

New York State  
Housing trust Fund Corporation  
38-40 State Street / Hampton Plaza  
Albany, NY 12207

# Legal Documents Manual



January 2008

Eliot Spitzer, Governor  
Deborah VanAmerongen, Chairperson  
Gary R. Connor, Counsel

THE DOCUMENTS IN THIS MANUAL ARE SAMPLES FOR REFERENCE ONLY. PLEASE DO NOT EXECUTE ANY OF THESE DOCUMENTS. THESE DOCUMENTS ARE SUBJECT TO CHANGE OR AMENDMENT AT ANY TIME WITHOUT NOTICE TO YOU.

NEW YORK STATE HOUSING TRUST FUND CORPORATION

LOW-INCOME HOUSING TRUST FUND PROGRAM  
and  
HOME INVESTMENT PARTNERSHIPS PROGRAM

LEGAL DOCUMENTS MANUAL

TABLE OF CONTENTS

<u>INDEX NO.</u>		<u>PAGE</u>
I	REGULATORY AGREEMENT .....	1
II	PROMISSORY NOTE .....	25
III	MORTGAGE AND SECURITY AGREEMENT .....	32
IV	CONSTRUCTION LOAN AGREEMENT .....	47
V	CONTRACTOR ASSURANCES AGREEMENT.....	65
VI	SUBORDINATION AGREEMENT .....	75
VII	NOTICE OF DEFAULT AGREEMENT .....	83
VIII	HOME DEED RESTRICTION .....	91
IX	HOME MATCH ADDENDUM.....	93
X	TECHNICAL ASSISTANCE AGREEMENT .....	97
XI	INSURANCE REQUIREMENTS .....	100
XII	COUNSEL’S OPINION LETTER.....	111
XIII	DEPOSIT ACCOUNT CONTROL AGREEMENT .....	115
XIV	CORPORATE RESOLUTION.....	124
XV	LIMITED PARTNERSHIP/ LIMITED LIABILITY CORPORATION AGREEMENT .....	126
XVI	CLOSING REQUIREMENT CHECKLISTS.....	128

# INDEX I

## REGULATORY AGREEMENT

Projects which are funded by the Low-Income Housing Trust Fund and Homes for Working Families programs must be operated in accordance with Article XVIII of the Private Housing Finance Law. Projects which are funded by the HOME Investment Partnerships Program must be operated in accordance with Subtitle A of Title II of the National Affordable Housing Act of 1990 (42 U.S.C. 12725 and 24 CFR Part 92).

The Regulatory Agreement is a contract between the Awardee and the Housing Trust Fund Corporation (“HTFC”) which obligates the Awardee to operate the premises in accordance with the applicable statute and the rules, regulations and policies of HTFC. The agreement is in effect for a fixed number of years and is binding on any subsequent owner of the property. Occupancy, rents and resale of the project are restricted during the regulatory period.

The Regulatory Agreement limits an Awardee’s return on any equity contributed to the project. In the case of HOME and HTF projects, if any excess income remains after payment of all project expenses, a return of 6% per annum on HTFC recognized equity is permitted to be distributed to an Awardee’s principals or investors. In the case of Homes for Working Families awards, if cash flow remains after payment of all the project expenses, it is split with 50 % payable to HTFC as debt service and 50 % payable to the project owner.

The Regulatory Agreement is recorded in the County Clerk’s office in the county where the project is located.

---

---

HOUSING TRUST FUND CORPORATION

and

[ Borrower ]

and

[ Fee Holder (if applicable) ]

---

[HOUSING TRUST FUND or HOME or HOMES FOR WORKING FAMILIES] PROGRAM

---

REGULATORY AGREEMENT

---

DATED AS OF [ date ]

This instrument affects real and personal property situated in the State of New York, Section [\_\_\_\_], Block [\_\_\_\_], Lot [\_\_\_\_], County of [\_\_\_\_], [ City/Town/Village ] of [\_\_\_\_], commonly known as [ project address ].

---

---

RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. [\_\_\_\_]

TABLE OF CONTENTS

SECTION I .....

[Insert in HOME Projects]

- 1. Authorization .....
- 2. Term .....
- 3. Federal Equal Employment Opportunity .....
- 4. Reversion of Funds .....

[Insert in HTF/HWF Projects]

- 1. Authorization .....
- 2. Term .....
- 3. Preference in tenant selection .....

SECTION II .....

- 1. Award.....
- 2. Responsibilities for and Regulation of Project .....
- 3. Reserve Accounts.....
- 4. Limitation of Profits and Return on Equity .....
- 5. Occupant Selection .....
- 6. Unit [ Rents ] / [ Sales Prices, Monthly Carrying Charges ] and Resale Restrictions .....
- 7. Management and Operating Budget.....
- 8. Assignment .....
- 9. Agreement to Run With the Land; Recording .....
- 9A. Other Mortgages .....
- 10. Indemnification .....
- 11. Non-Liability.....
- 12. Equal Opportunity.....
- 13. Covenants [and Certification ]of Borrower .....
- 14. Records and Reports; Inspections .....
- 15. Contracts .....
- 16. Modification.....
- 17. No Waiver .....
- 18. Notice of Investigation or Default.....
- 19. Default.....
- 20. Dissolution, Liquidation or Termination .....
- 21. Exhibits .....
- 22. Miscellaneous .....

HOUSING TRUST FUND CORPORATION  
REGULATORY AGREEMENT

AGREEMENT made as of [ closing date ], between HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), and [ Borrower ], a [ Borrower entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [ Borrower address ] (“Borrower”)

[If there is a Nominee titleholder]

, and [ Nominee titleholder ] a [ Nominee entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [ Nominee titleholder address ] (“Fee Holder”).

WITNESSETH:

NOW THEREFORE, the parties agree that the Property and the Project (as defined below) containing [ Number of Units (# of units) ] dwelling units of housing for persons of low income will be developed and operated in accordance with the following terms and conditions:

SECTION I

[If this is a HOME Project]

1. Authorization

Pursuant to Subtitle A of Title II of the National Affordable Housing Act of 1990, as may be amended from time to time (“Statute”) and the rules and regulations promulgated thereunder (24 CFR Part 92) as may be amended from time to time (“Regulations”), HTFC is authorized to enter into contracts with eligible applicants to provide grants and loans.

2. Term

The term of this Agreement (“Term”) shall commence as of this date and shall expire [ term length ] ([ numeral ]) years after the final disbursement of the award or upon satisfaction of all indebtedness required to be repaid, whichever occurs later, but no earlier than the end of the period of affordability specified in the Regulations.

[If this is a HOME Project (continued)]

3. Administrative and Project Requirements

Borrower shall, during the Term of this Agreement, a) comply with all federal laws and regulations described in 24 CFR Part 92, including, if applicable, the provisions regarding equal opportunity (24 CFR §92.350), fair housing (24 CFR §92.351), environmental review (24 CFR §92.352) displacement, relocation and acquisition (24 CFR §92.353), debarment, suspension and drug free work place (24 CFR §5.105), labor (24 CFR §92.354), lead-based pain (24 CFR §92.355), conflict of interest (24 CFR § 92.356(f)) and flood insurance (24 CFR §92.55); b) expend HOME Funds provided pursuant to this Agreement only in accordance with the requirements of 24 CFR §92.205-214 relating to eligible activities and costs; c) comply with the administrative requirements set forth in 24 CFR §92.505 and with the project requirements set forth in 24 CFR §92.250-258, insure that any lease for rental housing funded pursuant to this Agreement is approved by HTFC (24 CFR §92.253) and that the housing is in compliance with applicable federal housing standards (24 CFR §92.3251) and applicable State and local building codes.

4. Federal Equal Employment Opportunity

Borrower agrees that it will, and will cause all its contractors and subcontractors engaged upon the Project, to comply with the requirements of the Section 3 Clause (12 USC §1701-u), the Federal Equal Opportunity Clause (24 CFR §92.350) and the provisions of Executive Order 11246.

5. Reversion of Funds

(a) If the Project is terminated prior to completion, Borrower shall repay all HOME Funds to HTFC as provided in 24 CFR §92.205 (e), unless otherwise approved by HTFC as provided in the Regulations for project-specific assistance to community housing development organizations (24 CFR §92.301).

(b) Borrower shall, upon the termination of this Agreement, transfer to HTFC any funds in its possession at the time of termination which were provided pursuant to this Agreement and any accounts receivable attributable to any funds provided pursuant to this Agreement. Borrower shall also remit any interest or other income deriving from any funds upon HTFC's demand for such interest or other income.

[If this is a HTF/HWF Project]

1. Authorization

Pursuant to Article XVIII of the Private Housing Finance Law as may be amended from time to time (“Statute”) and the rules and regulations of HTFC (9 NYCRR 1900 et seq) as may be amended from time to time (“Regulations”), HTFC is authorized to enter into contracts with eligible applicants to provide housing for persons of low income.

2. Term

The term of this Agreement (“Term”) shall commence as of this date and shall expire [ term length ] ([ numeral ]) years after the final disbursement of the award or upon satisfaction of all indebtedness required to be repaid, whichever occurs later.

3. Preference in tenant selection

Preference in selection of occupants:

(a) shall be given to persons or families with the lowest incomes possible, given the income requirements of the Project; and

(b) shall also be given to persons or families whose current housing fails to meet basic standards of health and safety and who have little prospect of improving the condition of their housing except by residing in a project receiving payments, grants or loans under the Statute.

## SECTION II

1. Award

HTFC has agreed to make an award in the maximum amount of [ award amount ] DOLLARS (\$ [ numeral ]) in the form of a loan (“Loan”), for a certain project as more fully described in the attached Exhibit A (“Project”) with respect to land and improvements (collectively, “Property”) located in the [ City/Town/Village ] of [ \_\_\_\_\_ ] in the County of [ \_\_\_\_\_ ], which Property is more fully described in the attached Schedule A.

2. Responsibilities for and Regulation of Project

During the Term hereof, Borrower shall operate and maintain the Project in compliance with applicable federal, state and local laws, rules, regulations and any applicable agreements relating to the Project executed by Borrower, including but not limited to:

- (a) the Statute;
- (b) the Regulations;
- (c) exhibits to this Agreement; and
- (d) policies and procedures of HTFC, as amended from time to time (“Policies and

Procedures of HTFC”).

3. Reserve Accounts

[If this is a HTF/HOME/HWF Project]

Borrower shall establish an Operating Reserve Account and a Replacement Reserve Account in accordance with the Policies and Procedures of HTFC. Withdrawals from these and other accounts may only be made with the approval of HTFC.

(a) Borrower shall annually deposit into the Replacement Reserve Account an amount equal to \$ [ annual deposit amount ]. Such deposits shall be made monthly in amounts equal to one-twelfth the annual amount.

[If this is a HTF/HOME Project]

(b) Borrower shall annually budget and deposit into the Operating Reserve Account an amount not less than 3% of the annually budgeted gross rent plus any Excess Income (as defined below) remaining after payments are made pursuant to Paragraph 4. Such deposits shall be made monthly in amounts equal to one-twelfth the annual amount. Monthly deposits may be reduced or suspended any month the balance of the Operating Reserve Account equals 50% of the annually budgeted gross rent.

[If this is a HWF Project]

(b) Annual contributions to the Operating Reserve Account are not required.

[If this is a HTF/HOME/HWF Project]

(c) If deposits to the Operating Reserve Account or the Replacement Reserve Account are reduced or suspended in any month, Borrower shall utilize such funds in accordance with the Policies and Procedures of HTFC.

[If the Operating Reserve Account is to be capitalized in a HTF/HOME/HWF Project]

(d) Borrower shall capitalize the Operating Reserve Account in an amount not less than \$ [ capitalization amount ] on or before the date of this Agreement.

[If the Replacement Reserve Account is to be capitalized in a HTF/HOME/HWF Project]

(e) Borrower shall capitalize the Replacement Reserve Account in an amount not less than \$ [ capitalization amount ] on or before the date of this Agreement.

[If a project specific reserve account is to be capitalized in a HTF/HOME/HWF Project]

(f) Borrower shall capitalize the [ type of reserve account ] Reserve Account in an amount not less than \$ [ capitalization amount ] on or before the date of this agreement.

[If this is a HTF/HOME/HWF Project]

(g) Pursuant to the terms of a mortgage and security agreement with Borrower executed of even date herewith, HTFC has perfected a security interest in the Operating Reserve Account and the Replacement Reserve Account. In the event this Agreement terminates prematurely for any reason, any funds deposited in the Operating Reserve Account and the Replacement Reserve Account will be recaptured by HTFC.

[If this is a Rural Development Project]

Borrower shall establish a Project Reserve Account in accordance with the policies and procedures of the USDA, Rural Development. Withdrawals from these and other accounts may only be made with the approval of USDA, Rural Development.

(a) Borrower shall annually budget and deposit into the Project Reserve Account an amount no less than that required by USDA, Rural Development, plus any Excess Income remaining after payments are made pursuant to Paragraph 4.

(b) If deposits to the Project Reserve Account are reduced or suspended in any month, Borrower shall utilize such funds in accordance with the Policies and Procedures of HTFC.

(c) Borrower shall capitalize the Project Reserve Account in an amount not less than \$ [ capitalization amount ] on or before the date of this Agreement.

4. Limitation of Profits and Return on Equity

The following provisions shall apply to all Projects, except homeownership Projects:

**[If this is a HTF/HOME Project]**

(a) Borrower agrees that all income received from the operation of the Project for each fiscal year shall be used to (i) pay the operating expenses (exclusive of management incentive fees) of the Project for such fiscal year, in accordance with the annual budget approved by HTFC and (ii) make all scheduled reserve account payments in amounts required to maintain such reserve funds at the required levels. Any income for such fiscal year in excess of the amounts required to make the payments described in (i) and (ii) shall be deemed excess income (“Excess Income”) and shall be distributed as provided in Subparagraph (b) below.

(b) At the end of each fiscal year, Borrower shall first, distribute from Excess Income for such fiscal year, if any, any deferred interest owed to HTFC, then current interest owed to HTFC and next any management incentive fees due to Borrower and may, upon the prior approval of HTFC, distribute from any remaining Excess Income for such fiscal year, an amount not exceeding \$ [\_\_\_\_\_] (“Return on Equity”). Any part of the Return on Equity for any fiscal year which is not paid because of insufficient Excess Income for such fiscal year may be paid from Excess Income for the subsequent fiscal year. Any Return on Equity which is not paid in the subsequent fiscal year shall not be recoverable. Borrower shall utilize any Excess Income remaining after payment of HTFC interest and the Return on Equity in accordance with the Policies and Procedures of HTFC. Borrower shall document its determination of Excess Income as a schedule to its annual financial statement as required to be provided to HTFC pursuant to Section 14 of this Agreement.

**[If this is a HWF Project]**

(a) Borrower agrees that all income received from the operation of the Project for each fiscal year shall be used to (i) pay the operating expenses of the Project including debt service on senior mortgages approved by HTFC in an annual amount not to exceed \$ [ **approved debt service amount** ] and (ii) make all scheduled reserve account payments in amounts required to maintain such reserve funds at the required levels. Any income for each fiscal year in excess of the amounts required to make the payments described in (i) and (ii) (“Cash Flow”) shall be used as provided in Subparagraph (b) hereof.

[If this is a HWF Project (continued)]

(b) Fifty percent (50%) of Cash Flow for each fiscal year shall be paid to HTFC to repay the Loan in accordance with the terms of the Note. All payments to parties related to the Borrower, including but not limited to, management incentive fees, debt service on subordinate loans, deferred developer fee loans, and any return on equity shall be paid by Borrower from the remaining fifty percent (50%) of Cash Flow. Borrower shall document its determination of Cash Flow as a schedule to its annual financial statement as required to be provided to HTFC pursuant to Section 14 of this Agreement.

5. Occupant Selection

(a) Borrower shall select occupants based upon the Policies and Procedures of the HTFC and the income eligibility requirements of the approved affordability plan (“Affordability Plan”).

(b) Borrower shall adhere to the terms of the approved marketing plan attached as Exhibit B (“Marketing Plan”) for advertising and selection of eligible occupants.

6. Unit [ Rents ] [ Sales Prices, Monthly Carrying Charges ] and Resale Restrictions

(a) Borrower shall establish initial [ rents ] [ sales prices and monthly carrying charges ] in accordance with the Affordability Plan attached as Exhibit C.

(b) Borrower shall submit to HTFC an annual schedule of [ rents ] [ sales prices and monthly carrying charges ] in such form as required by HTFC, at least three months before the start of each of the Project’s fiscal years for HTFC’s review and approval.

(c) Borrower shall provide in each lease that the protection afforded by the terms of this Agreement will terminate upon the expiration of the Term and shall specify the date of such expiration.

(d) Borrower shall collect surcharges to rents for tenants whose incomes exceed the established limits in accordance with the Statute and the Policies and Procedures of HTFC unless the Project is regulated under the Low Income Housing Credit (“LIHC”) program, in which case said tenants must pay the maximum rent permitted under the LIHC program.

(e) Notwithstanding the above, Borrower agrees that persons who are sixty (60) years of age and older or subject to a disability as defined by law, who reside in rental units in the Project at the end of the Term and who are in compliance with the terms of their leases, shall be permitted to renew said leases for the remainder of their tenancy at rents that will be affordable to

them, except that Borrower may evict said persons for good cause. All leases shall contain a provision that a tenant shall not be evicted except for good cause in accordance with the Statute, Regulations and all applicable laws and rules. Each lease shall provide that the tenant shall not assign, sublet or otherwise permit the occupancy of such unit by persons other than the tenant without the prior written consent of Borrower which may only be granted in accordance with the Policies and Procedures of HTFC.

(f) The Project and all the units therein are subject to the resale restrictions as contained in the Statute and the Regulations.

7. Management and Operating Budget

(a) Borrower shall manage the Project in accordance with the management plan approved by HTFC.

(b) Borrower shall use its best efforts to adhere to the projected budget for operation of the Project approved by HTFC (“Operating Budget”). Borrower shall submit to HTFC an updated Operating Budget at least three months before the start of each of the Project’s fiscal years for HTFC’s review and approval.

(c) Debt service on loans to Borrower from any principal, owner or affiliate of Borrower, developer or sponsor of the Project shall be payable only from project revenues after payment of all operating expenses including other approved mortgage debt service and required reserve payments. Any expense payment to a principal, owner or affiliate of the Borrower, developer or sponsor of the Project must be approved in advance by HTFC.

8. Assignment

Borrower may not assign any right granted to it under this Agreement or delegate any obligation imposed on Borrower herein without the prior written consent of HTFC and any purported assignment or delegation without HTFC’s prior written consent shall be void. Borrower will not transfer the controlling interest of Borrower or change any

[If Borrower is a corporation]	officer
[If Borrower is a limited partnership]	general partner
[If Borrower is a limited liability company]	non-investor member

or the controlling interest of any

[If Borrower is a limited partnership]	general partner
[If Borrower is a limited liability company]	non-investor member

without the prior approval of HTFC. For the purpose of this section, a transfer of more than ten percent (10%) ownership interest or a transfer of stock in Borrower, in whole or in part, by a party holding ten percent (10%) or more of the stock of Borrower, or a transfer by more than one stockholder of the Borrower of ten percent (10%) or more of the stock of Borrower, or any other similarly significant change in the ownership of such stock or in the relative distribution thereof, or with respect to the parties in control of Borrower, whether by increased capitalization, merger with another corporation, issuance of new or additional stock or by any other methods, shall be deemed a transfer of ownership with respect to this Agreement or the Property.

