, of the Corporation in such depositaries as may from time to time be designated by the Board of Directors.

#### ARTICLE VII. REGULATORY AGREEMENT OF FHA

Rights of Federal Housing Administration. The management, operation and control of the affairs of the Corporation shall be subject to the rights, powers, and privileges of the Federal Housing Administration pursuant to a Regulatory Agreement between the Corporation and the Federal Housing Administration. The Corporation is bound by the provisions of the Regulatory Agreement which is a condition precedent to the acquisition of title to the Project by the Corporation.

#### ARTICLE VIII. AMENDMENTS

These By-Laws may be amended by the affirmative vote of the majority of the entire regular membership of record at any regular or special meeting, provided that no amendment shall become effective unless and until it has received the written approval of the Administration. Amendments may be proposed by the Board of Directors or by petition signed by at least twenty (20) percent of the members. A description of any proposed amendment shall accompany the notice of any regular or special meeting at which such proposed amendment is to be voted upon.

#### ARTICLE IX. CORPORATE SEAL

The Board of Directors shall provide a suitable corporate seal containing the name of the Corporation, which seal shall be in charge of the Secretary. If so directed by the Board of Directors, a duplicate of the seal may be kept and used by the Treasurer or any assistant secretary or assistant treasurer.

#### ARTICLE X. FISCAL MANAGEMENT

Section 1. Fiscal Year. The fiscal year of the Corporation shall begin on the 1st day of January of each year, except that the first fiscal year of the Corporation shall begin at the date of incorporation. The commencement date of the fiscal year herein established shall be subject to change by the Board of Directors should corporate practice subsequently dictate, but not without the prior written approval of the Administration.

Section 2. Books and Accounts. Books and accounts of the Corporation shall be kept under the direction of the Treasurer and in accordance with the Uniform System of Accounts prescribed by the FHA Commissioner. That amount of the carrying charges required for payment on the principal of the mortgage of the Corporation or any other capital expenditures shall be credited upon the books of the Corporation to the "Paid-In-Surplus" account as a capital contribution by the members.

Section 3. Auditing. At the closing of each fiscal year, the books and records of the Corporation shall be audited by a Certified Public Accountant or other person acceptable to the Administration, whose report will be prepared and certified in accordance with the requirements of the Administration. Based on such reports, the Corporation will furnish its members with an annual financial statement including the income and disbursements of the Corporation. The Corporation will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing each member's pro rata share of the real estate taxes and mortgage interest paid by the Corporation during the preceding calendar year.

Section 4. Inspection of Books. Financial reports such as are required to be furnished to the Administration and the membership records of the Corporation shall be available at the principal office of the Corporation for inspection at reasonable times by any member.

Section 5. Execution of Corporate Documents. With the prior authorization of the Board of Directors, all notes and contracts, including Occupancy Agreements, shall be executed on behalf of the Corporation by any officer of the Corporation, and all checks shall be executed on behalf of the Corporation by any two officers of the Corporation.

Section 6. Association with Other Cooperatives. The Corporation may become a member of an association of cooperatives who join together for purposes of mutual aid and of advancing the cooperative movement as a means of providing housing for consumers.

#### ARTICLE XI. SAVING CLAUSE

Any provision of these By-Laws that is inconsistent with or in violation of any provision or requirements contained in the Certificate of Incorporation or amended Certificate or Certificates, or that is inconsistent with and in violation of the statutes or the law of the State of New York, shall be considered inoperative, and the provision contained in the Certificate of Incorporation or any amended Certificate, and the provisions of the applicable laws of the State of New York shall be considered part of these By-Laws as if set forth herein.

REGULATORY AGREEMENT

LINDENWOOD GARDENS COOPERATIVE, INC.  
FHA Project Nos. 012-30241  
012-30242  
012-30243

AGREEMENT dated this            day of            1966, by and between LINDENWOOD GARDENS COOPERATIVE, INC. (hereinafter called the "Mortgagor") whose address is c/o FCH Company, Inc., 155-04 81st Street, Howard Beach, Queens, New York, party of the first part, and PHILIP N. BROWNSTEIN, as Federal Housing Commissioner (hereinafter called the "Commissioner"), acting pursuant to the authority granted to him by the National Housing Act, as amended (hereinafter called the "Act"), party of the second part,

WITNESS THAT:

WHEREAS, the Mortgagor is owner of certain premises upon which has been erected a cooperative housing development designated as FHA Project Nos. 012-30241, 012-30242, and 012-30243 (hereinafter collectively called the "Project"); and

WHEREAS, the Mortgagor has purchased the Project from the Commissioner for a purchase price of \$4,400,000.00 upon the following terms, namely, a cash downpayment of \$120,000.00 and the balance of the purchase price for credit, which balance of purchase price is evidenced by a certain note secured by a purchase money mortgage (hereinafter called the "Mortgage") given by the Mortgagor to the Commissioner; and

WHEREAS, the Mortgagor and the Commissioner have agreed that as a condition of the sale of the Project to the Mortgagor, that so long as the Project is encumbered by a mortgage owned or insured by the Commissioner, the Mortgagor will consent to be regulated and restricted by the Commissioner as provided in Section 213 of the Act.

NOW THEREFORE, in consideration of the sum of one dollar (\$1.00) in hand paid and other good and valuable considerations by each party to the other, the receipt of which is hereby acknowledged, and in order to induce the Commissioner to sell the Project to the Mortgagor, and in order that the Mortgagor may be regulated and restricted by the Commissioner as provided in said Section 213 and the applicable Rules, the parties hereto agree as follows: that as long as the Commissioner shall be the owner, holder, or insurer of the Mortgage, or during any time the Commissioner is obligated to insure a mortgage on the mortgaged property:

1. The Mortgagor shall promptly make all payments due under the Note and Mortgage.
2. The Mortgagor shall establish and maintain a reserve fund for replacements for the Project by the allocation to such reserve fund in a separate account with the Mortgagee or in a safe and responsible depository designated by the Mortgagee, commencing on the date of the first payment towards amortization of the principal of the mortgage insured by the Commissioner, of an amount equal to \$ 850.16 , and a like amount monthly thereafter. Such fund may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by the United States of America, and shall at all times be under the control of the Mortgagee. Such fund is for the purpose of effecting replacement of structural elements and mechanical equipment of the Project and for such other purposes as may be agreed to in writing by the Commissioner. Disbursements from such fund may be made only after receiving the consent in writing of the Commissioner.

