

ARTICLES OF ORGANIZATION ROCKVILLE HOUSING ENTERPRISES

Pursuant to Section 1-202(b) of Article 44A of the Annotated Code of Maryland, the Housing Authority of the City of Rockville (the "Housing Authority") and the Mayor and Council of Rockville (the "City") establish this Articles of Organization for a new entity to be known as the "Rockville Housing Enterprises" on the terms hereinafter stated:

1. Purpose and Findings. The Housing Authority of the City of Rockville has been in existence for over forty-four (44) years providing assistance to low income families in the community. It currently operates two developments, many scattered site single family units and administers the Section 8 Housing Program within the City limits. There is a need for a housing authority to function in Rockville and both the Housing Authority and the City recognize the benefits and advantages of broadening the powers of the Housing Authority to assist with the housing needs of existing tenants and others in the community.

Although there has been substantial progress in financing and constructing affordable housing, a shortage of homes within the means of families of low and moderate income remains. Both the City and the Housing Authority expect that the difficulties will become more severe in the next century as federal financial sources dwindle, more new households are formed and pressure is created as a result of a need for housing for disabled individuals, older residents and others with low and moderate incomes. Special attention is necessary to provide housing for these persons in a diversified manner which will provide for community acceptance and thus the greatest number of units to serve the needs of the City. Broadening the powers of the Housing Authority will help to offset reductions in federal subsidies, provide greater opportunity to assist residents in obtaining this housing, permit utilization of multiple sources of financing for one

development, allow multiple purposes of housing resources, provide improvements to the housing stock and promote the betterment of the community in general through assistance with rental and ownership of moderately priced units and the mixing of incomes in a variety of housing types scattered throughout the City.

2. Powers and Authority.

a. The name of the entity shall be the "Rockville Housing Enterprises" ("RHE").

b. RHE shall have all the powers of the Housing Authority of the City of Rockville as they existed as of December 1, 1990, subject to approval of certain actions by the Mayor and Council as provided in the Amended and Restated Cooperation Agreement by and between the City and the Housing Authority then in effect.

c. RHE shall consist of five Commissioners appointed by the Mayor and Council of Rockville. Since there is no chief publicly elected executive official in the City within the meaning of Section 1-103(e) of Article 44A of the Annotated Code of Maryland, the prior approval of the Mayor and Council of Rockville, as the legislative body of the City, is required to appoint commissioners.

d. Commissioners of RHE shall serve three (3) year terms. All Commissioners in office prior to the effective date hereof shall be reappointed in accordance with Section 1-202(f) and Section 1-207 of Article 44A of the Annotated Code of Maryland. The certificate of appointment for the Commissioners of RHE shall designate the initial term of service for each Commissioner as provided in Section 1-207 of Article 44A of the Annotated Code of Maryland. One employee of the City who is not an elected official of the City may be appointed as a Commissioner.

e. The Rockville City Clerk shall serve as custodian of records of RHE for the purposes required by Article 44A of the Annotated Code of Maryland.

f. Subject to the prior approval of the Mayor and Council of Rockville, RHE may exercise the following powers provided in Section 1-302 of Article 44A of the Annotated Code of Maryland, specifically:

(i) to make mortgage loans and mortgage subsidy payments to or for the benefit of persons of eligible income,

(ii) to make construction loans and long term mortgage loans to any person, firm, partnership, association, joint venture or corporation public or private, in order to produce housing for persons of eligible income,

(iii) to purchase mortgages secured by housing for persons of eligible income,

(iv) to acquire, develop, construct, rehabilitate, own, operate, and lease (either as lessor or lessee) commercial facilities either on the site of a housing project or adjacent to the site of a housing project which make an economic or social contribution to the housing project, provided that the commercial facilities are intended substantially for the use and benefit of the tenants of the housing project and the intended use by other persons is incidental,

(v) to act and invest as a general partner and as a limited partner in housing projects.