9. Agreement to Run With the Land; Recording

This Agreement shall apply to the Property, the Project and any successor projects thereto. This Agreement is intended to benefit HTFC and the State of New York as set forth in the Statute. This Agreement and all of the promises, agreements and covenants herein contained shall be deemed real covenants and shall run with the land and be binding upon the respective heirs, executors, administrators, successors and assigns of Borrower [ [and Fee Holder](#) ]. Borrower shall record this Agreement against the Property at such time, in such manner and in such places as may be required by HTFC and by any present or future law in order to publish notice of and to fully protect the priority of this Agreement and the interest of HTFC in the Property.

[Insert Section 9A when there are other mortgages and adjust to circumstances]

9A. Other Mortgages

The mortgage held by [ [Lender name](#) ] (“[ [Lender position](#) ] Mortgagee”), dated [Insert for recorded mortgages] [ [Mortgage date](#) ] and recorded in the [ [Project county](#) ] County Clerk’s Office on [ [recording date](#) ] in Book [ [Liber/Book #](#) ] of Mortgages at page [ [Page #](#) ] [Insert for unrecorded mortgages] even date, to be recorded in the [ [Project county](#) ] County Clerk’s Office (“[ [Lender position](#) ] Mortgage”) is [ [superior / co-equal / subordinate](#) ] to this Agreement and the Statute. The terms, provisions and covenants of both this Agreement and the Statute are binding on Borrower [ [, Fee Holder](#) ] and the [ [Lender position](#) ] Mortgagee and shall remain binding on any transferee of the Project and the Property as the result of the foreclosure of the [ [Lender position](#) ] Mortgage or otherwise, except insofar as HTFC may expressly agree to the contrary in writing.

10. Indemnification

To the fullest extent permitted by law, Borrower shall defend, indemnify and hold harmless HTFC and its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys’ fees arising out of or resulting from performance of this contract or the work to be performed pursuant hereto.

11. Non-Liability

Nothing in this Agreement or arising out of the development or operation of the Project shall impose any liability or duty whatsoever on HTFC, the State of New York or any of its agencies or subdivisions.

12. Equal Opportunity

Borrower agrees that it will, and will cause all its contractors and subcontractors engaged upon the Project to comply with the equal opportunity requirements attached as Appendix 1 (“Equal Opportunity Requirements”).

[Insert in HTF and HWF projects]	13. <u>Covenants of Borrower</u>
[Insert in HOME projects]	13. <u>Covenants and Certifications of Borrower</u>

Borrower covenants as follows:

(a) If a lien for the performance of work or the furnishing of labor or materials is filed against the Property, Borrower shall cause it to be satisfied, discharged or bonded at the earlier of the time of any request for disbursement or within a period of twenty (20) days after the date of filing of such lien;

(b) Borrower [ and Fee Holder ] shall comply with all of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party; and

(c) Borrower shall comply with the conflict of interest restrictions of the Statute, Regulations and other federal and state laws.

[Insert in HOME projects]	<p>(d) By signing and submitting this Agreement, Borrower, a prospective lower tier participant as defined in 24 CFR Part 24, is providing the certification set out in subsection (e) below. The certification in subsection (e) is a material representation of fact upon which reliance was placed when this Agreement was entered into. If it is later determined that Borrower</p>
---------------------------	---

[Insert in HOME projects (continued)]

knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, HTFC may pursue available remedies including suspension and/or debarment. Borrower shall provide immediate written notice to HTFC if at any time Borrower learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Borrower agrees by submitting this certification that it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by HTFC or HUD.

(e) Borrower certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any Federal department or agency.

(f) Where Borrower is unable to certify to any of the statements in this certification, Borrower shall provide an explanation of the reason(s) for such inability.

(g) Borrower further agrees that it will include the certification in subsection (e) above entitled as “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

14. Records and Reports; Inspections

Borrower shall maintain records, submit reports and cooperate with audits and inspections as stated in the Statute, Regulations, this Agreement and the Policies and Procedures of HTFC and sufficient to provide HTFC with any information necessary to file such reports as the Statute may require. Borrower shall submit management reports on its Project in such format and at such times as HTFC may prescribe.

15. Contracts

All contracts entered into by the Borrower for legal, accounting, architectural, engineering, technical, professional, consulting or other services which are to be paid for, in whole or in part, from the Award shall be arms-length transactions and shall, if required by HTFC, be entered into only after an appropriate evaluation by HTFC of the experience and qualification of the contracting firm or individual and submission of the contract to HTFC for approval.

16. Modification

This Agreement may not be amended, modified or rescinded unless such amendment, modification or rescission is in writing, and signed by HTFC.

17. No Waiver

No term, provision or condition of this Agreement shall be deemed waived by HTFC's action or inaction unless the waiver is in writing, signed by HTFC and delivered to Borrower.

18. Notice of Investigation or Default

(a) Borrower certifies to the best of its knowledge, for the period beginning ten years prior to the date of this Agreement, Borrower has not: (i) been the subject of any governmental agency's investigation or audit; (ii) defaulted under any mortgage, deed of trust, security agreement, loan agreement or credit instrument executed in connection with any governmental agency's project; (iii) breached any agreement, credit agreement, lease or other instrument executed in connection with any governmental agency's project; (iv) been suspended, debarred or otherwise restricted by any governmental agency from doing business with such agency; (v) been convicted of, or been the subject of a complaint or indictment charging a felony; or (vi) defaulted on an obligation covered by a surety or performance bond or been the subject of a claim under an employee fidelity bond.

(b) Borrower shall notify HTFC within five days after obtaining knowledge of: (i) the commencement of any investigation or audit of its activities by any governmental agency; (ii) the alleged default by Borrower under any mortgage, deed of trust, security agreement, loan agreement or credit instrument, whether executed in connection with the Project or otherwise; or (iii) any alleged breach by Borrower of any agreement, credit agreement, lease or other instrument executed in connection with the Project.

Borrower shall provide that, in the event of any alleged default under any of such instruments, the mortgagee, secured party, lender or lessor, as the case may be, shall simultaneously send to HTFC a copy of any notice of such alleged default sent to Borrower, and shall give HTFC a reasonable opportunity to cure such alleged default; if such mortgagee, secured party, lender or lessor fails to send such simultaneous notice, then Borrower itself shall immediately upon receipt send such notice to HTFC. For the purposes of this paragraph, the term "Borrower" shall include all officers, board members, general partners or other principals, including any person holding a controlling interest in the Borrower.

19. Default

(a) Any of the following shall constitute an Event of Default hereunder:

(i) if Borrower fails, in the opinion of HTFC, to comply with or perform any of the conditions or covenants contained in this Agreement, the Statute, the Regulations or the Policies and Procedures of HTFC;

(ii) if at any time HTFC becomes aware that a representation or warranty made by Borrower with regard to its application or the Project is or was false or materially misleading;

(iii) if Borrower [ or Fee Holder ] shall fail to comply with any of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party;

(b) Upon the occurrence of an Event of Default, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for therein), after written notice specifying such default and demanding that the same be remedied shall have been given by HTFC to Borrower (or if such default cannot with due diligence be cured within such period, Borrower shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence), HTFC shall have the right to pursue any remedies available at law or in equity for any breach of this Agreement, including the right to terminate this Agreement, the right to injunctive relief, the right to enforce the provisions of this Agreement and the right to recover damages suffered by HTFC as a result of any breach of this Agreement by Borrower.

(c) HTFC shall have the right, but not the obligation, upon the happening of any uncured Event of Default as provided in (b) above, in addition to any other rights or remedies available to it, to enter into possession of the Property and perform or cause the performance of any and all work and labor necessary or desirable to complete the Project, protect the Property and the Project or to make repairs to the Project; provided, however, that the foregoing shall not be deemed to impose on HTFC the obligation to prosecute to completion any action taken pursuant hereto and HTFC shall have no liability to Borrower arising out of the failure to complete any work commenced pursuant to this Section. All sums expended by HTFC for such purposes shall be deemed to have been paid to Borrower. For this purpose, Borrower hereby constitutes and appoints HTFC its true and lawful attorney-in-fact with full power of substitution

to complete the Project or make repairs in the name of Borrower, and hereby empowers said attorney or attorneys as follows: to employ or continue to employ such general contractor, subcontractors, material suppliers, laborers, agents, architects and inspectors as shall be required or may be reasonably desirable for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of any work or the clearance of title; to procure such insurance as may in its judgment be desirable; to execute all applications and certificates in the name of Borrower which may be required by any contract or subcontract; and to do any and every act with respect to work on the Project which Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with a secured interest which cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with work performed on the Project and to take such action and require such performance as is deemed necessary. Borrower hereby conditionally assigns and quitclaims to HTFC all sums disbursed or to be disbursed hereunder and all retained sums subject to the condition that said sums, if any, be used for work performed on the Project and payment of related expenses as set forth herein.

(d) For the purposes of Section 19(c) above, and in connection with (i) any and all contracts and subcontracts for the provision of labor and the furnishing of materials, fixtures and articles in connection with the rehabilitation, construction, conversion, repairs to or maintenance of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively “Contracts”) and (ii) all licenses, approvals, authorizations, consents, certificates and permits in connection with the rehabilitation, construction, conversion, repairs to or maintenance of and operation of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively “Licenses”), Borrower hereby assigns the Contracts and Licenses to HTFC, provided, however, Borrower shall enjoy and perform all of its rights and obligations under the Contracts and Licenses until the happening of an Event of Default. In addition, Borrower shall submit to HTFC a letter signed by the contractor under contract to the effect that, upon receipt of notice from HTFC of an uncured Event of Default, such contractor will recognize HTFC as Borrower’s duly appointed successor and assign and will perform its obligations under such contract as if HTFC were the party with which it had contracted.

20. Dissolution, Liquidation or Termination

In the event of dissolution, liquidation or termination of Borrower (whether voluntary, involuntary or by operation of law), this Agreement may be terminated. Such termination shall not relieve Borrower from liability to HTFC pursuant to this Agreement. Whether voluntary, involuntary or by operation of law, Borrower, or its directors, partners or members, as the case may be, shall obtain the prior approval of HTFC of any application in whatever form for dissolution and of any proposal or plan of dissolution and distribution of assets.

21. Exhibits

The following schedule, exhibits and

<b>[If this is a HOME Match Project]</b> Appendices	<b>[Otherwise]</b> Appendix
---	-----------------------------

are hereby incorporated into this Agreement and Borrower, to the extent applicable, shall adhere to the provisions contained therein.

Schedule A	Description of Property
Exhibit A	Proposal Summary
Exhibit B	Marketing Plan
Exhibit C	Affordability Plan
Exhibit D	Green Building Standards
Appendix 1	Equal Opportunity Requirements

<b>[If this is a HOME Match Project]</b> Appendix 2	HOME Match Addendum
---	---------------------

22. Miscellaneous

(a) All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to Borrower and to HTFC at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(c) This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

HOUSING TRUST FUND CORPORATION

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ Borrower ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[If Borrower is not the Fee Holder]

[ Fee Holder ]

As Nominee and Titleholder

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]





## Appendix 1

### EQUAL OPPORTUNITY REQUIREMENTS

In connection with this Agreement, Borrower agrees to abide by the provisions of Article 15-A of the Executive Law as may be amended from time to time (“Statute”) and the regulations promulgated thereunder by the Division of Minority and Women's Business Development of the New York State Department of Economic Development as may be amended from time to time (“Regulations”). Borrower also agrees to include the provisions of this exhibit in every contract and subcontract in such a manner that the requirements of the provisions will be binding upon each contractor and subcontractor as to work performed in connection with this Agreement. Borrower agrees that the Housing Trust Fund Corporation (“HTFC”) shall be deemed a third-party beneficiary of the provisions of this exhibit with respect to any contracts and subcontracts thereunder and shall have the full right of enforcement thereof.

1. Cooperation with HTFC.

Borrower shall at all reasonable times make available and provide to HTFC’s Office of Fair Housing and Equal Opportunity (AOFHEO@), HTFC or its agents all material and documents relating to this Agreement and shall allow the representatives of HTFC access to the location of the work and the individuals employed thereon to verify compliance with this agreement.

2. Reports.

After the award of this agreement, Borrower shall submit to OFHEO such reports, in form and manner and at such times as is required by HTFC.

3. Minority and Women-Owned Business Participation Goals.

(a) Participation goals have been adopted to ensure the opportunity for meaningful participation of minority and women-owned business enterprises in the work to be undertaken by Borrower and financed with funds provided by HTFC. These goals are expressed as a percentage of the total value of all work to be performed under the Agreement. These percentages are [\_\_\_\_] % for minority-owned business enterprises (“MBEs”) and [\_\_\_\_] % for women-owned business enterprises (“WBEs”). Borrower agrees to make good faith efforts to achieve these participation goals.

(b) The Directory of Certified Minority and Women-owned Businesses published by the Division of Minority and Women's Business Development of the New York State Department of Economic Development lists the only enterprises which are recognized as minority or women-owned business enterprises for the purpose of meeting the participation goals.

4. Contract Attachment Requirements.

Each contract or subcontract entered into by Borrower for the work to be performed shall include the following contract clauses:

(a) Equal Employment Opportunity Pledge. The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Policy Statement. As a precondition to entering into this Agreement, the contractor shall submit an Equal Employment Opportunity Policy Statement to HTFC. The Policy Statement shall contain and the contractor shall, during the performance of this Agreement, agree to the following:

(i) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

(ii) The contractor shall state in all solicitations or advertisements for employees that, in the performance of state funded contracts, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(iii) At the request of HTFC, the contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race,

creed, color, national origin, sex, age, disability or marital status and that such employment agency, union or representative will affirmatively cooperate in the implementation of the contractor's obligations.

(c) Minority-owned Business Enterprises/Women-owned Business Enterprises.

(i) Good Faith Efforts to Achieve Participation Goals. The contractor will, and will cause its contractors and subcontractors to take the following good faith actions to achieve the participation goals:

(A) Actively and affirmatively solicit bids for contracts and subcontracts from qualified MBEs or WBEs, including circulation of solicitations to minority and women contractor associations.

(B) Obtain a copy of the Directory of Certified Minority and Women-owned Businesses and solicit bids from MBEs and WBEs in the Directory.

(ii) The contractor and its subcontractors shall at all reasonable times make available to HTFC or its agents all materials and documents relating to this Agreement and shall allow the representatives of HTFC access to the location of the Work and the individuals employed thereon to verify compliance with this Agreement.

(iii) The parties agree as a condition of entering into such contract or subcontract to be bound by the provisions of Section 316 of the Executive Law.

## INDEX II

### PROMISSORY NOTE

All Low-Income Housing Trust Fund, Homes for Working Families and HOME Investment Partnerships Program awards which are leveraged with federal or state low income tax credits will be structured as loans. The promissory note evidences this debt obligation. All Low-Income Housing Trust Fund Program awards which do not utilize tax credits receive the award as a loan or as a grant as determined by HTFC. The promissory note evidences this debt obligation.

The Awardee executes the note. The note may not be pre-paid without the prior written consent of HTFC. The Awardee is not personally liable for payment; recourse is limited to the project property and other assets pledged as collateral.

PROMISSORY NOTE

\$ [ loan amount ]

[ place of execution ], New York  
[ closing date ]

FOR VALUE RECEIVED, [ Borrower ], a [ entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [ Borrower address ] (“Borrower”) promises to pay to HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), or at such place as HTFC may designate in writing, the principal sum of [ loan amount ] DOLLARS (\$ [ loan amount ]) (“Loan”)

[If this is a Construction Loan]

or so much thereof as shall have been disbursed pursuant to a certain construction loan agreement (“Construction Loan Agreement”)

which is secured by a Mortgage and Security Agreement and a Regulatory Agreement executed on this date (collectively “Loan Documents”) on, inter alia, the property and improvements located at [ project address ] as more fully described in the Loan Documents, and shall be payable, together with interest and charges as set forth below.

[If this is a Construction Loan]

The activities undertaken with the proceeds of the Loan will be completed within [\_\_\_\_\_] months from the date of this Note (“Construction Period”).

During the Construction Period, this Note shall bear interest at the rate of six percent (6%) per annum. As of the date of this Agreement, Construction Period interest is estimated to be \$ [\_\_\_\_\_].

[If this is a HTF/HOME Construction Loan]

The estimated Construction Period interest shall be prepaid from the first disbursement of the Loan.

[If this is a HWF Construction Loan]

All Construction Period interest shall accrue and will be added to the principal balance of the permanent loan on the Conversion Date.

**[If this is a Construction Loan]**

The principal, interest and all unpaid charges shall be due and payable at the end of the Construction Period if the Conversion Date has not occurred.

After the Conversion Date, this Note shall bear interest at the annual un compounded rate of one percent (1 %) of the outstanding principal of the Loan.

**[If this is a Permanent Loan ]**

This Note shall bear interest at the annual un compounded rate of one percent (1%) of the outstanding principal of the Loan.

**[If this is a HTF/HOME Construction Loan]**

The first payment of interest for the period from the Conversion Date through the end of Borrower's fiscal year shall be due and payable within 120 days of the end of Borrower's fiscal year (December 31) from Excess Income prior to distribution of any Return on Equity, each as defined in the Regulatory Agreement. Thereafter, interest shall be calculated on an annual basis and shall be payable annually within 120 days of the end of Borrower's fiscal year from Excess Income prior to distribution of any Return on Equity. Except as provided above, no interest shall be earned or payable for the period prior to the Conversion Date.

**[If this is a HWF Construction Loan]**

The first payment of interest for the period from the Conversion Date through the end of Borrower's fiscal year shall be due and payable from Cash Flow, as defined and in the manner described in the Regulatory Agreement, within 120 days of the end of Borrower's fiscal year. Thereafter, interest shall be calculated on an annual basis and shall be payable annually within 120 days of the end of Borrower's fiscal year from Cash Flow.

[If this is a HTF/HOME Permanent Loan]

The first payment of interest for the period from this date through the end of Borrower's fiscal year (December 31) shall be due and payable within 120 days of the end of Borrower's fiscal year from Excess Income prior to distribution of any Return on Equity, each as defined in the Regulatory Agreement. Thereafter, interest shall be calculated on an annual basis and shall be payable annually within 120 days of the end of Borrower's fiscal year from Excess Income prior to distribution of any Return on Equity.

[If this is an HTF/HOME Loan]

Distribution of Excess Income, if any, shall be applied first, to repay any deferred interest, then to pay current interest due on the Loan.

[If this is a HWF Permanent Loan]

The first payment of interest for the period from this date through the end of Borrower's fiscal year shall be due and payable from 50% of Cash Flow, as defined and in the manner described in the Regulatory Agreement, within 120 days of the end of Borrower's fiscal year. Thereafter, interest shall be calculated on an annual basis and shall be payable annually within 120 days of the end of Borrower's fiscal year from 50% of Cash Flow.

[If this is a HWF Loan]

Distribution of HTFC's annual Cash Flow, if any, shall be applied first, to repay any deferred interest, then to pay current interest and finally, to reduce the principal balance of the Loan.

If Borrower can demonstrate to HTFC's satisfaction that there is insufficient

[If this is a HTF/HOME Loan] Excess Income	or	[If this is a HWF Loan] Cash Flow
--	----	-----------------------------------

to pay any amount due pursuant to the terms of this Note, then, so long as there shall be no Event of Default (as defined in the Loan Documents), the amount due which exceeds

[If this is a HTF/HOME Loan] Excess Income	or	[If this is a HWF Loan] Cash Flow
--	----	-----------------------------------

shall be deferred, and be due and payable on the next payment date and shall be aggregated with

any other outstanding amounts. The deferred amount due shall not bear interest or be subject to penalty.

**[If this is a Tax Credit Project]**

Upon notice from HTFC and prior to the issuance of the Certificate of Credit Allocation (Internal Revenue Service Form 8609), Borrower shall repay the portion of the Loan principal equal to any savings in approved project costs indicated by a cost certification reviewed and accepted by the Division of Housing and Community Renewal.

