

**NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION  
HOMELESS HOUSING AND ASSISTANCE PROGRAM**

**FINAL AWARD AGREEMENT**  
(Rev. 12/2013)

**THIS IS AN AGREEMENT**, made the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the **NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION**, having its principal office at 40 North Pearl Street, Albany, New York 12243 (hereinafter the "Corporation") and «**SPONSOR**», a «AppType» corporation having its principal office at «St\_» «Street\_Name» «suffix» «Address\_Add», «City», «State» «PostalCode» (hereinafter the "Sponsor").

**WITNESSETH:**

WHEREAS, Chapter 61 of the Laws of 1983, as amended by Chapter 458 of the Laws of 1986, established the Homeless Housing and Assistance Program (hereinafter "HHAP") to provide State financial assistance to fund capital programs sponsored by not-for-profit corporations, charitable organizations or wholly owned subsidiaries thereof, public corporations and municipalities, for the purpose of expanding and improving the supply of shelter and other housing arrangements for homeless persons; and

WHEREAS, Chapter 215 of the Laws of 1990 created and established the Corporation, as codified at Section 45-c of The Private Housing Finance Law pursuant to which the Corporation is authorized to administer the HHAP; and

WHEREAS, the Corporation is authorized under such acts to enter into contracts with not-for-profit corporations, charitable organizations or wholly owned subsidiaries thereof, public corporations and municipalities to provide such State financial assistance for costs attributable to the establishment and operation of homeless projects as defined at Section 42 of the Social Services Law of the State of New York; and

WHEREAS, the Sponsor is a lawfully established not-for-profit corporation and has submitted an application for a Final Award of HHAP funds for the establishment and operation of a Homeless Project (hereinafter the "Project"), which the Corporation has determined to be acceptable and which application is annexed and incorporated herein as Appendix B; and

WHEREAS, the Corporation has agreed to provide HHAP funds to the Sponsor in consideration of, among other things, the Sponsor's undertaking to comply with all of the terms and conditions of this Agreement;

NOTE: THE FOLLOWING PROVISIONS APPLY ONLY TO AN AMENDMENT OF AN Agreement FROM A PRECONSTRUCTION AWARD Agreement TO A FINAL AWARD Agreement. CHECK THE APPROPRIATE SPACE.

- APPLICABLE
- NON-APPLICABLE

WHEREAS, the Corporation and the Sponsor entered into a Preconstruction Award Agreement Contract Number «**CONTRACT\_**» which was signed by the Corporation on «**PCA\_Date**»; and

WHEREAS, the Corporation is satisfied that the Sponsor has completed Preconstruction Activities in accordance with the terms of its Preconstruction Award Agreement;

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE CORPORATION AND THE SPONSOR AS FOLLOWS:

**NOTE:** THE FOLLOWING PROVISION APPLIES ONLY TO AN AMENDMENT OF AN Agreement FROM A PRECONSTRUCTION AWARD Agreement. CHECK THE APPROPRIATE SPACE.

- APPLICABLE
- NON-APPLICABLE

The Provisions of Contract «**CONTRACT\_**» as signed by the Corporation on «**PCA\_Date**» are hereby revoked in their entirety and are replaced by the following provisions as stated herein:

**1. SCOPE OF PROJECT**

a. In accordance with the requirements of the HHAP statute (New York Social Services Law, Title 1, Article 2A), and the Regulations (Title 18, Official Compilation of the Codes, Rules and Regulations of the State of New York, Part 800) and procedures established by the Corporation for the administration of HHAP, the Sponsor shall establish and operate, at «**StreetNum**» «**StreetName**» «**StreetSufx**» «**AddressAdditional**», «**Municipality**» in the County of «**CountyCode**», State of New York (hereinafter the "Project Premises"), a Project to provide housing for homeless people.

b. In establishing and operating the Project the Sponsor shall expend funds and otherwise perform under this Agreement as set forth herein and as more particularly described in Appendix B, which is annexed hereto and incorporated herein, and in those documents expressly incorporated by reference by the terms of this Agreement.

c. All Project activity shall conform to the description thereof in this Agreement. Any substantive change in the approved Project shall be carried out by amendment of this Agreement, and shall be in the sole discretion of the Corporation, upon written application of the Sponsor.

d. If the Project, as described in this Agreement, requires the regulatory approval of a State agency the Sponsor shall obtain and maintain throughout the term of this Agreement such approval and shall operate the Project and the Project Premises in compliance with the applicable law and such agency's regulations and directives.

e. The Sponsor shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and any directive issued to it by the Corporation through the

Project Officer, designated pursuant to Section 21 of this Agreement, which the Corporation may reasonably deem necessary to insure the Sponsor's compliance with the terms of this Agreement.

## **2. PHASES OF THE PROJECT**

- a. The Project shall be carried out in two phases.
  - (i) Project Establishment Phase. The first phase shall consist of the acquisition and/or improvement of the Project Premises, and such other development and start-up activities, related to the establishment of the Project, as are described in Appendix B hereto (hereinafter the "Project Establishment Phase"). This phase shall commence on the date referred to in Section 3. below.
  - (ii) Project Operational Phase. The second phase shall consist of the ongoing operation of the Project Premises as housing for persons who would otherwise be homeless, including resident occupancy, management and provision of necessary support services. This phase shall commence upon the written approval by the Corporation of the Project Premises for occupancy as a Homeless Project and shall conclude upon the satisfactory completion of a period of no less than **twenty-five (25)** years from the date of such approval (hereinafter the "Project Operational Phase").

## **3. TIME FOR PERFORMANCE**

Performance under this Agreement shall commence on «**A\_Date**» and shall terminate **twenty-five** years from the date of written approval by the Corporation of the project premises for occupancy and ongoing operation, unless otherwise terminated or extended in accordance with the terms of this Agreement.

## **4. EXECUTION OF MORTGAGE AND NOTE**

a. Payments made by the Corporation to the Sponsor under this Agreement shall be evidenced by a Grant Enforcement Note of the Sponsor in the amount of the Award, as defined in Section 7. below, or so much thereof as may be disbursed (hereinafter the "Note"). The Award shall be due and payable upon the occurrence of an Event of Default under this Agreement as defined in Section 17. herein. The Note shall be secured by a Mortgage covering the Project Premises, the Project improvements, and any other property and rights of the Sponsor described in the Mortgage (hereinafter the "Mortgage").

b. Upon the recording of the Mortgage in favor of the Corporation, then, except for the property secured by the Mortgage the Corporation shall not have recourse for repayment of the Award or any other performance from the assets of the Sponsor; provided, however, that there shall be no such limitation of recourse in the event of malfeasance, fraud or criminal acts by the Sponsor, its officers, employees, or agents in connection with the establishment or operation of the Project or performance under this Agreement.

c. The Note and Mortgage shall be upon such forms and contain such terms, covenants and conditions as the Corporation shall determine are needed for the Corporation's protection, and the Mortgage shall be executed and acknowledged by all parties necessary to

make it, as determined by the Corporation, a valid lien against the Sponsor's estate and interest in and to the Project Premises, the fixtures and personal property to be covered thereby for all sums advanced, free and clear of all liens, encumbrances and security instruments other than those, if any, to which the Corporation has already expressly agreed or may hereafter accept.

d. If required by the Corporation, the Sponsor shall deliver to the Corporation either: (i) a title search satisfactory to the Corporation; (ii) a title insurance policy of a title insurance company approved by the Corporation (hereinafter the "Title Company") in, or aggregating, the amount of the Award (or, in lieu of a policy, a title binder or certificate of title containing the Title Company's agreement to issue such a policy) insuring that the Corporation's Mortgage is a valid lien on the Premises, subject only to such exceptions as shall be approved by the Corporation's attorneys, and otherwise in form and substance satisfactory to and approved by the Corporation; or (iii) a title insurance policy insuring Sponsor's title to the project premises. The Corporation may require that the Title Company's searches shall be continued to the date of each disbursement and, as a condition to the making of such disbursement, that such title continuations shall disclose only such title exceptions as shall then be approved by the Corporation's attorneys and the Corporation shall be provided with such endorsements or other agreements of supplemental insurances as it shall require at the time of each disbursement.