3. Commencing with occupancy, the Mortgagor shall establish and maintain a general operating reserve for the Project by allocation and payment there-to monthly of a sum equivalent to not less than 3 percent of the monthly amount otherwise chargeable to the members residing in the Project (hereinafter referred to as "Members") pursuant to their occupancy agreements. Upon accrual in said General Operating Reserve Account of an amount equal to 15 percent of the current annual amount, otherwise chargeable to the members pursuant to their Occupancy Agreements, the rate of such monthly allocations may, by appropriate action of the Mortgagor, be reduced from 3 percent to 2 percent, provided, however, that in the event withdrawals from such account reduce it below said 15 percent accrual, the rate of such monthly deposits shall immediately be restored to 3 percent; at any time thereafter upon accrual in said General Operating Reserve Account of an amount equal to 25 percent of the current annual amount otherwise chargeable to the Members pursuant to their Occupancy Agreement, such monthly deposits may, by appropriate action of the Mortgagor, be discontinued and no further deposits need be made into such General Operating Reserve so long as said 25 percent level is maintained and provided, further, that upon any reduction of such reserve below said 25 percent level, monthly deposits shall forthwith be made at the 3 percent rate until the 25 percent level is restored. (This reserve shall remain in a special account and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America, and shall at all times be under the control of the Mortgagor. This cumulative reserve is intended to provide a measure of financial stability to the Project during the periods of special stress and may be used to meet deficiencies from time to time as a result of delinquent payments by individual cooperators in the Project to provide funds for the re-purchase of stock of withdrawing Members, and other contingencies. Disbursements totaling in excess of 20 percent of the total balance in the reserve as of the close of the preceding annual period may not be made during any annual period without the consent of the Commissioner. Reimbursement shall be made to the account upon payment of delinquencies or sale of stock for which funds were withdrawn from the reserve.)
4. The Mortgagor shall establish and collect monthly carrying charges for the Project pursuant to the conditions set forth hereinafter. Monthly carrying charges charged to Members during the initial occupancy period shall be made by the Mortgagor in accordance with a schedule of charges filed with and approved in writing by the Commissioner prior to the opening of the Project for occupancy. Such charges shall be in an amount sufficient to meet the FHA estimate of cooperative management expense, operating expense, and maintenance expense, debt service, taxes, special assessments and ground rents, if any, reserves, and all other expenses of the Mortgagor for the Project. Subsequent to the initial occupancy period, charges made by the Mortgagor for its accommodations shall be in accordance with a schedule of charges filed with and approved in writing by the Commissioner and shall be in an amount sufficient to meet the Mortgagor's estimate of expenses set forth in an operating budget which shall be prepared and submitted to the FHA 60 days prior to the beginning of each fiscal year. The operating budget shall set forth the anticipated income of the Project and a sufficiently detailed estimate of expenses which will include separate estimates for administration expenses, operating expense, maintenance expense, utilities, hazard insurance, taxes and assessments, ground rent, interest and amortization, mortgage insurance premium, replacement reserve and operating reserve. The Mortgagor shall not permit occupancy of its accommodations except in accordance with a schedule of charges approved by the Commissioner and such schedule shall not be changed except with the written approval of the Commissioner; nor shall occupancy be permitted by the Mortgagor except upon the execution of an Occupancy Agreement in a form approved by the Commissioner. The Project shall not be rented as an entirety. Commercial accommodations and non-dwelling facilities, if any, shall be rented only according to a schedule of charges fixed by the directors and approved in writing by the Commissioner, and the form of lease shall be subject to the written approval of the Commissioner. Mortgagor shall provide for the management of the project in a manner satisfactory to the Commissioner. Any management contract entered into by the Mortgagor involving the Project shall contain a provision that it shall be subject to termination, without penalty and with or without cause, upon written request by the Commissioner addressed to the

Mortgagor and the management agent. Upon receipt of such request the Mortgagor shall immediately terminate the contract within a period of not more than thirty (30) days and shall make arrangements satisfactory to the Commissioner for continuing proper management of the Project.

5. The Mortgagor shall not without prior approval of the Commissioner, given in writing:

- (a) Sell, assign, transfer, dispose of or encumber any real or personal property of the Project, except as specifically permitted by the terms of the Mortgage;
- (b) remodel, reconstruct, demolish, or subtract from the premises constituting the Project and subject to the Mortgage;
- (c) permit the occupancy of any of the dwelling accommodations of the Project except at the charges fixed by the schedule of charges provided herein;
- (d) permit occupancy of any of the dwelling accommodations of the Project except by Members;
- (e) consolidate or merge the Corporation into or with any other Corporation; go into voluntary liquidation; carry into effect any plan of reorganization of the Corporation; effect any changes whatsoever in its capital structure; alter or amend its Certificate of Incorporation; or amend its by-laws;
- (f) fail to establish and maintain the Fund for Replacements and general operating reserve as set forth herein;
- (g) incur liabilities pertaining to the Project (direct or contingent) which will at any time exceed in the aggregate \$42,800.00, except that indebtedness secured by the Mortgage or necessarily incidental to the execution and delivery thereof;
- (h) enter into any contract or contracts for supervisory or managerial services;
- (i) invest any funds of the Corporation in any property, real, personal, or mixed, except obligations of, or fully guaranteed as to principal by, the United States of America;
- (j) encumber or dispose of in any manner whatsoever any funds derived from the proceeds of its insured mortgage on the Project in excess of sums required to pay the applicable statutory percentage of the actual cost of legitimate obligations incurred in the construction of the physical improvements on the mortgaged property and for which mortgage funds were made available, nor fail to apply such excess funds to the reduction of the principal due under such insured Mortgage.