**[If this is a Construction Loan]**

Notwithstanding the above, all principal, interest and charges will be due and payable on the [ loan term ] ([ loan term in number form ]) anniversary of the Conversion Date.

**[If this a Permanent Loan]**

Notwithstanding the above, all principal, interest and charges will be due and payable on the [ loan term ] ([ loan term in number form ]) anniversary of the date of this Note.

**[If this is a HTF/HOME Loan]**

The principal and interest of this Note may not be pre-paid in whole or in part at any time unless expressly agreed to in writing by HTFC.

**[If this is a HWF Loan]**

The principal and interest of this Note may be partially pre-paid at any time but in no event shall the principal balance be less than ONE DOLLAR (\$1) prior to the maturity of this Note unless expressly agreed to in writing by HTFC.

In addition, in the event of Borrower's default in the payment of this Note, Borrower shall pay all costs of collection, including reasonable attorneys' fees and disbursements.

If Borrower defaults under the Loan Documents, the unpaid Loan principal and interest, charges and all other sums payable to HTFC, shall immediately become due and payable. In addition, HTFC shall have and may exercise any rights and remedies in the Loan Documents and provided by law.

If any provision of this Note or of any of the Loan Documents is invalid or unenforceable, the other provisions shall remain in full force and effect.

If any payment provided for in this Note is more than fifteen (15) days late, a late charge of four cents for each dollar overdue shall become due immediately to HTFC, as liquidated damages for the costs incurred by HTFC because of the failure to make prompt payment. The damages shall be paid no later than the due date of the next subsequent installment of interest, and if not paid, shall be secured by the security for this Note, and shall be paid by Borrower on demand.

Borrower waives the rights of presentment and notice of dishonor.

The obligations and liability of Borrower for payment of the principal of this Note, interest thereon and charges shall be enforceable solely against any property (including, without limitation, the Mortgaged Property), security, collateral and/or assets (including the proceeds thereof) encumbered, pledged or assigned by Borrower and other instruments securing this Note. Borrower shall not be personally liable for the payment or satisfaction of such sums. In any action to foreclose the Mortgage and Security Agreement, HTFC shall not enter any deficiency judgment against Borrower nor shall HTFC enforce any monetary judgment on this Note for such sums against Borrower. The foregoing shall not affect HTFC's liens, security interests, rights and remedies with respect to the Mortgaged Property or any other property, security, collateral and/or assets (including the proceeds thereof) encumbered, pledged or assigned by Borrower.

This Note may not be changed or modified in any way except by a written instrument duly executed by HTFC and Borrower.

[ Borrower ]

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

Name: [ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]



## INDEX III

### MORTGAGE AND SECURITY AGREEMENT

Projects leveraged with federal or state low income tax credits will have their financing structured as a loan. The mortgage and security agreement secures the debt obligation and creates an interest in the project personalty, including the project reserve accounts, for the benefit of HTFC.

Low-Income Housing Trust Fund Program and HOME Investment Partnerships Program projects which are not leveraged with federal or state low income tax credits will receive the award in the form of a loan or a grant. An enforcement mortgage and security agreement is executed by the Awardee of a grant and given to HTFC to secure the Awardee's compliance, performance and observance of all the provisions of the project documents and either the HOME statute and rules and regulations or Article XVIII of the Private Housing Finance Law and the rules and regulations, policies and procedures of HTFC.

The mortgage and security agreement or, in the case of a grant, the enforcement mortgage and security agreement convey to HTFC the right to enter the property, to commence foreclosure proceedings and to take possession of the property in the event of default under any of the project documents or any of HTFC's statutory or regulatory requirements and policies.

The mortgage and security agreement or, in the case of a grant, the enforcement mortgage and security agreement are executed by the Awardee and recorded in the county clerk's office for the county in which the project is located.

---

---

HOUSING TRUST FUND CORPORATION

and

[ Borrower ]

and

[ Fee Holder (if applicable) ]

---

[ HOUSING TRUST FUND ] or [ HOME ] or [ HOMES FOR WORKING FAMILIES ]  
PROGRAM

---

[ LEASEHOLD ] MORTGAGE AND SECURITY AGREEMENT

---

DATED AS OF [ \_\_\_\_\_ ]

This instrument affects real and personal property situated in the State of New York, Section [\_\_\_\_], Block [\_\_\_\_], Lot [\_\_\_\_], County of [\_\_\_\_], [ City/Town/Village ] of [\_\_\_\_], commonly known as [ project address ].

---

---

RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. [ \_\_\_\_\_ ]

TABLE OF CONTENTS

GRANTING CLAUSE .....  
PRIMARY COVENANT .....  
ARTICLE I COVENANTS OF THE MORTGAGOR.....  
    Section 1.01.....  
    Section 1.02.....  
    Section 1.03.....  
    Section 1.04.....  
    Section 1.05.....  
    Section 1.06.....  
    Section 1.07.....  
    Section 1.08.....  
    Section 1.09.....  
    Section 1.10.....  
ARTICLE II EVENTS OF DEFAULT AND REMEDIES .....  
    Section 2.01.....  
    Section 2.02.....  
    Section 2.03.....  
    Section 2.04.....  
    Section 2.05.....  
    Section 2.06.....  
    Section 2.07.....  
    Section 2.08.....  
ARTICLE III SECURITY AGREEMENT .....  
    Section 3.01.....  
ARTICLE IV MISCELLANEOUS.....  
    Section 4.01.....  
    Section 4.02.....  
    Section 4.03.....  
    Section 4.04.....  
    Section 4.05.....  
    Section 4.06.....

HOUSING TRUST FUND CORPORATION

[ LEASEHOLD ] MORTGAGE AND SECURITY AGREEMENT

THIS [ LEASEHOLD ] MORTGAGE AND SECURITY AGREEMENT (“Mortgage”), made on [ closing date ] between [ Borrower ], a [ Borrower entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [ Borrower address ] (“Mortgagor”)

[If the ownership of the Property is Split]  
, [ Fee holder ] a [ Fee holder entity type ] organized and existing under the laws of the State of \_\_\_\_\_, with its principal place of business at [ Fee Holder address ] (“Fee Holder”)

and HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“Mortgagee”).

This Mortgage is made to secure payment of a debt (“Loan”) of Mortgagor to Mortgagee for [ award amount ] DOLLARS (\$ [ award amount ]), payable according to and in the manner set forth in the promissory note executed by Mortgagor on this date in that amount (“Note”). This Mortgage also secures Mortgagor's performance and observance of all the provisions, obligations and covenants under this and other instruments delivered in connection with the debt evidenced by the Note, including the regulatory agreement executed between Mortgagor and Mortgagee on this date (“Regulatory Agreement”)

[If this is a Construction Loan Project] and the Construction Loan Agreement of this date which [is]/[are] hereby incorporated by this reference into this Mortgage as if fully set forth herein, this Mortgage and such other documents being hereinafter collectively referred to as the “Loan Documents”.

GRANTING CLAUSE

NOW THEREFORE, in consideration of the Loan, Mortgagor

[If there is no Fee Holder] hereby mortgages, pledges, assigns and grants

[If there is a Fee Holder] and Fee Holder hereby mortgage, pledge, assign and grant

a security interest in all its estate, rights, title and interests in, and under any and all of the following described property (collectively, “Mortgaged Property”):

(i) the [ [leasehold](#) ] property located in the [ [City/Town/Village](#) ] of [ \_\_\_\_\_ ], County of [ \_\_\_\_\_ ] and State of New York as described in the annexed Schedule A (“Premises”);

(ii) all the improvements, buildings and appurtenances now or hereafter erected on the property, and all air space, easements, privileges, rights in and to any land lying in the streets and ways adjacent thereto, mineral, oil and gas rights and profits, water, water rights, and water stock, now or hereafter obtained, and all payments at any time owing or due to Mortgagor by virtue of any sale, lease, transfer, conveyance or condemnation of any part thereof or interest therein including proceeds of insurance;

(iii) all right, title and interest of every nature of Mortgagor in and to all fixtures, equipment, appliances, furniture, furnishings, decorations, chattels and other personal property now or hereafter in or at the Premises or acquired in whole or in part or the cost of which is reimbursed to Mortgagor in whole or in part (collectively, “Chattels”);

(iv) all rents, royalties, issues, profits, revenue, income and other benefits of the Mortgaged Property, all leases and lettings of the Premises now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening of an Event of Default (as defined by Section 2.01 hereof), to receive and collect the rents thereunder (collectively “Rents”);

(v) all right, title and interest of every nature of Mortgagor in all moneys deposited or to be deposited in or with any financial institution of any nature including deposit accounts (“Accounts”);

(vi) all right, title and interest of every nature of Mortgagor in all Contracts and Licenses as those terms are defined in the Regulatory Agreement as well as other general intangibles in any way related to the Premises; and

(vii) all extensions, additions, renewals and replacements, substitutions and accessions with respect to the foregoing (“Extensions”).

TO HAVE AND TO HOLD UNTO Mortgagee, its successors and assigns forever.

PRIMARY COVENANT

[If this is a HTF/HWF Project]

Mortgagor will maintain the Mortgaged Property for the benefit and occupancy of low-income persons as defined in the New York Private Housing Finance Law, Article XVIII, as may be amended from time to time, and the rules and regulations promulgated thereunder, as may be amended from time to time.

[If this is a HOME Project]

Mortgagor will maintain the Mortgaged Property for the benefit and occupancy of low-income persons as defined in Subtitle A of Title II of the National Affordable Housing Act of 1990, as may be amended from time to time, and the rules and regulations promulgated thereunder, as may be amended from time to time.

ARTICLE I COVENANTS OF THE MORTGAGOR

Section 1.01

Mortgagor will punctually pay such sums as become due under the Note at the time and place and in the manner specified in the Note.

Section 1.02

Mortgagor, within five (5) days upon request in person, or within ten (10) days upon request by mail, will furnish to Mortgagee a written statement duly acknowledged by an officer of Mortgagor certifying the principal amount then outstanding on the Note and certifying that no offsets or defenses exist against the Mortgage indebtedness.

Section 1.03

The Loan is subject to the trust fund provisions of Section 13 of the New York Lien Law.

Section 1.04

Mortgagor

[If there is no Fee Holder] represents and warrants that it has

[If there is a Fee Holder] and Fee Holder represent and warrant that together they have

good and marketable title to the Mortgaged Property, subject to no lien, charge or encumbrance

except [ number of liens ] lien(s), the Loan Documents and easements and restrictions of record, and that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to herein. At its own cost and without expense to Mortgagee, Mortgagor will preserve such title, and will defend the validity and priority of the lien hereof against the claims of any and all other persons.

[If the Project has other mortgage(s) fill in and adjust as appropriate]

This Mortgage is [ superior/coequal/subordinate ] to the mortgage held by [ Lender name ] (“[ Lender position ] Mortgagee”), dated

[Insert for recorded mortgages] [ Mortgage date ] and recorded in the [ Project county ] County Clerk’s Office on [ recording date ] in Book [ Liber/Book # ] of Mortgages at page [ Page # ] (“[ Lender position ] Mortgage”).

[Insert for unrecorded mortgages] even date, to be recorded in the [ Project county ] County Clerk’s Office (“[ Lender position ] Mortgage”).

Section 1.05

Mortgagor

[If there is no Fee Holder] represents and warrants that it has

[If there is a Fee Holder] and Fee Holder represent and warrant that together they have

good and marketable title to all chattel, rents and accounts subject to no adverse claims, liens, security interests or restrictions except as created for the benefit of the other mortgagees listed above in the same priority as listed above.

Section 1.06

Mortgagor will pay, when due, all taxes, assessments, water rates and sewer rents, and all other public charges imposed against the Mortgaged Property. Mortgagor will, upon the request of Mortgagee, deliver to Mortgagee receipts evidencing such payments.

Section 1.07

Mortgagor will keep the Mortgaged Property insured at all times against loss by fire, casualty and such other hazards as may be required by Mortgagee for the benefit of Mortgagee. Loss payments under all such insurance policies shall be payable to Mortgagee and such policies shall contain a standard New York Mortgagee endorsement.

Section 1.08

Mortgagor will, at all times, maintain the Mortgaged Property in good operating order

and condition and will promptly make, from time to time, all necessary or desirable repairs, renewals, replacements, additions, and improvements. The Mortgaged Property shall not be removed, demolished or altered without the prior written consent of Mortgagee.

#### Section 1.09

Mortgagor will comply with all the laws, ordinances and regulations affecting the Mortgaged Property and the conduct of Mortgagor's business operations.

#### Section 1.10

Mortgagor will preserve its existence in the form as it existed at the time of the execution of this Mortgage and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, sell all or substantially all of its assets nor change its name without the prior written consent of Mortgagee.

### ARTICLE II EVENTS OF DEFAULT AND REMEDIES

#### Section 2.01

The following shall be events of default (“Events of Default”):

- (a) if default shall be made in the payment of any amount due under the Note and such default shall have continued for a period of fifteen (15) days.
- (b) if default shall be made in the payment of any tax or other obligation required by Section 1.06 to be paid; or
- (c) if default shall be made in the due observance or performance of any other covenant or condition on the part of Mortgagor contained in the Loan Documents, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for in the Loan Documents) after written notice specifying such default and demanding that the same be remedied shall have been given to Mortgagor by Mortgagee (unless such default cannot with due diligence be cured within such period and Mortgagor shall have commenced to cure within such period, and having commenced, shall thereafter prosecute and complete such cure with due diligence); or
- (d) if Mortgagor shall make an assignment for the benefit of creditors, or shall institute any proceeding seeking relief on its behalf as debtor, or it is adjudicated bankrupt or insolvent; or

(e) if the Mortgaged Property shall be sold, conveyed or otherwise transferred or encumbered, or if there is a transfer of controlling interest in Mortgagor, without the prior written consent of Mortgagee;

(f) any default, event of default or breach (however such terms may be defined) after the expiration of any applicable notice and cure periods under any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property shall be an Event of Default under this Mortgage and that any costs, damages or other amounts, including reasonable attorney's fee incurred by Mortgagee as a result of such Event of Default by Mortgagor, including amounts paid to cure any default or event of default shall be an obligation of Mortgagor and become a part of the indebtedness secured by this Mortgage.

#### Section 2.02

Upon the occurrence of any such Event of Default:

(a) Upon notice to Mortgagor, Mortgagee may enter into and upon the Mortgaged Property, and may exclude Mortgagor; and may sell, use, operate, manage and control the Mortgaged Property and conduct the business thereof; and upon every such entry, Mortgagee at the expense of Mortgagor, may

(i) make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as to it may seem advisable; and

(ii) complete the construction of the Mortgaged Property and take such other actions set forth in the Loan Documents and Mortgagee shall be entitled to collect and receive any and all income of the Mortgaged Property and, after deducting the expenses of conducting the business thereof and of all maintenance and improvements and amounts necessary to pay for taxes, assessments, insurance or other proper charges upon the Mortgaged Property, as well as all costs and expenses of and reasonable compensation for the services of Mortgagee or its attorneys, contractors, agents and employees, Mortgagee shall apply such income first, to the payment of the principal of the Note, the interest and charges thereon, and second, to the payment of any other sums required to be paid by Mortgagor under the Note and under this Mortgage. No such entry or action by Mortgagee shall create any liability to Mortgagor or to any party holding under or claiming through Mortgagor, nor shall such entry or action be deemed an eviction of any lessee of the Mortgaged Property or any part thereof; or

(b) With or without entry, Mortgagee may institute proceedings for the foreclosure of this Mortgage; or

(c) Mortgagee may take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Loan Documents and this Mortgage, or in aid of the execution of any power herein or therein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as Mortgagee shall elect; or

(d) Mortgagee may pay any and all taxes due and owing on the property and any and all payments due on any other mortgages, liens or other claims affecting the property; said expenditures shall be at the expense of Mortgagor and secured by this Mortgage; or

(e) Mortgagee may exercise all the rights and remedies with respect to repossession, retention and sale of the Chattels, Rents, Accounts and Extensions and the disposition of the proceeds thereof as are accorded to a secured party by the applicable sections of Part 6 of Article 9 of the Uniform Commercial Code. To the extent permitted under the Uniform Commercial Code, Mortgagor waives all rights of redemption and all other rights and remedies of a debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the Chattels, Rents, Accounts and Extensions after an Event of Default. Nothing contained in this subparagraph shall preclude Mortgagee from proceeding as to both the real property and the personal property covered by this Mortgage in accordance with its rights and remedies with respect to the real property, as provided in Section 9-601 (a)(2) of the Uniform Commercial Code.

### Section 2.03

Upon any sale made under or by virtue of this Article II, judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and may credit to the purchase price the amount required to be paid by Mortgagor to Mortgagee and secured by this Mortgage, the expenses of the sale, the costs of the action and any other sums which Mortgagee is authorized to collect under this Mortgage.

### Section 2.04

The proceeds of any foreclosure sale shall be applied in the following order of priority:

(a) To the payment of the costs and expenses of such sale, including reasonable compensation to Mortgagee, its agents and counsel, and any judicial proceedings, the expenses of

any receiver, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, including the costs of taking possession of, maintaining and preserving the Mortgaged Property, and of completing construction of the Mortgaged Property, and all taxes or assessments, except any taxes, assessments or other charge subject to which the Mortgaged Property shall have been sold;

(b) To the payment of the whole amount then due, owing or unpaid upon the Note including any penalties; and

(c) To the payment of the surplus, if any, to whomever may be lawfully entitled to receive the same.

#### Section 2.05

In addition to other remedies provided in this Mortgage, upon the occurrence of any Event of Default, Mortgagee may accelerate the entire principal of the Note then outstanding, interest and charges by declaring it to be immediately due and payable, and demand full payment thereof.

#### Section 2.06

No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given under the Loan Documents or hereunder or now or hereafter existing at law or in equity. No delay or failure of Mortgagee to exercise any right, power or remedy hereunder or under the Loan Documents shall impair any such remedy of Mortgagee or shall be construed to be a waiver thereof. No waiver of any breach shall constitute a waiver of any other then existing or subsequent breach.

#### Section 2.07

After the happening of any Event of Default and during its continuance, Mortgagee shall be entitled to the appointment of a receiver of the Mortgaged Property and of any and all the income thereof.

#### Section 2.08

Notwithstanding any agreement, representation, warranty or undertaking in this Mortgage or the Loan Documents, it is agreed that neither Mortgagee nor any successor or assign of the Mortgagee, nor any other person shall have any claim to proceed personally against Mortgagor or any other person having an interest in the Mortgaged Property, or any assignee, successor, heir or

representative of any of the foregoing, for any deficiency or any other sum owing by virtue of this Mortgage, the Note or the Loan Documents or for any obligation or liability hereto or thereunder, and Mortgagee for itself and any successor Mortgagee waives and releases such personal liability and agrees to look solely to the Mortgaged Property and the project for any sums due with respect to this Mortgage, the Note and the Loan Documents.

### ARTICLE III SECURITY AGREEMENT

#### Section 3.01

Mortgagor and Mortgagee expressly agree that this Mortgage shall also constitute a “security agreement” as such term is defined in the Uniform Commercial Code. The Mortgaged Property includes, and shall be deemed to include, inter alia, the Chattels, Rents, Accounts and Extensions, regardless of whether they are now held or hereafter acquired, of Mortgagor in, to and under the Mortgaged Property. By executing and delivering this Mortgage, Mortgagor hereby grants, in the same manner and with the same effect described in the Granting Clause hereof, Mortgagee a security interest in the Chattels, Rents, Accounts and Extensions which are subject to the Uniform Commercial Code. If any Event of Default shall occur, Mortgagee shall have, in addition to any and all other rights and remedies set forth in this Mortgage, and may exercise without demand, any and all rights and remedies granted to a secured party under the Uniform Commercial Code. The proceeds of any such sale of the Chattels, Rents, Accounts and Extensions, or any part thereof, shall be applied in the manner set forth in Section 2.04 of Article II of this Mortgage.

