Homebuyer Development Subsidy

[insert owner’s name (capitalized)] and

## HOUSING TRUST FUND CORPORATION (“HTFC”) NEW YORK STATE HOME LOCAL PROGRAM

**GRANT ENFORCEMENT**

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS**

**AND RESALE RESTRICTION**

**DATED AS OF [insert date]**

**This instrument affects real and personal property situated in the State of New York, County of [insert name of county], [insert name of city/town/village], [insert section, block and lot # for HOME assisted unit] [Section , Block , Lot ] and commonly known as [insert property address].**

**[insert SHARS ID #]**

**RECORD AND RETURN TO:**

**HOUSING TRUST FUND CORPORATION**

**C/O NYS HOME Local Program**

**38-40 State Street, 4th Floor, Albany, NY 12207**

## DECLARATION OF LAND USE RESTRICTIVE COVENANTS AND RESALE RESTRICTION

**(Housing Trust Fund Corporation)**

**THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS AND RESALE**

**RESTRICTION**, (“Declaration”) is made as of [insert date of funding or transfer of title]

, 20 by [insert name(s) of homeowner/buyer(s)]; residing at [insert address of HOME- assisted unit] NY, [insert zip code], (the "Eligible Owner"),

**AND IS GIVEN** as a condition in favor of the award of certain HOME Program Funds as administered by the **HOUSING TRUST FUND CORPORATION (“**HTFC**”)**; a public benefit corporation created and existing as a subsidiary of the New York State Housing Finance Agency pursuant to Section 45- a of the of the Private Housing Finance Law pursuant to Title 21 Part 92 Subtitle A of Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq., has set aside funds pursuant to Title I of the Housing and Community Development Act of 1974, as amended and 24 Code of Federal Regulations (“CFR”) Part 570, as the same may be amended from time to time; and under a HOME Program Grant Agreement, (“Grant Agreement”) dated as of [insert execution date of Grant Agreement] by and between the HTFC and [insert name of Local Program Administrator], (“LPA”), having its principal place of business at [insert address of Local program Administrator].

## WITNESSETH:

**WHEREAS,** pursuant to the terms of the Grant Agreement, the HTFC has awarded a grant to the LPA, a portion of which are to be used for **Homebuyer Development**; and

**WHEREAS,** such HOME LPA Funds in the amount of $ [insert amount of per unit assistance to eligible owner] (“HOME LPA Funds”) shall be used for appropriate eligible use duly allocable to certain property, fixtures, and improvements located on the premises located at [insert property address and Section, Block and Lot number], Section , Block , Lot # , (the “Property”), as such Property is more fully described in Schedule A attached hereto; and

**WHEREAS,** the Eligible Owner has purchased the Property and the improvements located on such Property, situated in the County of [insert County where property is located], at [insert property address, city, zip code], (“Assisted Unit”), and in connection with such purchase or rehabilitation, the Eligible Owner has executed an Assistance Agreement with the LPA (“Assistance Agreement” or “Written Agreement”) and received the benefit of the HOME Funds for the purpose(s) of the acquisition, rehabilitation, new construction (or a combination thereof) of the Assisted Unit within the [insert name of project/program of LPA] (and as such, the Assisted Unit is therefore subsidized by HTFC), and

**WHEREAS**, the Eligible Owner recognizes and agrees that the HOME LPA Funds must be used in accordance with the provisions of the Assistance Agreement and Grant Agreements, respectively, and that the LPA and HTFC are responsible for monitoring the proper uses of such funds; and

**WHEREAS**, the Eligible Owner has represented to the LPA that the Eligible Owner is qualified to receive such affordable housing assistance benefits under the terms of the Assistance and Grant Agreements, respectively, and that the use restrictions applicable to the Property under such agreements shall be maintained by the Eligible Owner with respect to the Assisted Unit for at least the period of time set forth herein, knowing and understanding that HTFC is relying on such representations in providing said benefits to Eligible Owner; and

**WHEREAS**, as a condition precedent to the awarding of HOME LPA Funds that the Eligible Owner execute, deliver and record this Declaration on the official land records of the County/City Register in which the Assisted Unit is located in order to create certain covenants running with the land for the purpose of enforcing the requirements of Subpart F of 24 CFR Part 92, as amended, and the Use Restrictions found in Section 4 of this Declaration, by regulating and restricting the use, occupancy, and transfer of the Assisted Unit, as set forth herein; and