6. Commencing with the date hereof, no compensation or fee pertaining to the Project shall be paid by the Mortgagor except for necessary services and except at such rate as is fair and reasonable in the locality for similar services, nor, except with the prior written approval of the Commissioner, shall any compensation be paid by the Mortgagor to its officers, directors or stockholders, or to any person, or corporation, for supervisory or managerial services; nor shall any compensation be paid by the Corporation to any employee in excess of \$5,000 per annum, except with such prior written approval. No officer, director, stockholder, agent, or employee of the Mortgagor shall in any manner become indebted to the Mortgagor, except on account of approved occupancy charges.

7. The Mortgagor shall maintain the Project, the grounds, buildings, and equipment appurtenant thereto, in good repair and in such condition as will preserve the health and safety of its occupants.
8. The Mortgagor, its property, equipment, buildings, plans, office, apparatus, devices, books, contracts, records, documents and papers shall be subject to inspection and examination by the Commissioner or his duly authorized agent at all reasonable times.
9. The books and accounts of the Mortgagor shall be kept in accordance with the Uniform System of Accounting prescribed by the Commissioner. The Mortgagor shall file with the Commissioner and the Mortgagee the following reports verified by the signature of such officers of the Mortgagor as may be designated and in such form as may be prescribed by the Commissioner:
  - (a) monthly or quarterly operating reports, when required by the Commissioner;
  - (b) semi-annual financial statement within sixty days after the semi-annual period when required by the Commissioner;
  - (c) annual reports prepared by a certified public accountant or other person acceptable to the Commissioner, within sixty days after the end of each fiscal year;
  - (d) specific answers to questions upon which information is desired from time to time relative to the operation and condition of the property and the status of the Mortgage;
  - (e) copies of minutes of all stockholders' meetings certified to by the secretary of the Mortgagor within thirty days after such meetings, and when required by the Commissioner, copies of minutes of directors' meetings.
10. The Mortgagor shall not execute or file for record any instrument which imposes a restriction upon the sale, leasing, or occupancy of the property subject to the insured mortgage, or any part thereof, on the basis of race, color or creed.
11. No litigation seeking the recovery of a sum in excess of \$3,000 nor any action for specific performance or other equitable relief shall be instituted nor shall any claim for a sum in excess of \$3,000 be settled or compromised by the Mortgagor unless prior written consent thereto has been obtained from the Commissioner. Such consent may be subject to such terms and conditions as the Commissioner may prescribe.
12. The Mortgagor agrees to observe and perform each and every one of the covenants, and provisions required to be observed and performed under or pursuant to the terms of the Mortgage.
13. The Mortgagor shall not file any petition in bankruptcy, or for a receiver, or in insolvency, or for reorganization or composition, or make any assignment for the benefit of creditors or to a trustee for creditors, or permit an adjudication in bankruptcy, or the taking of possession of the mortgaged property or any part thereof by a receiver, or the seizure and sale of the mortgaged property or any part thereof under judicial process or pursuant to any power of sale.

14. Upon a violation of any of the above provisions of this Agreement by the Mortgagor, the Commissioner may give written notice thereof to the Mortgagor, by registered or certified mail, addressed to the addresses stated in this Agreement. If such violation is not corrected to the satisfaction of the Commissioner within 15 days after the date such notice is mailed, or within such additional period of time as is set forth in the notice, or where the Mortgagor proceeds immediately and diligently, within such further time as the Commissioner determines is necessary to correct the violation, without further notice the Commissioner may declare a default under this Agreement and upon such default the Commissioner may:
- (a) (i) If the Commissioner holds the Note - declare the whole of said indebtedness immediately due and payable and then proceed with the foreclosure of the Mortgage;
  - (ii) If said Note is not held by the Commissioner - notify the holder of the Note of such default, and the holder, with the prior written consent of the Commissioner, may declare the whole indebtedness due, and thereupon proceed with foreclosure of the Mortgage; or assign the Note and Mortgage to the Commissioner as provided in the Regulations;
  - (b) Collect all rents and charges in connection with the operation of the Project and use such collections to pay the Mortgagor's obligations under this Agreement and under the note and Mortgage and the necessary expenses of preserving the property and operating the Project;
  - (c) Take possession of the mortgaged property, bring any action necessary to enforce any rights of the Mortgagor of the Project, and any rights of the Commissioner, arising by reason of the Agreement, and operate the Project in accordance with the terms of this Agreement until such time as the Commissioner in his discretion determines that the Mortgagor is again in a position to operate the Project in accordance with the terms of this Agreement and in compliance with the requirements of the note and Mortgage;
  - (d) Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violation of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to the Commissioner arising from a default under any of the terms of this Agreement would be irreparable and the amount of the damage would be difficult to ascertain.
15. As security for the payment due under this Agreement for the Reserve Fund for Replacements, and to secure the Commissioner because of his liability under the endorsement of the Note for insurance, and as security for the other obligations under this Agreement, the Mortgagor assigns, pledges and mortgages to the Commissioner its rights to the rents, profits, income and charges of whatever sort which it may receive or be entitled to receive from the operation of the mortgaged property, subject, however, to any assignment of rents in the insured Mortgage referred to herein: Provided, however, that permission is granted to the Mortgagor to collect and retain under the provisions of this Agreement the rents, profits, income and charges, during any such period or periods of time for which the Commissioner has not declared a default. Upon declaration by the Commissioner of a default, the said permission is terminated and shall not be deemed to be reinstated until the Commissioner has declared this default to be cured.
16. The Mortgagor agrees that there shall be full compliance with the provisions of (1) any state or local laws prohibiting discrimination in housing on the basis of race, color, creed, or national origin, and (2) with the Regulations of the Federal Housing Administration providing for non-discrimination and equal

opportunity in housing. It is understood and agreed that failure or refusal to comply with any such provisions shall be a proper basis for the Commissioner to take any corrective action he may deem necessary including, but not limited to, the rejection of future applications for FHA mortgage insurance and the refusal to enter into future contracts of any kind with which the Mortgagor is identified, and further if the Mortgagor is a corporation or any other type of business association or organization which may fail to refuse to comply with the aforementioned provisions, the Commissioner shall have a similar right of corrective action (1) with respect to any individuals who are officers, directors, trustees, managers, partners, associates, or stockholders of the Mortgagor, and (2) with respect to any corporation or any other type of business association or organization with which the officers, directors, trustees, managers, partners, associates or stockholders of the Mortgagor may be identified.

