

## Office of Finance and Development

### Capital Programs Manual

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.01 Introduction

This Section describes the general development requirements of the DHCR/HTFC for projects/programs funded under the Unified Funding Process. Unless otherwise noted at the top of each heading, the development requirements apply to all programs:

- (i) the Low-Income Housing Trust Fund (HTF) Program;
- (ii) the New York State HOME Program (HOME)
- (iii) the Housing Development Fund (HDF) Program;
- (iv) the Rural Rental Assistance Program (RRAP); and
- (v) For LIHC, SLIHC and LIHB only, i.e. standalones, Please refer to Sub-section: 5.08

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Sub Section 5.02 Environmental Requirements

All funded projects must undergo an environmental review, with the exception of:

- (i) projects funded solely under the LIHC/SLIHC Program;
- (ii) projects funded under RRAP;
- (iii) projects receiving HDF loans for predevelopment;
- (iv) projects receiving only HTF or HOME Program awards for predevelopment or seed money; and
- (v) tenant based rental assistance.

An environmental review may include any or all of the following independent reviews, depending upon the specific project proposed:

- (i) State Environmental Quality Review Act (SEQRA) - for all projects;
- (ii) City Environmental Quality Review (CEQR) - for all projects located in New York City where the City of New York Department of Housing Preservation Development (HPD) is a funding source or has site control;
- (iii) State Historic Preservation Office (SHPO) review - for all projects;
- (iv) Flood Plain Management Criteria - for all State projects; and
- (v) Waterfront Revitalization and Coastal Resources Review - for all projects located in, or adjacent to, any Waterfront Revitalization Area
- (vi) Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law.

In addition, any expenditure of HOME funds is subject to the provisions of the National Environmental Policy Act (NEPA) of 1969. Implementing regulations are found at 24 CFR Parts 50 and 58.

5.02.01 DHCR/HTFC Environmental Review Procedures

DHCR/HTFC conducts an environmental review according to requirements of the State Environmental Quality Review Act (SEQRA) and, for federally funded projects, the National Environmental Policy Act (NEPA). Although SEQRA and NEPA have somewhat different procedural requirements, both require DHCR/HTFC to complete an environmental review and issue an environmental determination before an action commences involving physical alteration of a project site, such as construction, rehabilitation, site clearance or grading, excavation, or any change in use.

DHCR/HTFC is responsible to certify environmental determinations made for HOME projects directly funded by the agency. Local Program Administrators which are units of general local government assume environmental review responsibilities for HOME local programs. DHCR/HTFC cannot delegate the responsibility to certify HOME environmental review to nonprofit organizations, CHDOs, private developers or lending institutions. These entities may assist in information collection necessary for the review but only DHCR/HTFC can certify that environmental review requirements have been properly completed.

The DHCR/HTFC environmental review does not substitute for an environmental review which may be required by other State agencies, municipalities or lenders to obtain any necessary approval, permit or loans. If a coordinated SEQRA review is conducted, DHCR/HTFC will not assume lead agency status unless requested by the local municipality. Any situations where DHCR/HTFC might be requested to be lead agency should be identified by the project sponsor. If another agency is conducting coordinated SEQRA review, DHCR/HTFC must be identified as an involved agency, and a Full EAF submitted to DHCR/HTFC. DHCR/HTF encourages developers to have their project's local municipality conduct a coordinated SEQRA review in the earliest stage possible of a project's development. As an involved agency of a coordinated SEQRA review, the DHCR/HTF SEQRA review may be expedited.

Significant issues identified by environmental review may be subject to verification or require further investigation. DHCR/HTFC will require any significant environmental impacts identified by this assessment to be mitigated as a condition for proceeding with project construction.

5.02.02 City Environmental Quality Review (CEQR)

New York City has established an environmental review process for all projects located in the five boroughs of the City, which is to be utilized in addition to the SEQRA and NEPA process. The City Environmental Quality Review (CEQR) provides for the selection of a single lead review agency, and enhances the public's opportunity to comment on a project in the early stages of the environmental review process. HPD will assume lead agency status for all NYS projects which involve HPD approval or disposition of city-owned property. For more information regarding CEQR, contact: Director of Environmental Review, 100 Gold Street, Room 9H-4, New York, New York 10038.

5.02.03 General Scope of Review

In general, DHCR/HTFC environmental review addresses the following issues:

- classification of the project according to SEQRA and, for federally funded projects, NEPA categories;
- assessment, where required, of potential impacts of the proposed action on public health or the natural environment;
- review by the State Historic Preservation Office (SHPO) to determine the potential impact of proposed activities on archaeological, cultural or historic resources;
- compliance with specific environmental regulations (i.e., flood plain management, HUD noise regulations); and,
- investigation of liability associated with prior use of the site which may have involved storage, treatment or disposal of hazardous materials.

5.02.04 Project Classification and Environmental Assessment

DHCR/HTFC classifies each project according to categories established by SEQRA regulations at 6 NYCRR 617, and NEPA regulations at 24 CFR Part 58.

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Under SEQRA, a project can be classified as Type II, Unlisted or Type I. A Type II action requires no Determination of Significance to be made. For Unlisted actions, an environmental assessment must be prepared, referencing the criteria for determining significance found at 6 NYCRR 617.7(c). A Determination of Significance is then made, either a Negative Declaration or a Positive Declaration. A Negative Declaration ends the SEQRA process. A Positive Declaration requires that an Environmental Impact Statement (EIS) be prepared. Agency review for Unlisted actions may be uncoordinated, where each agency conducts its own SEQRA review, or coordinated, where one agency becomes the Lead Agency, and makes a Determination of Significance binding upon all involved agencies. Type I actions require coordinated review as described above, leading to either a Negative Declaration or a Positive Declaration. Whenever a project is anticipated to undergo a coordinated SEQRA review, and is seeking DHCR/HTFC funding (except LIHC or SLIHC stand-alone), DHCR/HTFC should be identified as an involved agency and a Full EAF submitted. No matter how a project is classified under SEQRA, it must still comply with related regulations or review processes (e.g., floodplain management, SHPO review).

Under NEPA, projects are classified as Exempt, Categorically Excluded, or Requires Environmental Assessment. Except for Exempt actions, all projects and LPA programs funded under the HOME Program require publication of a public notice and HUD clearance prior to project construction start.

#### 5.02.05 Historic Properties

The State Historic Preservation Office (SHPO) is required to review all state or federally funded new construction or rehabilitation projects to determine whether the proposed project is of historic, architectural or archaeological value or would adversely affect any district, site, building or other structure which is listed, or eligible to be listed, in the National Register of Historic Places. SHPO is also required to make recommendations on issues of design or construction that best protect the historic quality of a building, site or district. Once a site has been listed, or is eligible for listing in the Register, or is within an existing or eligible historic district, no site action affecting historic resources can proceed once application is made, or is

anticipated to be made by the project sponsor, for state or federal funding, without consultation of the SHPO.

Project sponsors must initiate the SHPO review process prior to applying for funds by submitting a Project Review Cover Form, and a Historic Resources Inventory Form (if applicable) directly to SHPO together with the SHPO Transmittal Letter provided in the project application. The SHPO may ask the applicant for further information regarding the existing site or proposed project design in order to make its determination.

Projects with SHPO conditions related to the design and specifications of the project must take into consideration the cost impacts upon the project. The potential impact of SHPO conditions on operating costs must also be addressed. For example, if satisfying SHPO conditions results in inefficient energy conservation, excessive common areas, excessive heating costs due to high ceilings, or increased maintenance due to special design finishes, the increase in operating costs should be estimated and where possible, a means of cost containment and/or mitigation should be proposed. Project sponsors may be asked to provide a life cycle cost analysis for rehabilitation projects which have been determined to be adversely impacted by historic preservation costs.

OCD may act as mediator between the project sponsor and SHPO to resolve project conditions. OCD's mediation role is greatly diminished if federal funds are involved.

#### 5.02.06 Compliance With Specific Environmental Regulations

Proposed construction activities must be in compliance with applicable environmental regulations and receive all necessary approvals and permits prior to physical alteration to the site (6NYCRR Part 617 State Environmental Quality Review, Section 617.3(a)). In addition to obligations under SEQRA, DHCR/HTFC is also required to review projects according to the following specific environmental review regulations:

- The New York State Historic Preservation Act of 1980 (Chapter 354 of Parks, Recreation and Historic Preservation Law)
- Floodplain Management Criteria for State Projects (6 NYCRR Part 502)
- New York State Coastal Zone Program (19 NYCRR Part 600)
- Agricultural District Determination: Section 305 (4) of the Agriculture and Markets Law

For HOME projects and LPA programs, activities must also be reviewed according to related environmental regulations listed at 24 CFR 58.5 and 58.6.

5.02.07 Site Contamination

A Phase I Environmental Site Assessment (ESA) will be required for all single-site projects when the project receives a funding award, to determine the likely presence on the site of hazardous materials, soil or water contamination, underground storage tanks, PCBs, asbestos, mold and lead-based paint. Suspected hazards must be characterized by follow-up testing and analysis. DHCR/HTFC will require remediation of identified hazards in accordance with regulations or guidance of agencies with jurisdiction over the hazard(s) present on the site. Prospective applicants are encouraged to explore funding for hazardous materials remediation from state and federal funding sources.

5.02.08 Schedule of Submissions

Project Application

- (a) The SEQRA Short EAF, Part 1, completed, dated and signed by the project sponsor;
- (b) A copy of the SHPO Historic Resources Inventory Form, Project Review Cover Form and the SHPO Transmittal Letter submitted to SHPO;
- (c) A letter from the Code Enforcement Office, other municipal agency or insurance company indicating the flood zone of the project site, and the location of the project site relative to the designated coastal zone (for projects near a designated coastal zone);
- (d) Evidence of compatibility with existing zoning, or request for variance; and
- (e) Any prior SEQRA or NEPA environmental findings issued by a local or other State Agency.

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- (f) Any other existing environmental documentation or permits, i.e., environmental site assessments, wetland investigations, State Pollution Discharge Elimination System (SPDES) permits, etc.

#### Post Application Submissions

The Funding Commitment Letter sent to successful applicants will outline additional submission requirements to complete the environmental review. A Phase I Environmental Site Assessment (ESA) will be required for all awarded projects. The Environmental Analysis Unit (EAU) will provide a detailed letter to awardees discussing other necessary requirements and their scope.

The following submissions must be sent to the Environmental Analysis Unit if they were not included in the project application and are applicable to the project:

- (a) Zoning change or variance
- (b) Subdivision Approval
- (c) Archaeological survey
- (d) Village/Town/City Council Review/Approval
- (e) Flood Plain/ Waterfront/Coastal Zone Approval
- (f) Lead Agency Designation for Coordinated Review
- (g) Full EAF
- (h) SPDES General Storm Water Permit

Technical studies or other information may be requested to satisfy concerns identified in previous submissions and to develop any necessary mitigation strategies so that a final environmental determination can be made. Awardee will be responsible for costs associated with any significant environmental impacts that require mitigation measures as a condition for proceeding with project construction.

5.02.09      Completion of Environmental Review

Environmental review for HTFC projects is complete when a SEQRA determination is made by the SEQRA Officer, approved by the HTFC Board of Directors, and an environmental clearance letter has been issued by HTFC. For HOME funded projects, HTFC must publish an appropriate public notice in a newspaper of general circulation in the project area. Environmental review for HOME projects is complete when comment periods following public notices have expired and HUD issues an Authority to Use Grant Funds form for the project. No physical alteration to the site can occur until the project has received an environmental clearance letter from HTFC.

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The site requirements set forth below apply to new construction and substantial rehabilitation on all sites for all funded projects with the exception of those funded under:

- (i) LIHC/SLIHC/LIHB; and
- (ii) RRAP.