g. The Mayor and Council shall determine the meaning of the term "persons of eligible income" from time to time as deemed necessary and appropriate for projects other than State or Federally funded programs.

h. RHE may exercise the power provided in Section 1-302 (a)(4) of Article 44A of the Annotated Code of Maryland, which allows RHE to permit a maximum of 80% of the residents of any housing project, or any portion thereof, financed by RHE to have incomes above the levels established for persons of eligible income, without the prior approval of the Mayor and Council, subject to any restrictions contained in any applicable agreement with the State or federal government or any other party,.

i. Nothing in this Articles of Organization shall be construed to limit the power of RHE to comply with the terms of any agreements already existing as of this date between the Housing Authority of the City of Rockville, including the attached Amended and Restated Cooperation Agreement, and any State or federal governmental entity, or any applicable law.

j. As provided in the attached Amended and Restated Cooperation Agreement between the City and the Housing Authority, the Housing Authority shall obtain the prior approval of the Mayor and Council before taking any actions or exercising certain powers under Title 1 of Article 44A of the Annotated Code of Maryland as set forth in the Amended and Restated Cooperation Agreement.

k. The term "housing project" and "persons of eligible income" shall have the meanings ascribed to them in Article 44A of the Annotated Code of Maryland.

WITNESS:

Cyril L. Lindbom

WITNESS:

George J. Gurnea

MAYOR AND THE CITY COUNCIL
OF THE CITY OF ROCKVILLE

By: W. Mark Pentz
W. Mark Pentz, City Manager March 16, 2000

HOUSING AUTHORITY OF THE
CITY OF ROCKVILLE

By: Wilma Bell
Chair Wilma Bell
Effective Date: 2-22-2000

AMENDED AND RESTATED COOPERATION AGREEMENT

This Amended and Restated Cooperation Agreement (the "Agreement") made this 29th day of March, 2000, by and between the Housing Authority of the City of Rockville ("Housing Authority") and the Mayor and Council of Rockville ("City")

RECITALS:

R.1. The City and the Housing Authority entered into a certain Cooperation Agreement dated July 18, 1956, with respect to the development and administration by the Housing Authority of low-rent housing projects within the corporate limits of the City.

R.2. The Cooperation Agreement was amended on February 25, 1960, by the "Amendment to Cooperation Agreement" to permit the Housing Authority to develop and administer 200 low-rent housing units within the corporate limits of the City.

R.3. The Cooperation Agreement was further amended on January 24, 1985 by the "Second Amendment to Cooperation Agreement" to forgive the payment of certain outstanding payments in lieu of taxes and to forgive future payments in lieu of taxes until such time as the Housing Authority had assembled operating reserves of Fifty Thousand Dollars (\$50,000.00).

R.4. On December 18, 1989, the Cooperation Agreement was amended by the "Third Amendment to Cooperation Agreement" to forgive future payments in lieu of taxes until such time as the Housing Authority had assembled additional operating reserves equal to twenty-five percent (25%) of its operating budget.

R.5. On August 5, 1993, the Cooperation Agreement was again amended by the "Fourth Amendment to Cooperation Agreement" to increase the number of low rent housing units which it could develop and administer from an aggregate number of 200 low-rent housing units to 250 low-rent housing units within the City.

R.6. On or about December 16, 1998, the Housing Authority adopted Resolution No. 99-10 wherein the Housing Authority approved proposed Articles of Organization establishing a new entity to be known as Rockville Housing Enterprises ("RHE")

R.7. After review and consultation by and among the Housing Authority, the City, and their respective representatives, the final form of Articles of Organization was agreed upon and, on February 16, 2000, the Housing Authority adopted Resolution No. 00-02 wherein the Housing Authority approved Articles of Organization and directed the Executive Director to submit the Articles of Organization to the City for disposition as provided in Article 44A of the Annotated Code of Maryland.