e. The Sponsor shall execute the Note and Mortgage in favor of the Corporation upon final execution of this Agreement, and shall record the Mortgage upon the assumption by the Sponsor of title to the Project Premises, or upon notification by the Corporation of the execution of this Agreement, whichever is later, or at such other time as the Corporation determines is necessary for its protection.

f. The Sponsor upon the execution of the Mortgage shall cause the Mortgage to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully protect the lien of the Mortgage, and the interest of the Corporation, as Mortgagee, in the Project Premises.

g. Apart from the execution of the Mortgage and Note in the Corporation's favor the Sponsor may not transfer title to, or the right to possession of, or otherwise assign, encumber, convey, sublet, mortgage or dispose of the Project Premises until after the completion of its obligations hereunder without the prior written consent of the Corporation, which consent shall be in the sole discretion of the Corporation and may be conditioned upon such terms as the Corporation deems necessary to satisfy the requirements of the HHAP, including, but not limited to, execution by the transferee of such agreements and/or other documents as the Corporation may require to assure the transferee's carrying out of the provisions of this Agreement.

h. The Sponsor will provide in any approved mortgage, deed of trust, security agreement, loan agreement, credit agreement or other instrument executed in connection with the Project, with a party other than the Corporation, that, in the event of any default under any such instrument, the mortgagee, lender or lessor, as the case may be, shall simultaneously send to the Corporation a copy of any notice of default sent to the Sponsor and shall provide the Corporation reasonable opportunity, but not the obligation, to cure such default. Any sums expended by the Corporation in its efforts to cure any such default shall be added to the outstanding Award amount and obligation of the Sponsor's Note.

i. Upon the completion by the Sponsor of its obligations under this Agreement the Corporation will provide to the Sponsor a document, in a recordable form, evidencing the satisfaction of the Mortgage.

## **5. ESTABLISHMENT OF THE PROJECT**

a. The Project shall be established in accordance with the provisions of this Agreement and:

- (i) the Project description, budgets and other documents set forth in Appendix B;
- (ii) the documents comprising the Internal Review Package;
- (iii) any applicable federal, State or local law, regulation or ordinance governing the establishment of the Project.

b. The Sponsor warrants that all materials furnished and work performed in connection with the establishment of the Project shall be of good quality, free from faults and defects, and in conformance with this Agreement, and shall be guaranteed for a period of one year from the date of the Corporation's acceptance of the work constituting the Project Establishment Phase. Should any problem develop during this one-year period due to defective material or faulty workmanship, the Sponsor agrees to furnish all necessary material and labor to correct the problem without any cost to the Corporation.

c. No contract of sale or general contract for construction relating to the establishment of the Project, or any part thereof, nor any modification thereof shall be executed without the written consent of the Corporation. All such contracts shall include the provisions required by Section 20. herein, including provisions making the contract subject to the acceptance of the Corporation and permitting its assignment by the Sponsor to the Corporation or its agent.

## **6. CONSTRUCTION OF THE IMPROVEMENT**

If the establishment of the Project, as described in Appendix B annexed hereto, involves the improvement of the Project Premises (hereinafter the "Improvement") the Sponsor shall:

a. Obtain the Corporation's written approval of the plans and specifications for the Improvement.

b. File, or cause to be filed, plans and specifications with all governmental authorities having jurisdiction and obtain all necessary approvals of said plans and specifications and all necessary building permits from said authorities.

c. Make no changes or amendments to said plans and specifications without the prior written approval of the Corporation and, to the extent required by any law, rule or regulation thereof, by said authorities.

d. When submitting the contracts for the construction of the Improvement for the Corporation's acceptance, provide evidence satisfactory to the Corporation that competitive bids were solicited for the services to be provided under the contract, and that the proposed contractor is the lowest responsible bidder as will best promote the public interest, taking into consideration the reliability of the bidders, the qualities of the articles proposed to be supplied, the purposes for which required and the terms of delivery.

e. If required by the Corporation as a condition of its acceptance of a construction contract, obtain a Performance Bond or Letter of Credit acceptable to the Corporation, from the selected construction contractor.

f. Maintain in force from the commencement of the construction of the Improvement until its completion the insurance required pursuant to Section 19. herein.

g. Complete the Improvement on or before the completion date set forth in the Sponsor's construction contract accepted by the Corporation, or, if there is more than one construction contract, the latest completion date set forth in any of the approved construction contracts, provided that the completion date may be adjusted, with the approval of the Corporation, in accordance with the terms of the construction contract (hereinafter the "Completion Date").

h. Construct the Improvement in compliance with all requirements of all governmental authorities having jurisdiction over said Improvement.

## **7. AMOUNT OF THE AWARD**

a. In full payment for the obligations to be undertaken by the Sponsor pursuant to this Agreement, including those relating to the establishment of the Project, the Corporation agrees to pay as a Final Award and the Sponsor agrees to accept a sum not to exceed «**FAAWORDS**» («**FINALAWARD**»), (hereinafter the "Award") which sum shall be allocated to appropriate Project activities in accordance with the Breakdown of Project Costs (hereinafter the "Breakdown of Development Budget Costs") contained in Appendix B, attached hereto.

b. Payment under this Agreement is conditional upon the continued availability of State funds appropriated for this purpose. Should such State funds become unavailable to complete this Project according to the amount agreed upon in this Section the Corporation may terminate this Agreement in accordance with the provisions of Sections 17. and 18. herein, and the Sponsor shall be relieved of any obligation to continue the Project.

## **8. ADMINISTRATION OF HHAP FUNDS**

a. The HHAP funds disbursed to the Sponsor under this Agreement shall be deposited in an interest-bearing bank account in a commercial bank or a savings and loan association located in the State of New York, and insured by the Federal Deposit Insurance Corporation (hereinafter the "Project Account" or "Account"). The Sponsor agrees to ensure that such Account shall be opened and maintained at a financial institution where, except as otherwise approved by the Corporation, the total of all of the Sponsor's accounts, including the Project Account, does not exceed the amount insured by the Federal Deposit Insurance Corporation at any given time.

b. The Sponsor shall maintain HHAP funds in a demand deposit Project Account (*i.e.*, an account which permits the withdrawal of funds, without penalty, at any time, as opposed to a time deposit, which permits withdrawal without penalty only upon maturity) which affords the Sponsor timely and convenient access to the funds on deposit. The Sponsor shall promptly provide to the Corporation monthly bank statements and other records pertaining to the Project Account at such times as the Corporation may request.

c. The Project Account shall be maintained solely for the deposit and withdrawal of the funds provided by the Corporation to the Sponsor pursuant to this Agreement, and no other funds shall be commingled in the Account without prior approval of the Corporation.

d. The Sponsor's bank-customer deposit agreement for the Project Account shall require that all withdrawals from the Account be authorized by the signature of at least two individuals designated by the Sponsor, at least one of which shall be an officer of the Sponsor. The Sponsor shall give an irrevocable direction and authorization to the Bank in which the Project Account is established to (i) cooperate fully with the Corporation by furnishing to the Corporation, upon request, monthly bank statements and other records pertaining to such account at such times as the Corporation may request, and (ii) upon any Notice of Breach under this Agreement, to freeze withdrawals from the account, and upon any Event of Default under this Agreement, to repay to the Corporation funds deposited therein if requested to do so by the Corporation.

e. Upon opening such Account, the Sponsor shall promptly submit to the Corporation:

- (i) a certified copy of a resolution adopted by the Board of Directors of the Sponsor, or their designees, authorizing the opening of such Project Account;
- (ii) a copy of the Sponsor's signature card on file with the bank; and
- (iii) a copy of the Sponsor's bank-customer deposit agreement for the Account together with the direction and authorization of the Sponsor to the Bank regarding cooperation with, and repayment to, the Corporation.