Applicants should select sites which are suitable for residential use; the suitability of the site selected will be an important factor in determining project eligibility and feasibility. The HOME Program also has a requirement for site and neighborhood standards that is published in the HOME regulations at 24 CFR 92.202. Applicants must select project sites in accordance with fair housing requirements and to promote a greater choice of housing opportunities. Newly constructed projects must not be located in areas of minority concentration, except as permitted by 24 CFR 882.705. Low-income housing projects located within an urban neighborhood must meet the following minimum requirements:

1. The site must be free from hazardous materials and incompatible adjacent uses. There must be no environmental conditions that significantly impair the intended residential purposes.
2. The site must have power, telephone, water and sewer connections adjacent to the site.
3. The site must have local/public transportation or be within walking distance to community services and retail establishments including a grocery store.
4. The site must have adequate space to accommodate local off-street parking requirements.
5. The site must be relatively level and of no greater size than that which is necessary to accommodate the proposed project.

Low-income housing projects located in non-urban areas must meet the following minimum requirements: Items 1, 4 and 5 as numerated above.

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1. Where public utilities are not included, the site must have the capacity to provide a cost effective on-site water and/or septic system.
2. For family projects, the site must be within a five mile distance of a municipality that provides community services and retail establishments including a grocery store.
3. Family projects must have adequate space to accommodate an on-site play area for children.
4. The site must be directly accessible from a public road.
5. Elderly projects must be located within a rural community and have local public transportation or be within walking distance, (i.e., one-half mile) of essential services including a grocery store.

#### 5.03.01 Site Control

DHCR/HTFC requires that applicants have site control for all buildings and/or sites included when applying for projects. Single-family homes in a specific subdivision are not excluded from DHCR/HTFC's site control requirements. Applicants that propose to use HOME funds for HOME programs are not required to identify sites at the time of application.

**NOTE: SITE CONTROL DOCUMENTATION IN THE FORM OF A CONTRACT OF SALE, OPTION OR LEASE MUST BE IN THE NAME OF THE APPLICANT AND BE LEGALLY BINDING AT THE TIME OF APPLICATION.**

Acceptable forms of site control, in order of DHCR/HTFC preference, include:

- A deed evidencing ownership by applicant;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period;

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- An option to purchase which is renewable or with a term that continues at least six months beyond the date of application. For HOME projects, purchase options must be conditioned on completion of HUD environmental review prior to closing;
- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A letter from the NYC Department of Housing Preservation and Development (HPD) which specifies expiration date and clearly matches property included in plans and project summary; or
- A lease with a term that equals the applicable program's regulatory period.

DHCR/HTFC reserves the right to accept other evidence of site control for State- or federally-owned sites, or those owned by entities affiliated with the State or federal government. If a site is owned by any governmental entity, the applicant should describe the current status of the project site in the land disposition process.

#### 5.03.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant. The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price, or the value established by an appraisal acceptable to DHCR/HTFC (see Section 5.03.03). Costs related to acquisition which also may be eligible project costs, depending on the specific program, include: legal fees, financing costs,

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mortgage recording tax, tax escrow payments, insurance premiums, water and sewer charges prior to construction, recording and filing fees, appraisal fees, title search and insurance costs, site surveys, and other related costs. If the seller has an identity of interest with any participant involved with the project then it must be disclosed in the application. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sales price.

Applicants must submit evidence prior to the Contract Closing that the following activities have occurred, regardless of whether or not the site is already owned by the applicant or owner:

- (i) all necessary site acquisition documents have been recorded and filed;
- (ii) a title search has been conducted;
- (iii) all required insurances have been obtained; and
- (iv) site survey-certified to the applicant/awardee, HTFC and the Title Insurance Co.

A survey of the premises prepared by a registered land surveyor in accordance with American Land Title Association/American Congress on Surveying and Mapping (ALTA/ACSM) Minimum Standard Detail Requirements for Land Title Surveys and dated or redated not more than 30 days before the closing. The following additional items shall be shown on the survey: a) legend of all symbols and abbreviations used; b) vicinity map; c) contours; d) flood zone designation; e) all improvements including proposed improvements; f) parking areas and, if striped the striping and number of parking places; g) indication of access to the public way such as curb cuts, driveways marked; h) location of all utilities serving the property, including manholes, catch basins, valve vaults or other surface indications of subterranean uses; i) all wires and cables (including their function) crossing the surveyed premises, and the poles on or within ten feet of the surveyed premises, and the dimensions of all cross wires or overhangs affecting the surveyed premises; j) observable evidence of cemeteries; and k) significant observations not otherwise disclosed.

5.03.03 Appraisals

The site appraisal requirement set forth below may be waived for sites funded under the HDF Program if the permanent/construction financing source agrees to the site purchase price.

For LIHC/SLIHC/LIHB funded projects only, i.e. standalones, see Section 5.08.

Acquisition costs for any individual site which exceed \$100,000 must be supported by an acceptable appraisal(s). If site acquisition costs exceed \$250,000, DHCR/HTFC may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below \$100,000.

In addition, DHCR/HTFC may also engage a review appraiser for further documentation of site value. If HOME funds are used to assist with the purchase of a unit by a first-time home buyer, an appraisal must be conducted by a state-certified appraiser. In any case, the applicant should reference the types of certifications below to determine the minimum qualifications necessary. All appraisals should be conducted pursuant to a contract between the applicant and the appraiser.

An acceptable appraisal must document and conclusively estimate the "as is" fair market value of the site and provide separate evaluation for the land and structure in a rehabilitation project. Fair market value is the price which a property will most probably bring in a competitive and open market under all conditions requisite to a fair sale, assuming the price is not affected by undue stimulus including special public financing amounts or terms, and that the buyer and seller act prudently and knowledgeably.

The following are the minimum requirements for an acceptable appraisal:

1. Must be certified to NYS Division of Housing and Community Renewal/Housing Trust Fund Corporation.
2. Must be prepared no later than six months prior to the date of the application. Appraisals prepared more than six months, but less than one year, prior to the date of the application will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance will DHCR/HTFC accept an appraisal prepared one year or more prior to the date of application.

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3. Appraiser must have the appropriate certification/license to undertake the scope of the project:
  - NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than \$1 million and non-complex, nonresidential properties with a transaction value of less than \$250,000.
  - NYS Certified Real Estate Residential Appraiser: all residential, noncomplex properties and non-residential, non-complex properties with a transaction value of less than \$250,000.
  - NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.
4. Must comply with the Uniform Standards of Professional Appraisal Practice.
5. Must use the income, market, and replacement cost approaches (see Glossary under "Appraisal") in estimating the fair market value of the site. For vacant land or where both the prior and proposed use of the property is a one-to-four unit dwelling, only the market approach is required.
6. Must describe local economic conditions and analyze physical, demographic, economic and governmental factors affecting the highest and best use of the site except where transaction values for the acquisition of vacant land are less than \$100,000.
7. Must provide a sales and ownership history for the last 5 years and /or the last two sales, whichever represents a shorter time frame.

Other comments such as extraordinary assumptions and type of transaction (i.e., arms-length) together with a table of contents and pagination will assist in the determination of site value.

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The design requirements contained in the OCD Design Handbook apply to all projects, with the exception of those funded under:

- (i) LIHC ;
- (ii) SLIHC;
- (iii) RRAP;
- (iv) HOME LPAs;
- (v) HOME substantial rehabilitation projects where the total development cost is less than \$25,000 per unit;
- (vi) LIHB;
- (vii) RARP; and,
- (viii) UI.

In addition, the design requirements apply to projects developed under the following programs only if DHCR/HTFC is the lead review agency:

- (i) HDF;
- (ii) HOME;
- (iii) HTF; and,
- (iv) HWF

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Sub Section 5.05 Project Costs

The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities. Housing planned for historic neighborhoods should reflect the historic and cultural environment in size, scale and material, while housing planned for rural areas should be developed to reflect the character of the environment.

For project awards in which DHCR/HTFC is not the lead review agency, Applicants are encouraged to incorporate the design requirements into local procedures. For LPA's all units assisted with HOME funds must, at a minimum, meet federal Housing Quality Standards (HQS) and HUD Cost-Effective Energy Conservation and Effectiveness Standards found in 24 CFR Part 39.

For detailed information refer to the Design Handbook, current edition.

In an effort to promote the continued marketability of the housing units we finance, the DHCR/HTFC would like to encourage applicants/developers to include in their designs the provision of high speed internet access in all residential units.

All funded projects are subject to the project cost standards set forth below, with the following exceptions:

- (i) projects financed under the HDF Program must meet DHCR/HTFC underwriting criteria only if DHCR/HTFC has been designated as the lead review agency;
- (ii) projects receiving an allocation under the LIHC/SLIHC/LIHB Program should refer to Section 5.08 and
- (iii) HOME tenant based rent subsidies.

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR/HTFC reviews the total project cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines.

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Applicants should note the following standards for the various costs included in the total project cost. These standards should be used as a guide only -- over or under budgeting of costs will impact on both feasibility and/or scoring. The applicant should also refer to Section 2.00 of this Manual to determine eligible costs for the appropriation program(s).

- (i) Acquisition Costs - The HOME and the HDF Programs are the only DHCR/HTFC programs for which the total program award may be used for acquisition costs. The HTF statute prohibits using more than 50% of the HTF award for site acquisition;
- (ii) Total Development Cost (TDC) - should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews; HOME new construction and rehabilitation projects which contain 12 or more HOME-assisted units are subject to the provisions of the Davis-Bacon Related Act and must pay prevailing wages;
- (iii) Construction Costs and Soft Costs - generally, the ratio of construction costs to soft costs should be 80% (construction costs) to 20% (soft costs); PLEASE NOTE: Only off site costs directly associated with the project will be considered eligible for funding through the DHCR/HTFC programs.
- (iv) Builder's Fees - up to four percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general requirements; and up to ten percent of construction costs may be used for builder's profit.
- (v) Developer's Fee – for HWF projects, a developer fee in an amount equal to 10% of acquisition and improvement costs is allowed. Subject to the approval of the 4% LIHC allocating agency, the fee may be increased up to 15% on the cost of the improvements only.
- (vi) Payment and Performance Bond Premium - in addition to a ten percent retainage held throughout construction, generally one to two percent of construction costs is allowed for a Payment and Performance Bond Premium (see Section 5.10, Insurance Requirements); where applicable, the bonding requirement must be satisfied at the Contract Closing;

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- (vii) Project Contingency - up to ten percent of the sum of total soft costs and contractor's cost for rehab projects and small project initiative projects, and up to five percent for typical new construction projects.
- (viii) Professional Fees - these include project architect and legal counsel fees, as well as development consultant, engineer, surveyor, and accountant fees as required:
  - (a) Architect's Fees - up to five percent of construction costs for project design, and two percent of construction costs for construction supervision, depending on the project size. The fees for design should be lower if the project has multiple buildings of the same design.
  - (b) Legal Fees - are generally limited to one percent of the total development cost, depending on the attorney's specific responsibilities.
  - (c) Housing Consultant Fees - up to one percent of TDC, not to exceed \$20,000. Note: For projects receiving LIHC/SLIHC, the maximum allowable developer's fee is reduced by the amount of payments to a consultant, unless their services are not normally provided by the developer (ie, packaging related to historic preservation, brownfields, real property tax abatement).
  - (d) Nonprofit Developer's Allowance (NPDA) - a not-for-profit organization which acts as the developer on a project which will be owned and operated on a not-for-profit basis may be paid a NPDA as compensation for functions not otherwise funded. An NPDA is not available to a not-for-profit which is in partnership with a for-profit developer on a project. The NPDA is not available to applicants which receive only seed money awards. It is only available to applicants which receive development funding awards.