**WHEREAS**, the regulatory and restrictive covenants set forth herein governing the use, occupancy, operation and transfer of the Assisted Unit shall be and are covenants running with the land for a term, which, except as otherwise is expressly provided in Section 5 of this Declaration, shall terminate [insert number of years of period of affordability] years after the date of this Declaration, and are binding upon all subsequent owners of the Assisted Unit for such term, and are not merely personal covenants of the Eligible Owner; and

**WHEREAS**, HTFC, as a condition of its extension of financial assistance to the LPA requires that the Eligible Owner shall, by entrance into the terms, conditions and covenants set forth below, consent thereby to be regulated and restricted by HTFC as provided herein and by any applicable statutes and rules, regulations, policies and procedures of the US Department of Housing and Urban Development (HUD) and the HTFC; and

**WHEREAS,** the Assisted Unit is subject to the lien of a first mortgage loan made by [insert name, address of primary/first mortgage lender] and the respective successors and assigns thereof and this Declaration will be subject and subordinate to the mortgage securing the Lender‘s interests in the Assisted Unit and any payments or expenses already made or incurred or which may hereafter be made or incurred, pursuant to the terms of such Mortgage or incidental thereto, or to protect the security thereof, to the full extent thereof and during the Period of Affordability, any proposed sale, assignment, lease, encumbrance, transfer, or mortgage shall be subject to the terms and rights of the respective Lender as enumerated in the mortgage of such Lender. The affordability restrictions imposed by this agreement will terminate upon occurrence of any of the following termination events by the first mortgage lender: foreclosure, transfer in lieu of foreclosure or assignment of an FHA- insured mortgage to HUD.

**NOW THEREFORE,** in consideration of the provision of the HOME LPA Funds, the Eligible Owner agrees as follows:

## Section 1 - Definitions

All the words and phrases used in this Declaration shall have the same meaning as when used in 24 CFR Part 92, other applicable HUD regulations as same may be amended from time to time, the Assistance Agreement and the Grant Agreement, unless the context requires otherwise.

## Section 2 – Recording, Filing, Covenants Run With the Land

1. Upon execution of this Declaration by the Eligible Owner, the LPA shall cause this Declaration and all amendments hereto to be filed on the land records of the County/City Register in which the Assisted Unit is located, and shall pay all charges incurred in connection therewith. Upon recording, the LPA shall keep records on file in their offices and shall cause the recorded Declaration to be returned by the County/City Register to the principal place of business of HTFC as stated on page two (2) of this Agreement.
2. The Eligible Owner intends, declares, and covenants, on behalf of the Eligible Owner and all future owners of the Assisted Unit during the term of this Declaration, that this Declaration and the covenants and restrictions set forth in this Declaration regulating and restricting the use, occupancy and transfer of the Assisted Unit: (1) shall be and are covenants running with the land, encumbering the Assisted Unit for the term of this Declaration, binding upon the Eligible Owner's successors in title and all subsequent owners of the Assisted Unit; and

(2) are not merely personal covenants of the Eligible Owner; and (3) shall bind the Eligible Owner (and the benefits shall inure to HTFC, as its respective interest may appear) and the Eligible Owner’s heirs, successors and assigns during the term of this Declaration.

1. The Eligible Owner hereby agrees that any and all requirements of the laws of the State of New York to be satisfied in order for the provisions of this Declaration to constitute deed restrictions and covenants running with the land are deemed satisfied in full, and that any requirements or privileges of estate are intended to be satisfied, or in the alternate, that an equitable servitude has been created to insure that these restrictions run with the Property and the Assisted Unit.
2. For the term of this Declaration, each and every contract, deed or other instrument hereafter executed conveying the Assisted Unit, shall expressly provide that such conveyance is subject to this Declaration; provided, however, the covenants contained herein shall survive and be effective regardless of whether such contract, deed, or other instrument hereafter executed, conveying the Assisted Unit, provides that such conveyance is subject to this Declaration.
3. The Eligible Owner covenants to obtain the consent of any prior recorded lien holder on the Assisted Unit to this Declaration and shall furnish a copy of such consent to HTFC. Such consent(s) shall be furnished to the HTFC on or before the date of this Declaration.
4. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA- insured mortgage to HUD. The HTFC may use, in its sole discretion, purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure sale to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

## Section 3 - Representations, Covenants and Warranties of the Eligible Owner

The Eligible Owner hereby represents, covenants, and warrants as follows:

1. The Eligible Owner has the full legal right, power and authority to execute and deliver this Declaration and that all Eligible Owners are executing this Declaration.
2. The execution and performance of this Declaration by the Eligible Owner (1) will not violate or, as applicable, has not violated any provision of law, rule or regulation or any order of any court or other agency or governmental body; (2) will not violate or, as applicable, has not violated any provision of any indenture, agreement, mortgage, mortgage note or the instrument to which the Eligible Owner is a party or by which the Eligible Owner or the Assisted Unit is bound; and (3) will not result in the creation or imposition of any prohibited encumbrance of any nature.
3. The Eligible Owner shall, at the time of execution and delivery of this Declaration have good and marketable title to the Assisted Unit free and clear of any lien or encumbrance except for encumbrances created pursuant to the purchase of the Assisted Unit and this Declaration.
4. The Assisted Unit constitutes or will constitute an Assisted Unit as defined by the applicable HUD**,** NYS HOME LPA Funds regulations, and qualifies or will qualify as an HTFC subsidized Assisted Unit under the Assistance and Grant Agreements.
5. The Eligible Owner has not and will not execute any other declaration with provisions contrary to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
6. As of the date of this Declaration, the Assisted Unit meets the HOME LPA Funds affordability requirements set forth in Section 4 below.

## Section 4 – Occupancy and Use Restriction.

The Eligible Owner represents, warrants, covenants and agrees that throughout the term of this Declaration and in order to satisfy the requirements of HTFC and 24 CFR Part 92, as amended, the Assisted Unit shall constitute a unit of affordable housing and shall meet the following requirements:

1. Homeowner Residency Requirements: the Eligible Owner shall continuously occupy the Assisted Unit as his/her/their principal place of residence, commencing upon the date the unit was closed out in HUD’s International Information and Disbursement System (“IDIS”) for a period of [enter number of years of period of affordability] years.(“Period of Affordability”) and the Eligible Owner shall not be permitted to sell, assign, lease, encumber, mortgage (including any refinancing of existing debt) or otherwise dispose or transfer the Assisted Unit during the Period of Affordability without the prior written consent of the LPA and HTFC.
2. The ownership of the property must be either in fee simple title or a ninety-nine (99) year leasehold interest, or such other form of title or interest in the Assisted Unit as the HTFC may approve and agree to in writing.
3. In the event of a sale to an eligible buyer during the Period of Affordability, the Eligible Owner agrees to submit all documentation required by the LPA or HTFC to assist the LPA or HTFC to qualify the new buyer as eligible for assistance. During the Period of Affordability, the LPA shall assist the Eligible Owner in qualifying a new buyer to meet HOME LPA Program income and home purchase eligibility requirements. Any approved subsequent buyer of the Assisted Unit during the Period of Affordability will be bound by the terms of this Declaration and may be required to execute an amended Declaration which shall reduce the Period of Affordability by the duration that the Eligible Owner continuously occupied the Assisted Unit.
4. The future resale of the Assisted Unit must provide the Eligible Owner a fair return on investment as defined in the NYS HOME Local Program Resale -Recapture Policy and 24 CFR Part 92.254 to include the Eligible Owner’s original investment at time of purchase and any documented capital improvement over $3,000 in the Assisted Unit.
5. Income Limits: At the time of purchase of the Assisted Unit, the Eligible Owner's gross income cannot exceed eighty percent (80%) of the area median income as determined by HUD.

## Section 5 - Term of Declaration

This Declaration, and the term of restricted use specified herein applies to the Assisted Unit. The Period of Affordability for this unit is [insert POA] and the start date of the Period of Affordability is the date the unit was closed out in HUD’s Integrated Disbursement and Information System (IDIS) and the Eligible Owner shall comply with the restrictive covenants herein not later than the first day on which the Assisted Unit is first occupied. Contact LPA or HTFC for this date. Pursuant to 24 CFR, Part 92.254, as amended, this Declaration and the term of the Period of Affordability shall remain in effect for not less than [enter number of years of period of affordability] years without regard to the term of any mortgage or other underlying security and without regard to any transfer of ownership.

