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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.01 Low-Income Housing Trust Fund Program

2.01.01 Summary

The Low-Income Housing Trust Fund Program ("HTF Program") provides payments, grants, and loans to eligible applicants to develop and complete housing projects for occupancy by persons of low income in eligible areas. The HTF Program was established under Article 18 of the Private Housing Financing Law (PHFL) and is administered by HCR on behalf of the NYS HTFC. A copy of the PHFL can be found at ny.gov.

Eligible applicants may receive up to \$125,000 per unit per project to pay for eligible costs that include: site acquisition; constructing, rehabilitating, or converting an eligible project; and soft costs. HTF Program funds may be used as bridge or permanent financing for predevelopment costs, construction costs, working capital, and replacement reserves.

Through the Multifamily Finance 9% RFP (9% RFP) process, an eligible applicant may participate in the HTF Program as a direct project recipient, in which the applicant develops projects on its own. Applicants who participate in the HTF Program as private developers, as defined in the PHFL Article 18, Section 1102.1, are required to make an equity contribution equal to two and one-half percent of the total project cost (total development cost in current HCR budget forms) or five percent of the total project cost less all grants, whichever is greater. A portion of the equity contribution, equal to three months of operating expenses and debt service for projects of 60 units or more, and 6 months of operating expenses and debt service for projects of less than 60 units, must be made as a cash deposit to the project's Operating Reserve Account.

Per statute, allocations of HTF cannot exceed the following limits based on the total program appropriation in any fiscal year:

- 50 percent allocated to projects located within any single municipality.

In addition, Section 1102.8 of the PHFL requires preference in the awarding of funds to be given to economically feasible projects which contain a substantial number of persons whose income does not exceed 50 percent of Area Median Income (AMI).

Applicants, who plan to use HTF Program funds in conjunction with the Low Income Housing Tax Credit (LIHTC) Program (Section 2.03), should be familiar with the eligibility

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requirements of both programs. Applicants and owners of projects involving the construction or rehabilitation of four or more HCR assisted housing units including LIHTC Program projects are required to submit affirmative marketing plans before rent-up, detailing specific actions to be taken to provide information and outreach to eligible persons of all racial, ethnic, gender and disabled groups from the housing market area.

2.01.02 Statutory Provisions

2.01.02.A Purpose

The HTF Program was created by Article 18 of the PHFL for the purpose of making payments, grants, or loans available to subsidize the cost of rehabilitating and constructing housing for persons of low income. The Legislature's intent in creating the HTF Program was to increase the housing opportunities of persons of low income by expanding the supply of affordable housing. The HTF Program is administered by the HTFC, a public benefit corporation established under Section 45-a, of the PHFL. The specific legislative findings on which the HTF Program is based are found in Article 18, Section 1100 of the PHFL.

2.01.02.B Definitions

Definitions and program specific terms can be found in Article 18 of the PHFL, Section 1101.

2.01.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HTF Program.

2.01.03.A Eligible Applicants

As set forth in Article 18 of the PHFL, eligible applicants for the HTF Program include municipalities, counties, municipal housing authorities, not-for-profit corporations, charitable organizations, wholly-owned subsidiaries of not-for-profit corporations or charitable organizations, partnerships, certain private developers, and HDFCs. To be considered a not-for-profit project under the HTF Program requirements, a not-for-profit corporation or its wholly owned subsidiary must have an ownership interest in the project ownership entity equal to at

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least 50% of the controlling interest in the project and have a defined role in project management, evidenced by an equal say in the selection, hiring, and firing of the management agent for the project, and in other decisions regarding the management of the project. The non-profit must also have an equal say in the management of the partnership as demonstrated by the partnership agreement.

Except in cases of not-for-profit organizations, which are at the time of application engaged in multiple activities, and HTFC has given its consent to those activities continuing, the project must be and remain the sole asset and business purpose of the project recipient. Persons of low income may not be direct recipients of payments, grants or loans from the Corporation, but may receive such funds from another eligible applicant.

With the exception of municipalities, counties, and private developers, an applicant must have been in existence as a bona fide organization for at least one year prior to submission of an application, and must have the improvement of housing for persons of low income as a primary purpose, as evidenced in their articles of incorporation or by-laws. Municipalities, counties, and private developers must demonstrate prior experience in the production of affordable or low income housing.

A partnership's term of existence is determined by that of the partner with controlling interest. The term of existence for wholly-owned subsidiaries of not-for-profit corporations or charitable organizations is determined by that of the parent corporation.

Applicants must have the experience and capacity to develop and complete a project of the size and type proposed in a timely and cost-effective manner. They also need to be capable of maintaining financial records in accordance with Generally Accepted Accounting Principles. Applicants must also be able to secure any additional financing that may be necessary to complete the project as proposed. Additionally, applicants must be able to assume responsibility for providing management of the HTF Program units during the regulatory period. An applicant may apply directly to the HTF Program as a project recipient, in which case HTFC administers funding.