Not-for-profit applicants seeking a developer's allowance or fee must ensure that such fee or allowance is an eligible expense under the permanent financing source. An HDF applicant cannot receive a developer's allowance from both HDF and the permanent financing source. The NPDA is not

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compensation for an organization's administrative overhead, which is frequently funded from another source, or for out-of-pocket project costs, which may be invoiced as an eligible development expense. DHCR/HTFC has established standards for NPDA compensation based upon the complexities of the project's development and the costs associated with a project's geographical location. DHCR/HTFC standards also provide for an adjustment when a consultant's services are used to undertake functions which would otherwise be undertaken by the nonprofit developer. The amount of the NPDA is limited to the greater of:

1. ten percent of total development cost less the amount of acquisition; or
2. \$2,400 per low-income unit. Single Room Occupancy (SRO) units are counted as 75% of a low-income unit for the purpose of calculating the NPDA. For projects located in the high cost New York Metropolitan Area and Nassau, Westchester and Suffolk Counties, the NPDA is increased to \$3,000 per low-income unit.
3. For projects financed with 501(c)(3) tax exempt bonds, the greater of ten percent of TDC or \$5,000 per unit.

When a housing consultant's services are used in connection with the project, the housing consultant's fee will be subtracted from the NPDA cap to arrive at the NPDA that the applicant is entitled to receive.

Under an executed contract with DHCR/HTFC, the nonprofit developer must meet specific milestones tied to the completion of the project in order to earn the NPDA. No more than 80% of the NPDA may be paid during the project's development as a project cost for the performance of development duties. The remaining 20% must be held back as an incentive payment for successfully completing the project. Specifically, percentages of the approved NPDA are earned in accordance with the following schedule:

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| Scope                    | Deliverables/Milestones  | Fee |
|--------------------------|--|-----|
| 1. Preliminary Approvals | Site Control & DHCR/HTFC Notice of Review Action - Competitive     | 10% |
| 2. Preconstruction       | Local Approvals & All Funding Commitments                          | 20% |
| 3. Bid Process           | Selection of Contractor  | 5%  |
| 4. Contract Finalization | Initial Endorsement of DHCR/HTFC Contract and Regulatory Agreement | 20% |
| 5. Construction          | Certificate of Occupancy Issuance                                  | 25% |
| 6. Cost Certification    | DHCR/HTFC Approval of Project Cost Certification                   | 10% |
| 7. Start Up              | Rent Up Completed  | 10% |

- (e) Local HOME Program Administrative Costs - such costs should not exceed 8% of the HOME award, and are available when program funding levels permit.
- (f) Construction Manager's Fees - (this fee is only available to projects without a general contractor) limited to five percent of project construction cost, and builder's overhead and profit may not be claimed.
- (ix) Working Capital - up to two percent of the total development cost is allowed for Working Capital; escrows for taxes and insurance are generally limited to six months expense, supplemental management fees should be no more than one quarter of the monthly gross rent roll; applicants must itemize all items included in working capital and demonstrate need; any working capital remaining after the project has been in operation for one year should be transferred to the operating reserve;
- (x) Reserve Funds - an initial deposit to project reserve funds may be required in certain programs. The applicant should review the Underwriting Criteria (Sub-Section 5.06(iii) and Project Operating and Management Requirements (Sub-Sections 7.03.03 and 7.03.04) of this Manual. HOME funds may not be used to provide capitalization of either an operating or replacement reserve account. **HTFC funds may be used to**

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capitalize a replacement reserve, but may not be used to capitalize an operating reserve.

- (a) Replacement Reserve (see Glossary for definition) - The replacement reserves are generally funded from an annual contribution included in the operating budget. For HTF and HOME-funded projects which include Low-Income Housing Tax Credits (LIHC) and/or State Low-Income Housing Tax Credits (SLIHC) as a financing source, an initial capitalization of the replacement reserve equal to \$1,000 per unit is required. HOME projects must utilize a non-HOME source, such as LIHC equity, to cover the replacement reserve capitalization. No initial capitalization is required for HTF or HOME projects that do not include LIHC or SLIHC in the financing plan

Additionally, the DHCR/HTFC will recognize the capitalization of up to \$4000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.

- (b) Operating Reserve (see Glossary for definition) - The operating reserve may be funded with annual contributions or an initial capitalization. The applicant should review specific program requirements for each program under which the application is submitted to determine if the initial capitalization of operating reserves is allowed and under what circumstances.

Applicants participating as private developers in the HTF and HOME Programs are required to make a cash equity contribution to the Operating Reserve equal to the lesser of one percent of the total development cost or 50% of project gross rent. Those projects which capitalize the reserve in an amount equal to one percent of total development cost will be required to make annual contributions until the Operating Reserve reaches the cap of 50 percent of project gross rent.

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- (c) Debt Service Reserve - In the case of HWF or 501(c)(3) bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.06 Underwriting Criteria

All funded projects are subject to the underwriting criteria set forth below, with the following exceptions:

- projects financed under the HDF Program must meet only the underwriting criteria specified for determining market support for the project, and the appraisal criteria for acquisition and construction loans, where DHCR has been designated as the lead review agency for the project; and
- projects funded through local HOME programs described in Section 2.05.
- LIHC/SLIHC/LIHB funding only, i.e. standalone (see Section 5.08)

Where federal programs are involved (e.g. HOME, LIHC), DHCR/HTFC may be required to certify to the federal agency that these projects receive only the level of funding that is necessary to provide affordable housing. To comply with these requirements, applicants that propose projects involving other federal subsidies (i.e., CDBG or Section 8) may be requested to provide additional information. For projects involving Project-Based Section 8 Voucher assistance and LIHC, the Federal Housing and Economic Recovery Act of 2008 authorizes DHCR as a housing credit agency to perform the HUD- required subsidy layering review for such projects. Please refer to CPM Section 5.07 for detailed information on the subsidy layering review process.

Applicants must establish that a project is financially feasible by demonstrating the following: that there is market support for the project; in general the proposed rents are equal to or less than comparable rents for the area; the estimated project income is sufficient to pay the estimated operating expenses, including any reserve fund contribution and debt service contained in the financing plan; and the reasonableness of operating and development budgets. In doing so, the applicant must address the following:

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- (i) Market Support of Project - Applicants must firmly establish that a sufficient number of income-eligible households exist in the proposed market area who can afford the project rents and who can be expected to live in the project. To do this, applicants shall submit a market analysis or a comprehensive market study.

Applicants proposing a project of fifteen units or less may submit a market analysis to establish market support for the project. Any project of more than fifteen units, which does not involve the preservation of existing, affordable housing, will require the submission of a comprehensive market study or in the case of projects in the City of New York, a market analysis utilizing data from the most current New York City Rent Guidelines Board Report.

Preservation projects of more than fifteen units located outside of the City of New York may submit a market analysis, if the project's average occupancy for the twelve months prior to application submission is 90% or greater. If the average occupancy level is below 90%, a comprehensive market study is required for these projects. Applicants proposing preservation projects located in the City of New York may submit a market analysis regardless of occupancy level

A market analysis must consider the geographic area from which households are expected to be drawn (Primary Market Area or PMA), the number of income-eligible households within that area able to afford the required monthly housing expense, current vacancy rates, the impact of the project on other housing stock (including other publicly assisted housing), rents of similar housing in close proximity to the proposed project, identification of other comparable housing that is planned or under development, and the availability of project-based rent subsidies. In areas having comparable housing under development, DHCR/HTFC may wait until any project under development is built and rented prior to funding an additional project in the market area. The exception to this will be those projects that are part of a housing/community development strategy or serving a special needs population.

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- (a) Evidence of Market Support - which must be submitted at the time of Small Project Initiative, Urban Initiative (UI), and Rural Area Revitalization Program (RARP) applications, should include:
- i. surveys identifying potential tenants and/or housing studies recently conducted by public agencies documenting need for the proposed units.
  - ii. information on waiting lists from other projects in the market area providing housing of the same general type and with comparable rents;
  - iii. commitments on leases and/or referral of households financially assisted by social services or public health programs; and
- (b) Comprehensive Market Studies - applicants utilizing LIHC and/or SLIHC must submit a professional market study which:
- i. is conducted by a disinterested pre-qualified market analyst approved by the Division and demonstrates that the proposed number and type of units meet an existing and identified need of low-income individuals and can be readily absorbed by existing need in the local area. Alternatively, applicants proposing projects located within the City of New York may prepare an analysis utilizing data from the most current “Housing NYC: Rents, Markets and Trends” report issued by the New York City Rent Guidelines Board for inclusion in their application. (Note: In all cases market demand must be documented from within New York State.)
  - ii. The comprehensive market study should include the Scope of Work contained in the following guidelines:

#### HTFC/DHCR Market Study Content Guidelines

- A. Executive Summary. Each market study must include a concise summary of the data, analysis and conclusions, including the following:
- A concise description of the site, adjacent parcels and the immediately surrounding area.

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- A brief summary of the project including the type of construction, number of buildings, number and type of units, proposed rents and the proposed population to be served.
- Precise statement of key conclusions reached by the analyst.
- Precise statement of analyst's opinion of market feasibility including the prospect for long term performance of the property given housing and demographic trends and economic factors.
- Provide recommendations and/or suggest modifications to the proposed project.
- Provide a summary of market related strengths and/or weaknesses which may influence the subject development's marketability, including compatibility with surrounding uses, the appropriateness of the subject property's location, unit sizes and configuration, and number of units.

B. Project Description. The market study should include a project description to show the analyst's understanding of the project at the point in time the market study is undertaken. The project description should include:

- Proposed number of units by: number of bedrooms and baths, income limit as a percent of Area Median Income (AMI), unit size in square feet and utility allowances for tenant paid utilities, proposed rents, and target population, including income restrictions and any special needs set-asides.
- The utilities expected to be paid by tenants and energy sources for tenant paid hot water, heat, cooking.
- For existing occupied properties, identification of any existing assisted housing program at the property such as Section 8, Section 202, Section 811, Section 236, etc, as well as current occupancy levels, current rents and proposed rents.

C. Location and Market Area Definition

The Primary Market Area (PMA) is the geographic area from which a property is expected to draw the majority of its residents.

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- Define the Primary Market Area, including a map that clearly delineates the area, and provide a clear explanation of the basis for the boundaries of the PMA. Identify PMA boundaries by municipality (ies), census tracts/block groups, street/highway names, or other appropriate geographic features (a river for example) forming the boundaries. Also define the larger geographic area in which the PMA is located (i.e. city, county, Metropolitan Statistical Area (MSA), etc.). Projects in the City of New York should indicate the Community Board in which the project is located. Applicants are strongly encouraged to use entire census tracts or block groups in defining the PMA.
- Provide photographs of the site and neighborhood, and a map clearly identifying the location of the project and the closest transportation linkages, shopping, schools, medical services, public transportation, places of worship, and other services such as libraries, community centers, bank, etc. In situations where it is not feasible to show all the categories on a map, the categories may be addressed in the narrative.
- Describe the marketability of the proposed development.
- Provide information or statistics on crime in the PMA relative to data for the overall area. Address any local perceptions of crime or problems in the PMA.

#### D. Population and Households

- Provide total population, age and income target data for the Primary Market Area using the 2000 Census, current year estimates, and a five year projection. Data from other legitimate studies, such as Claritas, CACI and similar demographic information companies, with detail on household size, tenure, age and other relevant categories may be provided. Provide the same information for the SMA, if one has been defined. Indicate the source for all data and provide a methodology for estimates.
- Provide a breakdown of households by tenure for 2000 Census, current year and five year projection.
- Provide an analysis of trends indicated by the data and include reference sources for the data and methodology for analyzing the data.
- Provide a breakdown of households by incomes in \$5,000-\$10,000 increments, by household size and by tenure for 2000 Census, current year, and five year projection.