R.8. On March 13, 2000, the City adopted Resolution No. 10-00 wherein the City approved Articles of Organization establishing a new entity to be known as Rockville Housing Enterprises, and directed the City Clerk to file with the Secretary of State the Articles of

Organization and approved and adopted Resolutions of the Housing Authority and the City, together with the required certifications of the City Clerk and Secretary of the Housing Authority.

R.9. On March 29, 2000, the Secretary of State approved the Articles of Organization and issued a certificate of approval.

R.10. As of the date of the issuance of the certificate of approval by the Secretary of State, the Articles of Organization as filed became effective and are conclusively considered to have been lawfully and properly adopted.

R. 11. The City has determined that it is in the best interests of the City to permit the Housing Authority to expand, broaden and improve its facilities and expand its authority for the benefit of the citizens of Rockville, subject to this Agreement and the Articles of Organization, as modified and approved by the Mayor and Council of Rockville.

R. 12. When the Articles of Organization become effective, Rockville Housing Enterprises, as successor to the Housing Authority of the City of Rockville, will be bound by the this Agreement and will assume all the assets, liabilities, duties, responsibilities, rights, contracts, obligations, and operations of the Housing Authority.

R. 13. The City and the Housing Authority desire to amend and restate the terms and conditions of the provisions of the prior Cooperation Agreement, as amended, and set forth, in this Agreement, the terms and conditions of their relationship in conjunction with the new Articles of Organization and the transformation of the Housing Authority of the City of Rockville to Rockville Housing Enterprises.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and the Articles of Organization, the parties do hereby amend and restate the terms and conditions of the Cooperation Agreement, as amended as follows:

**I. PROVISIONS RELATED TO
FEDERAL HOUSING PROJECTS UNDER THE UNITED STATES
HOUSING ACT OF 1937, AS AMENDED.**

1. Whenever used in this Agreement:

(a) The term "Project" or "Projects" shall mean any low-rent housing in the City hereafter developed as an entity by the Housing Authority with financial assistance of the United States Department of Housing and Urban Development ("HUD").

(b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.

(c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and nondwelling rents (excluding all other income of such Project), less the cost to the Housing Authority of all dwelling and nondwelling utilities.

2. The Housing Authority shall endeavor (a) to secure a contract or contracts with HUD for loans and annual contributions covering one or more Projects aggregating up to 250 units of low-rent housing and (b) to develop and administer such Project or Projects, each of which shall be located within the corporate limits of the City.

3. (a) Under the Constitution and statutes of the State of Maryland, all Projects are exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Housing Authority and HUD for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to HUD in connection with such Project remain unpaid, whichever period is the longest, the City agrees that it will not levy or impose any real or personal property taxes or special assessments upon such Project or upon the Housing Authority with respect thereto. During such period, the Housing Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of such taxes and special assessments as set forth herein.

(b) Each such annual Payment in Lieu of Taxes shall be made by February 1 following the end of the fiscal year established for such Project and shall be in an amount equal to ten percent (10%) of the aggregate Shelter Rent charged by the Housing Authority in respect to such Project during such fiscal year for which real property taxes would have been paid to the City if the Project were not exempt from taxation.

(c) No Payment in Lieu of Taxes for any year shall be made to the City in excess of the amount of the real property taxes which would have been paid to the City for such year if the Project were not exempt from taxation.

(d) Upon failure of the Housing Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Housing Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof, except as provided under Section 1-104 of Article 44A of the Annotated Code of Maryland.

(e) Notwithstanding the above, the City agrees that no annual Payments in Lieu of Taxes on Projects will be due for any fiscal year unless the Housing Authority has operating reserves equal to twenty-five percent (25%) of its operating budget in such fiscal year as computed on Form HUD 52564 (or such forms as shall be substituted for HUD 52564) and as approved by HUD for all Projects under the control of the Housing Authority.

(f) The Housing Authority shall submit to the City quarterly reports describing its revenues and expenditures. Said reports shall be submitted on Form HUD 52564 or a facsimile of Form 52564. Said reports shall be submitted within forty-five (45) days after the end of each

quarter. For the purposes of this agreement a quarter shall end on December 30, March 31, June 30 and September 30.