## Section 6 - Enforcement of Restrictions

1. The Eligible Owner shall submit any other information, documents, or certifications requested by the LPA or HTFC, that are deemed reasonably necessary to substantiate the Eligible Owner’s continuing compliance with the provisions of the restrictions specified in this Declaration.
2. The Eligible Owner hereby agrees that the representations and covenants set forth herein may be relied upon by the LPA, HTFC and all persons interested in compliance under the Assistance and Grant Agreements, 24 CFR Part 92 and all other applicable HUD regulations.
3. The Eligible Owner covenants that he/she/they will not knowingly take or permit any action that would result in a violation of the requirements of the Assistance and Grant Agreements, 24 CFR Part 92, HUD, or any other applicable regulations referenced in this Declaration. Moreover, the Eligible Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary, in the opinion of HTFC) to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed and published by HUD from time to time pertaining to the Eligible Owner's obligations under 24 CFR Part 92.
4. The Eligible Owner acknowledges that the primary purpose for requiring compliance by the Eligible Owner with the restrictions provided in this Declaration is to assure compliance of the Assisted Unit and the Eligible Owner with the Assistance and Grant Agreements, 24 CFR Part 92, and other applicable regulations, and by reason thereof, in consideration of HOME LPA Funds provided by HTFC to the LPA, hereby agrees and consents that HTFC, the LPA or each of them, shall be entitled, for any breach of the provisions hereon, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Eligible Owner of his/her/their obligations under this Declaration in a court of competent jurisdiction. The Eligible Owner hereby further specifically acknowledges that the beneficiaries of the Eligible Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
5. The Eligible Owner agrees to take any and all actions reasonably required by HTFC to substantiate the Eligible Owner’s compliance with the occupancy restrictions of 24 CFR Part 92, HUD, the Assistance Agreement and Grant Agreements, as now constituted or subsequently amended.
6. This Declaration shall be deemed a contract enforceable by HTFC, the LPA, or their respective designee. In the event the Eligible Owner fails to satisfy the requirements of this Declaration and legal costs are incurred by the LPA or HTFC, such legal costs, including attorney fees and court costs (including costs of appeal), are the responsibility of, and may be recovered from, the Eligible Owner.

## Section 7 – Record Keeping

During the term of this Declaration, including the Period of Affordability, the LPA shall provide HTFC with reports, records and accounts in such form, content and frequency as required or requested by HTFC.

## Section 8 - Miscellaneous

1. Severability. The invalidity of any clause, part, or provision of this Declaration shall not affect the validity of the remaining portions thereof.
2. Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The LPA, HTFC and the Eligible Owner, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

If to **HTFC**: Housing Trust Fund Corporation

38-40 State Street

Albany, NY 12207

Attn: Director, HOME Local Program - HTFC

If to **Eligible Owner:** [insert name & address of homeowner/buyer(s)]

[should be same as Property]

**With a copy to:** [insert name & address of LPA]

Or to such other address or person as shall be designated from time to time by notice.

1. Amendment. The Eligible Owner agrees to take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the Assistance Agreement, Grant Agreements, 24 CFR Part 92, HUD, and any and all applicable rules, regulations, policies, procedures, rulings, or other official statements pertaining to the Assisted Unit. HTFC, together with the Eligible Owner, may execute and record any amendment or modification to this Declaration and such amendment or modification shall be binding on third-parties granted rights under this Declaration.
2. Governing Law. This Declaration shall be governed by the laws of the State of New York and, where applicable, the laws of the United States of America.

[Remainder of this page intentionally left blank]

**IN WITNESS WHEREOF,** the Eligible Owner(s) hereto has/have executed this Declaration the day and year first written above.

## ELIGIBLE OWNER:

Eligible Owner(s)

Print Eligible Owner Name(s) [LPA NAME]

By: Title: Executive Director [insert title]

Print Executive Director Name

STATE OF NEW YORK )

COUNTY OF

) ss.:

On the [insert day] day of [insert month] in the year [insert year] 20 , before me, the undersigned, personally appeared [insert name of homeowner/buyer(s)] personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

My Commission Expires:

STATE OF NEW YORK )

COUNTY OF

) ss.:

On the [insert day] day of [insert month] in the year [insert year] 20 , before me, the undersigned, personally appeared [insert name of LPA Executive Director/Officer], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name (is) subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires:

## SCHEDULE A

**Legal Description of the Property**

[insert legal property description from deed]

If the description contained in this Schedule does not describe the same property as previously described in this Declaration, then this Declaration shall be read so as to place a lien upon the Property described above and all properties described in this Declaration. The Eligible Owner(s) agree(s) that all descriptions used herein have been supplied by the Eligible Owner(s) and he/she/they expressly consent to the provisions in this paragraph.