E. Employment and Economy. Provide data and analysis on the employment and economy of the PMA to give an understanding of the overall economic health of the community in which the PMA is located. List sources for the data and methodology for the analysis.

- Provide a description of employment by industry sector for the PMA or smallest geographic area available that includes the PMA and compare the data to the larger geographic area, e.g. the city, county, labor market area, or MSA.
- List major employers in the PMA, the type of business and the number employed and compare the data to the larger geographic area (i.e. MSA, County, etc.).
- Show the historical unemployment rate for the last ten years (or other appropriate period) for the PMA and compare to the larger geographic area (i.e. MSA, County,, etc.).
- Show employment trends over the same period or a more recent, shorter period (last 5 years). Compare to the larger geographic area.
- Comment on trends for employment in the PMA in relation to the subject development.
- If relevant, comment on the availability of affordable housing for employees of businesses and industries that draw from the PMA.
- Provide a breakdown of typical wages by occupation.
- Provide commuting patterns for workers such as how many workers in the PMA commute from surrounding areas outside the PMA.

F. Existing Rental Housing. Provide information on other multifamily rental housing in the PMA and any rental housing proposed to be developed in the PMA. This section of the study should include:

- If relevant in the market, a 10-year, or other appropriate period, history of building permits, if available, by housing type and comments on building trends in relation to household trends.

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- Identify a list of existing comparable and competitive properties, including: name, location, population served, type of design, age and condition, number of units by bedroom type, rent levels, number of bedrooms and baths for each unit type, size in square footage of units, kitchen equipment, type of utilities (state whether paid by tenant or owner and energy sources for hot water, heat and cooking), unit and site amenities included. Also, if available, site staffing, occupancy rate, and absorption history for the property (if recently completed). Provide the name, address and phone number of property contact. Attach photos of each comparable property. Include a map showing the location of each comparable property in relation to the subject.
- A comparable property is one that is representative of the rental housing choices of the PMA and that is similar in construction, size, amenities, location, and/or age. A competitive property is comparable to the proposed project **and** competes at nearly the same rent levels and tenant profile, such as age, family or income.
- Describe the size of the overall rental market in the PMA, including the percentage of market rate and affordable housing properties.
- Provide a narrative evaluation of the subject property in relation to the comparable properties, and identify the competitive properties, which are most similar to the proposed development. The analyst should state why the comparables referenced have been selected, which are the most directly comparable, and explain why certain projects have not been referenced.
- For each comparable property, provide comparisons to the subject rents based on the comparable property amenities, tenant paid utilities, location, parking, concessions and rent increase or decrease trends.
- Only the **directly comparable projects** should be used to derive the market rents in the PMA for use in evaluating the competitive advantage of the project rents. Market rents should be adjusted for owner paid utilities included in the rent. Including conventional projects with superior amenities, location, design, and larger unit sizes in determining the market rent is **not** acceptable. For example, the use of 1200 sq ft townhome style apartment units as comparables for a project with 850 sq ft, two bedroom units with limited amenities is not reasonable or acceptable.

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- Discuss the availability of affordable housing options, including purchase or sale of homes.
- When relevant, include a list of LIHC/SLIHC, USDA RD, HUD 202 and other subsidized projects with allocations/awards in or near the market area that are not placed in service, giving as much known detail as possible on estimated placed-in-service dates, unit mix and income to be served.
- Discuss the impact of the subject development on the existing housing stock.
- Describe the market vacancy rate for the PMA rental housing stock by population served (i.e. market rate, LIHC, and Project Based Rental Assistance) and type of occupancy (i.e. family, seniors, special populations) and unit size.
- Identify the number of people on waiting lists for each project. Indicate if the households have been income qualified, and when the wait list was last updated.

G. Local Perspective of Rental Housing Market and Housing Alternatives. The market study should include a summary of the local perspective on the rental market, need for the proposed housing and unmet housing needs in the market. The local perspective should consider:

- Interviews with local planners, housing and community development officials and market participants to estimate proposed additions to the supply of housing that would compete with the subject development and to evaluate the local perception of need for additional housing.
- Interview local Public Housing Authority (PHA) officials and seek comment on need for housing and possible impact of the proposed development on their housing inventory and waiting lists for assisted housing. Include a statement on the number and availability of Housing Choice Vouchers and the number and types of households on the waiting lists for Housing Choice Vouchers. Compare subject development's proposed rents to local payments standards or median rents.
- The cost and availability of home ownership and mobile home living, if applicable.

H. Analysis.

- Derive a market rent **using appropriate comparables as discussed in Section F above**, an achievable restricted rent given the project income limits, and then compare them to the developer's proposed rent. Quantify and discuss the market advantage of the proposed development and impact on marketability.
- Provide a detailed analysis of the income levels of the potential tenants for the proposed units. Eligible households will pay no less than 30% and no more than 48% of their income for gross rent (rent plus utilities). (See CPM, Section 7.06.04, for additional information).
- Calculate separate capture rates **for each targeted income limit by unit type** in the subject property, incorporating DHCR/HTFC restrictions such as age, income, renters versus home owners, household sizes, etc. For example, if a project has 30 one bedroom units targeted at 50% of AMI, 10 one bedroom units targeted at 60% of AMI , and 20 two bedroom units targeted at 60% of AMI, three separate capture rates must be calculated. In calculating the capture rates the analyst should subtract all existing affordable housing in the PMA (supply) from the number of income eligible, age appropriate households (demand). Note: For senior projects, only **10% of the eligible homeowners** may be included in the demand calculation.
- The unmet demand for additional housing units must be more than 5 times the number of units proposed. Capture rates must be 20% or less for each targeted income limit by unit type.
- Define and justify the absorption period and absorption rate for the subject property.
- Project and explain any future changes in the housing stock within the market area.
- Identify risks (i.e. competitive properties which may come on line at the same time as the subject property; declining population in the PMA, etc.), unusual conditions and mitigating circumstances. Evaluate need for voucher support or HUD contracts.
- Provide documentation and descriptions that show the methodology for calculations in the analysis section and relate the conclusions to the data.

I. Other Requirements

- Date report was prepared, date of inspection and name and telephone number of analyst preparing study.
- Certification of no identity of interest between the analyst and the entity for whom the report is prepared.
- Certification that recommendations and conclusions are based solely on professional opinion and best efforts.
- Statement of qualifications.
- List of sources for data in the market study.

(ii) Project Income - Applicants must demonstrate that the project will generate sufficient income to cover its operating expenses.

- (a) Rent Plan - the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by a 5% vacancy and arrears loss. The rents approved by DHCR/HTFC for the purposes of the HTF or HOME commitment letter or LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR/HTFC approval, subject to the receipt and review of operating cost documentation supporting the need for the increase.
- (b) Non-Residential Income - if the project building also contains non-residential space, the budget for the non-residential space must be self-sustaining and accounted for separately. DHCR/HTFC funds may not be used to subsidize the non-residential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the project operations should be conservatively estimated. Such income should be considered only on a net basis after deduction of vacancy loss and arrears, operating and maintenance expense, and debt service. The estimate for vacancy loss and arrears should be in the

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range of five percent for pre-leased space, to 15% for space which has not been leased.

- (iii) Operating Budget - the applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. The accuracy of the projections will be an important factor in feasibility.

The operating budget should take into account the project's design and construction, utility configuration, and type of population to be served (i.e., elderly, family, homeless individuals, etc). The applicant must submit an operating budget and supporting documentation at the time of application and, if there are changes, again at the time of Contract Document Submission. The applicant may use information from comparable projects as the basis for estimating expenses, such as maintenance, management, and various services (i.e., trash or snow removal, extermination, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant should identify the comparable projects used as a basis for their projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant's estimate of property tax expenses should be documented by a counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

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DHCR/HTFC will not recognize more than a nominal initial cash flow (e. g., \$35 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing.

For LIHC/SLIHC projects that propose to defer a portion of their developer fee please see Section 5.05 viii(f).

Project owners must provide for annual contributions to the Reserve Account(s) in the operating budget as detailed below.

- (a) Replacement Reserve Contributions - The following replacement reserve contributions are required for all HTF and/or HOME projects that do **not** include Low-Income Housing Tax Credits (LIHC) and/or State Low-Income Housing Tax Credits (SLIHC) as a financing source:
1. Family and non-senior projects: annual contributions equal to .50 percent of total construction cost, including builder's fees, up to a maximum of \$800 per unit
  2. Senior Projects: annual contribution of \$400 per elderly projects

HTF and/or HOME projects which include LIHC and/or SLIHC as a financing source must provide for a minimum annual contribution of \$250 per unit. If a project requires a higher annual contribution, e.g. preservation projects, a higher per unit contribution may be allowed, if the project operating economics can support it.

All required annual contributions will continue throughout the life of the project with no ceiling. HTF stand-alone projects, i.e. projects that do not involve LIHC or SLIHC, may be permitted to capitalize a replacement reserve if the project's operating economics cannot support the annual contributions required for these projects. Projects permitted to capitalize the replacement

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reserve must demonstrate that the initial capitalization will provide sufficient funds to cover expenses throughout the regulatory period. All assumptions (i.e., initial cost, annual inflation rate, life expectancies, etc.) should be included on a spreadsheet which shows that such capitalization will be adequate.

- (b) Operating Reserve Contributions - where applicable, and unless otherwise approved by DHCR/HTFC, the operating budget should provide for a minimum of three percent of the project's gross rents to be contributed annually to the Operating Reserve account. Annual contributions to the Operating Reserve are required when the balance in the reserve is less than 50% of the gross rents. All excess cash flow from the project should be deposited in the Operating Reserve account.
  
- (iv) Financing Plan - the financing plan for the project must meet the following requirements:
  - (a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;
  - (b) all project financing must be contractually obligated at or before the Contract Closing;
  - (c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable DHCR/HTFC program;
  - (d) debt service for loans must be supportable by the project's annual operating budget;
  - (e) balloon payments of loan principal prior to the end of the regulatory period are permissible only if it can be demonstrated that refinancing is possible without affecting project rents;
  - (f) the terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the average rate level offered in the marketplace and the conditions (i.e.

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requirements on security, credit enhancement and debt service coverage factors) must be typical and advantageous;

- (g) debt service coverage factors required by lenders should be provided by the applicant at the time of the Contract Document Submission; and,
- (h) in the case of tax exempt bond and 501(c)(3) bond financed projects, HTFC may waive or alter these requirements based upon the applicant's satisfactory demonstration of its necessity or may adopt the standards required by the bond issuer.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.07 Subsidy Layering Review Process

A. Introduction: The Federal Housing and Economic Recovery Act of 2008 (the Act) authorizes changes to the Federal Low Income Housing Credit Program in order to simplify its use and enhance its value in creating and preserving affordable housing. Among these changes, the Act states that when project-based voucher assistance is proposed for newly constructed and rehabilitated structures the subsidy layering review (SLR) required in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 shall be satisfied if a Housing Credit Agency (HCA) conducts an SLR. This section of the Capital Programs Manual outlines the purpose of performing SLRs, as well as the procedures that the Division of Housing and Community Renewal will utilize, consistent with the Department of Housing and Urban Development (HUD) administrative guidelines issued July 9, 2010 (75 FR 39561), for conducting these reviews.

B. Purpose of Subsidy Layering Reviews: The purpose of a subsidy layering review is to ensure that the amount of HUD assistance shall not be greater than is necessary to provide affordable housing.

C. Timing of Reviews:

An initial subsidy layering review will be performed by DHCR underwriting staff at the time of application review in order to determine the appropriate number of project-based vouchers, tax credits and/or DHCR capital funding to recommend for award.

