Homebuyer Down Payment Assistance & Homebuyer Development with Down Payment Assistance

## [insert owner’s name (capitalized)] and

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

**GRANT ENFORCEMENT**

 **MORTGAGE**

**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 Program**

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

THIS ENFORCEMENT MORTGAGE made as of the [insert day] day of [insert month], in the year [insert year], between [insert Owner’s name (capitalized)] (“Owner”), [an] individual(s) residing at [insert Owner’s address], and the HOUSING TRUST FUND CORPORATION (“HTFC”), having its principal place of business at 38-40 State Street, Albany, NY 12207.

Owner hereby acknowledges that HTFC has provided funds ("Grant ") described in Paragraph 1 of this Enforcement Mortgage pursuant to Subtitle A of Title II of the Cranston Gonzalez National Affordable Housing Act ("HOME Investment Partnerships Program"), to be held in trust and to be used by Owner solely in connection with the acquisition of the Property as described in Paragraph 2 of this Enforcement Mortgage, and that this Enforcement Mortgage shall be subject to the trust fund provisions of section 13 of the New York State Lien Law. Owner understands that the Grant Funds represent a portion of the cost of the purchase price of the Property and agrees to HTFC’s recapture of Grant as required herein.

1. This Enforcement Mortgage is made to secure the terms of a grant agreement between HTFC and Owner in the amount of [spell out grant amount] DOLLARS ($enter grant amount), ("Recapture Obligation"). This Enforcement Mortgage also secures Owner’s performance and observance of all the provisions, obligations and covenants under this and other instruments delivered in connection with the Grant including the Grant Agreement dated the date hereof and incorporated by reference into this Enforcement Mortgage as if fully set forth herein (“Award Documents”).
2. Owner hereby mortgages the Property located in the [insert name of city/town/village of], County of [insert name of county], State of New York, more particularly described in Schedule A annexed hereto ("Property"); together with:
	1. the buildings and improvements on the Property;
	2. all of Owner's right, title and interest in and to any land lying in the bed of the streets in front of and adjoining the Property to the center lines of such streets;
	3. all fixtures which now are or which later may be attached to or used in connection with the Property (but not including household furniture);
	4. all condemnation awards for any taking by a government or agency of the whole or part of the Property or any easement(s) or right of way(s) in connection with the Property (including awards for changes of grades of streets);
	5. all right, title and interest but not obligation, of Owner in and to all leases and other agreements affecting the use or occupancy of the Property or any common area appurtenant thereto; and
	6. any right, title and interest of Owner in and to any common areas appurtenant thereto.
3. Owner and HTFC hereby acknowledge that the Property is subject to the lien of a first loan made by [insert name, address of primary mortgage lender] ("Lender") [Note: if there is a second lender/lien adjust the following paragraph to reflect 1 or 2 lenders] and a second loan made by [insert second lender/lien] (the financing institution(s) which made the first and second loans are collectively defined as the "Lender(s)"). The parties hereto agree that all terms and provisions of this Enforcement Mortgage will be subject and subordinate to the lien(s) of the [choose as appropriate Lender or Lender (s)
4. The Recapture Obligation secured hereby does not require the payment of installments from Owner to HTFC, but shall be a standing obligation which will not accrue interest. The Recapture Obligation cannot be pre-paid in whole or in part at any time unless expressly agreed to in writing by HTFC
5. In addition to other remedies provided in this Grant Enforcement Mortgage, HTFC may require the immediate repayment of the Recapture Obligation if any one of the following Events of Default should occur:
6. if default shall be made in the due observance or performance of any other covenant or condition on the part of Owner contained in the Award Documents, and such default shall have continued for a period of thirty (30) days (unless a shorter cure period is provided for therein) (or if such default cannot with due diligence be cured within such period, Owner shall have failed to commence to cure within such period, or having commenced, shall thereafter fail to prosecute and complete such cure with due diligence) (the notice and cure provisions given under the default provisions of the Award Documents shall satisfy the notice and cure provisions of this section); or
7. if Owner sells, rents (except with regard to the rental of any accessory apartment(s) on the Property) or conveys any interest in or otherwise fails to occupy the Property as his/her principal place of residence;
8. if Owner shall make an assignment for the benefit of creditors, or shall institute any proceeding seeking relief on its behalf as debtor, or is adjudicated bankrupt or insolvent;
9. if default shall be made in the payment of any tax, insurance premium or other obligation required to be paid; then and in every such case, upon the occurrence of any such Event of Default:

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

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

(b) complete construction of the Property and take such other actions set forth in the Award Documents and HTFC shall be entitled to collect and receive any and all income of the Property; and after deducting the expenses of conducting the business thereof and of all main­tenance and improvements and amounts necessary to pay for taxes, assessments, insurance or other proper charges upon Property, as well as all costs and expenses of, and reasonable compen­sation for the services of HTFC or its attorneys, contractors, agents and em­ployees, HTFC shall apply any remaining income to the payment of the Recapture Obligation.