2.01.03.B Eligible Projects

Newly constructed and rehabilitated rental, cooperative, condominium, and homesteading projects are eligible projects under Article 18 of the PHFL. The HTF Statute and HCR policy set forth the following criteria with regard to rehabilitation projects:

- An occupied residential property is eligible for HTF if the property is distressed. HCR will consider an occupied residential property distressed if:
 - a. The occupancy rate by lawful occupants is less than 60% (otherwise known as under-occupied);
 - b. The residential portion of a mixed use property has an occupancy rate by lawful occupants of less than 60% (under-occupied);
 - c. A property consisting of one or two residential units prior to rehabilitation will subsequent to rehabilitation contain at least one additional residential unit; or,
 - d. The rehabilitation of the property would preserve affordable housing currently serving a population whose housing need would justify its replacement if it ceased to be available.
- An occupied non-residential property is eligible for conversion with HTF if the property is underutilized. HCR will consider the following factors in determining whether a non-residential property is underutilized:
 - a. Revenue from the leased space compared to the cost to operate the property;
 - b. Whether the owner provided the occupant with a plan acceptable to HCR for the occupant's relocation;
 - c. The percentage of leased space compared to the total amount of space available for lease;
 - d. Whether the current occupant of the non-residential space provides a critical service to the community which would be left unmet if the current occupant was displaced by the proposed project; and,
 - e. Whether the land, building(s), and/or structure(s) are currently not used or used at a lower density than the local land use plan permits and may potentially be developed, recycled, or converted into a higher density residential, commercial, or mixed-use development as defined in a local land use plan.

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Per HCR policy, a property is classified as residential property if 50 percent or more of its gross floor space is residential prior to rehabilitation. A property is classified as non-residential property if less than 50 percent of the gross floor space is residential prior to construction.

HCR will consider a structure to be vacant if the applicant can demonstrate that the occupancy is temporary in nature and that the occupant does not have a statutory or contractual right to occupy the property at the anticipated time for commencement of activities. A property will not be considered vacant if the occupant's obligation to vacate is conditioned upon the applicant securing funding from New York State. While there are no project size restrictions, factors such as site characteristics, community need, and project feasibility must be considered when determining project scope. Projects should be primarily for residential use, but other space may be included if it is determined by the Corporation to be appurtenant or incidental to the residential dwelling accommodations, and is intended for the exclusive use of project occupants. Depending on the nature of the project, such other space may include: community space, on-site management offices, common laundry rooms, social service space, dining and cooking areas, and recreational areas.

Applicants interested in using tax exempt bonds and 4% LIHTC for a project should consider requesting funding from the Homes for Working Families Program.

2.01.03.C Eligibility Requirements for Homesteading Projects

It is HTFC's policy that applicants requesting funds for 1-4 family owner-occupied properties seek funds from a source other than HTF.

2.01.03.D Requirements For Cooperative and Condominium Projects

For applicants seeking HTF funds for cooperative or condominium projects, HTFC will expect that the applicant will assume and retain the role of monitor over the management and operation of the cooperative or condominium to ensure that all HTF requirements are complied with for the duration of the HTF regulatory agreement.

2.01.03.E Eligible Areas

Article 18, Section 1102.3(h) of the PHFL provides the criteria of areas eligible for HTF funding. In addition, areas which have been designated by any Federal, State, or local law, rule, or regulation as blighted, deteriorated or deteriorating or as having a blighting influence on the surrounding area or as being in danger of becoming a slum or blighted area are eligible for HTF Program funds. Designations that meet these criteria include, but are not limited, to the following:

- (i) Federal Designation
 - a. Areas which are designated by the Secretary of the Department of Housing and Urban Development (HUD) of the United States as areas in which concentrated housing, physical development, and public service activities are being or will be carried out in a coordinated manner, pursuant to a locally developed strategy for neighborhood improvement, conservation and preservation;
 - b. Areas which have been proposed by the locality and approved by HUD as Community Development Block Grant (CDBG) target areas;
 - c. Areas which have been proposed by the locality and approved by HUD as Rental Rehabilitation target areas; and,
 - d. Neighborhoods in which Community Housing Development Organizations are carrying out activities pursuant to Title II of the National Affordable Housing Act.
- (ii) State Designation
 - a. Areas which are designated under Articles 15 and 16 of the General Municipal Law (The Urban Renewal Law and the Urban Development Action Area Act);
 - b. Census tracts in which at least 70 percent of the families have incomes which are 80 percent or less than the Statewide median income;
 - c. Areas of chronic economic distress as designated by the State and as approved by the Secretary of the Treasury and the Secretary of HUD;

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- d. Neighborhoods in which neighborhood preservation activities are being carried out pursuant to Article 16 of the PHFL;
- e. Rural preservation and revitalization regions in which preservation activities are being carried out pursuant to the provisions of Article 17 of the PHFL;
- f. Neighborhoods where median income does not exceed 80 percent of the median income of the MSA in which the neighborhood is located, or that does not exceed 80 percent of the median income of the county, if the county is not part of a MSA (for purposes of this section, "Neighborhood" means an area that surrounds a project and tends to determine, along with the condition and quality of the project, selling prices and/or rent levels of housing units);
- g. State designated Economic Development Zones; and,
- h. Or areas that will assist in the deconcentration of poverty.