f. HHAP funds received by the Sponsor pursuant to this Agreement shall be deposited into the Sponsor's Project Account and shall remain in the Account until expended in accordance with this Agreement.

g. If required by the Corporation, the Sponsor shall obtain a Fidelity Bond bonding each person authorized by the Sponsor to receive or handle any monies provided to the Sponsor under this Agreement. The bond shall be in a form and amount acceptable to the Corporation and shall provide that in the event of a covered loss payment shall be made directly to the Corporation.

h. Interest accruing upon amounts in the Sponsor's Project Account is the property of the Corporation and must be paid to the Corporation upon request.

i. Upon completion of the Project Establishment Phase or termination of this Agreement for any reason prior to such completion, the Sponsor's Project Account shall be closed and any amounts remaining therein, including accrued interest, shall be paid to the Corporation.

j. Funds provided to the Sponsor by the Corporation under this Agreement for the cost of any Improvement to the Project Premises are subject to the Trust Fund provisions of Section 13 of the New York Lien Law. In compliance with said Section, the Sponsor shall hold such funds in trust applying them first for the purpose of paying the cost of Improvement (the "cost of improvement" being as defined in Subdivision 5 of Section 2 of said Lien Law) before using any part of the total of the same for any other purpose.

## **9. DISBURSEMENT OF HHAP FUNDS**

a. If the establishment of the Project requires an Improvement to the Project Premises, the Corporation may at its discretion provide a construction advance to the Sponsor in an amount to be determined by the Corporation, provided, however, that such an advance may not exceed 25% of the amount of the Award. Any such construction advance will be made only after the final approval of this Agreement by the Corporation and upon submission to the Corporation by the Sponsor of a properly executed claim document in a form acceptable to the Corporation. The Corporation may permit additional advance payments upon the submission by the Sponsor of a justification for such an advance which is satisfactory to the Corporation. No additional advance shall exceed a reasonable estimate of the amount required for actual expenditure during the following month.

b. Except for any advances made pursuant to the preceding paragraph, the Corporation shall make disbursements hereunder on a periodic basis as work is completed in satisfaction of the Sponsor's obligations under this Agreement.

c. The funds to be provided hereunder shall be allocated and disbursed in accordance with the Breakdown of Development Budget Costs in Appendix B, as the Breakdown may be modified hereafter with approval of the Corporation, provided, however, that the total amount payable by the Corporation to the Sponsor shall not be increased by such modifications, and that the amount to be provided with respect to any activity shall not exceed the lesser of (i) the actual cost incurred by the Sponsor for such activity, or (ii) the amount specified for the activity in the Breakdown of Development Budget Costs as it may be modified.

d. The Corporation reserves the right to withhold up to ten percent of any payments otherwise due under this Agreement as security for the faithful completion of the Project Establishment Phase. The amount withheld in this manner, plus any remaining amounts due the Sponsor under this Agreement, shall be paid to the Sponsor, less any amounts deducted to satisfy any claims, liens, or judgments against the Sponsor, upon the certification by the Sponsor and the determination by the Corporation that the Sponsor has completed its obligations and duties under this Agreement relating to the Project Establishment Phase.

e. Disbursements shall be made upon submission to the Corporation by the Sponsor of a request for disbursement in such form and manner as the Corporation may require (hereinafter a "Request for Disbursement"). Each Request for Disbursement shall:

- (i) state the amount requested to be disbursed broken down according to the categories in the Breakdown of Development Budget Costs in Appendix B;
- (ii) be certified by the Sponsor and, for claims relating to the construction of the Improvement, by the Sponsor's Architect or Engineer; and
- (iii) be accompanied by a properly executed claim document in a form acceptable to the Corporation.

f. Requests for Disbursements shall be supported by bills, Contractor's Applications for Payment and such other documentation and information as the Corporation determines is necessary to ascertain the correctness of the claims and the Sponsor's continued compliance

with the terms of this Agreement.

g. Requests for Disbursements shall be submitted by the Sponsor monthly during the construction of any Improvement unless the Corporation approves more frequent, or less frequent, submissions.

h. No disbursement shall be made unless, in the judgment of the Corporation, all work for which the disbursement is requested is done in a good and workmanlike manner and approved by the Corporation. The Corporation will not pay for defective or inferior work and will disallow claims for funds expended by the Sponsor for such work. The making of any disbursement, however, shall not be deemed an approval or acceptance by the Corporation of the work done prior thereto, nor shall it relieve the Sponsor of the obligation to complete all work in accordance with this Agreement.

i. Upon the occurrence of an Event of Default, as defined in Section 17. herein, or with the consent of the Sponsor, the Corporation may make any or all disbursements directly to any contractor or subcontractor against requisitions for payment under the construction contract or subcontract, and the execution of this Agreement by the Sponsor shall, and does, constitute an irrevocable direction and authorization to so disburse the funds; provided, however, that any such direct disbursement shall not diminish the Sponsor's obligations hereunder, nor create any contractual relation between the Corporation and any contractor or subcontractor to which such disbursements are made.

j. The Corporation, before approving any Request for Disbursement, may conduct such inspections, tests and reviews of Project activities as it deems appropriate in order to determine whether activities for which payment is requested have been properly performed in accordance with the requirements of this Agreement.

k. Disbursements for costs of the Improvement shall be made upon the Corporation's determination, in its sole discretion, that the work for which payment is sought was performed in accordance with the approved plans and specifications. The Sponsor shall permit, and shall require its contractors to permit, representatives of the Corporation to conduct such inspections of the Project Premises and the Improvement, and to require such tests or documentation at such time and in such manner as the Corporation may deem necessary or appropriate in order to determine whether work is completed and properly performed.

l. The submission by the Sponsor of a Request for Disbursement hereunder shall be deemed a representation and warranty by the Sponsor that:

- (i) all work, if any, heretofore performed on the Improvement has been performed in accordance with the plans, specifications and construction contracts approved by the Corporation and in conformance with the requirements of any governmental authority having jurisdiction with respect thereto;
- (ii) no expenses for which funds are claimed has been previously paid for, or will be paid for, by any other funding sources, except for costs paid for by interim funding, approved by the Corporation, which requires repayment;
- (iii) the undisbursed portion of the Award together with funds available to the Sponsor from other sources will be sufficient to fully complete the establishment of the Project;

- (iv) each and every item of cost which was made the basis of the prior disbursement hereunder and which had not then been paid has since been paid in full;
- (v) the certifications and information in the Request for Disbursement are true and correct and omit no material facts necessary to make the same not misleading;
- (vi) there is no default on the part of the Sponsor under this Agreement and no event has occurred and is continuing which, with notice, or the passage of time, or both, would constitute an Event of Default hereunder.

m. The Corporation shall not be obligated to make any disbursement hereunder unless there has been full and continued compliance by the Sponsor with all of the provisions of this Agreement.

n. If the establishment of the Project requires the Improvement of the Project Premises, then, within 30 days after the completion of the Improvement and before the making of the final Request for Disbursement hereunder, the Sponsor shall furnish to the Corporation:

- (i) all necessary final certificates, licenses, consents and other approvals of the various governmental authorities having jurisdiction, including, if applicable, the certificate of occupancy;
- (ii) "as built" drawings of the Improvement together with written certification, acceptable to the Corporation, from the Sponsor's Architect or Engineer to the effect that the Improvement has been completed in accordance with the plans and the construction contract in a good and workmanlike manner;
- (iii) such waivers of lien and other documents as may be required to insure that there are no liens for labor furnished or materials supplied in connection with the Improvement.

o. The Sponsor shall submit its final Request for Disbursement to the Corporation under this Agreement within sixty days of completion of the Project Establishment Phase or, if termination occurs prior to the completion of the Project Establishment Phase, upon termination of this Agreement.