17. The covenants and agreements herein set out shall be deemed to run with the land herein described so long as there is a mortgage on said property insured or owned by the Commissioner and to bind any future purchasers of the real property or any part thereof.
18. As used in this Agreement the term:
  - (a) "Mortgage" shall include "Deed of Trust";
  - (b) "Note" shall include "Bond";
  - (c) "Mortgagor" shall include "Grantor" under any Deed of Trust;
  - (d) "Mortgagee" shall include the "Beneficiary" under Mortgage or Deed of Trust however designated;
  - (e) "Default" means a default declared by the Commissioner when a violation of this Agreement is not corrected to his satisfaction within the time allowed by this Agreement or such further time as may be allowed by the Commissioner after written notice;
  - (f) "Stock" shall include Membership Certificates or other forms designating member ownership;

(The use of the plural shall include the singular; the singular the plural; and the use of any gender shall be deemed to include all genders.)
19. This instrument shall bind, and the benefits shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors in office or interest, and assigns.
20. The invalidity of any clause, part or provisions of this Agreement shall not affect the validity of the remaining portions thereof.
21. The Mortgagor agrees and assumes the obligation to have this Agreement recorded in the appropriate land records in the jurisdiction in which the real property herein described is situated; and in the event of failure to do so, it is agreed that the Commissioner may have the same recorded at the expense of the Mortgagor.
22. It is specifically agreed between the parties hereto that the breach of any of the terms of this Agreement by the Mortgagor will substantially damage and injure the Commissioner in the proper performance of his duties under the provisions of the Act, and will impede and injure the proper operations intended under such Act; that such damage will be irrespective of and in addition to any damages to the security of the mortgaged premises or to any financial damage the Commissioner may suffer as insurer; that except for the agreements herein contained, the Commissioner would not issue and would not be authorized to issue his Contract of Mortgage Insurance, and that the Mortgagee would not lend the sum above-mentioned on the security of the said Mortgage unless the same were insured by the Commissioner.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement  
the day and year first above written.

WITNESS:

LINDENWOOD GARDENS COOPERATIVE, INC.

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

FEDERAL HOUSING COMMISSIONER  
c/o Federal Housing Administration

\_\_\_\_\_

By \_\_\_\_\_  
Authorized Agent

\_\_\_\_\_

This instrument was prepared by:  
William J. Delany, Esq.  
Krooth & Altman Law Offices  
1001 Fifteenth Street, N. W.  
Washington, D. C. -20005

STATE OF )  
 ) SS  
COUNTY OF )

I, \_\_\_\_\_, do hereby certify that  
Vice President of the above named \_\_\_\_\_, personally  
known to me to be the person whose name is subscribed to the foregoing agreement  
as such Vice President, appeared before me this day in person, and acknowledged  
that he signed, sealed, and delivered the foregoing agreement as the free and  
voluntary act of said \_\_\_\_\_, and as his own free  
and voluntary act as such Vice President for the uses and purposes therein set forth.

Given under my hand and seal this date of:

My Commission expires on

(SEAL)

\_\_\_\_\_  
Notary Public

STATE OF )  
 ) SS  
COUNTY OF )

I, \_\_\_\_\_, do hereby certify that  
authorized agent of the Federal Housing Commissioner, personally known to me to  
be the person whose name is subscribed to the foregoing document as such  
authorized agent, appeared before me this day in person and acknowledged that  
he signed, sealed, and delivered the foregoing agreement as a free and voluntary  
act of the Federal Housing Commissioner and as his own free and voluntary act  
as such authorized agent for the uses and purposes therein set forth.

Given under my hand and seal this date of:

My Commission expires on

(SEAL)

\_\_\_\_\_  
Notary Public

COOPERATIVE AGENCY AGREEMENT

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 1966, by and between  
LINDENWOOD GARDENS COOPERATIVE, INC.  
(hereinafter referred to as the "Cooperative") and the FCH COMPANY, INC., a corporation  
organized under the laws of the State of New York (hereinafter referred to as "FCH").

W I T N E S S E T H T H A T :

1. The Cooperative desires to purchase and operate on a cooperative basis the housing project of 309 units\* located in the City of New York, County of Queens, State of New York, known as LINDENWOOD APARTMENTS

which project is identified among the records of FHA as FHA Project Nos. 012-30241/42/43 (hereinafter referred to collectively as the "Project") which is owned by the Federal Housing Commissioner (hereinafter called the "Commissioner" and sometimes called "FHA") who has agreed to sell the Project to the Cooperative upon certain terms and conditions more particularly described in a certain Contract of Sale and Purchase dated August 11, 1966. To help in accomplishing this objective, the Cooperative desires the services and assistance of FCH and Krooth & Altman (sometimes hereinafter referred to as "Associated Counsel").

2. FCH has heretofore rendered services on behalf of the Cooperative which included assistance in connection with the program for the project and its development and sales. The compensation to be made in accordance with the provisions hereinafter set forth covers such work and the services described below.

3. FCH agrees to provide the following services, which may include services of consultants retained by FCH (at its own expense) for such work as is necessary, subject to the general provisions of paragraph 4 below:

- (a) Provide such staff and assistance as are necessary in the organization of the Cooperative and the cooperative sales program, including:
  - (1) preparation and securing of necessary approvals of sales documents;
  - (2) sales of memberships for all dwelling units in the Project and processing of documents relating to such purchases for the purpose of securing FHA credit approvals; and
  - (3) furnishing of a sales force which will act on behalf and in the name of the Cooperative in the sale of memberships and accompanying Occupancy Agreements and in such publicity and advertising (if any) as FCH may find necessary.
- (b) Account for funds collected, keep adequate records, and secure fidelity bond coverage on all FCH staff who handle downpayments in the sales program. The Cooperative shall be the obligee under such bond.
- (c) Assist in negotiations with FHA in securing purchase money mortgage for the Cooperative.
- (d) Prepare or arrange for all necessary submissions to FHA, or other governmental agencies which are the responsibility of the Cooperative.
- (e) Advise and assist the Cooperative in organizing its membership, including the preparation of such educational and informational material as FCH deems necessary for distribution to members.
- (f) Advise and assist the Cooperative in the performance of the obligations of the Cooperative under its contracts, commitments, or other documents.