### ARTICLE IV MISCELLANEOUS

#### Section 4.01

In the event any one or more of the provisions contained in this Mortgage or the Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

Section 4.02

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by certified or registered mail, return receipt requested, to the address herein set forth, or at such other address of which the party to receive such notice shall have notified the party giving such notice in writing except that any notice of such a change of address shall be deemed given when it is received.

Section 4.03

All the grants, covenants, terms, provisions and conditions herein shall run with the land, shall apply to and bind the successors and assigns of Mortgagor and all subsequent owners, encumbrancers and tenants of the Mortgaged Property, and shall inure to the benefit of Mortgagee, its successors and assigns and all subsequent holders of this Mortgage.

Section 4.04

This Mortgage shall be construed and enforced in accordance with and shall be governed by the laws of the State of New York.

Section 4.05

This Mortgage may be amended, discharged or terminated only by a written instrument executed by Mortgagee and Mortgagor.

Section 4.06

This Mortgage may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

[ Borrower ]

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

Name: [ \_\_\_\_\_ ]

Title: [ \_\_\_\_\_ ]

[ If Borrower is not the Fee Holder ]  
[ Fee Holder ]

As Nominee and Titleholder

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]



## INDEX IV

### CONSTRUCTION LOAN AGREEMENT

Those Awardees which have received a Commitment Letter for construction financing will enter into one of two forms of a construction agreement:

1. Projects which are leveraged with federal or state low-income tax credits will have the construction award structured as a loan;
2. Other Projects will have the construction award structured either as a loan or as a grant as determined by HTFC.

Each form of construction agreement sets out the requirements, procedures and events of default connected to the award. More specifically:

- \* Section I, Paragraph 1 sets out the amount of the award and whether it is loan or a grant.
- \* Section II, Paragraph 1 describes the scope of work for the project.
- \* Paragraph 7 describes the procedures for processing requests for disbursements.
- \* Paragraphs 4 & 5 are the Awardee's representations, warranties and covenants.
- \* Paragraph 6 describes events of default.

The exhibits required to be attached to the agreement are prepared by the Awardee and submitted to HTFC. The single exception is Exhibit I, the lien law affidavit which is prepared by HTFC.

The construction loan agreement is executed by the Awardee and HTFC. The agreement is filed in the county clerk's office in the county in which the project is located.

---

---

HOUSING TRUST FUND CORPORATION

and

[ Borrower ]

---

[HOUSING TRUST FUND or HOME or HOMES FOR WORKING FAMILIES] PROGRAM

---

CONSTRUCTION LOAN AGREEMENT

---

DATED AS OF [\_\_\_\_\_]

This instrument affects real and personal property situated in the State of New York, Section [\_\_\_\_], Block [\_\_\_\_], Lot [\_\_\_\_], County of [\_\_\_\_], [ City/Town/Village ] of [\_\_\_\_], commonly known as [ project address ].

---

---

AFTER FILING, PLEASE RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. [\_\_\_\_\_]

TABLE OF CONTENTS

SECTION I .....  
    1. Loan .....  
    2. Note and Mortgage and Security Agreement.....  
SECTION II .....  
    1. Scope of Work .....  
    2. Lien Law Affidavit.....  
    3. Disbursement of Loan Proceeds .....  
    4. Representations and Warranties.....  
    5. Covenants of Borrower .....  
    6. Default.....  
    7. Conditions to HTFC's Obligation to Make Disbursements .....  
    8. Conditions for Final Disbursement.....  
    9. Conversion Date.....  
    10. Indemnification .....  
    11. Non-Liability.....  
    12. Miscellaneous .....

HOUSING TRUST FUND CORPORATION  
CONSTRUCTION LOAN AGREEMENT

AGREEMENT made as of [ [date](#) ], between the HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207, (“HTFC”), and [ [Borrower](#) ], a [ [Entity type](#) ] organized and existing under the laws of New York State, with its principal place of business at [ [Borrower address](#) ] (“Borrower”).

WITNESSETH:

NOW THEREFORE, the parties agree that the Project will be constructed in accordance with the following terms and conditions:

SECTION I

1. Loan

HTFC has agreed to make an award in the maximum amount of [ [award amount](#) ] DOLLARS (\$ [ [award amount](#) ]) in the form of a loan (“Loan”) for a certain project as more fully described in the attached Exhibit A (“Project”) with respect to land and improvements (collectively “Property”) located in the [ [Project Municipality Type](#) ] of [ [Project Municipality](#) ] in the County of [ [Project county](#) ], which Property is more fully described in the attached Schedule A.

2. Note and Mortgage and Security Agreement

In consideration of the Loan, Borrower has executed a promissory note (“Note”) and delivered to HTFC a mortgage and security agreement (“Mortgage”) on this date covering the Project and the Property, securing the Note, compliance with this agreement and a regulatory agreement (“Regulatory Agreement”) regulating, inter alia, the development and operation of the Project after the completion of the rehabilitation, construction or conversion.

## SECTION II

### 1. Scope of Work

Borrower shall (a) construct the Project in accordance with the construction management plan attached as Exhibit B (“Construction Management Plan”) and plans and specifications, a list of which is attached as Exhibit C (“Plans”) as prepared by the Architect (defined below), and (b) shall complete the Project as set forth in the attached Exhibit D (“Development Timetable”) and will adhere to the budget attached as Exhibit E (“Development Budget”) and shall provide additional funds if the cost of the Project exceeds the Total Project Costs as set forth in the Development Budget. [ [Architect](#) ] (“Architect”) and [ [Contractor](#) ] (“Contractor”) have agreed, upon the event of a default and at HTFC’s request, to continue their performance on HTFC’s behalf, as evidenced by the Architect’s letter attached as Exhibit F (“Architect’s Letter”) and the Contractor’s Assurances Agreement attached as Exhibit G (“Contractor’s Agreement”).

### 2. Lien Law Affidavit

(a) Borrower has executed the lien law affidavit required by the Lien Law, which affidavit is attached as Exhibit H (“Lien Law Affidavit”).

(b) The Loan is made subject to the trust fund provisions of Section 13 of the Lien Law.

### 3. Disbursement of Loan Proceeds

(a) As construction progresses, Borrower shall submit to HTFC requests for disbursements in such form and manner and at such times as HTFC may require (each such request, a “Request for Disbursement”). Each Request for Disbursement shall (i) state the amount requested to be disbursed (ii) be certified by [ [officer/partner/member](#) ] of Borrower and the Architect as to the matters stated therein including payments and percentage of completion in accordance with paragraph 7 of this section and (iii) affirm that the representations and warranties previously made to HTFC remain true and correct on the date thereof. Subject to the conditions set forth herein, items under the construction section of the Development Budget shall be disbursed after receipt of each Request for Disbursement in an amount equal to the amount of the items under the construction section of the Development Budget, multiplied by the percentage of completion of eligible items of construction then attained, less amounts theretofore disbursed, less ten percent (10 %) and such other amounts as HTFC may require for items of

work or other matters either not properly completed or requiring further inspection (collectively “Holdback Amount”). The Holdback Amount shall be paid to Borrower upon satisfaction of the conditions for the receipt of the final disbursement set forth in paragraph 8 of this section. HTFC may, at its sole discretion, reduce the Holdback Amount at any time.

(b) All disbursements paid to Borrower shall be deposited in a separate account maintained by Borrower in a bank authorized to do business in the State of New York solely for the deposit and withdrawal of the Loan proceeds and other funds received by Borrower for the construction of the Project. Borrower shall give an irrevocable direction to the bank that upon the request of HTFC, the bank will: (i) furnish to HTFC all information pertaining to such account; and (ii) freeze withdrawals from the account and repay to HTFC funds deposited therein.

(c) At its option, HTFC may make such disbursements directly to the general contractor or to subcontractors and the execution of this Agreement by Borrower shall, and does hereby constitute, an irrevocable direction and authorization to so disburse the funds. All such disbursements shall satisfy pro tanto the obligations of HTFC hereunder and shall be secured by the Mortgage and other instruments of security provided for in the Note and the Mortgage.

(d) HTFC shall have no obligation to make disbursements for items other than the eligible items shown in the Development Budget, as more fully set forth in the Plans, or in amounts greater than those set forth in the Development Budget.

#### 4. Representations and Warranties

Borrower represents and warrants to HTFC that:

(a) All construction heretofore performed or hereafter to be performed on and the intended use of the Project have and will have been performed within the perimeter of the Property; in accordance with the Plans and all laws, ordinances, rules, orders, regulations, restrictive covenants and requirements of any governmental authority having jurisdiction over Borrower, the Project or construction thereon or the use and occupancy thereof (collectively “Requirements”).

(b) The Plans, exhibits hereto and other information contained herein or heretofore provided to HTFC by Borrower are true and correct in all respects and accurately represent the condition of the Project and of Borrower as of the respective dates thereof, no materially adverse change has occurred in the condition of the Project or the financial condition of Borrower since

the respective dates thereof, and Borrower has neither made application, nor received commitments for any additional borrowings, other than the borrowings contemplated hereby or included in the cash flow schedule attached as Exhibit I (“Cash Flow Schedule”).

5. Covenants of Borrower

Borrower covenants to:

(a) permit HTFC to enter upon the Property at such times as HTFC may elect to inspect the Project and will cause the general contractor and subcontractors to cooperate with HTFC in any such inspection.

(b) submit progress reports to HTFC, at such intervals as HTFC may require, and such other information as HTFC may request.

(c) commence such construction no later than thirty (30) days from the date hereof and cause the construction to be performed in a good and workerlike manner with diligence and continuity so as to complete same in accordance with the Plans and Development Budget on or before the date specified in the Development Timetable, free and clear of liens or claims for liens for material supplied or for labor or services performed in connection with the construction of the Project.

(d) cause all conditions hereof to be satisfied in a timely manner.

(e) correct upon demand any defect in the Project or any departure from the Plans not approved by HTFC.

(f) comply, and require all its contractors and subcontractors to comply, with the equal opportunity requirements attached as Appendix 1 (“Equal Opportunity Requirements”).

(g) not execute any contract with a general contractor without providing in any such contract that (i) such contract shall be assignable by Borrower to HTFC, (ii) subcontractors shall be subject to the acceptance of HTFC, (iii) the general contractor will, upon request, deliver to HTFC for its approval the names of all persons with whom such general contractor has contracted or intends to contract for the construction of the Project or for the furnishing of labor or materials therefore and (iv) the general contractor will, and will cause its subcontractors to, adhere to the Equal Opportunity Requirements.

(h) furnish insurance as required by the Mortgage to HTFC (with evidence of the payment of premiums therefore), or HTFC may obtain insurance at Borrower’s expense.

6. Default

(a) Any of the following shall constitute an Event of Default hereunder:

(i) if Borrower fails, in the opinion of HTFC, to comply with or perform any of the conditions or covenants contained in this Agreement, the Statute, the Regulations or the Policies and Procedures of HTFC; or

(ii) if at any time HTFC becomes aware that a representation or warranty made by Borrower herein shall be incorrect or materially misleading; or

(iii) if a lien for the performance of work or the furnishing of labor or materials is filed against the Property and remains unsatisfied, undischarged or unbonded for a period of thirty (30) days after the date of filing of such lien; or

(iv) if Borrower[ or Fee Holder ] shall fail to comply with any of the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in favor of any other party.

(b) Upon the occurrence of an Event of Default, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for therein), after written notice specifying such default and demanding that the same be remedied shall have been given by HTFC to Borrower (or if such default cannot with due diligence be cured within such period, Borrower shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence), HTFC shall have the right to pursue any remedies available at law or in equity for any breach of this Agreement, including the right to terminate this Agreement, the right to injunctive relief, the right to enforce the provisions of this Agreement and the right to recover damages suffered by HTFC as a result of any breach of this Agreement by Borrower.

(c) HTFC shall have the right, but not the obligation, upon the happening of any uncured Event of Default as provided in (b) above, in addition to any other rights or remedies available to it, to enter into possession of the Property and perform or cause the performance of any and all work and labor necessary or desirable to protect the Property and the Project or to make repairs to the Project; provided, however, that the foregoing shall not be deemed to impose on HTFC the obligation to prosecute to completion any action taken pursuant hereto and HTFC shall have no liability to Borrower arising out of the failure to complete any work commenced pursuant to this clause. All sums expended by HTFC for such purposes shall be deemed to have been paid to Borrower. For this purpose, Borrower hereby constitutes and appoints HTFC its

true and lawful attorney-in-fact with full power of substitution to complete the Project or make repairs in the name of Borrower, and hereby empowers said attorney or attorneys as follows: to employ or continue to employ such general contractor, subcontractors, material suppliers, laborers, agents, architects and inspectors as shall be required or may be reasonably desirable for said purposes; to pay, settle or compromise all existing bills and claims which are or may be liens against the Property, or may be necessary or desirable for the completion of any work or the clearance of title; to procure such insurance as may in its judgment be desirable; to execute all applications and certificates in the name of Borrower which may be required by any contract or subcontract; and to do any and every act with respect to work on the Project which Borrower may do in its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with a secured interest which cannot be revoked. Said attorney-in-fact shall also have power to prosecute and defend all actions or proceedings in connection with work performed on the Project and to take such action and require such performance as is deemed necessary. Borrower hereby conditionally assigns and quitclaims to HTFC all sums disbursed or to be disbursed hereunder and all retained sums subject to the condition that said sums, if any, be used for work performed on the Project and payment of related expenses as set forth herein.

(d) For the purposes of paragraph 6(c) above, and in connection with (i) any and all contracts and subcontracts for the provision of labor and the furnishing of materials, fixtures and articles in connection with the rehabilitation, construction, conversion, repairs to or maintenance of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively “Contracts”) and (ii) all licenses, approvals, authorizations, consents, certificates and permits in connection with the rehabilitation, construction, conversion, repairs to or maintenance of and operation of the Project which are now in existence or which may exist at any time or times in the future, together with any extensions or renewals thereof (collectively “Licenses”), Borrower hereby assigns the Contracts and Licenses to HTFC, provided, however, Borrower shall enjoy and perform all of its rights and obligations under the Contracts and Licenses until the happening of an Event of Default.

#### 7. Conditions to HTFC’s Obligation to Make Disbursements

- (a) For each advance, HTFC shall have received:
  - (i) a notice of title continuation or an endorsement to the title insurance policy theretofore delivered, insuring:

(A) that since the last preceding disbursement, no change in the state of title has occurred not theretofore approved by HTFC, and

(B) an increase in the coverage of the policy by an amount equal to the disbursement then being made; and

(ii) a Request for Disbursement containing certification from Architect and Borrower as to the percentage of completion of eligible items of construction stating that, in Architect's professional opinion, the construction of the Project theretofore performed was performed in a good and workerlike manner and in accordance with the Plans and Requirements.

(b) There shall have occurred no event which, with notice or passage of time, or both, would constitute an Event of Default under this Agreement, the Regulatory Agreement, the Note, the Mortgage or any other instrument executed in connection with the Loan.

#### 8. Conditions for Final Disbursement

HTFC's obligation to make its final disbursement is contingent upon Borrower's compliance with the policies and procedures of HTFC, including, but not limited to, the following:

(a) Certificate of Occupancy issued by the local building authority;

(b) "as built" drawings of the Project, together with written certification from the Architect to the effect that the Project has been completed in accordance with the Plans and in a good and workerlike manner;

(c) if the Project is a rental project located in the City of New York or located in a municipality that has elected to be covered by the provisions of the Emergency Tenant Protection Act of 1974, evidence satisfactory to HTFC that Borrower has registered the Project with the New York State Division of Housing and Community Renewal ("Division") or any successor thereto;

(d) such waivers of lien and other documents as may be required to ensure that to the Property has not been encumbered;

(e) a cost certification showing all sources and uses of funds used in the construction of the Project.

#### 9. Conversion Date

The date upon which the final disbursement to Borrower is made shall be the conversion date upon which the Loan is converted to a permanent award.

10. Indemnification

To the fullest extent permitted by law, Borrower shall defend, indemnify and hold harmless HTFC and its agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from performance of this contract or the work to be performed pursuant hereto.

11. Non-Liability

Nothing in this Agreement or arising out of the development or operation of the Project shall impose any liability or duty whatsoever on HTFC, the State of New York or any of its agencies or subdivisions.

12. Miscellaneous

(a) All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to the parties at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

(b) This Agreement may not be amended, modified or rescinded unless such amendment, modification or rescission is in writing signed by HTFC and delivered to both parties.

(c) No action shall lie or be maintained against HTFC or the State upon any claim based upon or arising out of this Agreement or anything done in connection herewith unless such action shall be commenced within six (6) months after the termination of this Agreement or one (1) year from the accrual of the cause of action, whichever is earlier.

(d) Borrower may not assign its rights or obligations under this Agreement without the prior written consent of HTFC and any purported assignment without the prior written consent of HTFC shall be void. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

(e) No disbursement of Loan proceeds hereunder shall constitute a waiver of any of the conditions precedent to HTFC's obligation to make further disbursements nor, in the event Borrower is unable to satisfy any such condition, shall any waiver have the affect of precluding HTFC from thereafter declaring such inability to be an Event of Default as hereinabove provided.

(f) All conditions to the obligations of HTFC to make disbursements hereunder are imposed solely and exclusively for the benefit of HTFC and no other person or entity shall have

standing to require satisfaction of such conditions or be deemed to be the beneficiary of such conditions.

(g) The following schedule, exhibits and appendix are hereby incorporated into this Agreement and Borrower, to the extent applicable, shall adhere to the provisions contained therein.

Schedule A	Description of Property
Exhibit A	Proposal Summary
Exhibit B	Construction Management Plan
Exhibit C	Schedule of Plans
Exhibit D	Development Timetable
Exhibit E	Development Budget
Exhibit F	Architect's Letter
Exhibit G	Contractor Assurances Agreement
Exhibit H	Lien Law Affidavit
Exhibit I	Cash Flow Schedule
Appendix 1	Equal Opportunity Requirements

(h) This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

HOUSING TRUST FUND CORPORATION

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ Borrower ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[If Borrower is not the Fee Holder]

[ Fee Holder ]

As Nominee and Titleholder

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]





EXHIBIT F

(ARCHITECT'S LETTER)

[ Date ]

[ Borrower ]

[ Borrower's Address ]

Subject:       Project: [\_\_\_\_\_]  
                  Project Recipient: [\_\_\_\_\_]

Gentlemen:

We are the Architects on the above project. In consideration of your making a loan to Project Recipient to finance said construction, we agree that in the event of default by Project Recipient under any of the loan documents, we shall, at your request, continue performance in your behalf under our agreement with Project Recipient in accordance with the terms thereof, provided we are reimbursed in accordance with said agreement for all services rendered on your behalf.

You shall, of course, be entitled to use the plans, specifications and drawings, together with any and all modifications thereof, prepared for said project, including any additions, enlargements or extensions thereof without cost to you.

Very truly yours,

---



Project Costs

(1)	Acquisition	\$ _____
(2)	Construction Contingency	\$ _____
(3)	Appraisals	\$ _____
(4)	Consultant Fees	\$ _____
(5)	Construction Manager	\$ _____
(6)	Legal Fees	\$ _____
(7)	Not-for-Profit Developer's Allowance	\$ _____
(8)	Audit	\$ _____
(9)	Working Capital	\$ _____
(10)	Reserves	\$ _____
	[List other expenses starting with (11)]	\$ _____
	Subtotal	\$ _____

Affiant avers that \$ \_\_\_\_\_ is being made available for Project Costs, that \$ \_\_\_\_\_ is being made available for Costs of Improvement and that the net sum available to Borrower for the improvement is \$ \_\_\_\_\_.