(iii) Local Designation

- a. An area designated by the chief executive officer or the appropriate legislative body as blighted, deteriorated or deteriorating, or as having a blighting influence on the surrounding area, or as being in danger of becoming a slum or a blighted area because of the existence of substandard, unsanitary, deteriorating or deteriorated conditions, an aged housing stock, or vacant non-residential property, or other factors indicating an inability or unwillingness on the part of the private sector, unaided, to undertake the activities mandated under Article 18.

2.01.03.F Eligible Occupants

To be eligible for funding, HTF housing projects must serve persons of low income, defined in PHFL Article 18, Section 1101.10. For rehabilitation or conversion projects, Article 18 of the PHFL provides that legal occupants who remain in possession of their unit, or who are temporarily relocated during rehabilitation or conversion, are entitled to continue occupancy

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after project completion. All additional occupants who move into the project subsequent to rehabilitation or conversion must be persons of low income, as defined above. Only temporary relocation expenses are eligible costs under the HTF Program.

2.01.03.G Eligible Project Costs

Pursuant to Article 18 of the PHFL, the HTF Program cost may not exceed \$125,000 per unit per project per funding round. Eligible project costs shall consist of the actual and necessary cost of rehabilitation, construction, or conversion, including, but not limited to, the following:

- (i) construction or rehabilitation costs;
- (i) architectural, engineering or professional services fees;
- (ii) financing costs;
- (iii) fees charged for disbursement of funds by lenders;
- (iv) temporary relocation costs;
- (v) property acquisition costs (not to exceed 50 percent of the HTF Program award);
- (vi) carrying costs during construction;
- (vii) Working Capital Fund;
- (viii) a Replacement Reserve;
- (ix) LPA fees for technical services rendered on behalf of the sub recipient (by policy, HTF program has preferred LPA projects to be accomplished through the Office of Community Renewal);
- (x) fees for construction audit;
- (xi) Developer's Allowance, if applicable; and,
- (xiii) Community Service Facility costs (not to exceed 10% of the HTF award amount, with the total HTF request not exceeding the per unit funding cap).

HTF Program funds may not be used for the administration costs of the applicant, to capitalize an operating reserve, or for the construction, conversion or rehabilitation of units, which, upon project completion, are to be occupied by other than persons of low income. By statute, no more than 50 percent of any HTFC payments, grants or loans provided for the project may be used for acquisition costs (including closing costs).

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For HTF projects with non-residential/commercial space which qualifies as a Community Service Facility (CSF), these costs may be eligible for HTF funding. A CSF is a non-residential facility within a HTF-eligible project which provides services to the low-income residents of the neighborhood/area in which the project is located. Up to 10 percent of the HTF award amount may be used to finance costs associated with the development of the CSF. Please see Section 5.09 for further guidance on using HTF for a CSF.

2.01.03.H Eligible Predevelopment Costs

NOTE: Predevelopment awards will only be made if the RFP for a particular 9% RFP states that such an award will be available for that funding round.

Once a Funding Commitment has been issued, a not-for-profit applicant may request funds for predevelopment expenses. By policy, the HTF Program will not fund more than \$5,000 per unit in predevelopment expenses, though other sources may be used to fund additional predevelopment costs. Predevelopment funds are included in the amount of the Funding Commitment, and any predevelopment funds awarded are included in the maximum funding amounts discussed above. The use of predevelopment funds is restricted to non-construction expenses, including, but not limited to:

- (i) site option costs and site carrying charges;
- (ii) architectural and engineering fees;
- (iii) appraisal fees;
- (iv) fees for title search and survey;
- (v) planning and consultant fees;
- (vi) demolition and clean out expenses necessary to complete the design of the project;
- (vii) legal and organizational expenses;
- (viii) accounting and application fees;
- (ix) market and environmental studies;
- (x) feasibility studies; and,
- (xi) site option expenses.

2.01.04 Program Requirements

This section describes private developer and regulatory period requirements specific to the HTF Program. Utilization of LIHTC may have an effect on certain requirements set forth in this section.

2.01.04.A Private Developer Minimum Equity Requirements

Article 18 requires that HTF applicants who are acting as private developers must make a minimum equity contribution to the project equal to either: (a) two and one-half percent of the total project cost; or (b) five percent of the total project costs (total development cost in current HCR budget forms) cost minus all grants, whichever is greater. For the purposes of the HTF Program, a grant is defined as financing which does not require payment of principal or interest during the project's regulatory period. Balloon mortgages which do not require amortization of principal or payment of interest during the loan period are considered grants.

Program policy requires that a portion of the equity contribution be in the form of cash, with a minimum of three months of operating expenses and debt service for projects of 60 units or more, and six months of operating costs and debt service for projects of less than 60 units be made as a cash deposit to the project's Operating Reserve Account.