\*plus 3 dwelling units for resident employees of the Cooperative.

- (g) Provide the foregoing services until memberships are sold for all dwelling units in the Project, and use its best efforts to accomplish this objective, but such services are not to continue beyond one year after the date of cooperative acquisition of title to the Project (hereinafter called "Project Acquisition Date"): Provided, that, notwithstanding the fact that memberships have been sold for all dwelling units in the Project, FCH shall in any event provide consulting services (with respect to the foregoing) for a period of 90 days after the Project Acquisition Date.

4. Krooth & Altman will render such legal services hereunder as are necessary up to a time ninety (90) days after Project Acquisition Date, but excluding the handling of litigation or individual transactions with members. Such legal services shall include:

- (a) Preparation of the legal documents involved in the organization and sales program, including but not limited to the By-Laws and the forms of Subscription Agreement, Occupancy Agreement, and Certificate evidencing membership.
- (b) Preparation of the legal documents involved in the program for the Cooperative's acquisition of title to the land, and for financing by the Cooperative through a purchase money mortgage.
- (c) Consultations, when requested, on legal problems or the aforesaid financing; and
- (d) Participations, when requested, in negotiations with the FHA.

5. The Cooperative recognizes and agrees that while FCH advised and consulted with the FHA concerning the acquisition of the Project, and in the future will continue to do so, FCH (including Associated Counsel and the Trustees of The Foundation for Cooperative Housing) so long as it acts in good faith, does not accept, nor will the Cooperative charge it with, any liability or responsibility whatsoever for the design or construction of the Project, the purchase price or the performance of others who contract directly with the Cooperative for services, work, facilities or other matters.

6. As compensation for the above work, FCH and Associated Counsel will be entitled to receive and the Cooperative hereby agrees to cause the following sums to be paid, which sums, as approved by FHA, shall be disbursed by checks payable jointly to FCH and Krooth & Altman as follows:

(a) If on Project Acquisition Date, memberships have been sold on 100% of the dwelling units in the Project, the sum of \$132,000.00 for services and expenses of FCH and Krooth & Altman (hereinafter referred to as the "Service Fee") shall be paid at the time of Project Acquisition Date; or

(b) If on Project Acquisition Date, memberships have not been sold on 100% of the dwelling units in the Project, the sum of \$132,000.00 as Service Fee shall be paid less an amount (hereinafter referred to as the "Hold-Back") equal to the difference between:

(i) the amount of \$335,680; and

(ii) the amount actually collected for memberships (which amounts have been deposited in the subscription account for the cooperative) as of the Project Acquisition Date, which amount shall in no event be less than the aggregate of the full subscription prices under subscription agreements covering 80% of the dwelling units in the Project; and

(c) There shall be paid to the Cooperative (for its use toward payment of the purchase price of the Project and its other acquisition costs and its working capital) an amount equal to the Hold-Back, subject to the continuing obligation on the part of the Cooperative or its agents to deposit immediately in a special account all moneys collected from the sale of memberships, which were not sold on the Project Acquisition Date (hereinafter referred to as the "Unsold Memberships") until there has been deposited in such special account an amount equal to the Hold-Back; such special account shall be under the sole control of FCH and Krooth & Altman jointly, who shall have the sole right to make withdrawals therefrom.

(d) Notwithstanding any other provision hereof, the Hold-Back herein provided shall not exceed whichever of the following is greater:

- (i) 10% of the Service Fee, or
- (ii) The cash which will be payable upon the future sale of Unsold Memberships.

(e) Until the Unsold memberships have been sold, FCH and Krooth & Altman shall have no right to make withdrawals from the special account described in subparagraph (C) of this paragraph 6 after the aggregate amount paid to them equals 90% of the Service Fee; Provided, however, that at such time as the number of Unsold Memberships equals not more than 3% of all of the dwelling units in the Project (hereinafter referred to as the "Last 3% of Unsold Memberships"), FCH and Krooth & Altman jointly shall have the following rights:

- (i) To make withdrawals from such special account of all of the Hold-Back, except an amount equal to whichever of the following is greater:
  - A. One-half of the remaining Hold-Back; or
  - B. The sum of \$5,000; or
  - C. The cash which will be payable upon the future sale of the Last 3% of Unsold Memberships.
- (ii) When sales have thereafter been made of all of the Last 3% of Unsold Memberships, FCH and Krooth & Altman shall have the right to make withdrawals from such special account of the undistributed portion of the Hold-Back described in sub-subparagraph (e)(i) of this paragraph 6: Provided, that, if any of the Last 3% of Unsold Memberships have not been sold by a date two years from the Project Acquisition Date (hereinafter referred to as the "Sales Termination Date") there shall be no right of FCH and Krooth & Altman to receive payment of said undistributed portion of the Hold-Back and any such funds then remaining in the Special Account shall be applied as directed by the Federal Housing Administration: Provided, further, that nothing herein shall preclude an agreement between FCH and Krooth & Altman and the Cooperative under which the Cooperative will undertake to complete the sale of the Last 3% of Unsold Memberships (or such number thereof as may remain unsold at the time of such agreement) for such consideration as may be acceptable to the parties. Upon payment to the Cooperative of the consideration for such agreement, FCH and Krooth & Altman shall be entitled to receive payment of the undistributed portion of the Hold-Back in the special account and shall have the right to make withdrawals from such special account in payment of these amounts.

7. (a) FCH shall use its best efforts to achieve sales of memberships for at least the minimum number of approved cooperative members required by the Contract of Purchase and Sale within six months from the date hereof (unless said period is extended with the written consent of the parties hereto and the FHA).