(g) Should the Housing Authority wish to request forgiveness for Payments in Lieu of Taxes for a given fiscal year in which it has achieved the operating reserves described in Section 3.(e), it shall, each time such forgiveness is required, submit to the City a written request for a waiver of Payments in Lieu of Taxes for such fiscal year. Said written requests shall be submitted by February 1 of the following year and shall contain a justification for the request and a description of what expenditures will be made with the amount of money forgiven. The City shall determine whether or not the Payments in Lieu of Taxes will be forgiven prior to June 30.

4. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Housing Authority and HUD for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to HUD in connection with such Project remain unpaid, whichever period is the longest, the City without cost or charge to the Housing Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

(a) Furnish or cause to be furnished to the Housing Authority and the tenants of such Project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings and inhabitants in the City;

(b) Vacate such streets, roads, and alleys within the area of such Project as may be necessary in the development thereof, and convey without charge to the Housing Authority such interest as the City may have in such vacated areas; and, insofar as it is lawfully able to do so without cost or expense to the Housing Authority or to the City, cause to be removed from such vacated areas, insofar as it may be necessary, all public or private utility lines and equipment;

(c) Insofar as the City may lawfully do so, (i) grant such deviations from the building code of the City as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of the Project and the surrounding territory;

(d) Accept grants of easements necessary for the development of such Project;
and

(e) Cooperate with the Housing Authority by such other lawful action or ways as the City and the Housing Authority may find necessary in connection with the development and administration of such Project.

5. In addition to the Payments in Lieu of Taxes and in further consideration for the public services and facilities furnished and to be furnished in respect to any Project:

(a) After payment in full of all obligations of the Housing Authority in connection with such Project for which any annual contributions are pledged and until the total amount of annual contributions paid by HUD in respect to such Project has been repaid, (1) all receipts in connection with such Project in excess of expenditures necessary for the management, operation, maintenance, or financing, and for reasonable reserves therefor, shall be paid annually to HUD and to the local public bodies (including the City) which have contributed to such Project in the form of tax exemption or otherwise, in proportion to the aggregate contribution which HUD and such local public bodies have made to such Project, and (2) no debt in respect to such Project, except for necessary expenditures for such Project, shall be incurred by the Housing Authority;

(b) If, at any time, such Project or any part thereof is sold, such sale shall be to the highest responsible bidder after advertising, or at fair market value as approved by HUD, and the proceeds of such sale, together with any reserves, after application to any outstanding debt of the Housing Authority in respect to such Project, shall be paid to HUD and local public bodies as provided in clause (a)(1) of this Section 5; provided, that the amounts to be paid to HUD and the local public bodies shall not exceed their respective total contribution to such Project.

II. ADDITIONAL PROVISIONS RELATED TO ARTICLES OF ORGANIZATION

6. The Housing Authority shall obtain an authorization resolution from the Mayor and Council of Rockville before engaging in any one of the following:

- a. Acquiring or disposing of any real property.
- b. Entering into new partnerships in housing projects or commercial enterprises.
- c. Borrowing or accepting money to undertake housing projects.
- d. Establishing not-for-profit corporations.
- e. Entering into mortgages, making mortgage loans and/or mortgage subsidy payments or purchasing mortgages.
- f. Developing and/or investing as a general partner or as a limited partner in housing projects.
- g. Issuing any tax exempt bonds.