Any equity above and beyond the required three months or six months of operating expenses and debt service cash contribution must be in the form of cash, land, or real property unless there is an identity of interest between the applicant and the builder. In this case, a portion of the builder's profits, up to ten percent of the actual cost of construction, may be waived or treated as equity subject to the approval of the Corporation. Not-for-profit organizations wishing to receive a return on equity for a project will be treated as private developers if they make the minimum required equity investment. The return on equity that a private developer is permitted to receive on its qualified equity investment is described in Section 2.01.04.D.

2.01.04.B Real Estate Contributions

Any land or real property contributed as equity must be owned by the applicant and must be free and clear of liens. Real property acquired pursuant to public funding shall have no equity value for the purpose of satisfying the HTF Program's equity requirement. The value of property

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acquired two years or less before submission of a 9% RFP application that is counted as equity shall be calculated as the lesser of either the preconstruction appraised value or the purchase price. The value of property acquired more than two years prior to submission of a 9% RFP application that may be counted as equity shall be the property's pre-construction appraised value. HTF Program funds used to acquire the property on which the project is located shall be deducted from its value when calculating the equity investment.

2.01.04.C Payment of Equity

A private developer's equity investment must be made at or prior to the project's Construction Closing. If the private developer has syndicated the project and is to receive future syndication proceeds, the amount of such future proceeds must be funded by some other source, without encumbering the project.

Cash equity contributions must be in the form of a certified check equal to the amount of equity to be invested in the project. In lieu of a certified check, an irrevocable letter of credit (LOC) may be submitted. The certified check or LOC must be submitted at or prior to the Construction Closing. The LOC should cover the term of the construction phase of the project. If the construction phase of the project takes longer than expected, the term of the LOC must be extended within 30 days of its expiration date to cover the extended period of the construction phase. It is the developer's responsibility to extend the LOC, if necessary. HTFC will deposit all cash equity contributions into interest-bearing accounts, and any interest earned will be returned to, or credited to, the developer.

2.01.04.D Return on Equity

If, after providing for all expenses, taxes and deposits to the reserve funds, there are funds available, an annual portion of the project earnings will be paid to the private developer as a return on equity. In order to receive a return on equity, there must be a cash surplus in the project's General Operating Account after payment of all expenses for the applicable fiscal year. The annual return on equity is limited to six percent of the total qualified equity contributions.

If unpaid, payment will accrue for return on equity and shall be made at such time as a cash surplus is available in the General Operating Account or in the Operating Reserve Account

(subject to the conditions previously described). The maximum payment of return on equity in any one fiscal year is limited to the current year's return on equity and one prior year's accrued amount. Return on equity payments will be made following the end of each fiscal year.

Payments from the General Operating Account for return on equity require prior approval of the Asset Management Unit (AMU). Payments from the Operating Reserve Account also require prior approval of AMU. AMU and HTFC Finance staffs review the annual audit report to ensure that return on equity is paid properly. Payments will not be approved if it is determined that the project is not in compliance with HTFC regulations and applicable housing occupancy and maintenance laws, codes, and regulations.

2.01.04.E Regulatory Period

HTF Program projects must be operated in accordance with a Regulatory Agreement for the duration of the applicable regulatory period described below:

- (i) for homesteading projects, the regulatory period is the greater of:
 - a. the 15-year period following the date of final disbursement for the project during which the resale, rental, and occupancy restrictions specified in the Regulatory Agreement are applicable; or,
 - b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.
- (ii) for rental, condominium or cooperative projects, the regulatory period is the greater of:
 - a. the 20-year period following the date of final disbursement for the project in which the resale, rental and occupancy restrictions specified in the Regulatory Agreement are applicable; or,
 - b. the period, not to exceed 30 years, during which any loan or indebtedness incurred pursuant to Article 18 of the PHFL is outstanding.

HTF projects may not be sold during the regulatory period except, with HTFC approval, to another eligible applicant who agrees to carry out the provisions of the Regulatory Agreement. During the regulatory period, the resale price will be established based on the value of the HTFC loan, project sponsor's equity and other relevant considerations.

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At the end of the regulatory period, the project may be resold or refinanced. Except for those projects financed under Grant Enforcement Mortgages, projects which are resold or refinanced, and which will not continue to provide housing units for persons of low income, must repay the amount of the outstanding mortgage principal and accrued interest, if not previously paid to HTFC. If the project is to be sold or refinanced, but will continue to provide units for persons of low income, a new mortgage and regulatory period can be negotiated. These provisions apply to all housing types - rental, homesteading, cooperative and condominium.