[If the Borrower has a Predevelopment Costs/Seed Money Agreement]  
[Affiant further avers that \$ \_\_\_\_\_ of Project Costs and \$ \_\_\_\_\_ of Costs of Improvement have already been disbursed pursuant to the [\[Predevelopment Costs/Seed Money Agreement.\]](#)]

This affidavit is made pursuant to Section 22 of the Lien Law of the State of New York.

Affiant as the [ [Borrower's signatory's title](#) ] of [ [Borrower](#) ], Borrower, is authorized by Borrower to have made this statement on Borrower's behalf. The facts herein stated are true to the best of affiant's knowledge and belief.

Sworn to before me on \_\_\_\_\_

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

## INDEX V

### CONTRACTOR ASSURANCES AGREEMENT

Awardees who receive a Commitment Letter for construction financing will execute a Contractor Assurances Agreement together with their contractor and HTFC.

This agreement establishes parameters for HTFC's relationship with the Awardee and the contractor during the construction phase of the project. Change orders, distribution of insurance proceeds in the event of loss and project completion in the event of an Awardee default are covered by the agreement.

HOUSING TRUST FUND CORPORATION

CONTRACTOR ASSURANCES AGREEMENT

THIS AGREEMENT, made as of [ date ], by and between HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), [ general contractor ], a [ gc entity type ] organized under the laws of New York State, with its principal place of business at [ GC’S OFFICE address ] (“Contractor”) and [ borrower ], a [ borrower entity type ] organized and existing under the laws of New York State, with its principal place of business at [ owner address ] (“Owner”).

WITNESSETH:

WHEREAS, Contractor and Owner have entered into a certain Agreement dated [ \_\_\_\_\_ ] for the improvement of property located at [ project address ] (“Project”), based upon American Institute of Architects (AIA) Form A101-1997 Standard Form of Agreement between Owner and Contractor (“Owner/Contractor Agreement”) and A201-1992 General Conditions of the Contract for Construction (“General Conditions”);

WHEREAS, HTFC is closing or about to close a construction loan (“Construction Loan”) with Owner in the Amount of [ amount of award ] DOLLARS (\$ [ amount of award in numerals ]) to be evidenced by a construction loan agreement (“Construction Loan Agreement”) and mortgage and security agreement;

NOW THEREFORE, in consideration of HTFC making said Construction Loan to Owner, and the acknowledgments and/or undertakings in favor of Contractor, with the consent of Owner, it is agreed as follows:

SECTION I- GENERAL

1. Contractor shall deliver insurance certificates or binders evidencing coverage in the minimum amounts shown on the attached Schedule A, and a Performance and Payment Bond or AIA Form of Performance Bond and accompanying Labor and Material Payment Bond naming Owner as obligee in a Penal Sum equal to the Contract Sum under the Owner/Contractor

Agreement, covering all work, as that term is defined and used in the Owner/Contractor Agreement (“Work”), to be performed under said Owner/Contractor Agreement.

2. Contractor shall provide HTFC and its agents access to the Work in preparation and progress. HTFC’s representatives may observe the completed Work, evaluate requisitions and recommend payment based upon percentage of completion.
3. No claims shall be allowed for conditions which, while not directly visible, can be reasonably inferred based on visible conditions or are noted in the Owner/Contractor Agreement.
4. Owner shall schedule and conduct a pre-construction meeting prior to the initiation of construction. Owner shall give seven days notice to HTFC and Contractor of the time and location of said meeting. Contractor shall submit the construction schedule required by Section 3.10.1 of the General Conditions to all parties at this meeting. The schedule shall not exceed the time limits currently established under the Owner/Contractor Agreement and shall provide for expeditious and practicable execution of the Work.

## SECTION II - CHANGE ORDERS

1. Contractor will not undertake to perform any extra work or furnish any extra materials, or make any substitutions of materials or delete any portion of the Work, unless the same has been reduced to a change order as that term is defined and used in the Owner/Contractor Agreement General Conditions (“Change Order”) between Owner and Contractor and has been approved in writing by HTFC. Change Orders must be approved prior to any changes to the scope of the Work.
2. HTFC will respond to Change Order requests within 10 business days of receipt of a fully documented request. Change Order requests must include:
  - (a) A description of the change with accompanying drawings, if necessary, which includes the location and quantities of Change Order work.
  - (b) The proposed cost of Change Order work which details the quantity of the material needed and unit pricing.
  - (c) Any deductions or increases in the value of the contract precipitated by the Change Order.
  - (d) A statement by the project architect that:

(i) the Change Order work exceeds or substantively differs from the Work;  
and

(ii) the proposed Change Order has been reviewed with and recommended by  
Owner.

3. HTFC will authorize an Emergency Change Order, as defined herein, immediately upon verification of the nature of the emergency. An Emergency Change Order is defined as a directive by the project architect to Contractor to undertake work to prevent possible loss of life or further property damage due to an act of nature, unforeseen circumstances or failure in building materials, systems or construction techniques.

4. HTFC's approval shall not be required for architect's field orders on minor variations required to effect the Work. Copies of field orders shall be promptly provided to HTFC.

5. HTFC is aware that circumstances such as subsurface ground conditions and Change Order necessitated by changes in the Work to be performed may cause cost increases. HTFC may consent at its sole and absolute discretion to Owner obtaining additional financing when necessary to help cover eligible costs, provided the Change Orders were approved by HTFC, the increased costs are necessary and are for authorized loan purposes and the proposed financing does not create any additional liens or encumbrances on the property.

### SECTION III- INSURANCE PROCEEDS

1. HTFC will not require any insurance proceeds to be applied to reduction of the Construction Loan for any loss unless it declares such loss to be substantial.

2. If the loss is so substantial that HTFC elects to apply any insurance proceeds to reduce the Construction Loan, then the insurance proceeds will be first paid to Contractor for Work that had been completed to the date of such loss plus all retainage plus a sum equal to the actual costs incurred to cancel and terminate material purchase orders and subcontracts, less prior payments, all without limiting liability of Owner or any other party who may be liable to Contractor.

## SECTION IV- OWNER DEFAULT

1. HTFC may elect to disburse proceeds of the Construction Loan directly to Contractor. All payments shall be held by Contractor subject to the trust fund provisions of Section 13 of the New York Lien Law. Owner consents to HTFC making disbursement of proceeds directly to Contractor for all amounts due to it on said Owner/Contractor Agreement and all payments so made shall be deemed to have been paid directly by Owner for all purposes.
2. Before Contractor is bound to proceed with the Work under the Owner/Contractor Agreement, and without waiving any other conditions precedent required to be met by Owner, HTFC shall notify Contractor in writing of its approval for Contractor to commence construction and of the fact that all of the conditions precedent contained in HTFC's Construction Loan Agreement to entitle Owner to take down the first advance thereunder have been met (other than those conditions relating solely to the filing and processing of the first payment request).
3. Should Owner default under the Owner/Contractor Agreement, Contractor shall give HTFC notice of such default in writing within 48 hours of said default and HTFC shall similarly give Contractor notice of any Owner's default under the Construction Loan Agreement for which HTFC makes an election to cease or delay funding to Owner.
4. If Owner defaults under the Owner/Contractor Agreement or the Construction Loan Agreement and Contractor is current in performance of its obligations under the Owner/Contractor Agreement, Contractor will continue performance under the Owner/Contractor Agreement for HTFC if, within 30 days of the default, HTFC in writing: (i) authorizes Contractor to continue Work; (ii) agrees in writing to pay or cause to be paid to Contractor all sums due through the date on which Owner defaulted including all sums due under all Change Orders approved by HTFC; and (iii) agrees to continue to pay or cause to be paid to Contractor the moneys for all Work through final completion, including all retainage. If HTFC does determine to complete construction of the Project after Owner's default, HTFC agrees that it will complete such Project with Contractor as above recited provided the Contractor is current in performance under the Owner/Contractor Agreement.
5. If Owner's default occurs after completion of the Work under the Owner/Contractor Agreement and prior to the time that the balance of the payments thereunder have been made to Contractor, so that HTFC has benefit of the completed Project under the Owner/Contractor

Agreement, HTFC shall disburse to Contractor the balance due under said Owner/Contractor Agreement, to the extent the Construction Loan has not been fully disbursed.

6. If HTFC does not authorize Contractor in writing to continue or recommence the Work within 30 days as above recited, then, without limiting such liability which Owner may have under the Owner/Contractor Agreement, HTFC shall pay Contractor for all Work through the date on which Owner defaulted or the date on which Work was stopped by Contractor due to Owner's default, whichever is later, inclusive of all retainage and all costs incurred by Contractor to close down and protect the construction site as may be required under applicable building codes and regulations, to the extent the Construction Loan has not been fully disbursed.

7. Pursuant to the terms of the Construction Loan Agreement, Owner has agreed to a conditional assignment of the Owner/Contractor Agreement to HTFC. Contractor consents to such conditional assignment. If Owner defaults under the Construction Loan Agreement and HTFC elects to exercise its rights under such assignment, HTFC shall notify Contractor in writing and hereby agrees to make payments to Contractor for all Work as called for under the Owner/Contractor Agreement in the same manner as is applicable under Paragraph 4. The rights of HTFC under such Assignment must be activated within the same time as is provided in Paragraph 4.

#### SECTION V- NOTICES

1. All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to Borrower and to HTFC at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.

2. Nothing herein contained shall operate as a waiver or relinquishment of any obligation or liability which may be owed by Owner, or any other party liable on Owner's behalf, to Contractor under the Owner/Contractor Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

HOUSING TRUST FUND CORPORATION

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ general contractor ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ Borrower ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]





## SCHEDULE A

### Insurance Requirements for Builders Under Direct Contract with Awardees

#### 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

#### 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 HTFC as obligee/loss payee.

## INDEX VI

### SUBORDINATION AGREEMENT

Subsection 6-a of Private Housing Finance Law Section 1102 requires HTFC to secure a first lien position for its mortgage except under certain limited circumstances.

The subordination agreement is executed by the Awardee, a superior mortgagee and HTFC. By entering into this agreement the superior mortgagee agrees to be subject and subordinate to the terms of the HTFC Regulatory Agreement and Mortgage and it agrees to provide HTFC notice of any default under the superior mortgage.

---

---

HOUSING TRUST FUND CORPORATION

and

[ Subordinate Mortgagee ]

and

[ Borrower ]

[and]

[ Fee Holder (if applicable) ]

---

[HOUSING TRUST FUND or HOME or HOMES FOR WORKING FAMILIES] PROGRAM

---

SUBORDINATION AGREEMENT

---

DATED AS OF [ date ]

This instrument affects real and personal property situated in the State of New York, Section [\_\_\_\_], Block [\_\_\_\_], Lot [\_\_\_\_], County of [\_\_\_\_], [ City/Town/Village ] of [\_\_\_\_], commonly known as [ project address ].

---

---

RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. [\_\_\_\_]

HOUSING TRUST FUND CORPORATION

SUBORDINATION AGREEMENT

THIS AGREEMENT, made as of [ date ], by and between the HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), [ Subordinate Mortgagee ], a [Subordinate Mortgagee entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [Subordinate Mortgagee address ] (“Mortgagee”) [ and / , ] [ Borrower ], a [Borrower entity type ] organized and existing under the laws of the State of New York, having its principal place of business at [ Borrower address ] (“Borrower”)

[If the ownership of the Property is Split]

, [ Fee holder ] a [ Fee holder entity type ] organized and existing under the laws of the State of \_\_\_\_\_, with its principal place of business at [ Fee Holder address ] (“Fee Holder”)

:

WITNESSETH

WHEREAS, Mortgagee is the owner and holder of a promissory note in the amount of [ subordinate mortgage amount ] DOLLARS (\$ [ subordinate mortgage amount in numbers ] ) executed by Borrower dated [ \_\_\_\_\_ ], which note is secured by a mortgage on premises described in the annexed Schedule A (“Mortgaged Premises”), from Borrower to Mortgagee dated [ \_\_\_\_\_ ] and [ to be ] recorded [ on subordinate mortgage recording date ] in the [ Project’s county ] County Clerk’s Office [ in Book \_\_\_\_\_ of Mortgages at Page \_\_\_\_\_ ] (“Mortgage”);

[If this is a HTF/HWF project]

WHEREAS, pursuant to Section 1102 of the Private Housing Finance Law, as may be amended from time to time (“Statute”), HTFC is authorized to enter into a contract with Borrower for the furnishing by Borrower of housing for persons of low income;

[If this a HOME project]

WHEREAS, pursuant to Subtitle A of Title II of the National Affordable Housing Act of 1990, as may be amended from time to time (“Statute”), HTFC is authorized to enter into a contract with Borrower for the furnishing by Borrower of housing for persons of low income;

WHEREAS, Borrower is required to enter into a regulatory agreement as a condition to an award under the Statute (“Regulatory Agreement”) and to execute a mortgage and security agreement in favor of HTFC (“HTFC Mortgage”); and

WHEREAS, Mortgagee has agreed to subordinate the Mortgage to the Regulatory Agreement, HTFC Mortgage and the Statute.

NOW, THEREFORE, in consideration of good and valuable consideration exchanged between the parties, it is hereby agreed as follows:

1. The Mortgage is hereby subordinated and made subject to the HTFC Mortgage.
2. The Mortgage is hereby made subject to the terms and conditions of the Regulatory Agreement and the Statute and shall continue to be subject to said terms and conditions in the event of foreclosure of the Mortgage or Mortgagee obtaining title to the Mortgaged Premises, in accordance with the law and provisions of the Mortgage.
3. In the event there shall be any default under the terms of the Mortgage, including, but not limited to, the failure to pay principal or interest of said Mortgage for sixty (60) days, Mortgagee shall give HTFC notice of such default and shall give HTFC a reasonable opportunity to cure such default before commencing foreclosure proceedings.
4. All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to the parties at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.
5. This Agreement may not be amended, modified, waived or rescinded in whole or in part nor may any other action or consent be given unless it is in writing, signed by and delivered to all the parties to this Agreement.
6. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is

invalid or unenforceable, shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.

7. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

HOUSING TRUST FUND CORPORATION

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ Borrower ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[If Borrower is not the Fee Holder]

[ Fee Holder ]

As Nominee and Titleholder

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]







## INDEX VII

### NOTICE OF DEFAULT AGREEMENT

Subsection 6-a(a) of Private Housing Finance Law Section 1103 requires that HTFC receive written notice from other mortgagees of the project property when the Awardee defaults on any payment of principal or interest on a mortgage loan for a period of 60 days.

The notice of default agreement is executed by the Awardee, HTFC and any other mortgagee of the project property and secures the additional mortgagee's agreement to provide written notice of default to HTFC.

---

---

HOUSING TRUST FUND CORPORATION

and

[ Subordinate Mortgagee ]

and

[ Borrower ]

[and]

[ Fee Holder (if applicable) ]

---

[ HOUSING TRUST FUND or HOME or HOMES FOR WORKING FAMILIES ] PROGRAM

---

NOTICE OF DEFAULT AGREEMENT

---

DATED AS OF [ date ]

This instrument affects real and personal property situated in the State of New York, Section [\_\_\_\_], Block [\_\_\_\_], Lot [\_\_\_\_], County of [\_\_\_\_], [ City/Town/Village ] of [\_\_\_\_], commonly known as [ project address ].

---

---

RECORD AND RETURN TO:

STATE OF NEW YORK  
HOUSING TRUST FUND CORPORATION  
38-40 State Street  
Albany, New York 12207  
Attention: Counsel's Office

SHARS I.D. No. [\_\_\_\_]

NOTICE OF DEFAULT AGREEMENT

THIS AGREEMENT, made as of [ date ], by and between the HOUSING TRUST FUND CORPORATION, a public benefit corporation with its principal place of business at 38-40 State Street, Albany, New York 12207 (“HTFC”), [Subordinate Mortgagee ], a [Subordinate Mortgagee entity type ] organized and existing under the laws of the State of New York, with its principal place of business at [Subordinate Mortgagee’s address ] (“Mortgagee”) [ and / , ] [ Borrower ], a [Borrower entity type ] organized and existing under the laws of the State of New York, having its principal place of business at [ Borrower address ] (“Borrower”)

[If the ownership of the Property is Split]  
and [ Fee holder ] a [ Fee holder entity type ] organized and existing under the laws of the State of \_\_\_\_\_, with its principal place of business at [ Fee Holder address ] (“Fee Holder”)

;

WITNESSETH

WHEREAS, HTFC entered into a regulatory agreement with Borrower affecting the premises described in the annexed Schedule A ( “Mortgaged Premises”) dated [\_\_\_\_\_] and [ to be ] recorded in the [\_\_\_\_\_] County Clerk’s Office [on { date of recording of regulatory agreement } in Book \_\_\_ of Deeds at Page \_\_\_ ], incorporated hereto by reference ( “Regulatory Agreement”);

WHEREAS, HTFC is the owner and holder of a mortgage and security agreement on Mortgaged Premises from Borrower to HTFC dated [\_\_\_\_\_] and [ to be ] recorded in the [\_\_\_\_\_] County Clerk’s Office [on { date of recording of mortgage and security agreement } in Book \_\_\_ of Mortgages at Page \_\_\_ ] (“HTFC Mortgage”);

WHEREAS, Borrower is giving Lender a subordinate mortgage on the Mortgaged Premises to secure a loan made by Lender to Borrower ( “Subordinate Mortgage”); and

WHEREAS, Lender has agreed to give HTFC notice when Borrower has defaulted under the Subordinate Mortgage.

NOW, THEREFORE, in consideration of good and valuable consideration exchanged between the parties, it is hereby agreed as follows:

1. The Subordinate Mortgage is hereby subordinated to the Regulatory Agreement, HTFC Mortgage and the Statute.
2. In the event there shall be any default under the terms of the Subordinate Mortgage, including, but not limited to, the failure to pay principal or interest on the Subordinate Mortgage loan for sixty (60) days, Lender shall give HTFC notice of such default and shall give HTFC a reasonable opportunity to cure such default before commencing foreclosure proceedings.
3. All notices or other communications with respect to the subject matter of this Agreement shall be in writing and shall be deemed to have been given when sent by certified mail, return receipt requested, to the parties at the addresses first set out herein. A party may change the address by giving notice as provided herein, which will be effective upon receipt.
4. This Agreement may not be amended, modified, waived or rescinded in whole or in part nor may any other action or consent be given unless it is in writing, signed by and delivered to all the parties to this Agreement.
5. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision shall be valid and enforceable to the fullest extent permitted by law.
6. This Agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have each duly executed this Agreement as of the day and year first above written.

HOUSING TRUST FUND CORPORATION

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[ Borrower ]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

[If Borrower is not the Fee Holder]

[ Fee Holder ]

As Nominee and Titleholder

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]







## INDEX VIII

### HOME DEED RESTRICTION

24 CFR 92.252(a)(5) of the HOME regulation requires that the affordability of the project units be secured throughout the regulatory term by a deed restriction which runs with the land. The following language must be included in any transfer deeds for the project property.

HOME DEED RESTRICTION

This conveyance is made and accepted with the condition that, in consideration of funding pursuant to the New York State HOME Program, the use of the property conveyed is restricted to use as affordable housing and shall meet the required affordability standards for a term of [\_\_\_\_\_] years from project completion. This restriction shall be enforceable by New York State Housing Trust Fund Corporation and may not be altered or removed prior to the expiration of the term set forth herein without the written permission of New York State Housing Trust Fund Corporation.

## INDEX IX

### HOME MATCH ADDENDUM

Certain Low-Income Housing Trust Fund Program projects have been identified for fulfilling the State's participating jurisdiction requirement for matching funds under the HOME Investment Partnerships Program. The Regulatory Agreement for these projects will include an addendum requiring that the project be operated in compliance with HOME requirements for affordability, tenant protections, housing quality and income determinations.

