

## **HOUSING AUTHORITIES RISK RETENTION POOL**

### **INTERGOVERNMENTAL COOPERATION AGREEMENT**

This Intergovernmental Cooperation Agreement (the "Agreement") is made and entered into by and among the participating Public Housing Authorities that have executed counterpart copies of this Agreement and have become parties to this Agreement.

#### **RECITALS:**

A. Chapters 39.34 and 48.62 of the Revised Code of Washington provide authority for Washington public agencies to enter into intergovernmental cooperation agreements. Chapter 190 of the Oregon Revised Statutes provide authority for Oregon public agencies to enter into intergovernmental cooperation agreements. California Government Code Section 6500, et seq., provides authority for California public agencies to enter into intergovernmental cooperation agreements. Chapter 277 of the Nevada Revised Statutes provides authority for Nevada public agencies to enter into intergovernmental cooperation agreements.

B. The participating Public Housing Authorities are exposed to risks of loss. The participating Public Housing Authorities desire to join together in a cooperative program of risk management, risk sharing and indemnification with the objective of obtaining advantageous coverage at an advantageous cost. In order to participate in a cooperative program of risk management, risk sharing and indemnification, the participating Public Housing Authorities are willing to waive certain rights that they otherwise might have. The participating Public Housing Authorities recognize, based on the provisions of this Agreement, that it is desirable to limit their claims and remedies against the cooperative program and other participating Public Housing Authorities so that a financially sound and secure program of risk management and indemnification will continue in the future.

C. The participating Public Housing Authorities recognize that the success of a cooperative program of risk management, risk sharing and indemnification will be based, in part, on the mutual cooperation of the participating Public Housing Authorities and by organizing the cooperative program under applicable state intergovernmental cooperation laws rather than as an insurer under applicable state insurance codes.

D. Each of the Public Housing Authorities which is a party to this Agreement has the power and authority to participate in a cooperative program of risk management, risk sharing and indemnification. The governing board of each of the Public Housing Authorities which is a party to this Agreement has authorized the execution, delivery and performance of this Agreement.

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## A G R E E M E N T :

Each of the participating Public Housing Authorities agrees as follows:

### **Section 1. DEFINITIONS**

The following definitions shall apply to the provisions of this Agreement:

1.1 Affordable Housing Pool. “Affordable Housing Pool” shall have the meaning given to such term in Section 2.4(y).

1.2 Bylaws. “Bylaws” shall mean the Bylaws of HARRP that contain provisions for managing the business and regulating the internal affairs of HARRP.

1.3 Contribution. “Contribution” shall mean any charge or assessment (other than a Membership Fee) imposed on or collected from the Members by HARRP for the Coverage Terms.

1.4 Coverage Terms. “Coverage Terms” shall mean the coverage, limits, deductibles, terms and conditions, as amended from time to time, which define the indemnification and financial protection to be provided by HARRP to the Members and their directors and officers.

1.5 Covered Loss. “Covered Loss” shall mean, with respect to any Member, any loss (including, but not limited to, judgments, settlements, loss payments, defense costs and other charges directly attributable to resolution of a claim) resulting from a claim or demand that is covered by HARRP under the Coverage Terms of the Member and that is in excess of the Member’s deductible.

1.6 Cumulative Net Financial Contribution. “Cumulative Net Financial Contribution” shall have the meaning given to such term in Section 9.2.

1.7 Director. “Director” shall mean a duly elected and qualified representative of the Members serving on the HARRP Board.

1.8 Entity. “Entity” shall mean a partnership, limited liability company, corporation, trust, governmental entity, public body, unincorporated association or other form of entity or association.

1.9 Excess Insurance. “Excess Insurance” shall include insurance purchased by HARRP for the benefit of the Members that provides coverage limits in excess of the limits of the Coverage Terms or coverage different from the Coverage Terms.

1.10 Executive Director. “Executive Director” shall mean an individual who shall be employed by HARRP and shall provide to HARRP such administrative and technical services as the HARRP Board shall determine.

1.11 HARRP. “HARRP” shall mean the legal entity, created by this Agreement, to be known as Housing Authorities Risk Retention Pool.

1.12 HARRP Board. “HARRP Board” shall mean the Board of Directors of HARRP.

1.13 HUD. “HUD” shall mean the United States Department of Housing and Urban Development.

1.14 Member. “Member” shall mean a Public Housing Authority that has been accepted for membership in HARRP, is a party to this Agreement and has not terminated its membership or been expelled from membership.

1.15 Membership Fee. “Membership Fee” shall mean a nonrefundable cash payment that a Member is required to make to HARRP as a condition to the Member’s acceptance for membership in HARRP; the amount of the Membership Fee shall be determined from time to time by the HARRP Board.

1.16 Net Financial Contribution. “Net Financial Contribution” shall have the meaning given to such term in Section 9.1.

1.17 Officer. “Officer” shall mean a duly appointed and qualified officer of HARRP, including, but not limited to, the President, Vice President, Secretary, Treasurer and Executive Director.

1.18 Paid Losses. “Paid Losses” shall mean, with respect to any Member, the amount paid by HARRP or its reinsurers for losses and loss adjustment expenses attributable to the Covered Losses of the Member (or in the event a claim or loss has not been finally adjudicated, settled or otherwise resolved, HARRP’s reserve for the Covered Loss). A Paid Loss of a Member shall be attributable to the calendar year during which the claim or demand relating to the Paid Loss is first reported to HARRP, and any determination by the HARRP Board with respect to the calendar year to which the Paid Loss is attributable shall be conclusive and binding upon the Members.

1.19 Person. “Person” shall mean an individual or an Entity.

1.20 Public Housing Authority. “Public Housing Authority” shall mean any state, county, municipality, municipal corporation, public corporation or other governmental entity or public body (or agency or instrumentality thereof) that is authorized to engage in or assist in the development or operation of housing for low-income families, including, but not limited to, any housing authority established pursuant to the Washington Housing Authorities Law (RCW Chapter 35.82), the Oregon Housing Authorities Law (ORS 456.055 et seq.), the California Housing Authorities Law (California Health and Safety Code Section 34200 et seq.), the Nevada Housing Authorities Law of 1947 (NRS 315.140 et seq.) or similar laws of other states.