## **10. DOCUMENTS AND PROFESSIONAL WORK PRODUCT**

a. All documents and professional work product, including but not limited to, plans, specifications, and working drawings, obtained with the proceeds of this Agreement shall be the property of the Corporation and shall be delivered to the Corporation upon the request of the Corporation. Use of said documents and professional work product without the prior written approval of the Corporation is prohibited.

b. Every contract with an architect, engineer or other person providing professional work product funded under this Agreement shall contain the terms of paragraph a. of this Section.

## **11. COMPLETION OF THE PROJECT ESTABLISHMENT PHASE**

a. Submission by the Sponsor of a final Request for Disbursement shall constitute its certification that any Improvement necessary to the establishment of the Project has been completed. Along with the final Request for Disbursement the Sponsor shall submit a report on the activities relating to the establishment of the Project required hereunder, noting any that have not been completed and providing a schedule for their completion.

b. After the Corporation's acceptance of the Sponsor's final Request for Disbursement and of the Management and Occupancy Plan, described in Section 15. below, and upon the Corporation's determination that the Project is suitable for occupancy the Corporation will provide the Sponsor with written approval, in a recordable form, for the occupancy of the Project. The date of such approval will mark the beginning of the **twenty-five** year Project Operational Phase hereunder.

c. The Corporation's approval of the Project for occupancy may be conditioned on the completion, in accordance with an agreed upon schedule, of any activities related to the establishment of the Project not fully completed at the time at which the approval is issued. In the event that the Sponsor does not complete the remaining activities related to the establishment of the Project within the time specified by the schedule, the Corporation may revoke its approval of occupancy.

## **12. OPERATION OF THE PROJECT**

During the Project Operational Phase the Project Premises shall be operated in accordance with the provisions of this Agreement and:

- (i) the Project description, operating budget and other documents set forth in Appendix B and the Internal Review Package;
- (ii) the management and operating plan as defined in Section 15 below, to be approved by the Corporation prior to commencement of occupancy of the Project Premises, or, where premises are already occupied, prior to any payment under this Agreement, and periodically thereafter throughout the Project Operational Phase;
- (iii) any restrictive deed covenants affecting the Project Premises; and
- (iv) any applicable federal, State or local law, regulation or ordinance governing the operation of the Project and Project Premises.

The foregoing are deemed incorporated by reference as part of this Agreement.

## **13. USE OF THE PROJECT PREMISES**

a. During the Project Operational Phase the Sponsor shall use the Project Premises to house people who would otherwise be homeless, as described in Appendix B, the Internal Review Package and the Management and Operating Plan approved by the Corporation. The Sponsor shall not admit to occupancy in the Project persons who do not meet this qualification, and shall maintain, throughout the term of this Agreement, records which provide evidence of

compliance with this use restriction.

b. The Sponsor will, at all times after the completion of the Project Establishment Phase, maintain the Project Premises in good operating order and condition and will promptly make all necessary or desirable repairs, renewals, and replacements, and will not make any change in the Project Premises, after the completion of any Improvement, which would in any way increase any fire or other hazard or which would materially depreciate the value or utility of the property.

c. The Sponsor shall maintain in force throughout the Project Operational Phase the insurance required pursuant to Section 19. herein.

#### **14. PROJECT RENTS AND REVENUES**

a. The initial rental rate for the residential units at the Project Premises shall not exceed the rental rate stated in the management and operating plan approved by the Corporation. No subsequent change in the rental rate of these units shall be made during the Project Operational Phase of this Agreement unless:

- (i) a description of the proposed adjustment is submitted, in writing, to the Corporation at least sixty days prior to the proposed effective date of the adjustment, together with a written statement setting forth facts showing the necessity or appropriateness of such adjustment;
- (ii) the adjustment is approved, in writing, by the Corporation; and
- (iii) the tenants are informed of the adjustment, in writing, after the Sponsor's receipt of the Corporation's written approval of the adjustment, and at least thirty (30) days before the adjustment is to take effect, and the adjustment is permitted under the terms of the Sponsor's agreement with the tenants.

b. The provisions of the preceding paragraph shall not apply to changes in per diem reimbursement provided by local departments of social services, or State regulatory agencies, or to changes in rental subsidies available to the Project or its occupants, provided that:

- (i) the Corporation has been notified and has approved the Project's use of such reimbursement, or operating subsidy;
- (ii) the Corporation is promptly informed of the change; and
- (iii) the change will not result in the Project's occupants either paying more for their accommodations, or having other benefits to which they are entitled reduced.

c. During the Project Operational Phase all of the rents and other revenues of the Project shall be applied solely to the costs associated with the Project. To the extent that revenues exceed the immediate costs of the Project during the Project Operational Phase such funds shall be deposited in an interest-bearing bank account in a commercial bank or a savings and loan association located in the State of New York, and insured by the Federal Deposit Insurance Corporation or by the Federal Savings and Loan Insurance Corporation (hereinafter the "Operating Reserve Account"). During the Project Operational Phase the funds deposited in

the Operating Reserve Account, along with the interest earned on such funds, shall be withdrawn and used only to meet costs directly connected with the operation of the Project, unless another use is approved in writing by the Corporation, upon the written application of the Sponsor.

#### **15. MANAGEMENT AND OCCUPANCY PLAN**

Before the commencement of occupancy of the Project, or before the disbursement of funds hereunder, if the Project is occupied at the time of the execution of this Agreement, the Sponsor shall submit to the Corporation for its approval a Management and Occupancy Plan (hereinafter the "MOP"). The MOP shall be in a form prescribed by the Corporation and shall be revised periodically, as required by Section 16. below, provided, however, that significant planned changes in the MOP must be reported to and approved by the Corporation in advance of implementation.

#### **16. REPORTS AND PROJECTED BUDGETS DURING PROJECT OPERATION**

a. Reports and Projected Budgets to be submitted by the Sponsor to the Corporation shall include the following:

- (i) The Sponsor shall, during the first year of the Project Operational Phase, submit to the Corporation quarterly reports regarding the operation of the project including information about the persons housed, the services provided, the total revenues, and the expenditures and obligations incurred.
- (ii) From the second year through the final year of the Project Operational Phase of this Agreement the Sponsor shall submit to the Corporation: (1) a projected operating budget prior to the commencement of each such year; (2) a report within three months following the conclusion of each such year on the persons housed and the services provided during the preceding year; (3) a certified annual financial report within five months following the conclusion of each such year; and (4) written certification and documentation that the Project Premises are occupied substantially by persons who would otherwise be homeless.

b. All documents required by this Section shall be in such form and detail, and shall be submitted at such times as the Corporation shall prescribe. In addition to the reports listed above the Corporation reserves the right to require the Sponsor to submit other or more frequent reports regarding the operation of the Project, including audited financial statements, as it deems appropriate.

c. If in the judgment of the Corporation, the Sponsors are no longer able to meet their responsibilities under this Agreement, including the Management and Operation Plan, due to financial or operational deficiencies, or are at risk of becoming unable to do so, the Corporation may require submission of a remedial plan which addresses and resolves the Corporation's concerns to the satisfaction of the Corporation. Failure to submit a plan acceptable to the Corporation or implement the plan shall be deemed an Event of Default pursuant to paragraph 17(b)(xix) of this Agreement.