(b) If FCH fails to achieve the minimum number of approved cooperative members required by the Contract of Purchase and Sale with FHA by the date applicable under subparagraph (a) hereof, the Cooperative shall have the right to terminate this Agreement by ten (10) days' written notice to FCH. If the FHA makes a written request that the Cooperative terminate this Agreement in the event of the failure of FCH to achieve the minimum number of approved cooperative members required by the Contract of Purchase and Sale by the aforesaid date applicable under subparagraph (a) hereof, the Cooperative shall promptly comply with such request and terminate this Agreement by ten (10) days' written notice to FCH.

(c) If this Agreement is terminated pursuant to this paragraph 7, neither the Cooperative nor FCH shall have any claim or right of action against the other for any losses, damages, or liabilities sustained, nor shall FCH have any right to any payments under this Agreement, such termination of this Agreement shall constitute a full and complete mutual release and mutual discharge of the Cooperative and FCH, respectively, of all liabilities and obligations of each party to the other party, respectively. The foregoing release by and of FCH shall include Krooth & Altman.

8. Krooth & Altman have joined in the execution of this Cooperative Agency Agreement to evidence their agreement to perform the legal services set forth in paragraph 4 hereof (subject to the limitations in paragraph 5 hereof) their compensation being included in the amount to be paid hereunder under paragraph 6.

9. The foregoing provisions of this Agreement are not in any way intended to limit, restrict, or bind the FHA in any way in its functions and determinations in connection with the Project.

10. Any other provisions of this Agreement to the contrary notwithstanding, the following modifications in and additions to, the foregoing provisions are hereby made:

NONE

11. Wherever FHA approval or consent is called for in this Agreement, such must be obtained in writing prior to the act or condition to which it pertains.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

ATTEST:

LINDENWOOD GARDENS COOPERATIVE, INC.

\_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

FCH COMPANY, INC.

\_\_\_\_\_

By: \_\_\_\_\_

We agree to provide the legal services as provided above.

KROOTH & ALTMAN

By: \_\_\_\_\_

LINDENWOOD GARDENS COOPERATIVE, INC.

OCCUPANCY AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between LINDENWOOD GARDENS COOPERATIVE, INC. (hereinafter referred to as the Corporation), a corporation having its principal office and place of business in the County of Queens, State of New York, and \_\_\_\_\_ (hereinafter referred to as "Member"),

WHEREAS, the Corporation has been formed for the purpose of acquiring, owning and operating a cooperative housing project to be located in the County of Queens, State of New York, with the intent that its stockholders (hereinafter called "Members" shall have the right to occupy the dwelling units thereof under the terms and conditions hereinafter set forth; and

WHEREAS, the Member is the owner and holder of \_\_\_\_\_ shares of common capital stock of the Corporation and has a bona fide intention to reside in the project;

NOW, THEREFORE, in consideration of One Dollar (\$1.00) to each of the parties paid by the other party, the receipt of which is hereby acknowledged, and in further consideration of the mutual promises contained herein, the Corporation hereby lets to the Member, and the Member hereby hires and takes from the Corporation, dwelling unit number \_\_\_\_\_, located at \_\_\_\_\_;

TO HAVE AND TO HOLD said dwelling unit unto the Member, his executors, administrators and authorized assigns, on the terms and conditions set forth herein and in the corporate Charter and By-laws of the Corporation and any rules and regulations of the Corporation now or hereafter adopted pursuant thereto, from the date of this agreement, for a term terminating on \_\_\_\_\_, 19\_\_\_\_, renewable thereafter for successive three-year periods under the conditions provided for herein.

ARTICLE 1. MONTHLY CARRYING CHARGES.

Commencing at the time indicated in ARTICLE 2 hereof, the Member agrees to pay to the Corporation a monthly sum referred to herein as "Carrying Charges", equal to one-twelfth of the Member's proportionate share of the sum required by the Corporation, as estimated by its Board of Directors to meet its annual expenses, including but not limited to the following items:

- (a) The cost of all operating expenses of the project and services furnished.
- (b) The cost of necessary management and administration.
- (c) The amount of all taxes and assessments levied against the project of the Corporation or which it is required to pay, and ground rent, if any.
- (d) The cost of fire and extended coverage insurance on the project and such other insurance as the Corporation may effect or as may be required by any mortgage on the project.
- (e) The cost of furnishing water, electricity, heat, gas, garbage, and trash collection, and other utilities, if furnished by the Corporation.
- (f) All reserves set up by the Board of Directors, including the general operating reserve and the reserve for replacements.
- (g) The estimated cost of repairs, maintenance and replacements of the project property to be made by the Corporation.
- (h) The amount of principal, interest, mortgage insurance premiums, and other required payments on the hereinafter-mentioned insured mortgage.
- (i) Any other expenses of the Corporation approved by the Board of Directors, including operating deficiencies, if any, for prior periods.

The Board of Directors shall determine the amount of the Carrying Charges annually, but may do so at more frequent intervals, should circumstances so require. No member shall be charged with more than his proportionate share thereof as determined by the Board of Directors. That amount of the Carrying Charges required for payment on the principal of the mortgage of the Corporation or any other capital expenditures shall be credited upon the books of the Corporation to the "Paid-In Surplus" account as a capital contribution by the members. Until further notice from the Corporation, the Monthly Carrying Charges for the above-mentioned dwelling unit shall be \$\_\_\_\_\_.

ARTICLE 2. WHEN PAYMENT OF CARRYING CHARGES TO COMMENCE.

After thirty days' notice by the Corporation to the effect that the dwelling unit is available for occupancy, or upon acceptance of occupancy, whichever is earlier, the Member shall make a payment for Carrying Charges covering the unexpired balance of the month. Thereafter, the Member shall pay Carrying Charges in advance on the first day of each month.

ARTICLE 3. PATRONAGE REFUNDS.

The Corporation agrees on its part that it will refund or credit to the Member within ninety (90) days after the end of each fiscal year, his proportionate share of such sums as have been collected in anticipation of expenses which are in excess of the amount needed for expenses of all kinds, including reserves, in the discretion of the Board of Directors.

ARTICLE 4. MEMBER'S OPTION TO RENEW.