A second, and in most cases final, subsidy layering review will be conducted prior to construction start. The second SLR will be based upon updated development and operating budgets submitted by the project sponsor. The Division's Section 8 Office will not execute an Agreement to Enter into Housing Assistance Payments (AHAP) contract until an SLR has been completed as evidenced by a certification from the Office of Community Development that the project is in compliance with HUD requirements.

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For projects requesting voucher assistance subsequent to receiving a carryover allocation of credit, the subsidy layering review will be conducted at the time the voucher request is received.

Per HUD guidelines, if prior to execution of the Housing Assistance Payment (HAP) contract, or during the period of the HAP contract, the owner receives additional HUD or other governmental assistance that results in an increase in project financing of 10% or more of the development budget used for the original subsidy layering review, the owner must report this change to the Division and a further subsidy layering review is required.

- D. Guidelines for Conducting Subsidy Layering Reviews: In conducting SLRs, DHCR underwriting staff will utilize the administrative guidelines issued by HUD in its notice of July 9, 2010 (75 FR 39561). The guidelines state that the required SLR may be fulfilled by the IRC section 42(m)(2) gap analysis review, if the review substantially complies with the SLR requirements detailed in the HUD notice. In addition, the HUD guidelines require the HCA to evaluate the effect of the project- based voucher income on project operating economics in order to assure that the amount of voucher assistance is no more than necessary to make the project feasible.

Specifically, the HUD notice requires that certain development and operations standards be applied by the HCA in conducting the SLR. These standards are summarized below.

1) Development Standards:

Net syndication proceeds to the project must be at or above the amount generally contributed by investors based upon current equity market conditions.

Development costs must be evaluated for reasonableness based upon HUD safe harbor standards and maximum allowable amounts.

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(a) Safe harbor: These are generally applicable development cost standards. If project costs and fees are within the safe harbor standards, the project can move forward without the need for additional justification. If project costs exceed the safe harbor limits, the owner must provide additional documentation and justification that demonstrate the need for costs that exceed the safe harbor standards.

(b) Maximum allowable amounts: These are firm limits which cannot be exceeded under any circumstances. Where HUD and DHCR maximum allowable costs or cash flow differ, the more stringent limit is applicable.

(c) Safe Harbor Percentage Allowances & Maximum Allowable Amounts

(i) **Builder's Fees** (as a percentage of the construction contract)

1. Safe Harbor:

- a. General Requirements: 6%
- b. Overhead: 2%
- c. Profit: 6%

2. Maximum:

The maximum combined costs for general requirements, overhead, and profit cannot be more than 14% of the construction contract.

(ii) **Developer's Fee**:

- 1. Safe Harbor 12% of total development cost
- 2. Maximum 15% of total development cost

To the extent that any of the fees exceed the safe harbor limits, the excess above the safe harbor must be justified to the Division's satisfaction based upon project size, characteristics, location and risk factors. If unjustified, the underwriter will reduce fees to the safe harbor standard, and perform the tax credit gap analysis based upon reduced project costs.

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(iii) Net Syndication Proceeds: The LIHC equity going into the project must be at or above the market price. The safe harbor minimum for the LIHC equity pricing will be established by DHCR based upon its assessment of the market price for similar projects. If the amount of equity is below the current market price without satisfactory documentation of the reasons for the lower amounts, DHCR will reduce the allocation of LIHC to bring the value of the tax credits at or above the minimum LIHC equity price.

- (2) **Operations Standards:** The impact of project-based voucher assistance on the project's fifteen year operations pro forma must be evaluated as part of the subsidy layering review. HUD requires the following standards to be applied:
- (a) **Debt Coverage Ratio (DCR):** In any year the DCR cannot be more than 1.45 or less than 1.10.
  - (b) **Cash Flow:** In any year, the cash flow cannot exceed 10% of the total project operating expenses.
  - (c) **Trending Parameters:** The HCA may use the trending assumptions that it deems appropriate and reasonable to the project market area. Generally, operating expenses should be trended between 3% - 7% per year, and annual rent increases between 2% -5%.

To the extent that the project exceeds the DCR and cash flow limits, DHCR will do further trending analysis of the 15 year pro forma to determine whether the project is receiving more governmental assistance than is necessary to make the project feasible. If that is found to be the case, then the owner will be asked to revisit the operating pro forma to bring cash flow and/or DCR down to allowable levels. If the owner declines, the number of vouchers proposed will be reduced or the proposed rents will be lowered as required by the HUD guidelines.

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Please note that per HUD guidelines, if the PBVs are requested subsequent to the issuance of a carryover allocation of credit, the SLR will be limited to only a review of the project's 15-year operations pro-forma as described above.

E. Basis of Review:

DHCR underwriters will review the following to conduct the subsidy layering review:

- (1) DHCR Forms:
  - (a) Residential Development Budget with all proposed sources and uses of funds;
  - (b) Rent and Affordability Plan;
  - (c) Income and Operating Budget; and
  - (d) Tax credit exhibits- Qualified Building Information and LIHC Project Summary.
  
- (2) Other Documents:
  - (a) Commitment letters from all financing sources disclosing significant terms;
  - (b) Tax credit equity investment commitment letter, or if available, limited liability corporation operating agreement/limited partnership agreement;
  - (c) Appraisal supporting budgeted acquisition cost; and
  - (d) Letter from entity allocating Project Based Vouchers authorizing/approving the PBV assistance.

In addition, applicants must submit to the Division, a completed copy of HUD form 2880 Applicant/Recipient Disclosure/Update Report with original signature. DHCR reserves the right to request other documents as needed in performing the subsidy layering review. All documents required for the subsidy layering review must be submitted to the Regional Office project manager. The project manager will forward the material to the underwriter for evaluation.

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- F. Completion of Review: If upon completion of the SLR, the DHCR underwriter finds that the project is in compliance with HUD requirements, the Office of Community Development will issue an HCA certification that the Section 8 project-based voucher assistance awarded to the project is not more than necessary to provide affordable housing. The certification will be sent to the Division's Section 8 Office and to HUD. If the underwriter finds the project to not be in compliance, the project owner will be contacted to discuss any necessary changes.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.08 LIHC Program Development Requirements

This sub-section describes the general development requirements of the DHCR for projects funded by LIHC/SLIHC and LIHB (4% LIHC allocated per Section 2040.4 of the QAP) ONLY, i.e., standalone credit projects. (No other capital financing required from DHCR/HTFC.)

5.08.01 Site Control

DHCR requires that applicants have some form of site control for all buildings and/or sites included when applying for projects.

Acceptable forms of site control, in order of DHCR preference, include:

- Executed Deed evidencing ownership by applicant or owner;
- A title report not more than 90 days old at the time of submission showing that the applicant holds title;
- A contract of sale between applicant and the property owner which describes the terms and conditions for the conveyance of title of the site at a designated price during a specific period.
- An Option to Purchase which is renewable or with a term of no less than six months from the date of application.
- A local Land Disposition Agreement;
- A letter from a public agency providing a site to the applicant under specified conditions within a time frame consistent with the proposed Development Timetable;
- A letter from the NYC Department of Housing Preservation and Development (HPD) which specifies expiration date and clearly matches property included in plans and project summary; or
- A lease with a term that equals the applicable program's regulatory period.

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DHCR reserves the right to accept other evidence of site control for State-or-federally-owned sites, or those owned by entities affiliated with the State or federal government. If a site is owned by any government entity, the applicant should describe the current status of the project site in the land disposition process.

#### 5.08.02 Site Acquisition

If the project includes the acquisition of property, the applicant must document the absence of encumbrances which would impair the applicant's ability to complete the project. All site acquisitions at a market price must be arms-length transactions between the seller and the applicant.

The site purchase price must be documented in a fixed price purchase contract or a fixed price option to purchase the property. Such contracts or options must allow for the site acquisition to occur in a timely manner.

Only that portion of the site's value which is necessary for the project may be recognized as a project cost. The specific amount of the site purchase price that will be recognized as a project cost is limited to the lesser of: the purchase price; or the value established by an appraisal acceptable to DHCR (see Sub-Section 5.08.03). Costs related to acquisition which also may be eligible project costs, depending on the specific program, include: legal fees, financing costs, mortgage recording tax, tax escrow payments, insurance premiums, water and sewer charges prior to construction, recording and filing fees, appraisal fees, title search and insurance costs, site surveys, and other related costs. If the seller has an identity of interest with any participant involved with the project then it must be disclosed in the application. Valuation must be documented via an acceptable appraisal. In lieu of an appraisal the price of the subject property from the last sale by an unrelated seller, if within 24 months from the date of application, plus associated carrying costs, will be used to determine the approved sale price.

#### 5.08.03 Appraisals

Acquisition costs for any individual site which exceed \$100,000 must be supported by an acceptable appraisal(s). If site acquisition costs exceed \$250,000, DHCR may require two appraisals. If there is an identity of interest between the seller and any project participant, an appraisal must be provided even if the acquisition cost is below \$100,000.

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In addition, DHCR may also engage a review appraiser for further documentation of site value. The applicant should reference the types of certifications below to determine the minimum qualifications necessary. All appraisals should be conducted pursuant to a contract between the applicant and the appraiser.

An acceptable appraisal must document and conclusively estimate the “as is” fair market value of the site and provide separate evaluation for the land and structure in a rehabilitation project. Fair market value is the price which a property will most probably bring in a competitive and open market under all conditions requisite to a fair sale, assuming the price is not affected by undue stimulus including special public financing amounts or terms, and that the buyer and seller act prudently and knowledgeably.

The following are the minimum requirements for an acceptable appraisal:

1. Must be certified to NYS Division of Housing and Community Renewal.
2. Must be prepared no later than six months prior to the date of the application.  
Appraisals prepared more than six months, but less than one year, prior to the date of the application will be accepted, if the appraiser provides a letter confirming that the appraisal remains valid given current market conditions. In no instance will DHCR accept an appraisal prepared one year or more prior to the date of application.
3. Appraiser must have the appropriate certification/license to undertake the scope of the project.
  - NYS Licensed Real Estate Appraiser: non-complex, residential properties with a transaction value of less than \$1 million and non-complex, non-residential properties with a transaction value of less than \$250,000.
  - NYS Certified Real Estate Residential Appraiser: all residential, non-complex properties and non-residential, non-complex properties with a transaction value of less than \$250,000.
  - NYS Certified Real Estate General Appraiser: appraisals on all types of real property regardless of transaction value or complexity.
4. Must comply with the Uniform Standards of Professional Appraisal Practice.
5. Must use the income, market, and replacement cost approaches (see Glossary under “Appraisal”) in estimating the fair market value of the site. For vacant land or where

both the prior and proposed use of the property is a one-to-four unit dwelling, only the market approach is required.

6. Must describe local economic conditions and analyze physical, demographic, economic and governmental factors affecting the highest and best use of the site except where transaction values for the acquisition of vacant land are less than \$100,000.
7. Must provide a sales & ownership history for the last 5 years and /or the last two sales, whichever represents a shorter time frame.

Other comments such as extraordinary assumptions and type of transaction (i.e., arms-length) together with a table of contents and pagination will assist in the determination of site value.

#### 5.08.04 Physical Needs Assessment

The goal of the design requirements is to encourage the development of housing units that have a long life expectancy and that are durable, accessible, adaptable, relatively maintenance free, and provide quality living facilities.

All applicants who are requesting funding from LIHC/SLIHC/LIHB only and are renovating an existing structure(s) must complete and submit the Physical Needs Assessment Form which is an attachment in the Unified Funding Project Application. The applicant must request a site visit from the Division to enable staff to observe the building's existing condition and discuss proposed renovations PRIOR to the application submission.

#### 5.08.05 Project Costs

A project must provide housing which represents good value for the State's investment. In making this determination, DHCR reviews total project cost (as defined in the Glossary) to ensure that acquisition and development costs fall within established guidelines.