#### **17. EVENTS OF DEFAULT AND REMEDIES**

a. In the event that the Project Premises cease to be used as a Homeless Project during the Project Operational Phase, or in case of any other substantial violation of this Agreement the Corporation may, in accordance with the terms of paragraphs 17.b. and c. below, terminate this Agreement and require the recapture of any HHAP funds previously disbursed to the Sponsor or take such other actions as are authorized by said paragraphs.

b. Each of the following events, upon notice given to the Sponsor by the Corporation (hereinafter "Notice of Breach"), in accordance with the terms of section 35. below, and the expiration without correction of the stated cure period, if any, shall constitute an Event of Default (hereinafter an "Event of Default") under this Agreement:

- (i) if the Sponsor fails to comply with or perform any of the terms, conditions or covenants contained in this Agreement, or is in substantial violation of the terms of any material directive issued by the Project Officer pursuant to the provisions of this Agreement and such failure continues for a period of thirty (30) days after written notice thereof shall have been given to the Sponsor by the Corporation; provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;
- (ii) if the Sponsor fails to comply with the terms of the Mortgage and Note executed pursuant to Section 4. above;
- (iii) if at any time any representation or warranty made by the Sponsor herein, or pursuant hereto shall be materially incorrect or misleading;
- (iv) if representations, certifications, statements, data or information provided by the Sponsor and submitted to the Corporation in connection with this Agreement are materially untrue, incomplete or incorrect;
- (v) if the Corporation or any of its representatives is not permitted to enter upon and inspect the Project Premises at such reasonable times as the Corporation shall elect;
- (vi) if title to the Project Premises is encumbered by liens not approved by the Corporation and such liens remain unsatisfied, undischarged or unbonded for a period of thirty (30) days after the date of filing of such lien and five (5) days after written notice thereof shall have been given to the Sponsor by the Corporation;
- (vii) in the event that the Sponsor is declared in default under the terms of any mortgage, deed of trust, security agreement, loan agreement, credit agreement or other like instrument executed in connection with the Project with a party other than the Corporation, which default is reasonably determined by the Corporation to adversely affect the Sponsor's ability to perform its obligations under this Agreement and such default continues for a period of thirty (30) days; provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;
- (viii) if the Sponsor's operation of the Project Premises is in substantial violation of

any applicable municipal, State or federal regulation or law for at least thirty (30) days and such violation continues for a period of thirty (30) days after written notice thereof shall have been given to the Sponsor by the Corporation; provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;

- (ix) if the Sponsor is delinquent in complying with any filing or other requirement necessary to remain a duly organized, validly existing corporation in good standing under applicable law and regulation and such failure continues for a period of thirty (30) days after written notice thereof shall have been given to the Sponsor by the Corporation; provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;
- (x) if, at any time, the Sponsor is in arrears in the payment of any municipal, State or federal taxes and such failure continues for a period of thirty (30) days after written notice thereof shall have been given to the Sponsor by the Corporation; provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;
- (xi) upon the filing by the Sponsor of a petition of bankruptcy or insolvency;
- (xii) sixty days after the filing against the Sponsor of a petition of bankruptcy or insolvency unless during such period, or such longer period as the Corporation may specify, the Sponsor can demonstrate to the satisfaction of the Corporation why the Agreement should not be terminated upon the grounds of the Sponsor's financial insolvency;
- (xiii) if HHAP funds disbursed to the Sponsor are used in any way that is not in accordance with the terms of this Agreement or the HHAP statute or Regulations;
- (xiv) if, at any time, the Sponsor, or contractors selected and employed by the Sponsor, are, in the judgment of the Corporation, not progressing with the activities necessary to the final completion of the Project Establishment Phase in a regular and timely manner with diligence and continuity and such failure continues for a period of forty-five (45) days after written notice thereof shall have been given to the Sponsor by the Corporation; provided, however, that such cure period may extend beyond 45 days if the Corporation determines that the Sponsor is in the process of curing with due diligence;
- (xv) if construction of any Improvement required for the establishment of the Project is, in the judgment of the Corporation, not prosecuted in a good and workmanlike manner with diligence and continuity, or at any time is discontinued for a period of ten (10) or more business days (except when such discontinuance is approved by the Corporation or is caused by force majeure) and such failure continues for a period of twenty (20) days after written notice thereof shall have been given to the Sponsor by the Corporation;

- (xvi) if the Improvement is not completed in accordance with the provisions of Section 6.g. hereof on or before the Completion Date unless completion is delayed by force majeure;
  - (xvii) if the Sponsor fails to operate the Project Premises in accordance with the occupancy and rent restrictions agreed to herein at any time during the Project Operational Phase, and such failure continues for a period of thirty (30) days after written notice thereof shall have been given to the Sponsor by the Corporation, provided, however, that such cure period may extend beyond 30 days if the Corporation determines that the Sponsor is in the process of curing with due diligence; or
  - (xviii) if the Sponsor is determined by the HHAC President, Vice President, or his or her designee to be non-responsible in accordance with the terms of Section 34(l)(iii) below.
  - (xix) if the Sponsors fail to submit and/or carry out a Remedial Plan to the satisfaction of the Corporation pursuant to paragraph 16(c) of this Agreement.
- c. If an Event of Default under this Agreement shall occur the Corporation shall have the right, but not the obligation to take any or all of the following actions:
- (i) Upon notice to the Sponsor terminate this Agreement.
  - (ii) Upon notice to the Sponsor declare a default under the Note and Mortgage executed by the Sponsor in favor of the Corporation pursuant to this Agreement.
  - (iii) Upon notice to the Sponsor declare the entire Award then outstanding under the Note to be due and payable immediately.
  - (iv) Upon notice to the Sponsor lengthen the duration of the Project Operational Phase by two days for each day during which an Event of Default continues.
  - (v) In addition to any rights or remedies available to it under the Note and Mortgage or applicable law, with notice to the Sponsor, to enter into possession of the Project Premises and perform or cause the performance of any and all work and labor necessary or desirable to complete the Project substantially in accordance with this Agreement and employ watchmen to protect the Project Premises; provided, however, that the foregoing shall not be deemed to impose on the Corporation the obligation to prosecute to completion any action taken pursuant thereto and the Corporation shall have no liability to the Sponsor arising out of the failure to complete any work commenced pursuant to this Section. All sums expended by the Corporation for such purposes shall be deemed to have been paid to the Sponsor and secured by the Mortgage. For this purpose, the Sponsor hereby constitutes and appoints the Corporation its true and lawful attorney-in-fact with full power of substitution to complete the Project in the name of the Sponsor, during an Event of Default, and hereby empowers said attorney or attorneys as follows: to use portion of the Award which may remain undisbursed for the purpose of completing the Project substantially in the manner called for under this Agreement; to make such

additions and changes and corrections in the work plans, specifications and other documents as shall be necessary or desirable to complete the Project in substantially the manner contemplated under this Agreement; to employ or continue to employ such general contractors, 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 Project Premises, or may be necessary or desirable for the completion of the 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 the Sponsor which may be required by any contract or subcontract; and to do any act with respect to the construction and operation of the Project which the Sponsor 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 an interest which cannot be revoked.

- (vi) In addition to any other remedy authorized under this Agreement, other document or by law or in equity, with notice to the Sponsor, provide for alternative management arrangements including transfer of all or any part of the Project activities from the Sponsor to another manager or operator selected by the Corporation in order to assure completion of the Project activities. In the event of such a transfer, the Sponsor agrees to bear all reasonable costs of transferring its management out of the Project and to cooperate fully to effectuate an orderly transfer, including the assignment to the Corporation or such other manager/operator all or any commitments or subcontracts relating to Project activities as the Corporation may request.
- (vii) Upon notice to the Sponsor require the Sponsor to bear the reasonable costs incurred by the Corporation in exercising its rights in an Event of Default.

d. The rights and remedies of the Corporation provided in this section shall not be exclusive and are in addition to all rights and remedies provided by law or in equity or under this Agreement.

## **18. ADDITIONAL TERMINATION PROVISIONS**

a. Upon execution of this Agreement funds appropriated by the State Legislature for the purpose of payment under the HHAP shall be made available for payment under this Agreement subject to the terms and conditions of this Agreement. However, in the unlikely eventuality that the Corporation determines that State funds are unavailable at any time during the duration of this Agreement, this Agreement may be terminated. The Corporation shall give timely written notice to the Sponsor in the event of termination under this paragraph. In the event of such termination the Corporation shall be obligated to pay the Sponsor only for expenditures made and obligations incurred by the Sponsor until such time as written notice of the termination is received by the Sponsor from the Corporation.

b. This Agreement may be terminated if the Corporation deems that termination would be in the best interest of the State, provided that the Corporation shall give written notice to the Sponsor not less than thirty days prior to the date upon which such termination shall become effective. In the event of such termination the Corporation shall pay the Sponsor for reasonable

and appropriate expenses incurred in good faith. The Sponsor shall incur no new obligations after receipt of notification of termination and shall cancel as many outstanding obligations as possible.