## APPENDIX 2

### HOME MATCH ADDENDUM

WHEREAS, this Addendum is hereby made a part of the Regulatory Agreement between Borrower and HTFC, pertaining to a low-income housing project ( “Project”) which qualifies as affordable housing under the HOME Program; and

WHEREAS, pursuant to Subtitle A of Title II of the National Affordable Housing Act of 1990 as may be amended from time to time ( “Statute”) and the regulations promulgated thereunder as may be amended from time to time ( “Regulations”) (collectively “HOME Program”), HTFC is required to provide a matching contribution to housing that qualifies as affordable under the HOME Program.

NOW, THEREFORE, Borrower agrees to maintain the housing units regulated under this Regulatory Agreement ( “Regulated Units”) as affordable housing under the HOME Program as stated in this Addendum.

1. Term of Affordability

The Regulated Units shall remain affordable housing under the HOME Program for at least fifteen years from project completion.

2. Affordability Requirements

The Regulated Units shall meet the affordability requirements set forth in 24 CFR 92.252 for the Term of Affordability set forth above. The Regulated Units shall: a) bear rents not greater than those set forth in 24 CFR 92.252 (a)(1)(i) and (a)(1)(ii); b) have, in the case of projects with three or more rental units or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20% of the rental units occupied by very low income families as set forth in 24 CFR 92.252 (a)(2)(i) and (a)(1)(ii) and have a rent no higher than the rent allowed under 24 CFR 92.252 (a)(2)(iii); c) be occupied only by households that qualify as low income families; and d) not be refused for leasing to a holder of a certificate, voucher or comparable document pursuant to any rental assistance program because of the status of the prospective tenant as a holder of such document. HTFC shall review and approve rents proposed by Borrower for units with “flat rents” and if applicable shall review and approve proposed monthly utility and services allowances for units subject to maximum rent limitations, pursuant to 24 CFR 92.252 (b). Maximum monthly rents shall be reviewed and approved by

HTFC annually and Borrower must comply with the provisions of 24 CFR 92.252 (b) and (c) in the increase of any rent.

### 3. Tenant Protections

The lease between Borrower (or Borrower's agent or successor or assign) and a tenant in one of the Regulated Units must be for not less than one year, unless by mutual agreement between the tenant and the owner. The lease may not contain any of the following provisions:

(a) Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of Borrower in a lawsuit brought in connection with the lease;

(b) Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law;

(c) Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(d) Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(e) Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(f) Agreement by the tenant to waive any right to a trial by jury;

(g) Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(h) Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

### 4. Property Standards

The Regulated Units shall be maintained in compliance with the housing quality standards set forth at 24 CFR 92.251, which include, minimally, the housing quality standards at 24 CFR 882.109 and with applicable State or local building codes during the Term of Affordability set forth herein.

5. Enforcement of Affordability

Failure to maintain the affordability of the Regulated Units as set forth in this Addendum shall be a default under this Regulatory Agreement and Borrower may be required to repay all funds provided to the Project, in addition to any other remedies available to HTFC in law or equity.

6. Income Determinations

Income determinations made for prospective or current tenants based on family income or adjusted family income shall be made in accordance with 24 CFR 92.203, including use of the definitions of annual income, adjusted income, monthly income and monthly adjusted income as those terms are defined in 24 CFR Part 813.

## INDEX X

### FORM OF TECHNICAL ASSISTANCE AGREEMENT BETWEEN SPONSOR ENTITY AND HDFC

Any sponsor corporation which forms a Housing Development Fund Company (or any other entity) (AHDFC@) to own and/or operate its project must enter into a technical assistance contract with the HDFC.

The technical assistance agreement assures that the expertise and housing management skills of the sponsor corporation will be available to the HDFC and the project for the duration of the HTFC regulatory term.

## TECHNICAL ASSISTANCE AGREEMENT

AGREEMENT (“Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a New York not-for-profit corporation having its principal place of business at \_\_\_\_\_ (“Sponsor Corporation”) and \_\_\_\_\_, a corporation organized under the Not-for-Profit Corporation Law and the Private Housing Finance Law of the State of New York, having its principal place of business \_\_\_\_\_ (“HDFC”).

### WITNESSETH:

WHEREAS, Sponsor Corporation has been selected by the State of New York, acting by and through the Housing Trust Fund Corporation (“HTFC”), to participate in its Housing Trust Fund Program by developing the property located at \_\_\_\_\_, New York (“Property”) for housing for low-income persons; and

WHEREAS, pursuant to HTFC’s requirements, Sponsor Corporation created HDFC under Article XI of the Private Housing Finance Law and the Not-for-Profit Corporation Law to acquire and develop the Property; and

WHEREAS, as a condition of providing the financing for the development of the Property, HTFC requires that Sponsor Corporation agree to assist HDFC, its successors or assigns during the term of the HTFC Note, Mortgage, Regulatory Agreement and such other documents executed on the date hereof in connection with the financing of the Property (“Financing Agreements”) in complying with the terms of the Financing Agreements.

NOW, THEREFORE, the parties agree as follows:

1. That HDFC will own the Property.
2. That HDFC is responsible for the fiscal and physical well-being of the project.
3. During the term of the Financing Agreements, Sponsor Corporation shall assist HDFC in complying with the terms of such Agreements by undertaking the following responsibilities:
  - a. Oversee the construction of the project.
  - b. Oversee the initial rent-up of the units.
  - c. Select a management company.

- d. Monitor compliance with all local, state and federal requirements.
- e. Maintain the property in compliance with all local, state and federal property standards.
- f. Assure that provisions of local, state and federal fair housing law are enforced.
- g. Prepare annual budgets for approval by HDFC's Board of Directors.
- h. Provide HDFC's Board of Directors with quarterly financial reports.
- i. Oversee the project finances to insure that the Property is managed in a fiscally responsible way.
- j. Insure that an annual audit is performed.
- k. Provide tenant services as the budget permits.

IN WITNESS WHEREOF, the undersigned have set their hands hereunto as of the day and year first written above.

[\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: President

[\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: President

## INDEX XI

### INSURANCE REQUIREMENTS

HTFC has specific insurance requirements for projects receiving construction and permanent financing. Please do not send copies of insurance policies for review; an insurance certificate is requested. The certificate must reflect insurance coverage to the extent required by Section 5.00 of the Capital Programs Manual in the manner shown on the attached sample insurance certificates. Awardees may request copies of the HTFC form certificate from the project manager or they may submit the information on an insurance industry Acord 25-S or 75 as appropriate. Evidence of Worker's Compensation coverage must be submitted on the appropriate form from the Worker's Compensation Board. Acord forms are not accepted.

**Important:**

Each policy must contain an undertaking by the insurer that the policy shall not be modified adversely to the interests of the holder of any mortgage on the premises or cancelled without at least 30 days prior written notice to the holder of any mortgage on the premises.

### Who Must Have Coverage:

1. Rental Projects
  - a. OWNER (During period of construction)
  - b. CONSTRUCTION CONTRACTOR (During period of construction)
  - c. OWNER (During project operations )
2. Homestead Projects
  - a. OWNER/AWARDEE (During period of construction)
  - b. OWNER/AWARDEE (After period of construction but before conveyance of units to homesteaders)
  - c. HOMESTEAD OWNER (After sale of unit)

### Worker's Compensation Requirements

Pursuant to Sections 57 and 220 subdivision 8 of the Worker's Compensation Law, HTFC is required to verify that its Awardees have appropriate worker's compensation and disability benefits insurance coverage prior to entering into a contract with the Awardee. All Awardees must provide one of the following forms of worker's compensation coverage:

1. New York State Insurance Fund form U-26.3, Certificate of Worker's Compensation Insurance; or
2. C-105.2 Certificate of Workers' compensation Insurance Coverage (for Awardees insured for Workers' compensation through a private insurance carrier); or
3. SI-12, Certificate of Worker's Compensation Self-Insurance (the Awardee calls the Worker's Comp. Self-Insurance office at 518-402-0247) or GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance (the Awardee's group self-insurance administrator will send this form to HTFC upon request); or
4. WC/DB-100, Affidavit for New York Entities And Any Out of State Entities With No Employees, That New York State Worker's Compensation And/Or Disability Benefits Insurance Coverage is not Required.

All Awardees must also provide one of the following forms of disability benefits coverage:

1. Either the DB-120.1, Certificate of Disability Benefits Insurance or the DB-820/829 (the Awardee's insurance carrier will send the appropriate form to HTFC upon request); or
2. DB-155, Certificate of Disability Benefits Self-Insurance (the Awardee calls the Worker's Comp. Self-Insurance office at 518-402-0247); or
3. WC/DB-100, Affidavit for New York Entities And Any Out of State Entities With No Employees, That New York State Worker's Compensation And/Or Disability Benefits Insurance Coverage is not Required.

The foregoing list of forms is accurate as of the date of this publication, but is subject to change by the Worker's Compensation Board at any time. Awardees are responsible for using the forms required by the Worker's Compensation Board.

Awardees may obtain additional information by contacting their insurance agents or the Worker's Compensation Board, Bureau of Compliance at (866) 298-7830 or by accessing the Board's website at [www.wcb.state.ny.us](http://www.wcb.state.ny.us).

PLEASE NOTE: ACORD forms are not acceptable proof of New York State Worker's Compensation or disability benefits coverage.

## RENTAL PROJECTS



This Certificate does not amend, extend or alter the coverage afforded, by the policies below.

Producer

Companies Affording Coverage

Company Letter	A
Company Letter	B
Company Letter	C
Company Letter	D
Company Letter	E

Insured

OWNER (HOME or HTF financed new construction or substantial rehabilitation project)

This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

CO Ltr	General Liability	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	General Aggregate
					Each Occurrence \$1,000,000
	<b>Automobile Liability</b> <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit \$ \$1,000,000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$
	<b>Excess Liability</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				Each Occurrence \$ Aggregate \$
	<b>Workers' Compensation and Employers' Liability</b> Owners/ partners/ officers included				<input checked="" type="checkbox"/> Statutory Limits Each Accident \$ Disease - Policy Limit \$ Disease - Each Employee \$
	<b>Fidelity (crime policy)</b>	Blanket position fidelity bond/comm. crime policy in	minimum amount equal to the largest HTFC disbursement. HTFC as loss payee.		
	<b>Other</b>				
	<b>Property</b> Builders Risk - All Risk	<b>Coverage Forms</b> Building Agreed Amt/Repl. Cost full replacement value of project			Amount Deductible Coinsurance 100

Description and Location of Property

Housing Trust Fund Corporation and New York State Division of Housing and Community Renewal are included as additional insureds as to liability coverage. Housing Trust Fund Corporation is named as loss payee for fidelity coverage.

Housing Trust Fund Corporation is named  mortgagee  loss payee for property coverage.

Prior to non-renewal or cancellation of these policies, at least 30 days advance written notice shall be given to the certificate holders named below.

Certificate Holders:

(1) Housing Trust Fund Corporation (2) NYS Division of Housing and Community Renewal Date Issued \_\_\_\_\_

Mail to the New York State Division of Housing and Community Renewal, Housing Management Bureau at::

- Hampton Plaza 38-40 State Street Albany, NY 12207  
 25 Beaver Street New York, NY 10004

Authorized Representative \_\_\_\_\_



This Certificate does not amend, extend or alter the coverage afforded, by the policies below.

Producer

Companies Affording Coverage

Company Letter	A
Company Letter	B
Company Letter	C
Company Letter	D
Company Letter	E

Insured

OWNER (Operating requirements)

This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

CO	Ly	General Liability	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	General Aggregate	
						Each Occurrence \$1,000,000	
		<b>Automobile Liability</b> <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit \$ \$1,000,000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$	
		<b>Excess Liability</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				Each Occurrence \$ Aggregate \$	
		<b>Workers' Compensation and Employers' Liability</b> Owners/ partners/ officers included				<input checked="" type="checkbox"/> Statutory Limits Each Accident \$ Disease - Policy Limit \$ Disease - Each Employee \$	
		<b>Fidelity (crime policy)</b> <small>Blanket position fidelity bond/comm. crime policy coverage equal to 3 months ent roll plus the value of any unrestricted project reserve</small>					
		Other					
		<b>Property</b> Fire - All Risk/Special form	Building Agreed Amt/Repl. Cost	Coverage Forms full replacement value of project	Amount	Deductible	Coinsurance 100

Description and Location of Property

Housing Trust Fund Corporation and New York State Division of Housing and Community Renewal are included as additional insureds as to liability coverage.

Housing Trust Fund Corporation is named as loss payee for fidelity coverage.

Housing Trust Fund Corporation is named  mortgagee  loss payee for property coverage.

Prior to non-renewal or cancellation of these policies, at least 30 days advance written notice shall be given to the certificate holders named below.

Certificate Holders:

(1) Housing Trust Fund Corporation (2) NYS Division of Housing and Community Renewal Date Issued \_\_\_\_\_

Mail to the New York State Division of Housing and Community Renewal, Housing Management Bureau at:

- Hampton Plaza 38-40 State Street Albany, NY 12207  
 25 Beaver Street New York, NY 10004

\_\_\_\_\_  
Authorized Representative



This Certificate does not amend, extend or alter the coverage afforded, by the policies below.

Producer

Insured

CONSTRUCTION CONTRACTOR (New construction/  
substantial rehabilitation HOME or HTF financed)

Companies Affording Coverage	
Company Letter	A
Company Letter	B
Company Letter	C
Company Letter	D
Company Letter	E

This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

CO Ltr	General Liability	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	General Aggregate
					Each Occurrence \$1,000,000
	<b>Automobile Liability</b> <input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Combined Single Limit \$ \$1,000,000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$
	<b>Excess Liability</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				Each Occurrence \$ Aggregate \$
	<b>Workers' Compensation and Employers' Liability</b>	Owners/ partners/ officers included			<input checked="" type="checkbox"/> Statutory Limits Each Accident \$ Disease - Policy Limit \$ Disease - Each Employee \$
	<b>Fidelity (crime policy)</b>	Performance and payment bond in an amount equal to the value of the contractor's contract. Owner to be obligee and loss payee.			
	<b>Other</b>				
	<b>Property</b>	Coverage Forms Building Agreed Amt/Repl. Cost			Amount Deductible Coinsurance 100

Description and Location of Property

Housing Trust Fund Corporation and New York State Division of Housing and Community Renewal are included as additional insureds as to liability coverage.

Housing Trust Fund Corporation is named as loss payee for fidelity coverage.

Housing Trust Fund Corporation is named  mortgagee  loss payee for property coverage.

Prior to non-renewal or cancellation of these policies, at least 30 days advance written notice shall be given to the certificate holders named below.

Certificate Holders:

(1) Housing Trust Fund Corporation (2) NYS Division of Housing and Community Renewal Date Issued \_\_\_\_\_

Mail to the New York State Division of Housing and Community Renewal, Housing Management Bureau at::

Hampton Plaza 38-40 State Street Albany, NY 12207  
 25 Beaver Street New York, NY 10004

Authorized Representative

## HOMESTEAD PROJECTS





This Certificate does not amend, extend or alter the coverage afforded, by the policies below.

Producer

Companies Affording Coverage

Company Letter	A
Company Letter	B
Company Letter	C
Company Letter	D
Company Letter	E

Insured

APPLICANT/HTF-HOME SPONSOR (Homestead)  
after construction - before sale

This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

CO Ltr	General Liability	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	General Aggregate	
	<input checked="" type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Each Occurrence \$1,000,000 Combined Single Limit \$ \$1,000,000 Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$	
	Excess Liability <input checked="" type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				Each Occurrence \$ \$1,000,000 Aggregate \$	
	Workers' Compensation and Employers' Liability	Owners/ partners/ officers included			<input checked="" type="checkbox"/> Statutory Limits Each Accident \$ Disease - Policy Limit \$ Disease - Each Employee \$	
	Fidelity (crime policy)	Blanket	position fidelity bond/comm. crime policy in a	minimum amount equal to the largest HTFC disbursement. HTFC as loss payee.		
	Other					
	Property	Coverage Forms		Amount	Deductible	Coinsurance
	Fire - All Risk/Special form	Building Agreed Amt/Repl. Cost	full replacement value of project			100

Description and Location of Property

Housing Trust Fund Corporation and New York State Division of Housing and Community Renewal are included as additional insureds as to liability coverage. Housing Trust Fund Corporation is named as loss payee for fidelity coverage. Housing Trust Fund Corporation is named  mortgagee  loss payee for property coverage.

Prior to non-renewal or cancellation of these policies, at least 30 days advance written notice shall be given to the certificate holders named below.

Certificate Holders:

(1) Housing Trust Fund Corporation (2) NYS Division of Housing and Community Renewal Date Issued \_\_\_\_\_

Mail to the New York State Division of Housing and Community Renewal, Housing Management Bureau at:

- Hampton Plaza 38-40 State Street Albany, NY 12207  
 25 Beaver Street New York, NY 10004

\_\_\_\_\_  
Authorized Representative



This Certificate does not amend, extend or alter the coverage afforded, by the policies below.

Producer

Companies Affording Coverage

Company Letter	A
Company Letter	B
Company Letter	C
Company Letter	D
Company Letter	E

Insured

HOMESTEAD OWNER  
(single family) after sale

This is to certify that the policies listed below have been issued to the insured named above and are in force at this time.

CO Ltr	General Liability	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	General Aggregate	\$300,000
	<b>Automobile Liability</b> <input type="checkbox"/> Any Auto <input type="checkbox"/> All Owned Autos <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Each Occurrence	
	<b>Excess Liability</b> <input type="checkbox"/> Umbrella Form <input type="checkbox"/> Other Than Umbrella Form				Combined Single Limit \$ Bodily Injury (per person) \$ Bodily Injury (per accident) \$ Property Damage \$	
	<b>Workers' Compensation and Employers' Liability</b>				<input type="checkbox"/> Statutory Limits Each Accident \$ Disease - Policy Limit \$ Disease - Each Employee \$	
	Fidelity (crime policy)					
	Other					
	<b>Property</b> Fire homeowner's	<b>Coverage Forms</b> Building Agreed Amt/Repl. Cost		full replacement value of project	Amount	Deductible
						Coinsurance
						100

Description and Location of Property

Housing Trust Fund Corporation and New York State Division of Housing and Community Renewal are included as additional insureds as to liability coverage.  
 Housing Trust Fund Corporation is named as loss payee for fidelity coverage.  
 Housing Trust Fund Corporation is named  mortgagee  loss payee for property coverage.

Prior to non-renewal or cancellation of these policies, at least 30 days advance written notice shall be given to the certificate holders named below.

Certificate Holders:  
 (1) Housing Trust Fund Corporation (2) NYS Division of Housing and Community Renewal Date Issued \_\_\_\_\_

Mail to the New York State Division of Housing and Community Renewal, Housing Management Bureau at:  
 Hampton Plaza 38-40 State Street Albany, NY 12207  
 25 Beaver Street New York, NY 10004  
 \_\_\_\_\_  
 Authorized Representative

## INDEX XII

### FORM OF COUNSEL'S OPINION LETTER

This document is prepared by the Awardee's attorney in the attached format and delivered at the project closing.

The opinion provides assurance to HTFC that as of the project closing date, the Awardee is legally formed and is capable of entering into the loan/grant transaction and that there are no legal impediments which would prevent the Awardee from going forward with the project.