- (i) Acquisition Costs – Projects with the acquisition costs of the building(s) may not exceed twenty five percent (25%) of the total development costs of the project unless it meets the parameters set forth in the QAP at Section 2040.2(N).

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- (ii) Total Development Cost (TDC) – should reflect the reasonable and necessary cost of producing low-income housing; cost effectiveness will be an integral part of the technical reviews;
- (iii) Builder's Fees – up to four percent of construction costs may be used for builder's overhead; up to six percent of construction costs may be used for general requirements; and up to ten percent of construction costs may be used for builder's profit.
- (iv) Developer's Fee – a developer's fee will range from 10% to 15% of the development cost; the applicant should refer to the QAP (Section 2040.3 (G)(2)(b)) for specific information.

Developer fees provide a cushion against construction, lease up risks and other unforeseen expenses. Therefore, at initial application review, requests for funding which require that greater than one third of the anticipated fee be deferred will be deemed not feasible.

Any applicant who proposes to defer a portion of their development fee must include an operating budget projection which supports the reasonable expectation that these fees can be paid within 15 years of the development's placed in service date. This repayment must be made from funds available after the payment of project expenses, including all debt service, according to the annual budget and payments to required reserves.

- (v) Construction Manager's Fees – (this fee is only available to projects without a general contractor) limited to five percent of project construction cost, and builder's overhead and profit may not be claimed
- (vi) Reserve Funds – The **following** initial deposit to project reserve funds **are** required.
  - (a) Replacement Reserve (see Glossary for definition) – **An initial replacement reserve capitalization of \$1,000 per unit is required for all LIHC/SLIHC funded projects.** Additionally, the DHCR will recognize the capitalization of up to \$4,000 per unit to be set aside to cover the post-construction cost to fully adapt an accessible residential unit to meet the specific needs of a prospective handicapped household.

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- (b) Operating Reserve – (see Glossary for definition) – An initial operating reserve capitalization equal to **the lesser of** one percent of the total development cost **or 50% of project gross rent** is required for all LIHC/SLIHC funded projects.
- (c) Debt Service Reserve – In the case of tax exempt bond financed projects, a debt service reserve may be funded based on the requirements of the bond issuer or the source of credit enhancement.

#### 5.08.06 Underwriting Criteria

Applicants must establish that a project is financially feasible by demonstrating the following: that there is market support for the project; in general, that the proposed rents are equal to or less than comparable rents for the area; the estimated project income is sufficient to pay the estimated operating expenses, including any reserve fund contribution and debt service contained in the financing plan; and the reasonableness of operating and development budgets. In doing so, the applicant must address the following:

- (i) Comprehensive Market Studies - an applicant utilizing LIHC, SLIHC or LIHB must submit a professional market study conducted by an analyst pre-qualified by DHCR and in compliance with the guidelines described in Section 5.06 (i). Note: Applicants proposing projects located within the City of New York may prepare an analysis utilizing data from the most current “Housing NYC: Rents, Markets and Trends” report issued by the New York City Rent Guidelines Board for inclusion in their application. :
- (ii) Project Income – Applicants must demonstrate that the project will generate sufficient income to cover its operating expenses.
  - (a) Rent Plan – the applicant must submit with the UF application, a rent plan for the project estimating rental income, adjusted by a 5% vacancy and arrears loss. The rents approved by DHCR for the purposes of the LIHC reservation may be increased by the annual percentage increase in the area median income prior to initial rent up with DHCR approval, subject to the receipt and review of operating cost documentation supporting the need for the increase.

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- (b) Non-Residential Income – if the project building also contains non-residential space, the budget for the non-residential space must be self-sustaining and accounted for separately. DHCR funds may not be used to subsidize the nonresidential portions of the project unless deemed appurtenant to the residential portion of the project. The feasibility of the project should not be predicated upon income from non-residential rents. Any non-residential income to be used to support the project operations should be conservatively estimated. Such income should be considered only on a net basis after deduction of vacancy loss and arrears, operating and maintenance expense, and debt service. The estimate for vacancy loss and arrears should be in the range of five percent for pre-leased space, to 15% for space which has not been leased.
- (iii) Operating Budget – the applicant must submit an estimated project operating budget which reflects as accurately as possible the expected rental income and operating costs of the project. The accuracy of the projections will be an important factor in feasibility. The operating budget should take into account the project’s design and construction, utility configuration, and type of population to be served (i.e., elderly, family, homeless individuals, etc). The applicant must submit an operating budget and supporting documentation at the time of application and, if there are changes, again at the time of binding agreement/carryover allocation. The applicant may use information from comparable projects as the basis for estimating expenses, such as maintenance, management, and various services (i.e., trash or snow removal, extermination, etc.) provided they are similar to the proposed project in type and located in the same market area. The applicant should identify the comparable projects used as a basis for their projections. Utility allowances, common utilities and heating expense (i.e., electric, gas, or fuel oil) should be estimated on the basis of consumption and rate schedules or vendor price. A utility estimate prepared by the project architect is also acceptable. Utility costs must be supported by a written estimate from the architect or vendor and should cover utilities paid directly by the tenant. The estimated insurance expenses should be documented by a written quote from an insurance broker including both the coverage and price. The applicant’s estimate of property tax expenses should be documented by a

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counsel's letter confirming the legal basis for any exemption or abatement to be received by the project. If the project is to be fully taxed, the estimate should be documented by a letter from the assessor having jurisdiction, stating the basis for estimation and estimated amount of the post-construction value.

DHCR will not recognize more than a normal initial cash flow (e.g., \$35 per unit per month) unless a debt service coverage is imposed for purposes of a conventional loan or bond financing. For LIHB projects, DHCR will not allow cash flow in excess of that generated when the debt service coverage is assumed to be 1.30.

For LIHC/SLIHC/LIHB projects that propose to defer a portion of their developer fee, see Section 5.08.05 (iv).

- (a) Replacement Reserve Contributions – **Annual Replacement Reserve Contributions of a minimum of \$250 per unit are required for all projects.** The annual contribution will continue throughout the life of the project with no ceiling.
- (iv) Financing Plan – the financing plan for the project must meet the following requirements:
  - (a) the total project cost must be financed by grants, loans, or equity, or a combination of the three;
  - (b) all project financing must be in place at or before the issuance of a binding agreement/carryover allocation;
  - (c) grants and/or equity financing cannot encumber the project in a manner which is inconsistent with the requirements of the applicable DHCR program;
  - (d) debt service for loans must be supportable by the project's annual operating budget;
  - (e) The terms and conditions of construction and/or permanent financing must be economical and reasonable. The interest rates must be no more than the average

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rate level offered in the marketplace and the conditions (i.e. requirements on security, credit enhancement and debt service coverage factors) must be typical and advantageous.

In the case of LIHB projects, DHCR may waive or alter these requirements based upon the applicant's satisfactory demonstration of its necessity or may adopt the standards required by the bond issuer.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.09 Financing Requirements

These financing requirements apply to all funded projects with the exception of projects funded under:

- (i) LIHC/SLIHC/LIHB; and
- (ii) RRAP.

The applicant must provide firm commitments from all sources of loan and equity financing necessary for the project as part of the Contract Document Submission. Documentation of firm financing commitments must include at least the following:

- (i) identification of the applicant and other parties to the proposed financial transaction;
- (ii) evidence that the commitment is legally in effect until a date which is on or after the anticipated date of Contract Closing;
- (iii) evidence that the commitment is not subject to any conditions other than the availability of other proposed project financing and/or the implementation of the project as described in the application submitted to DHCR/HTFC; and
- (iv) interest rate and principal repayment terms.

All financing for the project, including that necessary for capitalization of reserve funds, must be made available on or before the Contract Closing. DHCR/HTFC may request copies of superior notes and mortgages for review and their use must be approved before execution of the documents or such lien occurs. Applicants may decide if they wish to apply for both construction and permanent financing or permanent financing only. Construction financing for private developers will be structured as recourse financing.

HTFC is permitted by statute to subordinate HTF loans to other loans made for eligible uses—i.e., residential. Housing Trust Fund resources may not be subordinated to financing for noneligible (non-residential) property. The underlying principle is that HTF resources may not be used as collateral for an ineligible use under the HTF statute. The most direct solution for a mixed use property is to create a separate condominium for the commercial/non-residential use.

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DHCR is precluded by statute from providing financing for non-residential/commercial space development under both the HTF and HOME programs.

There is an exception however, for HTF projects with non-residential/commercial space which qualifies as a community service facility (CSF). A CSF is a non-residential facility within an HTF-eligible project which provides services to the low-income residents of the neighborhood/area in which the project is located. Up to 10% of the HTF residential award amount may be used to finance costs associated with development of the CSF.

Recipients of HTF and HOME funds who plan to develop mixed use properties are advised to secure separate financing for the development of non-residential/commercial space which will not encumber the residential space. Under certain limited circumstances, DHCR will permit a residential project to be encumbered by a mortgage which also finances non-residential/commercial development, provided that the non-residential/commercial space is master leased for the length of the HTFC/HOME regulatory term to an entity controlled by or under common control of the applicant and a payment guarantee acceptable to DHCR to secure the payment of all rent obligations and expenses of the master lessee under the master lease is supplied to DHCR at or prior to the funding of its loan.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.10 Insurance Requirements

The insurance requirements discussed below apply to all funded projects with the following exceptions:

(i) with regard to HDF's Program projects, the insurance requirements set forth here apply only to HDF interim acquisition and construction loans; and the fidelity bond requirement listed below also applies to HDF predevelopment loans; and

(ii) projects financed under the following programs are not required to comply with any of the insurance requirements set forth herein:

- (a) HOME Programs;
- (b) LIHC; and
- (c) RRAP.

Applicants (and their contractors and architects) are required to maintain appropriate insurance coverage during the development of the project as specified below. Binders or certificates for the following insurance policies must be submitted for review no later than three weeks prior to the scheduled date of the Contract Closing.

#### 5. 10.01 Insurance Requirements for Applicants

##### Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than \$1,000,000 for each occurrence (homesteading projects should obtain a \$1,000,000 "umbrella" liability policy);
- contractual coverage;
- DHCR/HTFC to be named as additional insured;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage;

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- single family HTF homesteading projects are required to obtain not less than \$300,000 in liability insurance

#### Property Insurance

- monetary limits commensurate with the project's replacement value;
- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage
- Builder's Risk Form - All Risk Coverage

#### Automobile Liability Insurance

##### Liability:

- to cover vehicles owned and operated by the applicant;
- monetary limits of not less than \$1,000,000;
- coverage for owned (if applicable), hired and non-owned vehicles;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

#### Blanket Position Fidelity Dishonesty Bond

- amount of coverage equal to the amount of the largest anticipated disbursement;
- DHCR/HTFC as sole loss payee/obligee;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

#### Workers' Compensation and Disability Benefits Insurance

- Must be provided by the employer for all employees performing work related to the project.

Title Insurance

- insuring DHCR/HTFC's interest as mortgagee in the maximum amount of the DHCR/HTFC financing to be provided;
- required for all projects in which a mortgage securing the DHCR/HTFC financing is required;
- property description must match a survey certified to DHCR/HTFC, the applicant and the title insurance company (survey must plot the proposed project and all existing easements); and
- an insurance binder must be delivered at closing insuring DHCR/HTFC's interest in the property, free and clear of all liens, encumbrances and restrictions except as may have been previously approved.