1.21 Reinsurance. “Reinsurance” shall mean the transfer to one or more reinsurers by agreement of all or a portion of the Covered Losses for which HARRP is financially responsible under the Coverage Terms.

1.22 Risk Management. “Risk Management” shall mean the process of identifying, evaluating, reducing, transferring and eliminating factors and circumstances which could result in physical property damage, liability to third Persons and public official and employee liability. Risk Management includes various safety procedures and educational programs and incorporates elements of insurance law, technology and general business administration utilized to effectively manage risks.

1.23 State Association. “State Association” shall mean the Association of Washington Housing Authorities, the Association of Oregon Housing Authorities or the Northern California/Nevada Executive Directors Association or any of their respective successors in interest.

## **Section 2. HOUSING AUTHORITIES RISK RETENTION POOL**

2.1 Establishment. The participating Public Housing Authorities have created a separate legal entity known as Housing Authorities Risk Retention Pool (“HARRP”), which has the powers set forth in Section 2.4.

2.2 Offices. HARRP shall have such offices as the HARRP Board may designate or as the business of HARRP may require.

2.3 Purposes. HARRP’s primary purpose is to provide to the Members, on a consistent basis, a cooperative program of indemnification and financial protection against risks of loss relating to the properties and operations of the Members and a cooperative program of Risk Management. HARRP shall endeavor to conduct its business to achieve long-term benefit to the Members as a whole, and to pursue ethical business practices, sound fiscal policies and courteous service. HARRP shall pursue such other purposes that are necessary or incidental to its primary purpose or that may be necessary or appropriate to protect or enhance its assets or business.

2.4 Powers. HARRP shall have all power and authority that is necessary or convenient to achieve the purposes set forth in Section 2.3 and to carry out its business and affairs, including, but not limited to, the following:

(a) To set, require payment from the Members and collect Contributions;

(b) To fix, require payment from the Members and collect Membership Fees;

- (c) To receive and collect monies and to pay, approve the payment of and incur liability for the payment of any costs, expenses, fees or other disbursements associated with the business or affairs of HARRP;
- (d) To establish reserves or accounts as shall be necessary, appropriate or convenient;
- (e) To make, arrange, enter into and contract for Excess Insurance and Reinsurance as shall be necessary, appropriate or convenient;
- (f) To establish and operate a program of Risk Management;
- (g) To issue to the Members written documents setting forth the Coverage Terms;
- (h) To indemnify the Members and to make payments for Covered Losses in accordance with the Coverage Terms;
- (i) To process, settle and adjudicate claims and to contract or provide, in accordance with the Coverage Terms, for legal representation in defense of claims;
- (j) To sue and be sued and complain and defend in its own name;
- (k) To make, adopt and amend the Bylaws, rules and regulations and internal policies not inconsistent with this Agreement for managing the business and regulating the internal affairs of HARRP;
- (l) To purchase, receive, lease or otherwise acquire, and to own, hold, improve, use and otherwise deal with personal property or real property, or any interest in property, wherever located;
- (m) To sell, convey, mortgage, pledge, lease, exchange or otherwise dispose of all or any part of its assets;
- (n) To invest and reinvest its funds, including purchasing, acquiring, owning, holding, voting, selling or otherwise disposing of such investments;
- (o) To make contracts and to incur liabilities and other obligations;
- (p) To employ or engage employees, independent contractors or agents to perform services for HARRP or the Members;
- (q) To engage advisers and consultants to advise or consult with HARRP for the benefit of HARRP or the Members;

(r) To receive contributions and donations of property, funds, services and other forms of assistance from any source;

(s) To consult with state insurance commissioners, state auditors, state risk managers, HUD or other Federal or state officials;

(t) To comply with any Federal, state or local law or regulation applicable to HARRP or any order, directive or regulation of HUD;

(u) To exercise any right, privilege or immunity or take any action that may be exercised or taken by a Member;

(v) To indemnify and hold harmless any Director, Officer or other Person acting on behalf of HARRP to the extent such indemnification is not prohibited by this Agreement or under applicable law;

(w) To borrow money or incur indebtedness or other obligations for any purpose and without any limitation as to amount or terms, to the extent permitted by law;

(x) In connection with the borrowing of money or incurring indebtedness or other obligations and in order to secure the payment of such indebtedness or obligations, to the extent permitted by law:

(i) to execute, deliver and issue notes, bonds, debentures, evidences of indebtedness or other instruments;

(ii) to grant a security interest in, pledge, assign, transfer, mortgage, encumber or hypothecate all or any part of its assets;

(iii) to make any covenants and take any action necessary or convenient or desirable in order to secure such indebtedness or other obligations, including, but not limited to, covenants securing the issuance of such indebtedness or other obligations, covenants as to indebtedness or other obligations to be issued and as to the issuance of such indebtedness or other obligations in escrow or otherwise, and the use and disposition of the proceeds thereof, covenants governing the issuance of additional indebtedness or other obligations, or other such covenants or actions tending to make the indebtedness or other obligations more marketable; and

(iv) to negotiate, execute, deliver and endorse agreements, documents and instruments of any nature or kind,

including, but not limited to, reimbursement or letter of credit agreements, bond purchase agreements, agreements for the exchange of interest rates, auction agreements, broker-dealer agreements, offering documents including, but not limited to, preliminary and final official statements or preliminary and final offering memoranda, remarketing agreements, bond insurance agreements and debt service reserve fund agreements;

(y) To assist in the organization and capitalization of an Entity (other than HARRP) that establishes a cooperative program of risk management, risk sharing and indemnification for Entities engaged in providing affordable housing (an "Affordable Housing Pool");

(z) To create an Entity to solicit or sell insurance products or coverages written by insurance companies for Public Housing Authorities or other Entities engaged in providing affordable housing, to achieve the purposes set forth in Section 2.3 or to carry out or exercise any of the powers set forth in this Section 2.4; and

(aa) To engage in any lawful activities that are necessary or incidental to the powers set forth in this Section 2.4 or that are necessary, convenient or appropriate to achieve the purposes set forth in Section 2.3 or to protect or enhance the assets or business of HARRP.