2.01.04.F Accessibility and Adaptation of Units

HTF projects must meet all applicable code, Fair Housing Act, and any other applicable requirements for accessibility and adaptability. All reasonable accommodations and reasonable modifications, including modifying adaptable dwelling units to the accessibility needs of the tenant, must be at the owner's expense.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.02 Housing Development Fund Program

2.02.01 Summary

The Housing Development Fund (HDF) is a revolving loan fund program established in 1966 under Article XI of the PHFL and administered by HCR. The primary purpose of the HDF program as currently administered by HCR is to provide construction loans to eligible applicants who will construct or rehabilitate housing projects for low-income households and to review requests to provide the Commissioner's Consent to the incorporation of Housing Development Fund Corporations, as set forth in Section 2.02.04B below. HDF loans provide temporary, interim, or bridge financing and are generally repaid from permanent financing provided by another public or private funding source or the equity proceeds contributed by the investor in low-income housing credit projects. A copy of the PHFL can be found at ny.gov/.

HDF construction loans may be used for the costs of rehabilitation or construction of an eligible project including: site improvement; demolition and/or site preparation; infrastructure; professional and legal fees during construction; labor; materials; equipment; approved developer fees and builders' overhead; project carrying costs and working capital; and the development of non-residential facilities, provided such space is incidental or appurtenant to the residential property, and allowed and reimbursable under the project's permanent financing. HDF construction loans may be paid at zero percent interest rate and are repaid from the first receipts of the project's permanent financing. These loans are usually of three years duration, but may be longer based on the financing necessities and construction timetables of specific projects. HDF loan funds have been used to provide construction financing for projects receiving permanent financing through the NYS HOME program.

HDF construction loans may also be used to provide interim financing for longer periods for projects funded through the LIHTC program. These HDF loans are called equity or bridge loans, because they bridge the period during the project's development and/or initial operating years until sufficient equity proceeds become available to repay the HDF loan. HDF equity loans are generally made at a zero or one percent interest rate based upon the project's financing needs, and may have terms longer terms than HDF construction loans since they may be repaid

subsequent to the receipt of permanent financing. HDF equity loans may be used to pay for any mortgageable project costs (i.e., costs reimbursable from the source of permanent financing).

In addition to construction loans, HDF financing may also be utilized to establish sub-recipient, revolving loan programs. Under this financing structure, HCR may enter into a HDF loan contract with an eligible non-profit corporation as borrower. Using loan origination and servicing parameters approved by HCR, the borrower provides HDF loans to sub-recipients to cover mortgageable costs associated with property acquisition and/or construction of HDF-eligible projects. Upon completion, the sub-recipient repays the full loan amount to the borrower, generally from permanent financing proceeds. The repaid loan funds then revolve and are utilized to finance another sub-recipient loan.

2.02.02 Statutory Provisions

2.02.02.A Purpose

The HDF program was created under Article 11 (Sections 570 through 582) of the PHFL for the purpose of establishing a revolving loan fund to provide temporary loans to eligible applicants to facilitate the development of housing for low-income households. The statutory purpose of the HDF Program is further elaborated upon in Section 571 of PHFL.

2.02.02.B Definitions

Pertinent program-specific terms are defined in Section 572 of the PHFL.

2.02.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to HDF.

2.02.03.A Eligible Applicants

Eligible HDF applicants include HDFC's incorporated pursuant to Section 573 of the PHFL and other not-for-profit and charitable corporations, and their wholly-owned subsidiaries, as set forth in Section 571 of the PHFL, which have the improvement of housing for persons of low income as a primary corporate purpose. Prospective project sponsors do not have to be HDFC's to be eligible for HDF funding. However, applicants may sponsor the incorporation of

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an HDFC as a single-asset vehicle to develop and/or own a low-income housing development, reduce corporate liability and potentially qualify for a state real property tax-exemption.

Applicants must have the experience and capacity to develop, rehabilitate and/or construct a project of the size and type proposed in a timely and cost-effective manner and demonstrate that the permanent financing needed to complete the project and repay the HDF loan has been firmly committed. Generally, a completed project must be and remain the sole asset and business purpose of the HDFC.

2.02.03.B Eligible Projects

Eligible HDF projects are defined in Section 572 of the PHFL. Restrictions on project size, scope, and the income levels of the project's low-income occupants are generally determined by the permanent funding source.

2.02.03.C Eligible Areas

All areas of the State are eligible for HDF financing.

2.02.03.D Eligible Occupants

HDF projects must be occupied by low-income individuals or households. Generally, the permanent funding provider regulates tenant eligibility, project rents, sale prices and/or disposition of property. If permanent financing is not provided by a governmental source, HCR may regulate the project subsequent to repayment of the HDF loan. Further, Section 576 of the PHFL restricts project occupancy to households with incomes not exceeding six times the total housing cost (rent plus utilities), except that for households with three or more dependents, the income must not exceed seven times the total housing cost.

2.02.03.E Eligible Loan Costs

Eligible loan costs are defined in Section 572 of the PHFL.

2.02.04 Program Requirements

This Section describes the loan and incorporation requirements specific to HDF.