No such entry or action by HTFC shall create any liability to Owner or to any party holding under or claiming through Owner, nor shall such entry or action be deemed an eviction of any lessee of the Property or any part thereof; or

(ii) With or without entry, HTFC may institute proceedings for the foreclosure of this Enforcement Mortgage; or

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

(iv) HTFC may pay any and all taxes due and owing on the Property and any and all payments due on any other mortgages, liens or other claims affecting the Property; said expenditures shall be at the expense of Owner and secured by this Enforcement Mortgage.

1. The amount to be recaptured under this Enforcement Mortgage shall be the full amount of the Recapture Obligation, except that such amount will be reduced as follows: Commencing one year from date the unit was closed out in HUD’s Integrated Disbursement and Information System (IDIS), provided that Owner has continuously occupied the Property as his/her principal residence and is not in default hereunder, the Recapture Obligation will be reduced by 1/ [insert number of years of period of affordability]. 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). Contact LPA or HTFC identified in Clause 15 for this date. Should the Owner continuously occupy the Property as his/her principal residence and not default hereunder for the full Period of Affordability of [insert # of years or POA], no Recapture Obligation will be required.
2. This Enforcement Mortgage may be assumed with its original terms and conditions by a HOME-eligible buyer during the term of this Enforcement Mortgage. An approved Local Program Administrator (“LPA”) must assist the Owner to qualify the new HOME-eligible buyer. HTFC must approve the new buyer as HOME-eligible and approve the sale of the Property.
3. Further Subordination of this Enforcement Mortgage must be approved by HTFC in writing and be in compliance with NYS HOME Local Program Subordination policy. Owner must apply for Subordination through an approved Local Program Administrator (“LPA”).
4. If the Recapture Obligation, or portion thereof, becomes due and payable as a result of Owner’s voluntary transfer of the Property, the sale proceeds, shall be distributed in the following order:
5. Owner shall first be reimbursed:
	1. his/her down payment made at the time of the initial purchase of the Property, if any;
	2. his/her verified cost of capital improvements exceeding $3,000 to the Property subsequent to the making of this Enforcement Mortgage, if any;
	3. his/her resale expenses which will include only the following items to the extent actually incurred: broker’s commission, reasonable attorney’s fees, and any transfer tax or recording fee payable pursuant to state statute or local ordinance in connection with the conveyance; and
	4. the principal amortized on superior debt during the Recapture Obligation period, if any.
6. HTFC shall then be repaid the Recapture Obligation to the extent there are sufficient sale proceeds remaining.
7. the remainder, if any, shall be retained by Owner.
8. If the Recapture Obligation, or portion thereof, becomes due and payable as a result of Owner’s involuntary transfer of the Property, the sale proceeds shall be distributed in the following order:
9. Foreclosing party shall first be reimbursed:
	1. his/her costs and expenses of sale including reasonable compensation to agents and counsel, if any;
	2. his/her advances made or incurred to maintain and preserve the Property;
	3. to the payment of the whole amount then due, owing or unpaid upon his/her Note.
10. HTFC shall then be repaid the Recapture Obligation to the extent there are sufficient sale proceeds remaining.
11. the remainder, if any, may be retained by Owner.
12. This Enforcement Mortgage shall be deemed of no further force and effect upon the [insert number of years of period of affordability] Anniversary Date hereof, and neither party to this Enforcement Mortgage will have any further rights or obligations under this Enforcement Mortgage against each other, except that, if Owner has failed to fulfill the Recapture Obligation due or otherwise defaulted under the terms of this Enforcement Mortgage, then the security interest created by this Enforcement Mortgage (in other words, the lien on the Property) will continue until the amount of the Recapture Obligation plus all costs of collection payable under the terms of this Enforcement Mortgage have been paid in full by Owner. This agreement is self-extinguishing, however, HTFC may deliver a satisfaction or statement of release or other appropriate documentation of such termination, after written request is delivered to HOME LPA or HTFC, together with whichever of the following is applicable:
	* 1. if Owner is released by reason of the expiration of the Recapture Obligation as described above and Owner met all obligations under this Agreement through the Recapture Obligation Period of Affordability;
		2. if Owner is released by reason of the payment of the Recapture Obligation in the form of a good certified or bank check to the order of HTFC, the amount of which must be pre-approved by the HTFC, in payment of the Recapture Obligation; or
		3. if Owner is released by reason of the assumption of the Recapture Obligation by an Approved Resale Purchaser, documentation evidencing the Approved Resale Purchaser’s assumption of the Recapture Obligation and evidencing and/or perfecting HTFC’s security interest in the Collateral.