### **Section 3. HARRP BOARD**

3.1 Power and Authority. All power and authority of HARRP shall be exercised by or under the authority of, and the business and affairs of HARRP shall be managed under the direction of, the HARRP Board.

3.2 Number, Term, Qualifications, and Election of HARRP Board. The number of Directors of HARRP shall be nine. The term of each Director shall be three years. If a Director's term expires, the Director shall continue to serve until his or her successor shall have been elected and qualified. A Director may be reelected for two or more successive terms. For the purpose of staggering the terms of the Directors, the Directors shall be divided into three classes. At each annual meeting of the Members, the term of one class of Directors shall expire (*e.g.*, the term of the first class will expire at the first annual meeting of the Members, the term of the second class will expire at the second annual meeting of the Members, the term of the third class will expire at the third annual meeting of the Members, and so on). Each class shall have three Directors, of which one Director shall be elected in accordance with Section 4.3 by the Members that are represented in the Association of Washington Housing Authorities, one Director shall be elected in accordance with Section 4.3 by the Members that are represented in the Association of Oregon Housing Authorities and one Director shall be elected in accordance with Section 4.3 by the Members that are represented in the Northern California/Nevada Executive Directors Association. The Directors shall be elected as follows: (i) three Directors

(one Director in each of the three classes) shall be elected in accordance with Section 4.3 by the Members that are represented in the Association of Washington Housing Authorities; (ii) three Directors (one Director in each of three classes) shall be elected in accordance with Section 4.3 by the Members that are represented in the Association of Oregon Housing Authorities; and (iii) three Directors (one Director in each of the three classes) shall be elected in accordance with Section 4.3 by the Members that are represented in the Northern California/Nevada Executive Directors Association. Each Director must be affiliated at all times during the term of his or her directorship with a Public Housing Authority that is a Member of HARRP; a Director shall be deemed to have resigned immediately upon the termination of his or her affiliation with a Public Housing Authority that is a Member of HARRP or upon the termination of membership or expulsion from membership in HARRP of the Public Housing Authority with which the Director is affiliated. A Director may be engaged by HARRP in any other capacity so long as the Director does not receive compensation for services performed in the other capacity. In the event one or more Public Housing Authorities located in a state other than Washington, Oregon, California and Nevada are accepted for membership in HARRP in accordance with Section 4.1, then the HARRP Board shall be authorized to determine the manner in which the voting rights of such Public Housing Authorities shall be exercised with respect to the election of Directors under this Section 3.2.

#### **Section 4. MEMBERS**

4.1 Admission. For admission to membership in HARRP, each Member must satisfy the following requirements:

- (a) It must be a Public Housing Authority that is engaged in or assisting in the development or operation of housing for low-income families;
- (b) It must satisfy the underwriting standards and other criteria for membership established from time to time by the HARRP Board;
- (c) It must be accepted for membership in HARRP by the HARRP Board or a committee thereof, in its sole discretion, which decision by the HARRP Board or the committee shall be final;
- (d) It must pay the Membership Fee in the amount determined from time to time by the HARRP Board; and
- (e) It must execute a counterpart copy of this Agreement, pursuant to which it agrees to be bound by the provisions of this Agreement.

HARRP may admit to membership one or more Public Housing Authorities located in a state other than Washington, Oregon, California and Nevada upon a determination by the HARRP Board that it is lawful for the Public Housing Authority to become a Member of HARRP and for HARRP to provide Coverage Terms to the Public Housing Authority.



4.2 Obligations. Each Member agrees to observe and fulfill the following obligations:

(a) Each Member shall pay to HARRP, when due, any amount that is due and owing to HARRP including, but not limited to, Contributions or any other amount.

(b) Each Member shall allocate each year or otherwise provide for sufficient funds to pay, when due, any amount that is due and owing to HARRP, including, but not limited to, Contributions or any other amount.

(c) No Member (or Person insured under the Coverage Terms applicable to the Member) knowingly shall make, or assist in the making of, any claim or demand against HARRP for indemnification, defense or other coverage with respect to any loss to the extent that the loss is not covered under the Coverage Terms applicable to such Member or Person. For purposes of this subparagraph (c), “knowingly” shall mean that a reasonable person, exercising the care and diligence that a reasonable person would exercise in managing his or her own affairs, would conclude that the loss referenced in this subparagraph (c) is not covered under the Coverage Terms.

(d) Each Member (and Person insured under the Coverage Terms applicable to the Member) waives the right to make, directly or indirectly, any claim or demand against any other Member, any Officer, Director, employee or agent of HARRP or any Person acting on behalf of HARRP, it being understood that all claims and demands may only be made against HARRP; the Members acknowledge that such waiver of claims and demands is desirable so that HARRP’s ability to perform its functions is not impaired.

(e) Each Member (and Person insured under the Coverage Terms applicable to the Member) waives the right to make, directly or indirectly, any claim or demand against HARRP that (i) HARRP pay any amount that is in excess of HARRP’s obligations under the Coverage Terms, including, but not limited to, the payment of any punitive, exemplary or consequential damages, (ii) HARRP take any action (or omit to act) in any manner that is inconsistent with or not provided in the Coverage Terms, or (iii) HARRP pay the attorney fees of such Member or Person in any claim or action against or by HARRP, whether based on statute, regulation, common law or other law; each Member acknowledges that such waiver is desirable so that HARRP has sufficient assets for the payment and performance of the Coverage Terms issued to all Members.

(f) Each Member (and Person insured under the Coverage Terms applicable to the Member) shall comply with the Coverage Terms, as amended from time to time.

(g) Each Member shall comply with any Risk Management program implemented by HARRP.

(h) Each Member shall comply with the Bylaws, as amended from time to time.