2.02.04.A HDF Loan Requirements

HDF construction loans are evidenced by a promissory note and/or mortgage note which, among other things, requires that the temporary loan will be due and payable on demand if HCR determines that permanent financing may not be obtained for the project, or if the HDF loan is in jeopardy of not being repaid. In general, no HDF loan repayment term can be extended beyond the last receipts of the permanent financing, or in the case of HDF equity loans for LIHTC projects, the last installment of syndication proceeds paid to the project owner pursuant to a syndication or partnership agreement. A closing is usually required prior to, or concurrent with, the disbursement of loan proceeds for construction. HDF loans are generally interest-free although HDF equity loans may have a one percent interest rate. An interest rate of up to six percent may be charged in the event of default on repayment.

Contracts for HDF construction loans may not be authorized until firm commitments are in place from all project funding sources, including the source of repayment for the loan. Generally, projects utilizing HDF loans must meet all eligibility requirements and design, legal and underwriting specifications of the public or private funding source providing permanent financing.

Prior to authorizing a contract and disbursing HDF loan funds, HCR must make findings pursuant to Section 573 of the PHFL. All HDF loan funding commitments are subject to the availability of funds in the HDF revolving loan fund, as well as to an annual authorization by the Legislature to use such funds. All applicants must enter into an HDF Regulatory Agreement and Loan Contract. HDF contracts must be executed by the applicant and HCR, and approved by the State Attorney General's Office and the Office of the State Comptroller prior to disbursement of the HDF loan proceeds.

2.02.04.B HDFC Incorporation

A Housing Development Fund Corporation (HDFC) must be incorporated pursuant to the provisions of Section 573 of the PHFL and the provisions of either Section 402 of Not-For-Profit

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Corporation Law, or, in the case of low-income cooperatives, Section 402 of the Business Corporation Law. An HDFC Incorporation package may be obtained by contacting the HDF Program Manager at HCR, 38-40 State Street, 6th Floor, Albany, New York 12207. Section 573 of the PHFL provides that a sponsor seeking to establish a HDFC must obtain the approval or consent of the Commissioner of HCR or certain officials within a locality, prior to filing a certificate of incorporation to incorporate an HDFC with the New York State Department of State. The agency which provides this consent or approval serves as the supervising agency of the HDFC which is incorporated.

The statute requires that the provision of the consent to the filing of the certificate of incorporation of the HDFC shall be based upon findings by the Commissioner or supervising agency as to the character and competence of the sponsor.

An applicant seeking financing from HCR must obtain the consent of the Commissioner to the creation of an HDFC to be used in that project. An applicant must obtain the consent of the NYC Department of Housing Preservation and Development (HPD) if financing is not being sought from HCR and the project is located in New York City. An applicant may seek consent of either the Commissioner or the supervising agency if the project is not in New York City and is not seeking financing from HCR.

In order to obtain the Commissioner's consent for the formation of a HDFC, the documentation cited below must be submitted by the sponsor or its legal representative to HCR at the above-cited address. This documentation will be reviewed by HCR's legal and program staff to determine consistency with statute at the sole discretion of the Commissioner. A sponsor that has previously incorporated an HDFC with the consent of the Commissioner or a supervising agency must still submit a complete package of the documentation requested below, regardless of the timeframe of the last approved submission.

The Commissioner reserves the right to deny provision of a consent to incorporate if HCR determines in its sole discretion that the sponsor has not satisfactorily demonstrated its character and competence. The following documentation must be submitted with each such request:

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- 1) An executed original of the proposed HDFC Certificate of Incorporation containing the address of the incorporator, which demonstrates to the satisfaction of the Commissioner that the HDFC complies with the not-for-profit corporation law and Section 573 of the PFHL. A recommended format for an HDFC Certificate of Incorporation is available at hcr.ny.gov/housing-development-fund-corporation-hdfc. This format provides optional language which may assist an HDFC in requesting approval of a NYS Sales Tax Exemption from the Department of Taxation and Finance;
- 2) If the HDFC will seek a NYS Sales Tax Exemption from the Department of Taxation and Finance (DTF) pursuant to Section 573 of the PHFL, the HDFC Certification Form available at <https://hcr.ny.gov/housing-development-fund-corporation-hdfc> must be completed and submitted by the HDFC to DTF subsequent to incorporation. The completed HDFC Certification Form may be emailed to DTF to the attention of STEO@tax.ny.gov, with the subject line: HDFC Certification Form for [NAME of HDFC];
- 3) A copy of the sponsor's Certificate of Incorporation, or, if unincorporated, a copy of the sponsor's by-laws;
- 4) Proof of the sponsor corporation's good standing in the form of a Certificate of Good Standing from the Secretary of New York State, or an attorney's opinion letter (the form may not be dated more than 60 days prior to submission of the HDFC incorporation package);
- 5) A copy of the board resolution (with appropriate notarized signature) authorizing the sponsor to organize the proposed HDFC;
- 6) An executed Omnibus Certification (current format available at hcr.ny.gov/housing-development-fund-corporation-hdfc with separate forms completed for the sponsor, its Board Chairperson/President and Executive Director/CEO. Please note that responses to these Certifications will be compared to any issues/findings reflected on a Lexis/Nexis search of public records pertaining to the sponsor. Any such issues reflected in the Lexis/Nexis search will be brought to the attention of the sponsor for further explanation if not previously addressed. Further, inconsistencies raised by a comparison of the search to the responses in the Certifications will require the