5.10.02 Insurance Requirements for Builders Under Direct Contract with Applicants

Liability Insurance

Comprehensive General Liability:

- monetary limits of not less than \$1,000,000 for each occurrence;
- contractual coverage;
- applicant to be named as additional insured;
- DHCR/HTFC to be named as additional insured;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Builder's Risk Insurance

- monetary limit to cover cash value of completed work on the project;
- DHCR/HTFC as mortgagee/loss payee (as applicable);
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Automobile Liability Insurance

Liability:

- coverage of owned (if applicable), hired and non-owned vehicles;
- monetary limits of not less than \$1,000,000;
- 30 days prior written notice to DHCR/HTFC of cancellation, non-renewal, or change in coverage

Workers' Compensation and Disability Benefits Insurance

- Must be provided for all employees performing work related to the project.

Performance and Payment Bond(s)

- coverage for 100% of value of construction contract;
- applicant and DHCR/HTFC as obligees/loss payees.

5.10.03 Project Architect's Insurance

DHCR/HTFC recommends that applicants require their project architects to meet the applicable insurance coverage parameters specified below, depending upon the dollar amount of the project construction costs:

- (i) for projects with construction costs of less than \$750,000, no professional liability insurance is required;
- (ii) for projects with construction costs of at least \$750,000, but less than \$2,500,000, a minimum of \$1,000,000 professional liability insurance should be required; and
- (iii) for projects with construction costs of \$2,500,000 or more, a minimum professional liability insurance coverage of one-half the construction costs should be required.

Coverage should extend from the date of the Owner/Architect Agreement to one year after the substantial completion of the project. If a project architect does not carry professional liability insurance, project professional liability insurance coverage may be carried in lieu of blanket coverage.

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The permanent lender on HDF Program projects must certify that architect's liability insurance is an eligible expense.

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project. Any anticipated tax exemptions or abatements should be documented as outlined in Section 5.06(I)(iii). At the time of Contract Document Submission a signed payment-in-lieu of tax agreement must be submitted in support of this operating budget expense.

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Section:       5.0     DEVELOPMENT REQUIREMENTS  
Sub Section   5.11    Real Property Tax Exemption

Applicants are encouraged to pursue tax exemptions or abatements with local municipalities for all or a portion of the project; particularly the benefits available under Section 581-A of the NYS Real Property Tax Law. This tax provision provides that affordable housing be assessed on the basis of the income approach for determining value. Applicants who pursue tax exemptions or abatement may receive additional points in the rating and ranking of their application(s) if tax exemptions or abatements have been obtained and documented.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.12 Professional Service Contract Requirements

These requirements apply to all funded projects with the exception of those funded under:

- (i) LIHC;
- (ii) RRAP; and
- (iii) projects funded from the HDF Program for which DHCR is not the lead review agency.

Applicants must comply with the provisions of this Section when selecting project architects, engineers, attorneys, construction managers, housing consultants, managing agents, or other professionals to provide all or a portion of the professional services required to develop a project. Professionals should be selected based on their professional and technical competence, relevant experience, knowledge of local laws, regulations and codes, price, and capacity to provide services in a timely manner. Formal bids are not required when selecting contractors for professional services; however, informal bids are required from at least three-to-four firms or individuals. The lowest, qualified bidder should be selected, or a detailed explanation of the reasons for not selecting the lowest qualified bidder must be provided.

DHCR/HTFC encourages applicants to utilize the services of M/WBEs in the performance of contracts. Please see Section 4.00 for a discussion of M/WBE requirements, and for details on how to obtain a M/WBE Directory.

In the event of inconsistencies between this Section and the federal HOME regulations, the HOME regulations shall apply.

#### 5.12.01 Selection of an Architect/Engineer/Construction Manager

All agreements between applicants and project architects or engineers must reflect a fixed fee compensation for all services required by DHCR/HTFC. The fixed fee should be structured so that payment is tied to successful completion of the various phases of work proposed (i.e., preliminary design, bid design, construction documents, etc.). Applicants should make OCD's Design Handbook available to the project architect as early as possible to ensure that the cost of services reflect the

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documentation required by DHCR/HTFC. All Owner/Architect agreements must be signed by the architect and submitted to DHCR/HTFC for review. Agreements that are already signed by both the architect and owner may require amendments if not acceptable to DHCR/HTFC. The following basic services and terms should be included in the Owner/Architect Agreement:

- (i) for rehabilitation projects, measured drawings showing all pertinent existing conditions of the building;
- (ii) for projects with construction costs greater than \$250,000, full-size as-built drawings and CD Roms(3) indicating the actual construction work performed on the project, including all change orders, addenda and modifications to the bid documents;
- (iii) detailed cost estimates for the UF application and bid documents; and
- (iv) no interest payable for unpaid balances.

The cost for any additional services required from the project architect must also be included in the fixed fee. Additional services may include the following:

- (i) providing structural, mechanical, electrical and/or landscaping services beyond basic services;
- (ii) providing site surveys, soil tests, and asbestos reports and tests;
- (iii) preparing asbestos removal plans and specification documents; and
- (iv) providing services for the project owner's construction manager.

All reimbursable costs, including printing, travel, meetings, and fees for securing governmental approvals should be separately itemized and included in the fixed-fee price. Fees may be charged on an hourly basis, provided that a maximum upset price is given

If the project architect has an identity of interest with the applicant/owner, or builder, the architect cannot perform construction monitoring services.

The percentage of fee by phase will be reviewed for compliance with the following schedule:

- Preliminary Phase < 15% Fee
- Design Development Phase < 20% Fee
- Construction Documents < 40% Fee
- Bidding/Negotiating < 5% Fee

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- Construction Monitoring > 20% Fee
- Total Fee - 100% Fee (Including submission of As Built drawings)

It is the project sponsor's and architect's responsibility to ensure that the Agreement has the proper dates, names, project address(es), project description and authorized signatures.

The use of AIA Document B141 (current edition) is required by DHCR/HTFC for all Owner/Architect agreements. If an architect's or engineer's contract fee is over \$25,000, the applicant must submit a M/WBE Utilization Plan prior to the contract execution.

The project sponsor and architect will be required to certify to DHCR/HTFC that care was taken to ensure compliance with all of the Design Handbook's requirements.

Please Note: Construction cost overruns will not be the responsibility of DHCR or HTFC.

#### 5.12.02 Selection of a Construction Manager

Applicants which propose to act as their own General Contractor or plan to utilize a construction manager in lieu of bidding for a general contractor must document that they have:

- (i) a minimum of five years of successful experience administering construction;
- (ii) the in-house staff capacity and experience to negotiate and direct the functions of both the project architect, construction, and/or construction manager; and,
- (iii) the financial capacity to provide a 100% performance and payment bond for the entire construction cost.

The applicant must document a proposed construction manager's ability and experience in managing the type and size of project proposed by demonstrating the following:

- (i) a minimum of five years experience as a construction management firm;
- (ii) three years of management experience in the field of residential construction; and,
- (iii) two years of experience with not-for-profit organizations and/or governmental agencies.

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The construction management firm must also document and certify that there is no identity of interest between the firm and the applicant/owner and/or the project architect.

The owner/construction manager contract must detail the responsibilities to be performed and the fee charged for each major activity, as well as due dates for all deliverables. Projects using a construction manager may not include builders overhead or profit in the development budget nor have a general contractor. The functions detailed in the owner/construction manager contract must not duplicate any of the functions of the project architect.

A fixed price, limited to five percent of the estimated construction costs, is the generally accepted construction manager's fee. Applicants which plan to use a construction manager must ensure that the project architect prepares bid documents which allow for trade work to be bid separately. The construction manager may not act as a subcontractor on the project. The applicant must bid all work prior to the Contract Closing and must guarantee the total construction cost of the project. If the project employs a construction manager, DHCR/HTFC will not recognize the cost of a general contractor and no builder's profit or overhead may be requested.

AIA Document B801 (current edition) for owner/construction manager agreement is required unless justification is submitted for not doing so, and is approved in advance by DHCR/HTFC. Applicants must provide the owner/construction manager agreement with detailed cost estimates with the UF Application and Bid Document Submissions. If the contract amount for the construction manager fee is over \$25,000, the applicant must submit a M/WBE Utilization Plan prior to execution of the contract.

5.12.03      Selection of a Housing Consultant

The applicant's agreement with a housing consultant to provide services related to the project's planning, marketing, housing management, and/or development must reflect a fixed fee arrangement based upon defined services to be provided by the consultant. Payment should be structured into phased progress payments associated with the percentage of work completed for each phase (i.e., planning phase, marketing phase, construction phase, occupancy phase, etc.). OCD's project manager will review all consultant agreements for reasonableness of costs and clarity of the scope of work to be performed. DHCR/HTFC reserves the right to require an amendment to the agreement before funding is provided.

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For those projects receiving a developer's fee, the housing consultant fee will be deemed to be a part of the developer's fee unless the applicant can demonstrate that the duties of the housing consultant are above and beyond those normally performed by the developer.

5.12.04      Selection of Attorneys

The applicant should identify the scope of legal services to be provided throughout the development of the project, and request that the attorney prepare and submit an agreement specifying the legal services to be performed at a fixed fee compensation. The following legal services may be included in the applicant/attorney agreement:

- (i) preparation and review of all applicant agreements;
- (ii) representation of the applicant at all closings;
- (iii) title examination and curing of title defects; and
- (iv) preparation of legal descriptions of property, and recording of title papers.

If the contract amount for the Attorney's fee exceeds \$100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract.

5.12.05      Selection of a Builder

5.12.05.a    Construction Contracting Requirements

DHCR/HTFC has two tracks for the contracting of construction work for its low-income housing projects. At the time of application funding, a project sponsor must identify which method of securing a construction contractor will be utilized. The first track is for a project sponsor seeking construction bids through a publicized, competitive process. The second track is for a project sponsor to identify and select a builder at the time of application submission. Under either track, should a project sponsor elect to produce housing through the use of a manufactured housing company, the purchase contract and supervision of such housing must be done as a sub-contract to the general contractor's/construction manager's contract. The requirements for both tracks are enumerated in the sections below.

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#### 1. Publicized, Competitive Bidding

Project sponsors electing to publicly and competitively bid the construction portion of their low-income housing projects must indicate this intent at the time of application submission.

This type of contractor selection will require the project sponsor to openly advertise in a well-known local newspaper for a period of four days and have a minimum bidding period of four weeks before bids are closed. MBE/WBE outreach requirements will be part of the bidding process. HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance are subject to Federal Labor Standards (Davis-Bacon Related Acts) regulatory requirements. The labor standards procedures for competitive bidding must be followed for these projects. Upon receipt of bids, the project sponsor and architect must notify DHCR/HTFC of the bidding results and the name of the selected lowest qualified bidder. The contractor's schedule of values must also be submitted to DHCR/HTFC at that time. DHCR/HTFC reserves the right to rebid a project or to negotiate a reduction in the scope of work, if all bids received are higher than the project's estimated total construction cost.

Since no contractor is available at the time of application submission, the project sponsor must ensure that the terms of the Owner/Architect Agreement include services for a detailed construction cost estimate prepared by a cost estimator based upon the preliminary drawings and specifications.

#### 2. Pre-Selected Contractor/Construction Manager Requirements

Project sponsors who elect to include a construction manager (CM)/contractor with their application for funding will be required to indicate the selection criteria that was used to hire the CM/contractor, the CM/contractor's previous professional experience in producing low-income housing units, the role the CM/contractor will play during the development and construction phases of the project and that the CM/contractor or project sponsor is capable of obtaining a 100% Payment and Performance Bond for the entire construction project.

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In addition, a pre-selected contractor will be responsible for providing a detailed cost estimate of the construction work based upon the preliminary drawings and specifications with the project sponsor's application submission. If the Davis-Bacon Related Acts apply to a project the Federal Labor Standards clauses for the relevant federal program and the most current wage rate for the location and type of construction must be incorporated into the contractor/construction manager agreement. The construction cost estimate must include general requirements (3% to 6% of the labor and material costs); builder's overhead (up to 4% of construction amount allowed); and builder's profit (up to 10% of the construction amount allowed). General requirements that are special conditions such as security, impact fees, etc. to a project should be detailed on a separate itemized listing.