## **19. INSURANCE**

a. During the Project Establishment Phase, if such phase includes the construction of an Improvement, the Sponsor will maintain a casualty insurance policy with respect to the Project Premises which policy shall provide "All Risk" Builders Risk Insurance, including collapse coverage and flood insurance (if the property is located in a HUD designated flood hazard area), and insurance against such other hazards as the Corporation may require. Such insurance shall be written on a completed value - nonreporting form basis except for flood insurance, which if required shall be for an amount equivalent to the amount of the Award which has been disbursed or the maximum amount of flood insurance available, whichever is less. The policy shall be in a form acceptable to the Corporation and shall be issued by a financially sound company with an A.Best rating of A+ or better, and shall contain the standard New York (non-contributing) mortgagee endorsement or an equivalent endorsement satisfactory to the Corporation.

b. During the Project Operational Phase, and during any period between the first disbursement hereunder and the commencement of the Project Operational Phase during which the Sponsor has use or possession of the Project Premises and the construction period insurance required by the preceding paragraph is not in force, the Sponsor will keep the Project Premises and Chattels insured against loss by fire, casualty and such other hazards as may be specified by Corporation for the benefit of Corporation, including such hazards as are covered by insurance now known as "broad form of supplemental or extended coverage". Such insurance shall be written by financially sound companies with an A.Best rating of A+ or better and in amounts sufficient to prevent the Sponsor or the Corporation from becoming a co-insurer of any partial loss under the applicable policies, but in any event in amounts not less than the greater of (i) ninety percent (90%) of the actual replacement value of the Project Premises, as determined by the Sponsor, with the Corporation's approval, in accordance with generally accepted insurance practice, or (ii) the outstanding Award stated in the Note.

c. The Sponsor shall also maintain for the benefit of Corporation, throughout the term of this Agreement, comprehensive liability insurance, including personal injury and property damage, applicable to the Project Premises, which insurance shall include coverage for premises and operations, independent contractors, contractual liability, projects and completed operation, liability for owned vehicles (if Sponsor owns vehicles), employer's non-ownership, including hired vehicles, and liability arising out of claims under worker's compensation acts or other employee benefits acts, and such other insurance as the Corporation may request, all in such amounts as Corporation may require but not less than as are usually carried with respect to similar properties in like locations.

d. The casualty and liability insurance maintained pursuant to this Section shall:

- (i) name the Corporation and the State of New York as a beneficiary on casualty insurance and as an additional insured party on liability insurance;

- (ii) include waivers by any insurer of all rights of subrogation against any named insured/beneficiary;
- iii) provide that no cancellation, reduction in amount or material change in coverage shall be effective until at least thirty (30) days after receipt by the Corporation of written notice thereof;
- (iv) be evidenced by certificates of insurance acceptable to the Corporation.

e. Sponsor will comply with all provisions of any insurance policy covering or applicable to the Project Premises, all requirements of the issuer of any such policy and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any successor body) applicable to the Project Premises.

f. In the event of a loss to the Project Premises during the term of this Agreement, the Sponsor shall immediately give notice thereof to the Corporation and perform the acts required by the insurance coverage so that the loss will be paid. Such payments shall be applied to the restoration and repair of the damage to the Project Premises, unless the Sponsor decides that such restoration is not practicable, and the Corporation agrees. In such a case in which it is mutually determined that restoration is not practicable, and provided that the Sponsor is not otherwise able to carry out its obligations under this Agreement, and the loss is in no way attributable to the errors, omissions or negligence of the Sponsor, the amount of the Award due under the Note, as a result of the Sponsor's inability to complete its obligations under this Agreement, may be reduced by the Corporation to reflect the portion of the Project Operational Phase that was completed before the loss.

## **20. PROJECT CONTRACTS BETWEEN SPONSOR AND OTHER PARTIES**

a. Definitions: The term "contract" in this section refers to agreements made directly between the Sponsor and any individual, corporation, or other entity for the performance of work under this Agreement, including but not limited to agreements with architects, lawyers, consultants, construction contractors, construction managers, and contractors in individual trades, property managers, and providers of services required under this Agreement. The term "contractor" refers to any party with whom the Sponsor directly enters into such a contract.

b. The Sponsor's use of contractors shall not diminish the Sponsor's obligations to complete all Project activities in accordance with this Agreement. The Sponsor is also fully responsible to the Corporation for the acts and omissions of its contractors, the contractor's agents, and of persons either directly or indirectly employed by them and shall control and coordinate the work of such contractors.

c. All contracts shall be arms-length transactions and shall be entered into only after an appropriate evaluation of the experience and qualifications of the contractor. All contractors with whom such contracts are executed shall be experienced and qualified and this contract shall be fair and reasonable. The Sponsor agrees to submit to the Corporation for its prior review and approval proposed contracts (i) under which the contractor would be paid a total of more than \$10,000 with funds provided under this Agreement; (ii) for architectural, engineering or construction management services relating to the construction of any Improvement to the Project Premises, regardless of the source of payment for such services; (iii) for services relating to the management and operation of the Project Premises including those relating to the

provision of social and support services to tenants under which the contractor would be paid a total of more than \$10,000, regardless of the source of payment for such services; and (iv) for development consultant services paid for, in part or in full, with funds provided under this Agreement.

d. All agreements between the Sponsor and contractors which must be approved in advance by the Corporation in accordance with the preceding paragraph, shall be made by written contract. All such contracts shall contain provisions specifying that:

- (i) the contractor has either been furnished with a copy of the Agreement between the Sponsor and the New York State Homeless Housing and Assistance Corporation (the "Corporation") for establishment and operation of a Homeless Project as defined in the New York State Social Services Law (the "HHAP Agreement"), or has been provided an opportunity to obtain and read the Agreement;
- (ii) the contract shall be subject to approval by the Corporation and the continued availability of State funds under the HHAP Agreement;
- (iii) the work performed by the contractor must be in accordance with the terms of the HHAP Agreement between the Corporation and the Sponsor;
- (iv) nothing contained in the contract shall impair the rights of the Corporation under the HHAP Agreement;
- (v) the contractor shall permit representatives of the Corporation to conduct such inspections and tests of work performed under the contract as the Corporation may deem necessary;
- (vi) the contractor acknowledges and assents to the Corporation's option to direct the Sponsor to assign to the Corporation or its agent the Sponsor's rights and interests in the enforcement of the contract;
- (vii) excepting the Corporation's option to require the Sponsor's assignment of the contract to the Corporation, nothing contained in the contract, or under the HHAP Agreement between the Corporation and the Sponsor, shall create any contractual relationship between the contractor and the Corporation.

e. The Sponsor represents and warrants that no payment of money or other consideration, to the Sponsor, the Sponsor's officers or employees, the contractor or its officers or employees, has been, or will be, made a condition for the award or acceptance of any contract relating to activities under this Agreement.

f. The Sponsor shall comply with any Corporation directive regarding the form or substance of proposed contracts requiring the approval of the Corporation.

g. The Sponsor agrees that any construction contract between the Sponsor and a construction contractor relating to the Project Premises shall contain the "Supplementary General Conditions" prepared by the Corporation for use with A1A Form A201, General Conditions of the Contract for Construction, unless the Corporation agrees in writing otherwise.

h. The Sponsor shall obtain at least three competitive bids before entering into a contract, or purchasing supplies or materials from a vendor, where such contract or such purchase involves an expenditure of \$10,000 or more of the funds provided hereunder, unless the Corporation agrees in writing otherwise. The Sponsor shall not split up contracts or take any other action for the purpose of circumventing the intent of this competitive bidding requirement. The Sponsor shall require its construction contractors to warrant, under penalty of perjury, that, where a contract is awarded based upon the submission of bids, that its bid was arrived at independently and without collusion aimed at restricting competition. The Sponsor agrees that any such contract will be awarded to, and any such supplies or materials purchased from, the lowest responsible bidder as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery; provided, however, that no such contract shall be let to and no purchase made from a bidder other than the lowest responsible bidder without the written approval of the Corporation.

i. The Sponsor shall, if directed in writing by the Corporation, assign to the Corporation or its agent all of its rights and interests in the enforcement of any contract that the Sponsor has entered into to carry out activities relating to the establishment or operation of the Homeless Project. The Sponsor shall insert in all such contracts a provision under which the contractor agrees to such assignment to the Corporation.