HTFC may designate or authorize, in writing, an LPA to execute such satisfaction or discharge on behalf of HTFC. Owner shall bear all costs to record or file said satisfaction or discharge with the proper County Clerk or City Register.

1. Rental Unit(s) if applicable: If the Property includes one or more rental units in addition the Owner’s unit, the Owner covenants and agrees that, during the Period of Affordability, the rental unit(s) shall be occupied by households which qualify as low income, defined as income less than 80% of Area Median Income, with rents that are approved annually by the LPA and HTFC. The Eligible Owner agrees to annually recertify tenant income, adhere to unit property standards requirements during the Period of Affordability, and comply with all other HOME requirements in the Assistance Agreement and Addendum.
2. Owner will keep the improvements on the Property insured against loss by fire and other risks as required by [choose as appropriate Lender or Lender(s)] and as required by HTFC.
3. Owner shall keep the Property in reasonably good repair, and shall pay, when due, all taxes, assessments, water rates and sewer rents, as well as all other public charges imposed against the Property. Owner shall, upon the request of HTFC, deliver to HTFC receipts evidencing such payments.
4. Owner represents and warrants that Owner lawfully owns the Property and that Owner has the right to mortgage the Property to HTFC. Owner further represents and warrants that the Property will be Owner's principal place of residence.
5. All notices, demands certifications, requests, communications or the like ("Notices") required or permitted to be given under this Enforcement Mortgage, unless otherwise specifically provided in this Enforcement Mortgage, shall be in writing and shall be deemed delivered when mailed by certified or registered mail, correct postage prepaid and return receipt requested, to the addresses set forth below, or to such other addresses as a party may from time to time designate in writing.

If to HTFC:

 Housing Trust Fund Corporation 38-40 State Street, Hampton Plaza Albany, N.Y. 12207

 Attn: Director, NYS HOME Local Program

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If to Owner:

[Same as Property or mailing address]

With a copy to:

[Name, address of LPA]

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

1. The terms, covenants and conditions of this Enforcement Mortgage shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York.
2. This Enforcement Mortgage may only be modified, amended, changed, discharged or terminated by an agreement in writing, in a form suitable for recording, signed by the party against whom the enforcement of the modification, amendment, change, discharge or termination is sought.
3. Owner warrants and represents that Owner (and the undersigned representatives of Owner, if any) has full power, authority and legal right to execute and deliver this Enforcement Mortgage and to mortgage all right, title and interest of Owner in and to the Property pursuant to the terms hereof and to keep and observe all of the terms, covenants and conditions of this Enforcement Mortgage on Owner's part to be performed.
4. If there is more than one Owner each will be separately liable. The words "Owner" and "HTFC" will include their heirs, executors, administrators, successors and permitted assigns. If there is more than one Owner, the word "Owner" used in this Enforcement Mortgage will be read as if written in the plural. Words in the masculine or feminine gender appearing herein will be deemed to refer to either or both male or female persons, as the sense of the sentence requires.
5. This Enforcement Mortgage may be executed in one or more duplicate originals bearing the same date.

[Remainder of this page intentionally left blank]

Owner states that Owner has read this Enforcement Mortgage, received a completely filled- in copy of it and has duly signed this Enforcement Mortgage as of the date at the top of the first page.

Owner: [insert Owner’s name]

ACKNOWLEDGEMENT

[insert second Owner’s name, if applicable]

STATE OF NEW YORK)

) ss.:

COUNTY OF [insert Name of County where signed])

On the [insert Date] day of [insert Month] in the year [insert Year] before me, the undersigned, personally appeared [insert Owner’s name] personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(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

Commission Expires:

STATE OF NEW YORK)

) ss.:

COUNTY OF [insert Name of County where signed])

On the [insert Date] day of [insert Month] in the year [insert Year], before me, the undersigned, personally appeared [insert additional Owner’s name, if applicable] personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names(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

Commission Expires:

SCHEDULE A

LEGAL DESCRIPTION

[insert legal description of the property from the deed]

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