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sponsor's explanation/justification. Any such items which are not addressed to the satisfaction of HCR may result in the Commissioner's denial to provide the requested consent to the incorporation;

- 7) The sponsor's current financial statement indicating the sponsor's assets and liabilities (an explanation will be required for any such statement which is dated more than one year past the end of the most recently completed calendar year);
- 8) An Organization's Relevant Experience exhibit/Form (current format available at hcr.ny.gov/housing-development-fund-corporation-hdfc) which is completed for the sponsor. If the sponsor does not have prior housing experience, the form must be submitted for other pertinent members of the project development team. Corporate resumes which outline specific housing development projects completed and experience will be accepted in lieu of this form. Sponsors must be able to demonstrate their wherewithal to complete the proposed project based on their previous track record or that of the development team;
- 9) An Organizational Chart of the project's ownership entity, including the proposed HDFC. The role and percentage of ownership interest of the HDFC in the project must be indicated.
- 10) A narrative which describes and details the proposed housing project, its proposed scope, use, and tenure, income levels of the households served, ownership structure, financing, and the sponsor. This project summary must also include the proposed housing project's plan of finance regardless of the HDFC's proposed term of duration. The plan of finance should identify the governmental agencies which are anticipated to be involved in the financing of the proposed housing project. Preliminary plans of finance that rely on proposed HCR funding from the NYS Housing Finance Agency (HFA) must first be submitted to HFA, accompanied by a project concept summary, concurrent with submission to DHCR. This information will be reviewed for consistency with Statute;
- 11) Evidence of permanent firm funding commitment(s), if the HDFC term is proposed as perpetual.
- 12) The sponsor may request an HDFC term of three (3) years, as reflected in the

proposed HDFC Certificate of Incorporation, if all such project permanent funding commitments have not been obtained (such certificates may be amended at a later date to provide for perpetual duration if funding commitments are subsequently received). HCR reserves the discretionary authority to contact other project funding sources in regard to the provision of Consent to the incorporation of the proposed HDFC. In addition, if HCR financing is identified in the plan of finance, but has not been awarded and/or committed, HCR may postpone review of the proposed HDFC until such time as the pertinent project is awarded HCR financing; and,

- 13) A completed federal tax return (IRS Form 990 for a non-profit organization) for the sponsor, whether a non-profit or for-profit entity, for the last applicable calendar year completed.

Once HCR has consented to incorporation, the Certificate of Incorporation is returned to the sponsor or its legal representative for the sponsor to continue its processing. The following steps must be taken to complete the filing of the Certificate of Incorporation:

- 1) the certificate of incorporation must be filed with the Secretary of State; and,
- 2) a certified copy of the filed Certificate of Incorporation must be submitted to the HDF Program Manager, together with a copy of the filing receipt from the Secretary of State.

2.02.05 Farmworker Housing Program

The Farmworker Housing Program was authorized in 1995 through an amendment to Article 11 of the PHFL, which made HDF program funds available for this new statutory purpose. The Farmworker Housing Program is a low-cost revolving loan program to assist agricultural producers in improving existing housing or constructing replacement housing for seasonal and year-round farmworkers so that the housing will comply with applicable code (such as the New York State Sanitary Code and/or the Building Codes of New York State). The loans are also used for the new construction of farmworker housing and the expansion of existing facilities.

The Farmworker Housing Program is administered by HCR and participating local farm credit institution(s) with the cooperation of the New York State Department of Health and/or

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county health departments which conduct inspections and provide permits for seasonal farmworker housing. HCR contracts with a farm credit institution(s) to serve as a Local Loan Administrator (LLA). The LLA originates and services loans to agricultural producers, utilizing their underwriting standards. Upon completion of LLA review, the application packages are forwarded to HCR for environmental approval, authorization, and the disbursement of loan funds.

Under the program, an agricultural producer (a producer or entity which owns or operates land eligible for an agricultural assessment under Sections 305 and 306 of the Agriculture and Markets Law and which produces food by the tillage of the soil, or raises, shears, feeds or manages animals or other dairying processes) can apply to borrow up to \$100,000 per year for a project. If more than \$100,000 in loan funds is needed to satisfactorily complete the construction, repair or improvement of one farmworker housing project, the agricultural producer can seek funds from other sources, including a blended loan (i.e., a combination of a program loan and a conventional loan).

LLAs may require a one-time servicing fee from the borrower at the time of loan closing of no more than five percent (5%) of the loan amount. There are no interest or inspection fees. All loans to borrowers must be repaid in equal annual payments of principal; the term of the loan may not exceed ten (10) years.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.03 Low-Income Housing Credit (LIHTC) Program

2.03.01 Summary

The Low-Income Housing Credit Program (LIHTC or the Credit) involves the allocation of a federal tax credit which provides a dollar-for-dollar reduction in federal income tax liability for eligible applicants/owners who develop qualified low income rental housing projects pursuant to the statutory requirements of Section 42 of the Internal Revenue Code (IRC or the Code).