It is covenanted and agreed that the term herein granted shall be extended and renewed from time to time by and against the parties hereto for further periods of three years each from the expiration of the term herein granted, upon the same covenants and agreements as herein contained unless: (1) notice of the Member's election not to renew shall have been given to the Corporation in writing at least four months prior to the expiration of the then current term, and (2) the Member shall have on or before the expiration of said term (a) endorsed all his stock for transfer in blank and deposited same with the Corporation, and (b) met all his obligations and paid all amounts due under this agreement up to the time of said expiration, and (c) vacated the premises, leaving same in good state of repair. Upon compliance with provisions (1) and (2) of this Article, the Member shall have no further liability under this agreement and shall be entitled to no payment from the Corporation.

ARTICLE 5. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY.

The Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for himself and/or his immediate family and for no other purpose, and may enjoy the use in common with other members of the corporation of all community property and facilities of the project so long as he continues to own a share of common stock of the Corporation, occupies his dwelling unit, and abides by the terms of this agreement. Any sublessee of the Member, if approved pursuant to Article 7 hereof, may enjoy the rights to which the Member is entitled under this Article 5.

The Member shall not permit or suffer anything to be done or kept upon said premises which will increase the rate of insurance on the building, or on the contents thereof, or which will obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise, nor will he commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. The Member shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If by reason of the occupancy or use of said premises by the Member the rate of insurance on the building shall be increased, the Member shall become personally liable for the additional insurance premium.

ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE POSSESSION.

In return for the Member's continued fulfillment of the terms and conditions of this agreement, the Corporation covenants that the Member may at all times while this agreement remains in effect, have and enjoy for his sole use and benefit the dwelling unit hereinabove described, after obtaining occupancy, and may enjoy in common with all other members of the Corporation the use of all community property and facilities of the project.

ARTICLE 7. NO SUBLETTING WITHOUT CONSENT OF CORPORATION.

The Member hereby agrees not to assign this agreement nor to sublet his dwelling unit without the written consent of the Corporation on a form approved by the Federal Housing Administration. The liability of the Member under this Occupancy Agreement shall continue notwithstanding the fact that he may have sublet the dwelling unit with the approval of the Corporation and the Member shall be responsible to the Corporation for the conduct of his sublessee. Any unauthorized subleasing shall, at the option of the Corporation, result in the termination and forfeiture of the member's rights under this Occupancy Agreement.

ARTICLE 8. TRANSFERS.

Neither this agreement nor the Member's right of occupancy shall be transferable or assignable except in the same manner as may now or hereafter be provided for the transfer of memberships in the By-Laws of the Corporation.

ARTICLE 9. MANAGEMENT, TAXES AND INSURANCE.

The Corporation shall provide necessary management, operation and administration of the project; pay or provide for the payment of all taxes or assessments levied against the project; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as required by any mortgage on property in the project, and such other insurance as the Corporation may deem advisable on the property in the project. The Corporation will not, however, provide insurance on the Member's interest in the dwelling unit or on his personal property.

ARTICLE 10. UTILITIES

The Corporation shall provide heat, hot and cold water, gas, electricity, refuse removal and customary maintenance in amounts which it deems reasonable. The Member shall pay directly to the supplier for all other utilities. There is a metered laundry concession available.

ARTICLE 11. REPAIRS.

(a) By Member. The Member agrees to repair and maintain his dwelling unit at his own expense as follows:

- (1) Any repairs or maintenance necessitated by his own negligence or misuse;
- (2) Any redecoration of his own dwelling unit;
- (3) Any repairs, maintenance or replacements required on items and appliances not supplied by the Corporation; and
- (4) Repair and Replacement of the kitchen range, refrigerator and dishwasher is the responsibility of the individual member.

(b) By Corporation. The Corporation shall provide and pay for all necessary repairs, maintenance and replacements, except as specified in clause (a) of this Article. The officers and employees of the Corporation shall have the right to enter the dwelling unit of the Member in order to effect necessary repairs, maintenance, and replacements, and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others, at any reasonable hour of the day and in the event of emergency at any time.

(c) Right of Corporation to Make Repairs at Member's Expense. In case the Member shall fail to effect the repairs, maintenance or replacements specified in clause (a) of this Article in a manner satisfactory to the Corporation and pay for same, the latter may do so and add the cost thereof to the Member's next month's Carrying Charge payment.

#### ARTICLE 12. ALTERATIONS AND ADDITIONS.

The Member shall not, without the written consent of the Corporation, make any structural alterations in the premises or in the water, gas or steam pipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

If the Member for any reason shall cease to be an occupant of the premises he shall surrender to the Corporation possession thereof, including any alterations, additions, fixtures and improvements.

The Member shall not, without the prior written consent of the Corporation, install or use in his dwelling unit any air conditioning equipment, washing machine, clothes dryer, electric heater, or power tools. The Member agrees that the Corporation may require the prompt removal of any such equipment at any time, and that his failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

#### ARTICLE 13. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF.

It is hereby mutually agreed as follows: If at any time after the happening of any of the events specified in clauses (a) to (i) of this Article the Corporation shall give to the Member a notice that this agreement will expire at a date not less than ten (10) days thereafter, this agreement and all of the Member's rights under this agreement will expire on the date so fixed in such notice, unless in the meantime the default has been cured in a manner deemed satisfactory by the Corporation, it being the intention of the parties hereto to create hereby conditional limitations, and it shall thereupon be lawful for the Corporation to re-enter the dwelling unit and to remove all persons and personal property therefrom, either by summary dispossession proceedings or by suitable action or proceeding at law or in equity or by any other proceedings which may apply to the eviction of tenants or by force or otherwise, and to repossess the dwelling unit in its former state as if this agreement had not been made:

- (a) In case at any time during the term of this agreement the Member shall cease to be the owner and legal holder of a share of stock of the Corporation.
- (b) In case the Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the By-Laws.
- (c) In case at any time during the continuance of this agreement the Member shall be declared a bankrupt under the laws of the United States.
- (d) In case at any time during the continuance of this agreement a receiver of the Member's property shall be appointed under any of the laws of the United States or of any State.
- (e) In case at any time during the continuance of this agreement the Member shall make a general assignment for the benefit of creditors.