[To be Submitted on Counsel's Letterhead]

[Date of Closing]

Housing Trust Fund Corporation  
Hampton Plaza  
38-40 State Street  
Albany, New York 12207

Re: [Client's name]  
SHARS ID #[ ]  
Project located at:

Ladies and Gentlemen:

We have acted as counsel to [Client/Entity], a [corporation] [limited partnership] [limited liability company] ("Borrower"), in connection with that certain \$\_\_\_\_\_ mortgage loan ("Loan") from Housing Trust Fund Corporation ("HTFC") to finance a low-income housing facility ("Project"). In such capacity, we have reviewed the following documents, all dated as of this date unless otherwise noted, as executed and delivered in connection with the Loan:

[list documents applicable to the transaction]

- (a) Regulatory Agreement;
- (b) Promissory Note (the "Note") between Borrower and HTF in the principal amount of \$\_\_\_\_\_;
- (c) Mortgage and Security Agreement (the "Mortgage") made by Borrower in favor of HTF as security for the Note and describing therein certain real property located at \_\_\_\_\_, New York (the "Real Property") and certain personal property (including fixtures and other rights) located thereon or used in connection therewith (the "Personal Property");
- (d) Construction Loan Agreement between Borrower and HTF;
- (e) Subordination Agreement;
- (f) Subordination and First Mortgagee [Waiver] Agreement;
- (g) Participation Agreement; and
- (h) Escrow Agreement.

Documents (a) through [(h)] are collectively referred to herein as the “Loan Documents”. The Real Property and the Personal Property are collectively referred to herein as the “Collateral”.

In rendering our opinion we have also examined the [describe Borrower’s organizational documents: e.g., its articles, bylaws, partnership agreements, operating agreements, and all amendments thereto] of Borrower (the “Organizational Documents”), certificates of public officials, and such other records, certificates, documents and instruments as we have deemed necessary for the purposes of the opinions herein expressed. As to various questions of fact material to our opinion, we have relied upon certificates and written statements of [officers] [partners] [members] of Borrower. We have assumed that the Mortgage will be duly recorded in the Office of the [Clerk] [Register] of the county in which the Real Property is located.

We express no opinion with respect to (i) the title to or the rights or interests of Borrower in the Collateral, (ii) the adequacy of the description of the Collateral, or (iii) the creation, attachment, perfection or priority of any liens thereon and/or security interests therein. We understand that, with respect to the title to the Real Property and the creation and priority of the lien of the Mortgage, you will be relying upon the title insurance policy issued to you by [title company] bearing Title No. \_\_\_\_\_ and dated as of the Closing Date.

The law covered by this opinion is limited to the present federal law of the United States and the present law of the State of New York. We express no opinion with respect to the law of any other jurisdiction and, unless specified, no opinion with respect to the statutes, administrative decisions, rules, regulations or requirements of any county, municipality, subdivision or local authority of any jurisdiction. We have assumed that you have complied with all state and/or federal laws and regulations applicable to you arising out of the Loan or your status as lender therein.

Based on the foregoing, and upon such investigation as we have deemed necessary, and subject to the qualifications and exceptions herein contained, we are of the opinion that:

1. Borrower is a [corporation] [limited partnership] [limited liability company] validly existing under the law of the State of New York.
2. Borrower has the power under its Organizational Documents and applicable law to own the Collateral and to execute, deliver and perform its obligations under, the Loan Documents.
3. Borrower has taken all action necessary under its Organizational Documents and applicable law to authorize the execution and delivery of the Loan Documents and the performance of its obligations thereunder and has duly executed and delivered the Loan Documents.
4. The Loan Documents are the valid and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as may be limited by (i) bankruptcy, insolvency or other similar laws affecting the rights and remedies of creditors generally and (ii) general principles of equity. In addition, we advise you that certain provisions

of the Loan Documents may be further limited or rendered unenforceable by applicable law, but in our opinion, such law does not render the Loan Documents invalid as a whole or substantially interfere with realization of the principal benefits and/or security provided thereby.

5. The execution and delivery by Borrower of the Loan Documents, and compliance with the provisions thereof under the circumstances contemplated thereby, will not conflict with or constitute on the part of Borrower a breach of or default under any contract or agreement or other instrument to which Borrower is a party, or any existing law, regulations, court order, or consent decree to which Borrower is subject.

6. To the best of our knowledge, based solely on the letter from \_\_\_\_\_, the Project Architect, all necessary governmental approvals, including but not limited to zoning, subdivision, and environmental requirements with respect to the acquisition and construction of the Project, have been obtained.

7. To our actual knowledge, Borrower is not a party to any pending, or overtly threatened in writing, actions or proceedings that may adversely affect the transactions contemplated by the Loan Documents or that would have a material adverse effect on Borrower.

This opinion is furnished by us as counsel for Borrower solely for the purposes contemplated by the Loan Documents. The opinions expressed herein may be relied upon only by you and only in connection with the Loan.

Very truly yours,

[Name of opinion giver]

## INDEX XIII

### DEPOSIT ACCOUNT CONTROL AGREEMENT

HTFC requires Awardees to give it a security interest in project reserve accounts. Recent amendments to Article 9 of the Uniform Commercial Code require that such a security interest be perfected by `Acontrol@`. When the collateral is in the possession of a third party, such as a bank holding a reserve account, control occurs when the bank agrees with the secured party that it will follow instructions of the secured party with respect to the collateral without further consent from the debtor. The deposit account control agreement perfects HTFC's security interest in project reserve accounts.

A deposit account control agreement may also be used by HTFC to restrict Awardee's access to reserve funds or to block a construction operating account.

## DEPOSIT ACCOUNT CONTROL AGREEMENT

### PARTIES

This Agreement is among the persons signing this Agreement as the “Secured Party,” the “Debtor,” and the “Bank” and is dated as of \_\_\_\_\_.

### BACKGROUND

The Debtor is the Bank's customer with respect to one or more demand deposit accounts identified by the account numbers specified below (individually and collectively, as re-numbered and including any funds in the account or accounts, the “*Deposit Account*”). The Debtor has granted the Secured Party a security interest in the Deposit Account. The Debtor is requesting that the Bank enter into this Agreement. The Bank is willing to do so upon the terms contained in this Agreement.

#### 1. **Definitions and Rules of Interpretation.**

In this Agreement (a) terms defined in the UCC and not otherwise defined in this Agreement have the same meanings in this Agreement as in the UCC, (b) the rules of interpretation in Article 1 of the UCC apply to the interpretation of this Agreement and (c) the term “or” is not exclusive. In addition, the following terms in this Agreement have the following meanings or interpretations:

This “**Agreement**” means the Deposit Account Control Agreement dated the Agreement Date among the Secured Party, the Debtor and the Bank.

“**Agreement Date**” means the date set forth at the beginning of this Agreement as the date as of which this Agreement was executed and delivered by the parties.

An “**address**” includes the person or persons or department of the Bank on an “attention” line.

“**Bank**” means the organization signing this Agreement as the Bank.

“**Business Day**” means:

(a) for communications to the Bank, a day other than a day (A) that is not a “business day” as defined in Federal Reserve Board Regulation CC, 12 CFR Part 229, or (B) on which the office, branch or department of the Bank specified as the Bank's address on the signature page is closed; and

(b) for communications to any other party, a day, other than a Saturday or Sunday, on which the other party is open for business at the location to which the communication is sent.

“**Claim**” means a claim, loss, cost or expense, and includes out-of-pocket or allocable internal legal fees and expenses incurred in bringing or defending a claim.

A “**communication**” includes a Disposition Instruction or a notice.

“**Debtor**” means the person signing this Agreement as the Debtor.

“**Deposit Account**” has the meaning set forth in the “Background” of this Agreement. The following account or accounts comprise the Deposit Account:

---

“**Deposit-related Agreements**” means, collectively, the deposit account agreement and any other agreements between the Bank and the Debtor governing the Deposit Account and any

cash management or similar services provided by the Bank to the Debtor in connection with the Deposit Account.

“**Disposition Instruction**” means an instruction to the Bank directing the disposition of the funds in the Deposit Account.

“**Order or Process**” means an order, judgment, decree or injunction, or a garnishment, restraining notice or other legal process, directing, or prohibiting or otherwise restricting, the disposition of the funds in the Deposit Account.

“**Secured Party**” means the person signing this Agreement as the Secured Party, whether the person is acting in a representative capacity or otherwise.

“**UCC**” means the Uniform Commercial Code of the jurisdiction whose law governs this Agreement or, if relevant to any matter other than the meaning of a defined term, the Uniform Commercial Code of the jurisdiction whose law applies to the matter under the choice of law rules of the jurisdiction whose law governs this Agreement.

A “**writing**” means a tangible writing, including a facsimile and an email; “*written*” refers to a communication in the form of a writing.

## 2. **The Debtor's Dealings with the Deposit Account**

As of the date hereof, the Bank will not comply with the Debtor's Disposition Instructions without written consent of the Secured Party. In its discretion the Bank may cease complying with the Debtor's Disposition Instructions at an earlier time as permitted by Section 4(a)(iv).

## 3. **The Secured Party's Right to Give Instructions as to the Deposit Account.**

The Bank will comply with any Disposition Instructions originated by the Secured Party, (a) without the Debtor's further consent, and (b) even if following the instruction results in the dishonoring by the Bank of items presented for payment from the Deposit Account or the Bank otherwise not complying with the Debtor's Disposition Instructions.

## 4. **Exculpation of the Bank**

(a) Notwithstanding the Bank's agreements in Sections 2 and 3, the Bank will not be liable to any other party for failing to follow a Disposition Instruction originated by the Secured Party (A) that requires the disposition of the funds in the Deposit Account by a method not available to the Debtor under the Deposit-related Agreements, (B) that the Bank determines would result in the Bank's failing to comply with a statute, rule or regulation, or an Order or Process, binding upon the Bank, (C) that requires the disposition of funds that are not immediately available in the Deposit Account, (D) that directs the disposition of less than all the funds in the Deposit Account or directs that the funds be sent to more than one recipient, or (E) for which the Bank has not received evidence reasonably required by the Bank as to the authority of the person giving the Disposition Instruction to act for the Secured Party;

(b) The Bank will not be liable to any other party for:

(i) wrongful dishonor of any item as a result of the Bank following any Disposition Instruction originated by the Secured Party,

(ii) failing to comply or delaying in complying with any Disposition Instruction or any provision of this Agreement due to a computer malfunction, interruption of communication facilities, labor difficulties, act of God, war, terrorist attack, or other cause, in each case beyond the Bank's reasonable control,

(iii) any other Claim, except to the extent caused by the Bank's gross negligence or willful misconduct, or

(iv) any indirect, special, consequential or punitive damages.

(c) The Bank will have no fiduciary duties under this Agreement to any other party, whether as trustee, agent, bailee or otherwise. The Bank will have no duties to the Secured Party except as expressly set forth in this Agreement. The Bank will have no duty to inquire into or determine the existence or enforceability of the Debtor's obligations to the Secured Party or whether, under any separate agreement between the Debtor and the Secured Party, the Debtor's obligations to the Secured Party are in default, the Debtor may originate a Disposition Instruction or the Secured Party may originate any Disposition Instruction.

## **5. The Bank's Recourse to the Deposit Account**

(a) Except for amounts referred to in Section 5(b), the Bank (i) subordinates any security interest, lien or other encumbrance against the Deposit Account to the Secured Party's security interest and (ii) will not exercise any right of recoupment, setoff or debit against the Deposit Account. This subordination will not apply to any security interest that the Bank has in an item under UCC Article 4 as a collecting bank.

(b) Notwithstanding Section 5(a), and regardless of any agreement of the Debtor to compensate the Bank by means of balances in the Deposit Account, the Bank may charge the Deposit Account, to the extent permitted by any of the Deposit-related Agreements or applicable law, for: (i) the face amount of a check, draft, money order, instrument, wire transfer of funds, automated clearing house entry, credit from a merchant card transaction, other electronic transfer of funds or other item (A) deposited in or credited to the Deposit Account, whether before or after the Agreement Date, and returned unpaid or otherwise uncollected or subject to an adjustment entry, whether for insufficient funds or for any other reason and without regard to the timeliness of the return or adjustment or the occurrence or timeliness of any other person's notice of nonpayment or adjustment, (B) subject to a claim against the Bank for breach of transfer, presentment, encoding, retention or other warranty under Federal Reserve Regulations or Operating Circulars, clearing house rules, the UCC or other applicable law, or (C) for a merchant card transaction, against which a contractual demand for chargeback has been made; (ii) normal service charges or fees payable to the Bank in connection with the Deposit Account or any related services; (iii) any adjustments or corrections of any posting or encoding errors; and (iv) reimbursements for out-of-pocket or allocable internal legal fees and expenses in connection with the negotiation, administration or enforcement of this Agreement by the Bank.

## **6. Indemnification and Reimbursement**

(a) The Debtor indemnifies the Bank against all Claims incurred, sustained or payable by the Bank arising out of this Agreement except to the extent caused by the Bank's gross negligence or willful misconduct.

(b) The Secured Party agrees to reimburse the Bank for any charge against the Deposit Account under Section 5(b) for which there were insufficient funds in the Deposit Account to satisfy the charge. Such reimbursement will be limited to the aggregate amount transferred from the Deposit Account as a result of the Bank's acting upon Disposition Instructions originated by the Secured Party or pursuant to Section 9(b). Any demand by the Bank for reimbursement must be made within 90 days after the termination of this Agreement. The Bank may not make a Claim for reimbursement under this subsection unless (i) the Debtor fails to satisfy the Claim within 15 days after the Bank makes a demand on the Debtor under Section 6(a) or (ii) the Bank is

enjoined, stayed or prohibited by operation of law from making the demand on the Debtor.

(c) The Secured Party's reimbursement obligations under Section 6(b) will not apply to (i) a charge for reimbursement of or indemnification for any out-of-pocket or allocable internal legal fees and expenses incurred by the Bank in connection with any claim or defense by the Bank against the Secured Party relating to this Agreement or (ii) the amount of any loss incurred by the Bank to the extent caused by the Bank's gross negligence or willful misconduct. If the Bank satisfies any Claim against the Debtor referred to in the foregoing clause (i) by charging the Deposit Account, the amount of the Secured Party's maximum liability for reimbursement obligations under Section 6(b) will be reduced by the amount of the Claim so satisfied.

(d) The Secured Party indemnifies the Bank against all other Claims incurred, sustained or payable by the Bank arising from the Bank following a Disposition Instruction originated by the Secured Party, or from the Bank's remittance of funds pursuant to Section 9(b), except to the extent caused by the Bank's gross negligence or willful misconduct.

#### **7. Representations and Warranties; Agreements with Other Persons.**

The Bank represents and warrants to the Secured Party that the Bank (a) is an organization engaged in the business of banking, (b) maintains the Deposit Account as a demand deposit account or accounts in the ordinary course of the Bank's business and (c) has not entered into any currently effective agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party. The Bank will not enter into any agreement with any person under which the Bank may be obligated to comply with Disposition Instructions originated by a person other than the Debtor or the Secured Party.

#### **8. Deposit Account Information.**

If the Secured Party so requests, to the extent that the Bank has the operational ability to do so, the Bank will provide to the Secured Party, whether by Internet access or otherwise, a copy of each periodic account statement relating to the Deposit Account ordinarily furnished by the Bank to the Debtor. The Bank's liability for failing to provide the account statement will not exceed the Bank's cost of providing the statement. The Debtor authorizes the Bank to provide to the Secured Party, whether by Internet access or otherwise, any other information concerning the Deposit Account that the Bank may agree to provide to the Secured Party at the Secured Party's request.

#### **9. Termination; Closure of the Deposit Account**

(a) Neither the Debtor nor the Bank will close the Deposit Account prior to termination of this Agreement. This Agreement may not be terminated by the Debtor except by a notice to the Bank given jointly by the other parties. This Agreement may be terminated (i) by the Secured Party at any time by notice to the other parties and (ii) by the Bank (A) immediately upon notice to the other parties if the Bank becomes obligated to terminate this Agreement or to close the Deposit Account under any statute, rule or regulation, or any Order or Process, binding upon the Bank, (B) upon five Business Days' notice to the other parties if any other party is in material breach of any of the Deposit-related Agreements or this Agreement, and (C) otherwise upon 30 days' notice to the other parties.

(b) If the Bank terminates this Agreement pursuant to clause (A) of Section 9(a)(ii), the Bank will remit any funds in the Deposit Account on the date of termination (i) at the direction of

the Secured Party if the direction is received by the Bank prior to the date of termination of this Agreement or (ii) if no such direction is received by the Bank prior to such date, by check mailed to the address of the Secured Party for receiving communications under this Agreement. If the Bank terminates this Agreement pursuant to clause (B) or (C) of Section 9(a)(ii), the Bank will remit any funds in the Deposit Account on the date of termination at the direction of the Secured Party. Any obligation of the Bank to remit any funds to or at the direction of the Secured Party under this subsection is subject to clauses (B) through (F) of Section 4(a)(ii).

(c) The termination of this Agreement will not affect any rights created or obligations incurred under this Agreement before the termination. Sections 4 and 6 will survive the termination of this Agreement for actions taken or omitted before the termination. Section 9(b) will survive the termination of this Agreement, and Section 5 will survive the termination of this Agreement solely for any funds to be remitted to or at the direction of the Secured Party pursuant to Section 9(b).

## **10. Communications**

(a) All communications under this Agreement must be in writing and must be delivered by hand or overnight courier service, mailed by certified or registered mail, or sent by facsimile to the party addressee. A writing or a Disposition Instruction, may also be sent by email.

(b) For a communication under this Agreement to be effective, it must be received at the party's address indicated below the party's signature to this Agreement, in each case subject to any change in address provided in Section 10(c).

(c) Any party may communicate to the other parties changes in its address for communications under this Agreement.

## **11. Successors and Transferees**

(a) This Agreement will inure to the benefit of, and be binding upon, the parties and their respective successors and other transferees permitted under this Section. Except as provided in this Section, a voluntary transfer of a party's rights or duties under this Agreement without the written consent of the other parties will be void.

(b) The Bank may transfer its rights and duties under this Agreement to a transferee to which, by contract or operation of law, the Bank transfers substantially all of its rights and duties under the Deposit-related Agreements.

(c) The Secured Party may transfer its rights and duties under this Agreement to (i) a transferee to which, by contract or operation of law, the Secured Party transfers substantially all of its rights and duties under the financing or other arrangements between the Secured Party and the Debtor for which the Deposit Account acts as collateral security or (ii) if the Secured Party is acting as a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for, a transferee that is a successor trustee, indenture trustee, agent, collateral agent, or other representative.

(d) No transfer under this Section will be binding upon a non-transferring party until the transferring party or the transferee notifies the non-transferring parties of the transfer in a writing signed by the transferee that identifies the transferee, gives the transferee's address for communications under this Agreement, and states that the transferee is a successor of the transferor or other transferee permitted under this Section and is entitled to the benefit of the transferring party's rights and has assumed all of the transferring party's duties under this Agreement.

(e) A non-transferring party need not request proof of any transfer or that the transferee is

a successor of the transferor or other transferee permitted by this Section. If requested by a non-transferring party, however, the transferring party or the transferee will provide reasonable proof thereof. If the Bank or the Secured Party, as a non-transferring party, requests such proof, then the effectiveness of the notification of transfer as to the non-transferring party will be suspended until the proof is provided.

(f) When a transfer becomes binding on the non-transferring parties, the transferring party will not be entitled to exercise any rights, and will be relieved of its obligations, accruing under this Agreement from and after that time. Those rights may be exercised and those obligations will be incurred by the transferee.

(g) The provisions of subsections (d) and (e) requiring notification for a transfer to be binding on the non-transferring parties and suspending the effectiveness of the notification of transfer until reasonable proof of the transfer has been provided do not apply to the Bank as the transferring party if the transfer is by operation of law and by operation of the law (i) the transferee succeeds to all or substantially all of the rights and becomes generally bound by all of the duties of the Bank, including the Bank's duties under this Agreement, and (ii) the Bank ceases to exist.