At the time of application submission, the project sponsor must provide a guaranteed price for the total development costs of the project. Any construction cost overruns incurred during the development and construction phases of the project shall be borne by the project sponsor and shall be paid for from the developer's fee amount. Using a pre-selected contractor permits the project sponsor to "by-pass" the Bid Document Submission stage; thus creating only one set of submission requirements, the Contract Documents.

All MBE/WBE requirements applicable to the pre-selected contractor must be documented through the contractor's selection process for sub-contractors and suppliers.

Applicants must maintain documentation of bid procedures, including invitations to bid, bid tabulations, M/WBE solicitation procedures, and written justification should a low bidder not be selected.

References should be carefully checked to ensure that the bidders and the selected builder have prior experience with comparable size projects, the financial capacity to complete the work, including sufficient working capital to cover carrying charges, and have satisfied any letter of credit/bond premium/retainage requirements.

The standard AIA A101 Owner/Contractor Agreement Form (current edition) should be used to execute construction contracts.

It is advised that per-unit costs be included in the bid documents in the event that unforeseen problems occur. For multi-site construction projects, the bid documents should also provide clear instructions for the builder to provide bids on an individual site basis.

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All projects must provide a summary bid tabulation prior to the execution of Contract Documents to be reviewed for cost reasonableness. The selected builder must submit a detailed cost estimate/trade payment breakdown at the time of Contract Document Submission.

Any applicant which proposes to act as the builder or general contractor on its own projects must show successful prior experience, bear the responsibilities, and meet the requirements of builders or contractors.

Municipal applicants may be required to abide by the Wicks Law, which requires separate bidding and contracts for a minimum of four major construction trades. Non-municipal applicants may bid project work using a single builder. If the contract between the builder and the applicant is for an amount greater than \$100,000, the applicant must submit an M/WBE Utilization Plan prior to execution of the contract, or within 90 days of the date assigned for the return of the HTFC commitment letter, whichever is sooner.

Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: "...labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

- (i) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or
- (ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

Note: If two or more subcontractors have common ownership, they are considered one subcontractor.

**5.12.06      Selection of a Managing Agent**

Owners which propose to utilize a managing agent must document that the agent holds a New York State real estate broker's license. Both owners which propose to utilize a managing agent and those which are planning to manage the project with their own staff must:

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- (i) document that any person authorized to receive, handle or disburse any monies of the project, is covered by a blanket position fidelity bond which is issued by the Superintendent of Insurance of the State of New York, which names the owner as obligee, and an amount of coverage equal to three months rent role and all project reserve funds;
- (ii) document their experience in managing similar low-income housing projects of the same size and complexity;
- (iii) maintain an office or place of business within the State of New York at no cost to the project owner;
- (iv) establish a monthly fee if a managing agent is to be used for services set forth in the Management Plan;
- (v) provide an organization plan setting forth lines of responsibilities and authority among those persons assigned to the housing project, including the owner's staff;
- (vi) provide an operational plan that details the staff member(s) or agent's functions with regards to marketing, physical maintenance, financial administration, resident relations and general administration; and
- (vii) provide an affirmative action plan to ensure that the staff member(s) or agent recruits, selects and retains employees in such a manner as to ensure equal employment opportunities and that the agent solicits bids from minority and women-owned business enterprises.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.13 Private Developer Requirements

The following requirements apply only to private developers of projects funded under:

- (i) HTF; and,
- (ii) LIHC.

Please see Section 2.01 for a discussion of the private developer minimum equity contribution requirement specific to the HTF Program.

#### 5.13.01 Guarantee of Construction Contract Costs

Private developers will be required to adhere to the award amount in their Funding Commitment (see Sub-Section 3.02.08). Any additional costs or cost increases must be paid for by the developer.

#### 5.13.02 Construction Loans Made to Private Developers

For projects administered by HTFC, interest, legal closing, and construction monitoring fees will be charged when construction loans are provided to private developers. Construction loan interest will generally be six percent simple interest on the outstanding loan principal. It is calculated as follows:

- (i) the principal amount of the loan is multiplied by 0.5 to arrive at the average outstanding balance;
- (ii) three months is added to the number of months in the construction period (for cost certification and HTFC approval of conversion of construction loan to permanent loan) and the total then is divided by 12;
- (iii) the product of step 2, is multiplied by 0.06 (six percent); and
- (iv) the product of step 1 is multiplied by the product of step 3 to produce total construction period interest.

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A construction loan closing fee, generally \$2,500, will be charged to reimburse DHCR/HTFC legal expenses. A construction inspection fee, generally \$15,000, (\* Exceptions will be made for small projects whose development costs are less than \$1 million and whose developers are not for profit organizations). Fees may be increased for complicated projects, such as those with environmental or historic preservation issues. Such fees will be specified in the HTFC commitment letter and will be charged to reimburse a portion of such cost to HTFC. Construction interest, closing cost and inspection fees will be paid at the time of construction loan closing.

HTFC may reduce or waive some or all of the above charges if it decides that imposition of such charges would significantly impact either project feasibility or the affordability of project rents.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.14 Persons with Special Needs Requirements

#### 5.14 Persons with Special Needs Requirements

A project is considered a project for persons with special needs if it targets 15% to 24% of its total units to one, or more, of the following populations and includes a supportive service plan where off-site services are to be delivered by either an independent service provider or by the housing sponsor:

- Persons with AIDS/HIV Related Illness;
- Persons and Families who are in long term recovery from Alcohol/Substance abuse;
- Persons with Psychiatric Disabilities;
- Persons and Families who are Homeless Persons and Families including Youth aging out of foster care and Veterans who are Homeless;
- Persons with Physical Disabilities;
- Persons who are Victims of Domestic Violence;
- Persons with Mental Retardation/Developmentally Disabled, and Persons who are Frail Elderly

If the project is also an elderly project, an aging-in-place plan is required.

Supportive housing shall mean projects which give preference in tenant selection to persons with special needs for at least 25 percent of the LIHC-assisted units. To be considered supportive housing a project must meet all of the aforementioned persons with special needs criteria and comply with the following:

- (1) The applicant must document the need for housing for the targeted population within the primary market area;
- (2) The applicant must ensure the delivery of appropriate services, for which a documented need exists, to the targeted population as evidenced in a comprehensive service plan as evidenced by a commitment of funding for services or a viable plan for funding services and an agreement in writing with an experienced service provider;
- (3) The applicant must include a transportation plan to ensure access to necessary services;

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- (4) The applicant must have funding in place or identify a viable plan for the funding of appropriate services;
- (5) The applicant must include provision for an ongoing rental subsidy or other form of subsidy which will be available to ensure that rents paid by the targeted population remain affordable; and
- (6) The applicant must identify, and have a written agreement with, a public agency or experienced service provider that will refer eligible persons and families for the targeted units. The comprehensive service plan requirement for a written agreement with an experienced service provider may be satisfied by utilizing the DHCR/HTFC model Housing/Service Agreement which can be found on the DHCR website at <http://www.nysdhcr.gov/Forms/SpecialNeeds/index.htm>. The written agreement requirement may also be satisfied by using a document which incorporates all of the terms of the model Housing /Service Agreement.

5.14.01      Aging in Place Plan

Applications proposing to serve persons who are elderly must submit a plan to address the aging in place of elderly tenants. An elderly project is defined as one that excludes non-elderly persons based on age, and as prescribed by the Federal Fair Housing Act and the New York State Human Rights Law, Section 296 of the Executive Law.

This plan must identify the following:

- project staff functions related to tenant requests for information/assistance;
- what services are anticipated to be requested/required by elderly tenants;
- means for helping tenants access services which they may request/require;
- any community organizations that will address tenants' service needs; and,
- the design features which will be included to accommodate tenants' aging.

5.14.02      Identification of Elderly Project Structure

Applicants proposing projects serving the elderly must identify whether their project will be structured as a 55 or older project or as 62 or older project:

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- A 55 or older project is a project in which at least 80% of the occupied units are occupied by at least one person who is 55 years of age or older.
- A 62 or older project is a project in which ALL occupants are persons 62 years of age or older.

Under both structures, the projects must be intended and operated as an elderly housing project. For further details, reference the Fair Housing Law exemption found at 24CFR 100.

In HTFC projects which are jointly financed by the US Department of Agriculture Rural Housing Services, an elderly project can only be occupied by persons 62 or older, or by handicapped persons of any age.

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Section: 5.0 DEVELOPMENT REQUIREMENTS

Sub Section 5.15 Federal Labor Standards Requirements

#### 5.15 Federal Labor Standards Regulatory Requirements (Davis-Bacon Related Acts)

Federal Labor Standards regulatory requirements (Davis-Bacon Related Acts) are enforced for certain Federal programs when projects meet specific threshold requirements such as HOME funded projects with 12 or more units or projects with 9 or more units of project based assistance.

The Federal Labor Standards regulatory requirements (described in Title 29 CFR Parts 1,3,5, 6,7) are comprised of the Davis-Bacon Related Acts, (DBRA); Contract Work Hours and Safety Standards Act (CHHSSA); the Copeland Act (Anti-Kickback Act); and the Fair Labor Standards Act (FLSA).

The DHCR Contracting Officer enforces the Federal Labor Standards requirements and rules promulgated by the HUD Office of Labor Relations. These requirements include providing initial information on wage rates, making determinations of appropriate rate schedules, locking in wage rates, and serving as a the depository for required federal payroll filings throughout the project.

- A. Project Owner requirements prior to executing an owner-general contractor agreement:
  - 1. Contact the DHCR Contracting Officer for a determination regarding application of appropriate wage rate schedule (residential or building) to the structures on the project.
  - 2. Review contractor eligibility (debarment status) for federal contracting prior to entering into a federally assisted construction contract subject to these requirements. Federal funds will not be paid for work performed by debarred contractors and sub-contractors.
  
- B. General Contractors/Construction Managers are required to:
  - 1. Lock in wage rates and file with the DHCR Contracting Officer copies of either: Documentation identifying: ‘start of construction’ date; copy of an owner –general contractor agreement containing both the federal program’s labor standards clause, and the most current wage rate for the schedule and location of construction; or variances or other similar communications from the U.S. Department of Labor.

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2. Ensure that all bid documents, contracts and subcontracts contain applicable Federal labor standards clauses and Davis-Bacon wage decision. No contract is awarded to an ineligible subcontractor, (e.g., debarred) for federally assisted work.
3. Post the applicable wage decision (or alternative Project Wage Sheet, HUD form 4720) and Department of Labor 'Notice to Employees' (WH-1321) at the job site at a location accessible to all employees. (Pre-printed copies of the WH-1321 with DHCR Contracting Officer contact information will be provided to each project.)
4. Provide appropriate staffing, capable of: reviewing weekly certified payroll reports and related documentation from employees and sub-contractors; identifying discrepancies and/or violations; ensuring that any needed corrections are made promptly; making discrepancies known to the DHCR Contracting Officer along with payroll submissions; and cooperating with on-site inspections.
5. Submit original payroll reports to the DHCR Contracting Officer promptly after each construction draw. This must be accompanied by a summary sheet listing all active subcontractors on site, the name of the project and the project SHARS number.

If any skilled trades or laborer rates are not listed on the published wage determination, but required for the project, file a HUD 4230a form with the DHCR Contracting Officer requesting Department of Labor approval of a wage rate for the missing wage classifications.

Any outstanding federal labor standards issues which remain unresolved at the end of the construction period may result in Federal funds not being released at finance closing. Contractors with U.S. Department of Labor penalties from previous Federal projects may have funds withheld from the current project's funding.