(i) Each Member shall comply with any rules and regulations and internal policies adopted by the HARRP Board, as amended from time to time.

(j) Each Member shall comply with the provisions of this Agreement, as amended from time to time.

(k) Each Member, for itself and for each Person insured under the Coverage Terms applicable to the Member, waives any claim that it or they may have against any other Member based on the insolvency of HARRP or the unenforceability or invalidity of any provision of this Agreement; provided, however, that any such waiver shall not include the waiver of any claim against a Member with respect to the failure of the Member to pay Contributions.

#### 4.3 Meetings; Voting Rights.

4.3.1 Members Represented in State Associations. At each meeting of the Members, whether annual or special, each Member on the record date for the meeting shall be entitled to notice of and to vote at the meeting, subject to Section 4.3.2. Each Member entitled to vote at a meeting of the Members shall be entitled to one vote for each Director (for which the Member has voting rights in accordance with Section 3.2) to be elected by the Members at the meeting and one vote upon each other matter submitted to a vote at the meeting. No cumulative voting for Directors shall be permitted. Procedures and quorum requirements for meetings of the Members shall be set forth in the Bylaws. The vote of a majority of the Members present, in person or by proxy, and entitled to vote at a meeting of the Members shall decide any question unless the vote of a greater number shall be required by this Agreement. Any action required or permitted to be taken at a meeting of the Members may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by the minimum number of Members that would be necessary to take the action at a formal meeting at which all the Members entitled to vote were present and voting; provided, however, that such action may be taken without a meeting only if all Members entitled to vote with respect to such matter are given written notice of the proposed action at least 10 days before the action is taken, which notice shall contain or be accompanied by the same material that would have been required if a formal meeting had been called to consider the action. Any consent in accordance with this Section 4.3 shall have the same effect as an affirmative vote of the Members at a formal meeting of the Members.

4.3.2 **Members Not Represented in State Associations.** So long as a Member is not represented in a State Association, it shall not be entitled to vote for Directors of HARRP under Section 3.2; provided, however, that an employee or other individual affiliated with such Member shall be eligible to serve as a Director of HARRP. Even though a Member is not represented in a State Association, the Member shall retain the right to vote on all matters (other than the election of Directors) submitted to the Members. Even though a Member that is not represented in a State Association relinquishes the right to vote for Directors under this Section 4.3.2, the Member will continue to be bound by all other provisions of this Agreement.

4.4 **Limited Liability.** A Member shall not be liable for the debts, liabilities and obligations of HARRP or any other Member. A Member shall not be liable for or subject to an assessment. Solely by reason of being or acting as a Member, no Member shall be required to pay, under any circumstance or as a result of any event, to HARRP, any other Member or any other Person any amount other than the Contributions or Membership Fee owing to HARRP by the Member or other amounts owing to HARRP by the Member under the Coverage Terms, it being understood that the debts, liabilities and obligations of HARRP (including, but not limited to, any obligations under the Coverage Terms), whether arising in contract, tort or otherwise, shall be satisfied solely out of the cash funds, investments and tangible assets of HARRP.

4.5 **Minimum Term of Membership; Termination of Membership.** Each Member agrees to remain a Member of HARRP for a period of not less than three years beginning on the date upon which the Coverage Terms first become effective with respect to the Member. A Member may terminate its membership in HARRP at any time after such three-year period has expired upon giving 30 days' prior written notice to HARRP of the Member's termination of membership and the effective date of termination.

4.6 **Expulsion.** A Member may be expelled from membership in HARRP, thereby resulting in the termination of the Coverage Terms (except to the extent otherwise expressly provided in the Coverage Terms) applicable to the Member on the effective date of the Member's expulsion.

4.6.1 **Procedures.** A Member shall be expelled from membership in HARRP for cause by the HARRP Board upon compliance with the following procedures:

(a) The Member is given not less than 60 days' prior written notice of expulsion and the reasons for the expulsion; and

(b) An opportunity is given to the Member to be heard, orally or in writing, at a meeting of the HARRP Board at which a quorum is present not less than 30 days before the effective date of expulsion.

Any determination by the HARRP Board that a Member shall be expelled from membership in HARRP for cause shall be conclusive and binding upon the Member. A Member's expulsion from membership for cause shall include, but not be limited to, the following grounds: (i) the Member's nonpayment, when due and owing, of Contributions or any other amount that is due and owing to HARRP; (ii) the Member's failure to comply with this Agreement, the Bylaws or any rules and regulations or internal policies which may be adopted by the HARRP Board; (iii) the Member's failure to comply with or a breach of the terms and conditions of the Coverage Terms; (iv) the Member's failure to promptly notify, provide adequate information or provide adequate cooperation to HARRP with respect to a claim, or the Member's improper assumption of an obligation or liability or making of an unnecessary admission in connection with a claim; (v) fraud or misrepresentation of the Member affecting the Coverage Terms or in the presentation of a claim or loss; (vi) failure of the Member to comply with HARRP's Risk Management program; (vii) the Member's adverse claims or loss experience; (viii) the Member is subject to highly adverse risk of or exposure to future losses; (ix) evidence that the Member's operations are subject to poor management, understaffing, improper or inadequate staff training, unusual activities, dissatisfied tenants or other unfavorable circumstances that may increase the Member's exposure to claims or losses; (x) failure or refusal of HARRP's reinsurers to reinsure, wholly or in part, the Coverage Terms applicable to the Member; (xi) in the opinion of legal counsel, there is a significant risk that the Member's membership in HARRP or the provision of Coverage Terms to the Member may be unlawful, may violate an order, directive or regulation of HUD or any other Federal, state or local regulatory or governmental body or may jeopardize HARRP's exemption from Federal income taxation; or (xii) the Member engages in or encourages HARRP to engage in any act or omission that is dishonest or unlawful or that is or may be injurious to the reputation or business of HARRP. The preceding enumeration of grounds for expulsion shall not constitute an exclusive listing of the grounds for expulsion.