## **21. PROJECT OFFICER**

The Corporation designates as Project Officer to communicate to the Sponsor OTDA's directives relating to the Sponsor's performance of its obligations under this Agreement the Director of the Bureau of Housing and Shelter Services. All Project reports, vouchers for payment, and issues of interpretation or direction relating to this Agreement shall be directed to the Project Officer, or to such persons who may be designated to assist the Project Officer.

## **22. RECORDS AND ACCOUNTS**

a. The Sponsor shall keep accurate records, in the manner and form required by the Corporation, of all activities, contracts, and expenditures related to this Agreement and the Project. All costs charged to the Project shall be supported by properly executed invoices, vouchers, contracts, purchase orders, payrolls, or time records, evidencing in proper detail the nature and propriety of these charges. All records shall be kept in a manner which distinguishes such Project activities, contracts and expenditures from all other activities, contracts and expenditures of the Sponsor. All records and accounts of financial transactions shall be maintained in accordance with generally accepted accounting standards.

b. All documents supporting Requests for Disbursements hereunder shall be maintained by the Sponsor for a period of at least six years from the date of completion of the Project Establishment Phase. Such documents shall be maintained at the Sponsor's offices or at such other place as shall be readily accessible to duly authorized representatives of the Corporation and the New York State Department of Audit and Control, for the purpose of auditing costs incurred and expenditures made in connection with this Agreement.

## **23. AUDIT AND INSPECTION**

a. The Sponsor shall permit, and shall require its contractors to permit, duly authorized

representatives of the Corporation, the New York State Office of Temporary and Disability Assistance (OTDA) and the New York State Department of Audit and Control to inspect all work, materials, records, invoices and other relevant data and records, and to audit the books, records and accounts of the Sponsor and its contractors pertaining to the Project, during the term of this Agreement, and for a period of seven years after its termination.

b. If an audit or inspection shows that any item of work for which a disbursement has been made was not carried out in full compliance with this Agreement, the Sponsor shall, upon demand of the Corporation, repay such disbursement to the Corporation, and/or complete or correct defective work without any additional charge to the Corporation for such work.

c. The Sponsor shall notify the Corporation, in writing, of the commencement of any investigation or audit by any governmental agency which might adversely affect the Sponsor's ability to comply with the Agreement, within three days of receiving information relating thereto.

## **24. CONFIDENTIALITY**

The Sponsor shall safeguard and maintain the confidentiality of information relating to individuals who may receive services in the course of this Project in conformity with the provisions of applicable law and regulation.

## **25. PUBLICATIONS AND COPYRIGHTS**

a. Materials developed by the Sponsor regarding the results of any activity supported under this Agreement, and intended for written publication or general distribution, may not be published by the Sponsor without prior written approval of the Corporation. Any such publication shall: (i) acknowledge the support of the Corporation and the State of New York; and (ii) state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Sponsor and do not necessarily represent the opinions, interpretations or policy of the Corporation or the State of New York.

b. The Corporation agrees that the Sponsor may obtain copyright to any form, document, publication or report which may be produced as the result of support given or work completed under this Agreement. However, the Corporation and the State of New York expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this Agreement or activity supported by this Agreement. All publications by the Sponsor covered by this Agreement shall expressly acknowledge the Corporation's right to such license.

## **26. CONTRACT MODIFICATIONS**

a. Any modification to this Agreement must be mutually agreed upon, in writing, before the additional or modified activity or requirement shall commence.

b. Any modification to this Agreement that would effect a substantive change in the Project, as determined by the Corporation, shall be carried out by amendment of this Agreement. Any such amendment shall require the approval of the Corporation.

**27. HOLD HARMLESS**

The Corporation and the Sponsor agree that the Sponsor is an independent contractor and not an employee of the Corporation. The Sponsor agrees to indemnify the Corporation and the State of New York against any loss the Corporation or the State of New York may suffer when such losses result from claims of any person or organization (excepting only the Corporation and the State of New York) injured by the negligent acts or omission of the Sponsor, its officers and/or employees or subcontractors. Furthermore, the Sponsor agrees to indemnify, defend and hold harmless the State, the Corporation, and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Sponsor in the performance of this Agreement, and against any liability, including cost and expenses, for violation of proprietary rights, copyright, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Agreement, or based on the Sponsor's inclusion of any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

**28. EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) PARTICIPATION**

New York State Executive Law §§ 310–318, (Article 15-A: Participation by Minority Group Members and Women with Respect To State Contracts -- hereinafter “the Statute”), was enacted to promote equality of employment and economic opportunities for minority group members and women in State contracting activities. The Corporation fully support the efforts of the State of New York to promote Equal Employment Opportunity (EEO) for all persons, and to promote equality of economic opportunity for minority group members and women who own business enterprises.

In accordance with section 312 of the Statute and 5 NYCRR 143, if this Agreement is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Corporation is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the Corporation; or (ii) a written agreement in excess of \$100,000.00 whereby the Corporation is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the Sponsor certifies and affirms that (i) it is subject to Article 15-A of the Executive Law which includes, but is not limited to, those provisions concerning the maximizing of opportunities for the participation of minority and women-owned business enterprises and (ii) the following provisions shall apply and it is the Sponsor's equal employment opportunity policy that:

(a) The Sponsor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status;

(b) The Sponsor shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on HHAC contracts;

(c) The Sponsor shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(d) At the request of the Corporation, the Sponsor 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 union or representative will affirmatively cooperate in the implementation of the Corporation obligations herein; and

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

Sponsor shall include the provisions of subclauses a-e of this section 28, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Sponsor. Section 312 of the Statute does not apply to: (i) work, goods or services unrelated to this Agreement; or (ii) employment outside New York State. The Corporation shall consider compliance by a Sponsor or subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The Corporation shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such Federal law and if such duplication or conflict exists, the Corporation shall waive the applicability of Section 312 of the statute to the extent of such duplication or conflict. Sponsor shall comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

The Corporation has adopted the forms and procedures of the New York State Office of Temporary and Disability Assistance (OTDA) with regard to the requirements under this Section. OTDA has developed, and the Corporation has adopted, compliance requirements, forms and procedures to ensure that (i) Sponsors with whom the Corporation enters into Agreements, as well as proposed or actual "Subcontractors", comply with requirements to ensure Equal Employment Opportunities for Minority Group Members and Women, and, (ii) there are meaningful participation opportunities for certified minority or women-owned business enterprises (M/WBEs) in the Corporation procurement process. Sponsors participating in and/or selected for procurement opportunities with the Corporation shall fulfill their obligations to comply with applicable Federal, State and Local requirements concerning Equal Employment Opportunity and opportunities for M/WBEs, including but not limited to the Statute and its implementing regulations as promulgated by the New York Division of Minority and Women's Business Development (DMWBD) and set forth at 5 NYCRR Parts 140-144), as well as Appendix Z, which is attached hereto and incorporated herein by reference. OTDA shall, at the direction of the Corporation, monitor and enforce the provisions of this Section.