## **12. Entire Agreement; Relation to Other Agreements**

(a) This Agreement constitutes the entire agreement of the parties, and supersedes all previous and contemporaneous negotiations, understandings and agreements, with respect to its subject matter, all of which have become merged and finally integrated into this Agreement.

(b) If this Agreement conflicts with any of the Deposit-related Agreements, this Agreement will control. However, this Agreement will not (i) derogate from any Claim or defense that the Bank may have against the Debtor under any of the Deposit-related Agreements or (ii) create any third party beneficiary rights under any of the Deposit-related Agreements in favor of the Secured Party.

(c) This Agreement does not amend or otherwise modify any of the agreements between the Debtor and the Secured Party or provide any rights for the Debtor to originate a Disposition Instruction in contravention of any agreement between the Debtor and the Secured Party.

## **13. Governing Law, Depository Bank's Jurisdiction and Waiver of Jury Trial**

(a) Except as otherwise required by Article 9 of the UCC, this Agreement will be governed by the law of New York without giving effect to any choice of law rule that would require the application of the law of another jurisdiction.

(b) The Bank's Deposit-related Agreements are amended to be governed by New York law solely for purposes of part 3 of Article 9 of the UCC

(c) To the extent permitted by applicable law, each party waives all rights to trial by jury in any action, claim or proceeding (including any counterclaim) of any type arising out of or directly or indirectly relating to this Agreement.

## **14. Miscellaneous**

(a) No amendment to this Agreement will be binding on any party unless it is in writing and signed by all of the parties. Any provision of this Agreement benefiting a party may be waived only by a writing signed by that party.

(b) If a provision of this Agreement is held invalid or unenforceable in any respect, the validity or enforceability of the remaining provisions will not in any way be affected, it being

understood that the invalidity or unenforceability of an affected provision in a particular jurisdiction will not in and of itself affect the validity or enforceability of the provision in any other jurisdiction.

(d) This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute a single agreement.

[Signature Page Follows]

**SIGNATURES:**

DEBTOR:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SECURED PARTY:

HOUSING TRUST FUND CORPORATION

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address: 38-40 State Street, Hampton Plaza

Albany, New York 12207

Attention: Office of Legal Affairs

Facsimile: (518) 486-5156

BANK:

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SHARS NUMBER: \_\_\_\_\_

## INDEX XIV

### FORM OF CORPORATE RESOLUTION

HTFC requires a certified copy of a corporate resolution approving the HTFC transaction and identifying those individuals authorized to execute documents on behalf of Awardee.

The certification is one of authenticity which is generally given by the corporate secretary. Awardee may submit a copy of the resolution, however, the certification must be an original.

CORPORATE RESOLUTION

RESOLVED that the Board of Directors of \_\_\_\_\_ has authorized the corporation to borrow \$\_\_\_\_\_ or so much as may be approved by the Housing Trust Fund Corporation for the project located at \_\_\_\_\_, New York; and may it be further;

RESOLVED that the Board of Directors has authorized the execution of a promissory note, mortgage, construction loan agreement, regulatory agreement and such other agreements and documentation as may be required by the Housing Trust Fund Corporation; and may it be further

RESOLVED that [insert names of authorized signatories] is/are authorized to execute and deliver such agreements and do all other acts necessary or required in furtherance of the purposes of this resolution.

I, \_\_\_\_\_ do hereby certify that I am the Secretary of \_\_\_\_\_ and that the foregoing is a true and correct copy of the resolutions duly adopted at a meeting of the Board of Directors of said corporation duly called on \_\_\_\_\_ at which a quorum was present and participated, and that said resolutions contained herein have not been in any way rescinded, annulled or revoked but are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

## INDEX XV

### LIMITED PARTNERSHIP/LIMITED LIABILITY COMPANY AGREEMENT REQUIREMENTS

To protect its financial interests and assure compliance with the low-income regulatory provisions of Article XVIII and Article XXIV of the Private Housing Finance Law, HTFC requires that the attached provisions be included in all Amended and Restated Limited Partnership Agreements and Limited Liability Company Operating Agreements

## [PARTNERSHIP][COMPANY] PROVISIONS

- a) The [partnership][company] is authorized to execute a note and mortgage in order to secure a loan to be made by the NYS Housing Trust Fund Corporation (“HTFC”), and to execute a regulatory agreement and other documents required by HTFC in connection with such loan.
- b) Any incoming [partner][member] shall, as a condition of receiving an interest in the [partnership][company] property agree to be bound by the note, mortgage and regulatory agreement and other documents required in connection with the loan to the same extent and on the same terms as the other [general partners or limited partners][members], as the case may be.
- c) For so long as HTFC is the holder of a mortgage on the project, any amendment to this agreement without the prior written consent of HTFC, shall be a default under HTFC’s regulatory agreement and mortgage and security agreement if it results in any of the following: 1) the amendment modifies the duration of this agreement; 2) the amendment results in a new [general partner][member]; or 3) the amendment affects HTFC’s mortgage or regulatory agreement.
- d) Notwithstanding any other provisions of this agreement, upon any dissolution, no title or right to possession and control of the project, and no right to collect the rents therefrom shall pass to any person who is not bound by the regulatory agreement in a manner satisfactory to HTFC.
- e) Notwithstanding any other provisions of this agreement, in the event that any provision of this agreement conflicts with any provisions of the regulatory agreement, the provision of the regulatory agreement shall control.
- f) For so long as HTFC, its successors or assigns, is the holder of a mortgage encumbering the project property, the [partnership][company] shall not be voluntarily dissolved without the prior written approval of HTFC.
- g) For so long as HTFC, its successors or assigns, is the holder of a mortgage encumbering the project property, the project is and shall remain the sole asset and business purpose of the [partnership][company].

## INDEX XVI

### CLOSING REQUIREMENTS CHECKLIST

All of the items on the respective closing checklists must be submitted to HTFC for review and approval prior to scheduling a loan closing. The attached checklists are representative of standard closing items, however, HTFC reserves the right to request any additional documentation it deems necessary to properly protect its financial interest in a project.

## CONSTRUCTION LOANS

## CONSTRUCTION LOAN CLOSING CHECKLIST

CPM = DHCR Capital Programs Manual

### I. Design Documents

- (1) Executed Copy of Approved Architect's Contract CPM § 5.11.01
- (2) Executed Copy of Approved Contractor's Contract (final plans & specs incorporated) CPM § 5.11.05
- (3) Executed Contractor Assurances Agreement (see form in Legal Documents Manual)

### II. Site Control Documentation

(1) Title Report (current to within 30 days of submission). No liens or encumbrances other than utility easements and pre-approved restrictions will be permitted by HTFC at loan closing. A mortgagee's policy of title insurance must be issued to HTFC at closing and include the following endorsements:

- \* Environmental Protection Lien
- \* ALTA 9 (if affirmative coverage is not available)
- \* Tax Parcel (for NYC projects or where more than one tax parcel is involved)
- \* Cooperative (if applicable)
- \* Condominium (if applicable)
- \* Leasehold (if applicable)

(2) Survey - Certified to Borrower, 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) flood zone designation;
- d) indication of access to the public way such as curb cuts, driveways marked;
- e) location of all utilities serving the property, including manholes, catch basins, valve vaults or other surface indications of subterranean uses;
- f) 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;
- g) observable evidence of cemeteries; and
- h) significant observations not otherwise disclosed. CPM § 5.03.02

Either a pdf copy (submitted by the surveyor) or a copy of the survey in a scannable format, on pages no larger than 11 x 17 must be submitted. Multiple sheets are acceptable. Certification may also appear on separate sheets.

- (3) UCC Searches - County level and Secretary of State for applicant, current and proposed owners of the project site, Borrower and all general partners of the above.
- (4) A copy of the contract for acquisition of the project site, deed or proposed deed (including in HOME projects the required deed restriction), all other agreements relating thereto and any other documents or information that HTFC may require CPM § 5.03.01
- (5) Copies of Existing or Proposed Notes and Mortgages which affect the property CPM § 5.03.02; 5.08
- (6) For projects built on a leasehold interest, an estoppel certificate is required from the certified fee owner stating that (i) the lease has not been assigned, altered, modified or amended and (ii) the lease is in full force and effect and no defaults now exist in relation thereto.
- (7) For projects built on a leasehold interest, consent by the certified fee owner to the leasehold mortgage or proof that such consent is not required.

### III. Insurance (see model certificates in Legal Documents Manual)

- (1) Name HTFC and State of New York as additional insured and mortgagee (except a) iii and b) iii).
- (2) For each policy required below provide evidence that the insurer has undertaken not to modify the policy adversely to the interests of any mortgage on the premises or cancel any policy without at least 30 days prior written notice to the holder of any mortgage on the premises.
  - a) Borrower Insurance Binders (originals) CPM § 5.09.01
    - i. Comprehensive liability in a minimum amount of one million dollars; Hazards including contractual liability and completed operations.
    - ii. Property Coverage - 100% of insurable replacement value of project - Builder's Risk Form- All Risk coverage (insuring Borrower's interest in project).
    - iii. Workers' Compensation and Disability insurance coverage. (HTFC not named insured)
    - iv. Any Auto@ automobile coverage in a minimum amount of one million dollars.
    - v. Blanket Position Fidelity Bond/Crime Coverage policy in the amount of the largest anticipated disbursement pursuant to the construction loan/award agreement. (HTFC named as loss payee)
    - vi. Flood Insurance (if applicable).
  - b) Contractor's Insurance Binders (originals) CPM § 5.09.02
    - i. Contractor's Liability Insurance - Minimum \$1,000,000 - All hazards including contractual liability and completed operations.
    - ii. Contractor's Performance Bond and Payment Bond - 100% of value of contractor's contract with Borrower. Borrower and HTFC as obligees/payees. Include proof of filing. (NYS GOL § 5-322.3)
    - iii. Workers' Compensation & Disability Benefits
    - iv. Comprehensive General Automobile Liability

### IV. Financial Documents

- (1) Evidence of commitment of all necessary funds from the sources shown on the HTFC commitment letter.
- (2) Evidence of tax abatement CPM § 5.10; 5.06(iii)

V. General Submissions

- (1) Copy of the Amended and Restated Agreement of Limited Partnership/Operating Agreement which contains the provisions found in the Legal Documents Manual (if applicable).
- (2) An estoppel certificate from the Borrower stating that: (i) the partnership agreement/operating agreement has not been altered, amended or modified since its execution, and (ii) the agreement remains in full force and effect and no defaults currently exist in relation thereto.
- (3) Certificate of Incorporation and related state and county filing receipts and any other documentation (such as corporate resolutions or stock certificates) necessary to establish that at least 50% of the controlling interest in the Borrower is held by a not-for-profit entity or its wholly owned subsidiary (if applicable).
- (4) List of names and addresses of the officers, directors and principals for each general partner or managing member of Borrower and a certification disclosing any fiduciary or financial relationships between Borrower and its officers, directors and principals, architect, contractor or major subcontractors, or indicating that there are no such relationships. Provide a “prior participation” certificate for all principals, officers and directors of the sponsor and the Borrower, including those of the general partners or members of the Borrower.
- (5) Counsel’s Opinion Letter dated the day of closing (see form in Legal Documents Manual).
- (6) Deposit Account Control Agreement between Borrower and Bank directing Bank to furnish information to HTFC regarding project operating and replacement reserve accounts. (See form in Legal Documents Manual).
- (7) Bank Freeze Letter from Borrower to Bank directing Bank to furnish information to HTFC and to freeze the operating account. Bank’s letter acknowledging the establishment of the operating account and giving its consent to freeze the account on behalf of HTFC (see form in Legal Documents Manual).
- (8) Verification that all conditions for construction financing required by the HTFC loan commitment letter have been met:
  - a) SEQRA/NEPA
  - b) Design
  - c) Underwriting
  - d) MBE/WBE and Section 3
  - e) OFHEO (marketing plan approval)
  - f) Housing Management (approval of management plan, necessity of blocked reserve accounts and form of project lease)
  - g) Special Needs
- (9) Sponsor and Borrower technical assistance contract (see form in Legal Documents Manual).

VI. Required Governmental Approvals

- (1) Building Permit(s)

VII. Condo/Co-op Documentation (if applicable)

- (1) Draft Condo/Co-op Offering Plan
- (2) Attorney General's no action letter (if applicable).
- (3) Draft Declaration of Condominium or Proprietary Lease as applicable

VIII. Borrower Executory Authority

- (1) A certified copy of documentation of the Borrower authorizing the transaction with HTFC and granting the individuals authority to execute documents.

IX. Final Exhibits for HTFC legal documents

Update as necessary and submit:

- (1) Proposal Summary
- (2) Construction Management Plan
- (3) Schedule of Plans & Specifications
- (4) Development Timetable
- (5) Development Budget
- (6) Architect's Letter
- (7) Contractor Assurances Agreement
- (8) Cash Flow Schedule
- (9) Affordability Plan

## PERMANENT LOANS

## PERMANENT LOAN CLOSING CHECKLIST

CPM = DHCR Capital Programs Manual

### I. Documents Required Prior to Issuance of Bank Takeout Agreement for the Interim Construction Loan Closing:

- (1) Evidence of commitment of all necessary funds from the sources shown on the HTFC commitment letter.
- (2) Title Report: No liens or encumbrances other than utility easements and pre-approved restrictions will be permitted by HTFC at permanent loan closing.
- (3) Certified survey of the project property prepared in accordance with CPM §5.03.02. (See II. (6) below)
- (4) Form of construction lender's takeout agreement.

### II. Documents for Permanent Loan Closing:

- (1) AIA G704 Form (Certificate of Substantial Completion).
- (2) AIA G706 Form (Contractor's Affidavit of Payment of Debts and Claims).
- (3) AIA G706A Form (Contractor's Affidavit of Release of Liens).
- (4) A lien bond or indemnity bond for the full amount of any outstanding balance on any contract.
- (5) Certificate of Occupancy or Temporary Certificate of Occupancy only if outstanding issues are not health or safety related.
- (6) Insurance Binders (originals) (CPM §7.04 and Legal Documents Manual):
  - a) Name HTFC and State of New York as additional insured and mortgagee (except c) iv).
  - b) For each policy required below provide evidence that the insurer has undertaken not to modify the policy adversely to the interests of any mortgage on the premises or cancel any policy without at least 30 days prior written notice to the holder of any mortgage on the premises.
  - c) Borrower Insurance Binders (originals) CPM § 5.09.01
    - i) fire insurance coverage insuring the mortgaged premises for full replacement value;
    - ii) fidelity bond/crime coverage in minimum amount of three month's rent roll plus value of all project reserves (HTFC named as loss payee);
    - iii) comprehensive general liability insurance in a minimum amount of one million dollars;
    - iv) worker's compensation and disability insurance coverage (HTFC not named insured);
    - v) Any Auto@ automobile coverage in a minimum amount of one million dollars;
    - vi) flood insurance coverage (if applicable).
- (7) Certificate of Incorporation and related state and county filing receipts and any other documentation necessary to establish that at least 50% of the controlling interest in

the Borrower is held by a not-for-profit entity or its wholly owned subsidiary (if applicable).

(8) Draft counsel's opinion letter. Final version to be dated the day of the permanent loan closing (required format found in the Legal Documents Manual).

(9) Verification that all conditions for permanent financing required by the HTFC loan commitment letter have been met:

- a) Design (including SEQRA/NEPA)
- b) Underwriting
- c) MBE/WBE and Section 3
- d) OFHEO (marketing plan approval)
- e) Housing Management (approval of management plan, necessity of blocked reserve accounts and form of project lease)
- f) Special Needs

(10) Copy of the construction lender's final payout letter (include a per diem interest figure, electronic funds wiring account information and ABA#).

(11) An originally certified copy of a corporate resolution of the Borrower authorizing borrowing from HTFC and designating the individuals authorized to execute documents.

(12) Title Report (current to within 30 days of submission). No liens or encumbrances other than utility easements and pre-approved restrictions will be permitted by HTFC at loan closing. A mortgagee's policy of title insurance must be issued to HTFC at closing and include the following endorsements:

- \* Environmental Protection Lien
- \* ALTA 9 (if affirmative coverage is not available)
- \* Tax Parcel (for NYC projects or where more than one tax parcel is involved)
- \* Cooperative (if applicable)
- \* Condominium (if applicable)
- \* Leasehold (if applicable)

(13) Certified As-built survey prepared in accordance with CPM §5.03.02. Certified to Borrower, 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) flood zone designation;
- d) all improvements including proposed improvements;
- e) parking areas and, if striped the striping and number of parking places;
- f) indication of access to the public way such as curb cuts, driveways marked;
- g) location of all utilities serving the property, including manholes, catch basins, valve vaults or other surface indications of subterranean uses;
- h) 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;
- i) observable evidence of cemeteries; and

j) significant observations not otherwise disclosed.

Either a pdf copy (submitted by the surveyor) or a copy of the survey in a scannable format, on pages no larger than 11 x 17 must be submitted. Multiple sheets are acceptable. Certification may also appear on separate sheets.

(14) UCC Searches - County level and Secretary of State for applicant, current and proposed owners of the project site, Borrower and all general partners of the above.

(15) For projects built on a leasehold interest, an estoppel certificate is required from the certified fee owner stating that (i) the lease has not been assigned, altered, modified or amended and (ii) the lease is in full force and effect and no defaults now exist in relation thereto.

(16) For projects built on a leasehold interest, the fee owner will be required to consent to and acknowledge the HTFC leasehold mortgage.

(17) Copy of the Amended and Restated Agreement of Limited Partnership/Operating Agreement which contains the provisions found in the Legal Documents Manual (if applicable).

(18) List of names and addresses of the officers, directors and principals for each general partner or managing member of Borrower and a certification disclosing any fiduciary or financial relationships between Borrower and its officers, directors and principals, architect, contractor or major sub-contractors or indicating that there are no such relationships. Provide a "prior participation" certificate for all principals, officers and directors of the sponsor and the Borrower, including those of the general partners or members of the Borrower

(19) An estoppel certificate from the Borrower stating that: (i) the partnership agreement/operating agreement has not been altered, amended or modified since its execution, and (ii) the agreement remains in full force and effect and no defaults currently exist in relation thereto.

(20) Evidence of tax abatement/PILOT (if applicable).

(21) HOME Program Deed Restriction (A quitclaim deed incorporating the restriction is acceptable. Form of restriction language is found in the Legal Documents Manual).

(22) Other Financial Documents - Copies of any documents (promissory notes, mortgages, regulatory agreements) previously executed or proposed to be executed with other lenders, funding sources and/or regulating agencies.

(23) Final exhibits for HTFC legal documents.

Update as necessary and submit:

a) Proposal Summary

b) Affordability Plan

(24) Documentation showing that all required project operating and replacement reserve accounts have been established. (Evidence should include the name of the bank where the account is held, account number, balance, and purpose of account) Submit account signature cards if required by housing management. (CPM §7.03)

(25) Deposit Account Control Agreement between Borrower and Bank directing Bank to furnish information to HTFC regarding project operating and replacement reserve accounts (see form in Legal Documents Manual).

(26) Copy of LIHC Carryover Allocation.

(27) Copy of final project development budget.

(28) Condo/Co-op Documentation (if applicable)

a) Approved Condo/Co-op Offering Plan

- b) Attorney General Approval (or no action letter if required)
  - c) Final Declaration of Condominium or Proprietary Lease, as applicable
- (29) For all projects governed by Rent Stabilization or the Emergency Tenant Protection Act (ETPA):
- a) Evidence of proper registration with DHCR Office of Rent Administration, including legal rent and HTF rent. (CPM §7.06.03);

### III. Final Payout of Retainage

- (1) Final lien releases for any previously unfinished contracts.
- (2) Submission of a cost certification which meets the requirements of CPM §6.05.
- (3) Satisfaction of any outstanding close-out issues described in CPM §6.06.