4.6.2 Effective Date of Expulsion. Subject to Section 4.6.1, a Member may be expelled from membership in HARRP at any time. Accordingly, the expulsion of a Member does not need to occur on the renewal date of the Coverage Terms and may occur during the period for which the Coverage Terms are effective.

#### 4.7 Effect of Termination or Expulsion

4.7.1 Obligations of Members. The termination of membership or expulsion from membership shall not relieve a terminated or expelled Member of any liabilities or obligations owing to HARRP, including, but not limited to, the payment of Contributions or the Membership Fee or any other amount owing to HARRP under the Coverage Terms. HARRP shall be entitled to charge interest,

at a reasonable rate not in excess of 12 percent per annum, on the unpaid balance of any amount that is due and owing to HARRP. HARRP shall be entitled to exercise or pursue any right or remedy available at law or in equity to collect any amount owing to HARRP. HARRP shall be entitled to offset against any monies payable to a terminated or expelled Member any amount that is owing to HARRP by the terminated or expelled Member. A terminated or expelled Member which has paid a Membership Fee to HARRP shall not be entitled to the refund of the Membership Fee.

4.7.2 Distributions. A terminated or expelled Member shall not be entitled to receive a dividend under Section 9.1, a liquidating distribution under Section 9.2 or the distribution of a membership interest in the Affordable Housing Pool under Section 9.3 if the record date for the dividend, liquidating distribution or distribution of a membership interest occurs after the effective date of termination or expulsion. A terminated or expelled Member shall not be entitled at any time to any payment or return of earned Contributions, payments, deposits, advances or other consideration whatsoever except as expressly provided in the Coverage Terms.

4.7.3 Coverage Terms. Except to the extent otherwise expressly provided in the Coverage Terms, the termination of membership or expulsion from membership shall result in the termination of Coverage Terms applicable to the terminated or expelled Member or any Person insured under the Coverage Terms applicable to the terminated or expelled Member.

4.7.4 No Effect on HARRP's Continuing Existence. The termination of membership or expulsion from membership of a Member shall have no effect on the continuing existence of HARRP or the enforceability of this Agreement, and HARRP's existence shall continue in accordance with the terms and provisions of this Agreement after the effective date of termination or expulsion without the participation of the terminated or expelled Member. The termination of membership or expulsion from membership of a Member shall not be construed as the completion of HARRP's purposes or the completion of the purpose of this Agreement.

## **Section 5. COVERAGE TERMS**

HARRP shall indemnify and financially protect each Member against the risk of loss in accordance with written Coverage Terms issued to the Member. The Coverage Terms shall provide such coverage, limits, deductibles, terms and conditions as shall be approved by the HARRP Board. The Coverage Terms may include any type of coverage for the indemnification and financial protection of the Members approved by the HARRP Board, including, but not limited to, coverage for property damage, general liability, errors and omissions, directors and officers liability, automobile liability and physical damage and fidelity. The HARRP Board, in its sole discretion, may impose for any Member certain coverage, limits, deductibles, terms and

conditions (including, but not limited to, compliance with a Risk Management program) with respect to the Member's Coverage Terms that are not applicable to other Members. If the HARRP Board finds that there are grounds for expulsion of a Member under Section 4.6.1 but decides not to expel the Member, then the HARRP Board, in its sole discretion, may decide at any time not to extend to the Member one or more types of coverage (but fewer than all types of coverage) that it extends to other Members; such finding of grounds for expulsion and such action by the HARRP Board shall be subject to the procedures for expulsion set forth in Section 4.6.1. HARRP shall not indemnify and financially protect a Member with respect to a Covered Loss to the extent that any insurance coverage from an insurance company or other Entity (other than HARRP) is available to the Member with respect to the Covered Loss. The Coverage Terms shall not provide coverage for any liability for which any Member is immune under applicable law.

## **Section 6. REINSURANCE; EXCESS INSURANCE**

6.1 Reinsurance. HARRP may obtain Reinsurance in such amounts and on such terms as the HARRP Board shall determine, in its sole discretion; provided, however, that HARRP shall not be required to obtain Reinsurance.

6.2 Excess Insurance. HARRP may obtain Excess Insurance in such amounts and on such terms as the HARRP Board shall determine, in its sole discretion. Excess Insurance may be purchased by HARRP for the benefit of some or all of the Members.

## **Section 7. CONTRIBUTIONS**

The Contributions payable by a Member shall be determined from time to time by the HARRP Board, in its sole discretion. In the exercise of its discretion with respect to setting Contributions for any Member, the HARRP Board may rely on specific factors attributable to the Member, including, but not limited to, geographic location, unique risk exposures, scope of operations, prior claims and loss experience, deductibles and compliance with HARRP's Risk Management program, and may adopt discounts and surcharges applicable to one or more Members. Contributions shall be payable at such time or times as the HARRP Board shall specify. Each Member's Contribution shall not be less than \$1,000 per year.

## **Section 8. FINANCIAL AND ADMINISTRATIVE MATTERS**

8.1 Executive Director. HARRP shall employ an Executive Director, who shall provide to HARRP such administrative and technical services as the HARRP Board shall determine. The HARRP Board shall supervise and control the services performed by the Executive Director.

### **8.2 Accounting Matters**

8.2.1 Books, Accounts, and Records. The fiscal year of HARRP shall begin on the first day of January in each calendar year and shall end on the last

day of December in each calendar year. HARRP shall maintain all books, accounts and records in an orderly and business-like fashion and in accordance with generally accepted accounting principles, subject to record retention policies adopted by the HARRP Board, in its sole discretion. Full and correct entries shall be made of all transactions of HARRP on the books, accounts and records of HARRP. The books, accounts and records of HARRP shall be open to inspection at all reasonable times by the Members and their representatives.

8.2.2 Accountant. HARRP shall retain a firm of independent certified public accountants, which shall be selected by the HARRP Board. The independent certified public accountants shall audit the financial statements of HARRP annually and shall provide such other accounting services as the HARRP Board shall request.