- (f) In case at any time during the continuance of this agreement any of the stock of the Corporation owned by the Member shall be duly levied upon and sold under the process of any Court.
- (g) In case the Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11 hereof.
- (h) In case the Member shall fail to pay any sum due pursuant to the provisions of Article 1 hereof.
- (i) In case the Member shall default in the performance of any of his obligations under this agreement.

The Member hereby expressly waives any and all right of redemption in case he shall be dispossessed by judgment or warrant of any Court or judge; the words "enter", "re-enter", and "re-entry", as used in this agreement are not restricted to their technical legal meaning, and in the event of a breach or threatened breach by the Member of any of the covenants or provisions hereof, the Corporation shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if re-entry, summary proceedings, and other remedies were not herein provided for.

The Member expressly agrees that there exists under this Occupancy Agreement a landlord-tenant relationship and that in the event of a breach or threatened breach by the Member of any covenant or provision of this Agreement, there shall be available to the Corporation such legal remedy or remedies as are available to a landlord for the breach or threatened breach under the law by a tenant of any provision of a lease or rental agreement. The parties hereto hereby do waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this agreement, the Member's use of occupancy of said premises, or any claim of injury or damage.

The failure on the part of the Corporation to avail itself of any of the remedies given under this agreement shall not waive nor destroy the right of the Corporation to avail itself of such remedies for similar or other breaches on the part of the Member.

#### ARTICLE 14. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS.

The Member covenants that he will preserve and promote the cooperative ownership principles on which the Corporation has been founded, abide by the Charter, By-Laws, rules and regulations of the Corporation and any amendments thereto, and by his acts of cooperation with its other members bring about for himself and his co-members a high standard in home and community conditions. The Corporation agrees to make its rules and regulations known to the Member by delivery of same to him or by promulgating them in such other manner as to constitute adequate notice.

#### ARTICLE 15. EFFECT OF FIRE LOSS ON INTERESTS OF MEMBER.

In the event of loss or damage by fire or other casualty to the above-mentioned dwelling unit without the fault or negligence of the Member, the Corporation shall determine whether to restore the damaged premises and shall further determine, in the event such premises shall not be restored, the amount which shall be paid to the Member to redeem the common stock of the Member and to reimburse him for such loss as he may have sustained.

If, under such circumstances, the Corporation determines to restore the premises, Carrying Charges shall abate wholly or partially as determined by the Corporation until the premises have been restored. If on the other hand the Corporation determines not to restore the premises, the Carrying Charges shall cease from the date of such loss or damage.

ARTICLE 16. INSPECTION OF DWELLING UNIT.

The member agrees that the representatives of any mortgagee holding a mortgage on the property of the Corporation, the officers and employees of the Corporation, and with the approval of the Corporation the employees of any contractor, utility company, municipal agency or others shall have the right to enter the dwelling unit of the Member and make inspections thereof at any reasonable hour of the day and at any time in the event of emergency.

ARTICLE 17. SUBORDINATION CLAUSE.

Title to the cooperative housing project, of which the above-mentioned dwelling unit is a part, was acquired by the Corporation with the assistance of a purchase-money mortgage loan advanced to the Corporation by the Federal Housing Administration with the understanding between the Corporation and the Federal Housing Administration that the Corporation would conduct its affairs pursuant to the Rules and Regulations published by the Federal Housing Administration under Section 213 of the National Housing Act, as amended. Therefore, it is specifically understood and agreed by the parties hereto that this agreement and all rights, privileges and benefits hereunder are and shall be at all times subject to and subordinate to the lien of a first mortgage and the accompanying documents to be executed by the Corporation payable to the Federal Housing Commissioner in the principal sum of \$4,280,000.00 with interest at 5-1/4 per centum and to any and all modifications, extensions and renewals thereof and to any mortgage or deed of trust made in replacement thereof and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Corporation or any part thereof. The Member hereby agrees to execute, at the Corporation's request and expense, any instrument which the Corporation or any lender may deem necessary or desirable to effect the subordination of this agreement to any such mortgage, or deed of trust, and the Member hereby appoints the Corporation and each and every officer thereof, and any future officer, his irrevocable attorney-in-fact during the term hereof to execute any such instrument on behalf of the Member. The Member does hereby expressly waive any and all notices of default and notices of foreclosure of said mortgage which may be required by law.

In the event a waiver of such notices is not legally valid, the Member does hereby constitute the Corporation his agent to receive and accept such notices on the Member's behalf.

ARTICLE 18. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT.

The Member covenants and agrees that, in addition to the other sums that have become or will become due, pursuant to the terms of this Agreement, the Member shall pay to the Corporation a late charge in an amount to be determined from time to time by the Board of Directors for each payment of Carrying Charges, or part thereof, more than 10 days in arrears.

If a Member defaults in making a payment of Carrying Charges or in the performance or observance of any provision of this Agreement, and the Corporation has obtained the services of any attorney with respect to the defaults involved, the Member covenants and agrees to pay to the Corporation any costs or fees involved, including reasonable attorney's fees, notwithstanding the fact that a suit has not yet been instituted. In case a suit is instituted, the Member shall also pay the costs of the suit, in addition to other aforesaid costs and fees.

ARTICLE 19. NOTICES.

Whenever the provisions of law or the By-Laws of the Corporation or this agreement require notice to be given to either party hereto, any notice by the Corporation to the Member shall be deemed to have been duly given, and any demand

by the Corporation upon the Member shall be deemed to have been duly made if the same is delivered to the Member at his unit or to the Member's last known address; and any notice or demand by the Member to the Corporation shall be deemed to have been duly given if delivered to an officer of the Corporation. Such notice may also be given by depositing same in the United States mails addressed to the Member as shown in the books of the Corporation, or to the President of the Cooperative, as the case may be, and the time of mailing shall be deemed to be the time of giving of such notice.

ARTICLE 20. ORAL REPRESENTATION NOT BINDING.

No representations other than those contained in this agreement, the Charter, and the By-Laws of the Corporation shall be binding upon the Corporation.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

LINDENWOOD GARDENS COOPERATIVE, INC.

BY \_\_\_\_\_ (SEAL)

\_\_\_\_\_

\_\_\_\_\_

Stockholder