## **29. REBATE COMPLIANCE**

a. It is acknowledged by the Sponsor that funds provided under this Agreement constitute indirect proceeds of New York State Housing Finance Agency Service Contract Obligation revenue bonds (the "Bonds"). The Sponsor will receive proceeds originally funded with advances received from the State and to be subsequently reimbursed with the proceeds of the Bonds. It is intended that interest on the bonds be excluded from gross income for Federal income tax purposes by virtue of Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"). The Code and the regulations promulgated thereunder impose certain conditions with respect to the exclusion from gross income pursuant to Section 103(a) of the Code of interest paid or accrued on obligations such as the Bonds. It will be necessary to comply with the Code and regulations in order to assure the exclusion from gross income of interest paid on the bonds pursuant to Section 103 of the Code. It is further necessary to comply with the provisions of the temporary Treasury Regulations Sections 1.148-OT through 1.150-IT, concerning arbitrage rebate.

b. It is further acknowledged that the Corporation, together with other State public benefit corporations entered into a rebate compliance agreement with the New York State Housing Finance Agency (the "Agency") under which agreement the Corporation has agreed, among other things, to cause its Sponsors under the HHAC to (a) furnish such information as may be required in writing by the Agency in order to monitor investments of funds received by Sponsors which constitute Bond proceeds and (b) to invest such Bond proceeds in the manner and in the types of investments subsequently specified by the Agency.

c. The Sponsor agrees to invest any proceeds disbursed under this Final Award Agreement only in demand deposit bank accounts, i.e., an account which permits the withdrawal of funds, without penalty, at any time, as opposed to a time deposit account, which permits withdrawal without penalty only upon maturity.

d. The Sponsor agrees to promptly furnish to the Corporation upon request monthly statements of demand deposit bank accounts showing: the amount and dates of deposits into such accounts, the amount and dates of expenditure from such accounts, the amount and dates of the crediting of earnings to such accounts, together with the interest rates pursuant to which such earnings accrue, as much interest rates may change from time to time. Where statements do not specify the interest rates paid on a demand deposit account, the Sponsor shall furnish, at the request of the Corporation, such information in some other form acceptable to the Corporation.

e. The Sponsor acknowledges that the Corporation may subsequently require the Sponsor to comply with any additional investment or accounting requirement that may be imposed upon the Corporation in writing at the written request of the Agency. The Sponsor further acknowledges that, if a failure by the Sponsor to comply with investment or accounting requirements under this Section or pursuant to a directive from the Project Officer results in a rebate penalty being imposed upon the Corporation, the Sponsor may be liable to the Corporation in the amount of the penalty so imposed.

## **30. DELAYS AND PROBLEMS**

The Sponsor shall notify the Corporation, in writing, within three days of the occurrence, of

any problem which may significantly delay or threaten the progress, completion or continued operation of the Project and shall submit therewith recommendations for a solution to such problem.

### **31. INTERNAL REVIEW PACKAGE**

The Sponsor has submitted as part of its application for funding under this Agreement an Internal Review Package (hereinafter referred to as an "IRP"). The IRP consists of documents relating to the following: evidence of site control; evidence of community and governmental support (optional); evidence of availability of non-HHAP development funds, if any; evidence of commitment of special operating funds, if any; documents relating to licensing/regulation, if applicable; sponsor documents, including certificate of incorporation and by laws; 501(c)(3) letter, if applicable, sectarian organization form, list of directors and their affiliations; key staff resumes, audited or unaudited financial statements; Dormitory Authority of the State of New York approvals and other related documents. The contents of the IRP are hereby incorporated by reference.

### **32. WORKERS' COMPENSATION BENEFITS**

In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Sponsor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

### **33. SET-OFF RIGHTS**

The Corporation shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Corporation's option to withhold for the purpose of set-off any moneys due to the Sponsor under this contract up to any amounts due and owing to the Corporation with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Corporation shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such by the Corporation, its representatives, or the State Comptroller.

### **34. ADDITIONAL PROVISIONS**

a. The Sponsor warrants that it is not in arrears to the State upon debt or contract, and is not a defaulter as surety, contractor or otherwise on any obligation to the State.

b. The Sponsor warrants that all the statements, data and other information and material furnished by the Sponsor and set forth in Appendix B or incorporated by reference herein are true, complete and correct in all material respects.

c. This Agreement is and shall be deemed to be a contract entered into pursuant to the laws of the State of New York and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.

d. The section headings of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement.

e. The rights and remedies of the Corporation provided in this Agreement shall not be exclusive and are in addition to all other rights and remedies provided at law or in equity.

f. It is hereby agreed that if there be any conflict between portions of this Agreement, including the Appendices and plans thereof, and material incorporated by reference, the provisions which enlarge the rights and remedies of the Corporation shall control.

g. If the Project, as described in Appendix B and the Internal Review Package, requires the regulatory approval of a State agency, the Sponsor shall obtain and maintain throughout the term of this Agreement such approval and shall operate the Project and the Project Premises in compliance with applicable law and such agency's regulations and directives.

h. Neither this Agreement nor any interest herein shall be assigned, encumbered or otherwise transferred by the Sponsor, and any purported assignment, encumbrance or other transfer without the prior written approval of the Corporation shall be null and void and of no effect.

i. No action shall lie or be maintained against New York State or the Corporation upon any claim based upon or arising out of this Agreement or the work performed hereunder or anything done in connection herewith unless that action shall be commenced within six (6) months from the termination of this Agreement or one year from the accrual of the cause of action, whichever is the earlier.

j. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must instead be heard in a court of competent jurisdiction of the State of New York.

k. In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Sponsor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Sponsor's actual receipt of process or upon the Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Sponsor must promptly notify the Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Corporation to the last known address shall be sufficient. Sponsor will have thirty (30) calendar days after service hereunder is complete in which to respond.

l. Responsibility provisions

- (i) The Sponsor shall at all times during the Agreement term remain responsible. The Sponsor agrees, if requested by the HHAC President, Vice President, or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (ii) The HHAC President, Vice President, or his or her designee, in his or her sole discretion, reserves the right to suspend any and all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Sponsor. In the event of such suspension, the

Sponsor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Sponsor must comply with the terms of the suspension order. Activity under the Agreement may resume at such time as the HHAC President, Vice President, or his or her designee issues a written notice authorizing a resumption of performance under the Agreement.

- (iii) Upon written notice the Sponsor, and a reasonable opportunity to be heard with appropriate HHAC officials or staff, the Agreement may be terminated by the HHAC President, Vice President, or his or her designee at the Sponsor's expense where the Sponsor is determined by the HHAC President, Vice President, or his or her designee to be non-responsible. In such event, the HHAC President, Vice President, or his or her designee may complete the requirements of the Agreement in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

**35. NOTICES TO BE WRITTEN**

a. All notices required to be sent by either party under this Agreement shall be in writing, and shall be sent via certified mail, return receipt requested or shall be delivered by hand with the sender receiving a receipt from the recipient. The date of such notices shall be deemed to be the date of receipt of such notice established by the receipt returned to the sender, or the date of recipient's receipt for notices delivered by hand.

b. Notices to be sent to the Corporation shall, unless stated otherwise, be sent to President, Homeless Housing and Assistance Corporation, c/o Bureau of Housing and Shelter Services, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, Albany, New York 12243.

**36. NO WAIVER**

Any failure by the Corporation to declare a breach or to insist upon the strict performance by the Sponsor of any covenant, term or provision hereof shall not be deemed to be a waiver of any of the covenants, terms and provisions hereof, and the Corporation, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Sponsor of any and all of the covenants, terms and provisions of this Agreement to be performed by the Sponsor.

**37. SEVERABILITY**

In the event that any provision of this Agreement is held to be invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared severable.

**38. ENTIRETY OF THE AGREEMENT**

This Agreement, including those documents expressly included by reference by the terms of this Agreement or Appendix B annexed hereto, contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

**[No further content on this page]**