8.2.3 Financial Statements. Within 180 days after the end of each fiscal year, HARRP shall furnish to the Members annual financial statements that include a balance sheet as of the end of the fiscal year, an income statement for the fiscal year and a statement of cash flows for the fiscal year. The financial statements shall be audited by HARRP's certified public accountants and shall be prepared on the basis of generally accepted accounting principles, consistently applied, except as set forth in the financial statements.

8.2.4 Annual Report. Within 180 days after the end of each fiscal year, HARRP shall furnish an annual report to each Member which shall describe the business and affairs of HARRP during the fiscal year.

8.2.5 Budget. The HARRP Board shall adopt a budget for HARRP for each fiscal year. During each fiscal year, the HARRP Board shall review the revenues and expenses of HARRP in relation to the budget and may amend or modify the budget at any time.

8.3 Tax Matters. The Members intend that HARRP shall be exempt from Federal income taxation under Section 115 of the Internal Revenue Code of 1986, as amended, and corresponding laws of taxation of the States of Washington, Oregon, California, Nevada and other states in which HARRP has Members. This Agreement shall be construed and interpreted consistently with the intention of the Members that HARRP shall be exempt from Federal and state income taxation. The HARRP Board shall cause HARRP to file such tax returns as shall be required by law.

8.4 Other Professional Services. HARRP shall engage and retain qualified Persons to provide professional and technical services to HARRP including, but not limited to, actuaries, attorneys, insurance consultants, claims adjusters and investment advisers.

## **Section 9. DISTRIBUTIONS**

9.1 Dividends. The HARRP Board, in its sole discretion, may declare a dividend to be paid to the Members as a class with respect to any calendar year. The dividend, if any, with respect to a calendar year shall be declared when the HARRP Board believes that all or substantially all of the claims and losses relating to the calendar year have been resolved and additional claims and losses relating to the calendar year are barred or substantially unlikely. The amount of the dividend shall be determined by the HARRP Board, in its sole discretion. The dividend shall be allocated among the Members of record in the ratio that the Net Financial Contribution of each Member entitled to the dividend for the calendar year for which the dividend is declared bears to the total Net Financial Contribution of all Members entitled to the dividend for the calendar year for which the dividend is declared. For purposes of this Agreement, the “Net Financial Contribution” of each Member, with respect to the calendar year for which the dividend is declared, shall be equal to the positive amount, if any, by which the Member’s written Contribution for the calendar year exceeds the Member’s Paid Losses for the calendar year. Notwithstanding the foregoing, in the event the foregoing allocation of dividends shall not be in accordance with HARRP’s exemption from Federal income taxation, the HARRP Board may allocate the dividend among the Members in a fair and equitable manner, determined in the discretion of the HARRP Board, which shall be in accordance with HARRP’s exemption from Federal income taxation. The HARRP Board shall fix a record date for the dividend in accordance with the Bylaws. Any reasonable determination by the HARRP Board in accordance with this Section 9.1 with respect to the allocation of any dividend among the Members shall be conclusive and binding upon the Members. At the option of each Member, the dividend may be received in cash or credited against future Contributions payable by the Member. Members who have terminated under Section 4.5 or have been expelled under Section 4.6 shall not be entitled to receive a dividend relating to a calendar year (or portion thereof) during which the terminated or expelled Member was a Member of HARRP if the effective date of termination or expulsion is prior to the record date for the dividend.

9.2 Liquidating Distributions. In the event of the termination of HARRP in accordance with Section 12, the HARRP Board may wind up the business and affairs of HARRP, in which event the assets of HARRP (after the payment of or provision for all liabilities, obligations and expenses of HARRP) that are available for distribution to the Members shall be allocated among the Members of record in the ratio that the Cumulative Net Financial Contribution of each Member of record bears to the total Cumulative Net Financial Contribution of all Members of record. For purposes of this Agreement, the “Cumulative Net Financial Contribution” of each Member shall be equal to the positive amount, if any, by which the Member’s written Contributions between the date of commencement of the Member’s membership in HARRP and the record date for the distribution exceeds the sum of (i) the Member’s Paid Losses between the date of commencement of the Member’s membership in HARRP and the record date for the distribution, (ii) the total dividends paid or credited to the Member pursuant to Section 9.1 between the date of commencement of the Member’s membership in HARRP and the record date for the distribution and (iii) the fair value, as determined by the HARRP Board in good faith, of a membership interest in the Affordable



Housing Pool on the date distributed to the Member pursuant to Section 9.3. Notwithstanding the foregoing, in the event the foregoing allocation of liquidating distributions shall not be in accordance with HARRP's exemption from Federal income taxation, the HARRP Board may allocate the liquidating distributions among the Members in a fair and equitable manner, determined in the discretion of the HARRP Board, which shall be in accordance with HARRP's exemption from Federal income taxation. The HARRP Board shall fix a record date for liquidating distributions under this Section 9.2 in accordance with the Bylaws. Any reasonable determination by the HARRP Board in accordance with this Section 9.2 with respect to the allocation of any liquidating distributions among the Members shall be conclusive and binding upon the Members. Members who have terminated under Section 4.5 or have been expelled under Section 4.6 prior to the record date for the liquidating distribution shall not be entitled to receive a liquidating distribution under this Section 9.2.

9.3 Distribution of Membership Interest in Affordable Housing Pool. The HARRP Board, in its sole discretion, may distribute membership interests in the Affordable Housing Pool to the Members. A distribution, if any, of membership interests in the Affordable Housing Pool shall be allocated among the Members of record as follows: (i) first, membership interests in the Affordable Housing Pool having a nominal value, as determined by the HARRP Board in its sole discretion, shall be allocated equally among the Members of record; and (ii) the balance of the membership interests in the Affordable Housing Pool shall be allocated in the ratio that the Cumulative Net Financial Contribution of each Member of record bears to the total Cumulative Net Financial Contribution of all Members of record. Notwithstanding the foregoing, in the event the foregoing allocation of membership interests in the Affordable Housing Pool shall not be in accordance with HARRP's exemption from Federal income taxation, the HARRP Board may allocate the membership interests among the Members in a fair and equitable manner, determined in the discretion of the HARRP Board, which shall be in accordance with HARRP's exemption from Federal income taxation. The HARRP Board shall fix a record date for the distribution of membership interests in the Affordable Housing Pool under this Section 9.3 in accordance with the Bylaws. Any reasonable determination by the HARRP Board in accordance with this Section 9.3 with respect to the allocation of membership interests in the Affordable Housing Pool among the Members shall be conclusive and binding upon the Members. Members who have terminated under Section 4.5 or have been expelled under Section 4.6 prior to the record date for the distribution of membership interests in the Affordable Housing Pool shall not be entitled to receive a membership interest in the Affordable Housing Pool under this Section 9.3.