It is the intent of the Mayor and Council to respond as expeditiously as possible to requests by the Housing Authority to undertake or engage in an activity requiring prior approval of the Mayor and Council. The Mayor and Council shall respond to a request by the Housing Authority to undertake or engage in an activity set forth in either paragraph 6 of this Agreement

or Section 2.f. of the Articles of Organization within one hundred twenty (120) days of receipt of a written request from the Housing Authority. If the Mayor and Council have not communicated their decision on such a request to the Housing Authority within one hundred twenty (120) days of receipt of the request from the Housing Authority, the request of the Housing Authority shall be deemed approved, unless both the City and the Housing Authority agree to extend the time for a decision for an additional period of time. 7. Prior to the acquisition or control of any property that would be exempt from taxation as provided in Section 1-104 of Article 44A of the Annotated Code of Maryland by the Housing Authority, a nonprofit housing corporation controlled by the Housing Authority, or any property used as housing for persons of eligible income that is owned by an entity related to the Housing Authority, the Housing Authority shall negotiate and enter into an agreement with the City to make payments in lieu of taxes for any such property or development.

8. Prior to the issuance of any tax exempt debt, the Housing Authority must obtain the approval of the City prior to the issuance of such tax exempt debt in order to insure, among other things, that the issuance of any such tax exempt debt will not interfere with or adversely affect the issuance of tax exempt debt by the Mayor and Council of Rockville. For purposes of this Agreement, the term "debt" means "Bonds" as that term is defined in Section 1-103 of Article 44A of the Annotated Code of Maryland.

9. In addition to any audit that is otherwise provided by law and/or required for HUD funded programs, the Housing Authority shall provide the City, in such form as is acceptable to the City, an annual audit and monthly financial reports.

10. This Agreement shall become effective at such time as the Articles of Organization for Rockville Housing Enterprises become effective.

11. This Agreement shall be binding upon the Housing Authority, and its successors and assigns, including, but not limited to, the Rockville Housing Enterprises.

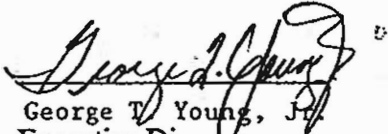
12. At such time as the Articles of Organization become effective, the Housing Authority shall become, and be known as, Rockville Housing Enterprises, and all the assets, liabilities, duties, responsibilities, rights, contracts, obligations, and operations of the Housing Authority will be assumed and taken over by Rockville Housing Enterprises.

13. This Agreement shall be reviewed periodically by the City and Housing Authority to determine if it is appropriate to make any modifications to the Agreement. Any such modifications to this Agreement shall be in writing and approved by both the Housing Authority and the City.

IN WITNESS WHEREOF, the Housing Authority of the City of Rockville and the Mayor and Council of Rockville have caused this Agreement to be executed in their respective names and caused their respective seals to be herein affixed and attested to as of the date first above written.

ATTEST:

HOUSING AUTHORITY OF THE CITY OF
ROCKVILLE


George T. Young, Jr.
Executive Director

By: 
Chairperson Wilma Bell

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE


Claire F. Funkhouser,
City Clerk

By: 
W. Mark Pentz, City Manager



City of Rockville
111 Maryland Avenue
Rockville, Maryland
20850-2364
www.ci.rockville.md.us

City Attorney
(301) 309-3320
TDD (301) 309-3187
FAX (301) 762-7153

April 12, 2000

Kenneth B. Tecler, Esquire
Chen, Walsh, Tecler & McCabe, LLP
200 A Monroe Street
Rockville, Maryland 20850

Re: Rockville Housing Authority

Dear Ken:

Enclosed herewith please find a copy of the Certificate of Approval from the Secretary of the State of Maryland approving the Articles of Organization for Rockville Housing Enterprises. Also enclosed are fully executed originals of the Articles of Organization and the Amended and Restated Cooperation Agreement.

Sincerely yours,


Paul T. Glasgow
City Attorney

PTG/am

Cc: Ed Duffy, Community Services Program Manager
Claire F. Funkhouser, City Clerk
W. Mark Pentz, City Manager



MAYOR
Rose G. Krasnow

COUNCIL
Robert E. Dorsey
Glenon J. Harrison
Anne M. Robins
Robert J. Wright

CITY MANAGER
W. Mark Pentz

CITY CLERK
Claire F. Funkhouser

CITY ATTORNEY
Paul T. Glasgow