## **Section 10. BYLAWS**

Provisions for managing the business and regulating the internal affairs of HARRP, including, but not limited to, the respective functions, rights and obligations of the Members, the HARRP Board and the Officers, shall be set forth in the Bylaws. The Bylaws shall be subject to amendment or repeal by the HARRP Board or the Members, and new bylaws may be adopted by the HARRP Board or the Members; provided, however, that not less than 20 days prior to the effective date of any amendment or repeal of the Bylaws by the HARRP Board or the Members

or the adoption of new bylaws by the HARRP Board or the Members, written notice describing the amendment, repeal or adoption shall be delivered to each Member in the same manner as notice of the meetings of the Members. All rights and obligations of the Members are subject to the reservation of the right of the HARRP Board or the Members to amend or repeal any provision contained in the Bylaws.

## **Section 11. INDEMNIFICATION**

11.1 Limitation of Liability. A Director shall not be personally liable to HARRP or the Members for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any breach of the Director's duty of loyalty to HARRP or the Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law or (iii) for any transaction from which the Director derived an improper personal benefit.

### 11.2 Standard of Conduct

11.2.1 Directors. A Director shall perform the duties of a Director, including duties as a member of any committee of the HARRP Board upon which the Director may serve, in good faith, in a manner the Director believes to be in the best interests of HARRP and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more Officers or employees of HARRP whom the Director believes to be reliable and competent in the matters presented; (ii) legal counsel, accountants, actuaries, insurance consultants or other Persons as to matters which the Director reasonably believes to be within such Person's professional or expert competence; or (iii) a committee of the HARRP Board upon which the Director does not serve if the Director reasonably believes the committee to merit confidence. A Director is not liable for any action taken as a Director, or any failure to take any action, if the Director performed his or her duties in compliance with this Section 11.2.1.

11.2.2 Officers. An Officer shall perform the duties of such Officer within such Officer's authority, in good faith, in a manner the Officer believes to be in the best interests of HARRP and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, an Officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by: (i) one or more Officers or employees of HARRP whom the Officer believes to be reliable and competent in the matters presented; or (ii) legal counsel, accountants, actuaries, insurance consultants or other Persons as to matters which the Officer reasonably believes to be within such Person's professional or expert competence. An Officer is not liable for any action taken

as an Officer, or any failure to take any action, if the Officer performed his or her duties in compliance with this Section 11.2.2.

### 11.3 Indemnification of Directors and Officers

11.3.1 Indemnification. HARRP shall indemnify a Director or an Officer who is a party to or is threatened to be made a party to any proceeding against all expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by the Director or the Officer in connection with the proceeding, but only if the Director or the Officer acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of HARRP and, in the case of a criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

11.3.2 Advancement of Expenses. Expenses incurred by a Director or an Officer in defending a proceeding shall in all cases be paid by HARRP in advance of the final disposition of such proceeding, at the written request of such Director or Officer, if the Director or the Officer:

(a) furnishes HARRP with a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in this Section 11.3 or is entitled to be indemnified under any other indemnification rights granted by HARRP; and

(b) furnishes HARRP with a written undertaking to repay such advance to the extent it is ultimately determined that he or she is not entitled to be indemnified by HARRP under this Section 11.3 or under any other indemnification rights granted by HARRP.

Such advances shall be made without regard to the ability of the Director or the Officer to repay such advances and without regard to the ultimate entitlement of the Director or the Officer to indemnification under this Section 11.3 or otherwise.

11.3.3 Successful Party. Notwithstanding any other provisions of this Section 11.3, to the extent that a Director or an Officer has been successful on the merits or otherwise, in the defense of any proceeding or in the defense of any claim, issue or matter therein, including the dismissal of an action without prejudice, HARRP shall indemnify the Director or the Officer against all expenses incurred in connection therewith.

11.3.4 Definitions. As used in this Section 11.3, the following terms shall have the following meanings:

(a) a “proceeding” shall include any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, in which a Director or an Officer may be or may have been involved as a party or otherwise by reason of the fact that he or she is or was a Director or an Officer of HARRP or is or was serving at the request of HARRP as a director, officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise whether or not serving in such capacity at the time any liability or expense is incurred for which indemnification or reimbursement can be provided under this Section 11.3; and

(b) “expenses” shall include, but not be limited to, expenses of investigations, judicial or administrative proceedings or appeals, attorneys’ fees and disbursements, but shall not include amounts paid in settlement by the Director or the Officer or the amount of judgments or fines against the Director or the Officer.

11.3.5 Determination. HARRP shall not indemnify a Director or an Officer under this Section 11.3 unless authorized in the specific case after a determination has been made that indemnification is permissible in the circumstances because the Director or the Officer has satisfied the standards of this Section 11.3:

(a) by the HARRP Board by majority vote of a quorum consisting of Directors not at the time parties to the proceeding;

(b) if a quorum cannot be obtained under subparagraph (a) above, by a majority vote of a committee duly designated by the HARRP Board consisting solely of two or more Directors not at the time parties to the proceeding; Directors who are parties to the proceeding may participate in the designation of the committee;

(c) by special legal counsel selected by the HARRP Board or its committee in the manner set forth in subparagraph (a) or (b) above, or if a quorum of the HARRP Board cannot be obtained under subparagraph (a) above and a committee cannot be designated under subparagraph (b) above, the special legal counsel shall be selected by majority vote of the full HARRP Board, including Directors who are parties to the proceeding; or

(d) by the Members of HARRP.

11.3.6 No Indemnification Permitted in Certain Circumstances. HARRP shall not indemnify a Director or an Officer under this Section 11.3 for the amount paid in settlement by the Director or the Officer or the amount of a judgment against the Director or the Officer:

(a) in connection with a proceeding by or in the right of HARRP, with respect to any claim, issue, or matter as to which the Director or the Officer shall have been finally adjudged by a court to be liable to HARRP, unless and only to the extent that any court in which the proceeding was brought shall determine upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, the Director or the Officer is fairly and reasonably entitled to indemnity; or

(b) in connection with any proceeding charging improper personal benefit to the Director or the Officer, in which the Director or the Officer was adjudged liable on the basis that personal benefit was improperly received by him or her.

This Section 11.3.6 shall not be construed to preclude HARRP from indemnifying a Director or an Officer against expenses actually and reasonably incurred by the Director or the Officer in any of the foregoing proceedings if the Director or the Officer has otherwise satisfied the provisions of this Section 11.3.

11.3.7 Nonexclusivity and Continuity of Rights. The indemnification and entitlement to advancement of expenses provided by this Section 11.3 shall not be deemed exclusive of any other rights to which a Director or an Officer may be entitled under any statute, common law principles, agreement, general or specific action of the HARRP Board or otherwise. HARRP shall have authority to enter into an indemnification agreement with a Director or an Officer subject to the approval of the Members. The indemnification and entitlement to advancement of expenses shall continue as to an individual who has ceased to be a Director or an Officer, shall inure to the benefit of the heirs and personal representatives of such individual and shall extend to all claims for indemnification or advancement of expenses made after the adoption of this Section 11.3.

11.3.8 Amendments. Any repeal of this Section 11.3 shall only be prospective and no repeal or modification of this Section 11.3 shall adversely affect the rights under this Section 11.3 in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding.

11.3.9 No Presumption of Bad Faith. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the Director or the Officer did not act in good faith or did not act in a manner which the Director or the

Officer reasonably believed to be in or not opposed to the best interests of HARRP or, with respect to any criminal proceeding, that the Director or the Officer did not have reasonable cause to believe that the conduct was unlawful.

11.3.10 Severability. If this Section 11.3 or any portion thereof shall be invalidated on any ground by a court of competent jurisdiction, HARRP shall indemnify each Director or Officer to the fullest extent permitted by any applicable portion of this Section 11.3 that has not been invalidated or to the fullest extent not prohibited by any other applicable law.

11.4 Indemnification of Employees and Agents Who Are Not Directors or Officers. By the general or specific action of the HARRP Board, HARRP may indemnify and advance expenses to any employee or agent of HARRP, who is not a Director or an Officer, to the same extent that indemnification and advancement of expenses is provided to a Director or an Officer under Section 11.3.

11.5 Insurance. The HARRP Board may cause HARRP to purchase and to maintain insurance on behalf of any individual who is or was a Director, Officer, employee or agent of HARRP, or a fiduciary with respect to any employee benefit plan of HARRP, or is or was serving at the request of HARRP as a director, officer, partner, trustee, employee or agent of another Entity or employee benefit plan against any liability asserted against such individual and incurred in any such capacity or arising out of such status, whether or not HARRP would have the power to indemnify such individual.

## **Section 12. DURATION**

HARRP shall continue to exist until it is terminated in accordance with this Section 12. A termination of HARRP's existence may occur upon the cessation of HARRP's business, the completion of HARRP's purposes or as a result of an acquisition of HARRP (whether through a merger, consolidation, sale of substantially all of its assets or otherwise). HARRP shall be terminated upon the occurrence of either of the following events:

- (a) HARRP shall be terminated upon the affirmative vote or written consent of at least two-thirds of the Members in favor of termination; or
- (b) HARRP shall be terminated within the discretion of the HARRP Board.

Upon the occurrence of an event of termination under this Section 12, the HARRP Board shall wind up the affairs of HARRP, shall liquidate HARRP's assets and shall make liquidating distributions in accordance with Section 9.2 as promptly as possible, but in an ordinary and business-like manner so as not to cause undue sacrifice. HARRP shall continue to exist in accordance with this Agreement for the purpose of winding up its affairs and liquidating and distributing its assets.

### **Section 13. AMENDMENT**

This Agreement may be amended only upon the affirmative vote or written consent of at least two-thirds of the Members. A copy of any amendment to this Agreement shall be delivered to each Member prior to the effective date of such amendment. All rights and obligations of the Members are subject to the reservation of the right to amend this Agreement.

### **Section 14. MISCELLANEOUS PROVISIONS**

14.1 Prohibition Against Assignment. No Member may assign any right, claim or interest it may have under this Agreement or any Coverage Terms, and no creditor, assignee or third party beneficiary of any Member shall have or acquire any right, claim or interest in HARRP.

14.2 Equitable Remedies. HARRP or its Members shall have the power to enforce this Agreement by suit or action brought in any court of competent jurisdiction. If any remedy of damages for any breach or threatened breach is inadequate, HARRP or its Members shall be entitled to a restraining order, a temporary and permanent injunction, specific performance or other appropriate equitable relief in addition to damages.

14.3 Severability. If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

14.4 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Members and their successors in interest. This Agreement also shall be binding upon any Person insured under the Coverage Terms applicable to a Member.

14.5 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

14.6 Integration. Effective as of January 31, 2010, this Agreement amends and restates the Amended and Restated Intergovernmental Cooperation Agreement dated July 15, 1992 among the Members, which shall have no further force or effect. This Agreement embodies the entire agreement and understanding of the parties in relation to the subject matter hereof and supersedes any and all prior understandings and agreements, whether written or oral, in regard to such matters.

DATED: January 31, 2010.

\_\_\_\_\_ HOUSING AUTHORITY

By: \_\_\_\_\_  
Title: Executive Director

HOUSING AUTHORITIES RISK RETENTION POOL

By: \_\_\_\_\_  
Title: Executive Director