LIHTC is available to project owners who acquire, construct, and/or rehabilitate rental housing reserved for low-income households. The amount of Credit allocated to a project is directly related to the costs associated with the acquisition, construction, and/or rehabilitation of rental housing that is reserved for low-income households (i.e., those earning 60% or less of AMI) and the allocation level necessary to ensure the project's completion and continued operation through the project's regulatory term. The amount of Credit allocated to an owner represents the annual Credit amount the owner may claim and receive for each of the next ten years subsequent to the Credit allocation.

In addition, the amount of Credit a project may receive is determined by applying the applicable federal credit percentage to the project; in general, approximately 9% (or the percentage which will yield 70% present value) is applied to the cost of new construction or rehabilitation for non-federally financed projects and approximately 4% (or the percentage which will yield 30% present value) is applied to the cost of building acquisition or development costs for projects which receive federal financing (such as tax-exempt bond financing). It should be noted that the New York State Housing Finance Agency (HFA) administers the State's credit allocations for tax-exempt bond financed projects (also termed "4% LIHTC projects") and the information contained herein does not address these projects.

2.03.02 Statutory Provisions

2.03.02.A Purpose

The Federal Tax Reform Act of 1986, as amended (the Act), established the LIHTC Program to be administered by state housing agencies for the purpose of promoting investment in the production and retention of rental housing units which are reserved for low-income households. The LIHTC Program replaced other tax incentives that existed prior to the passage of the Act in 1986.

The Act authorized the governor of each state to allocate the low-income housing tax credit ceiling among governmental units and other issuing authorities in the state with a single Housing Credit Agency (HCA) coordinating the allocation of Credit to owners of low income housing. In New York, the Governor's Executive Order #11 of 2011 designated DHCR as the State's lead HCA. The Executive Order authorized DHCR to allocate Credit in a manner which maximizes the public benefit by addressing the State's need for low-income housing and community revitalization incentives and to sub-allocate the Credit Ceiling among State and local entities involved with housing subject to an application requesting Credit authority. The information provided below is specific to the Credit allocated by DHCR directly to projects it selects for funding, as a component of HCR.

The Act further required each agency allocating Credit to adopt a Qualified Allocation Plan (QAP) to provide for the effective coordination of the State's LIHTC Program with Section 42 of the Internal Revenue Code (the Code). The DHCR QAP sets forth the threshold eligibility, scoring criteria and preferences by which LIHTC will be awarded, and allocated to projects by DHCR, as well as other important program provisions establishing the parameters by which DHCR administers the program.

2.03.02.B Definitions

LIHTC Program definitions are set forth in the Code and Section 2040.2 of the QAP.

2.03.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the LIHTC Program.

2.03.03.A Eligible Applicants

Eligible applicants under LIHTC include for-profit developers, not-for-profit developers, individuals, corporations, limited partnerships, and limited liability corporations which will own rent-restricted rental housing after the project is acquired and improved, rehabilitated or constructed.

2.03.03.B Eligible Projects

Credit allocations may only be made to qualified low-income housing projects which meet the minimum set-aside requirements set forth in Section 42(g)(1) of the Code. To be eligible, the project's low-income units must be rent-restricted, so that the low-income households occupying the LIHTC-regulated units do not pay rent (including tenant-paid utilities) greater than 30 percent of the AMI imputed for the unit based on the number of bedrooms the unit contains. Eligible project activities under the LIHTC Program include new construction, building acquisition with rehabilitation, and rehabilitation. The QAP sets forth additional eligibility requirements which must be met by Credit projects. These eligibility requirements are set forth in Section 2040.3(e) of the QAP.

In addition, while Credit projects may contain commercial space and market-rate or otherwise un-regulated residential units, credit can only be claimed and utilized for the financing of the project's low-income residential units. One important exception to the above is in the case of a residential project containing a CSF. A CSF is any facility within a residential project located in a HUD-designated Qualified Census Tract (QCT) designed to serve primarily individuals who reside in the Credit project and persons in the immediate community/neighborhood.

Although not specifically defined in the Code, a CSF may include space for such activities as Head Start, child care, job training, primary health care, youth recreation, and support services for seniors. Pursuant to the Code, the allowable percentage of development costs of the CSF portion of the qualified low-income project which can be included in qualified basis is 25 percent. Credit applicants must describe and clearly document the programmatic relationship between the occupant(s) of the CSF and the project tenants and community residents

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served by the CSF, carefully apportioning all project development costs, hard and soft, and real estate expenses between the CSF and the residential units of the project.

Credit allocations may not be used for projects which will be used for transient housing, defined as units with an initial lease of less than six months. However, an exception is permitted for single room occupancy (SRO) projects, which are eligible for Credit. Further, transitional housing projects for homeless persons and/or families are eligible for Credit. Credit allocations may not be used for rental dwelling units that are or will be part of a health facility, nursing home, mobile home park, or student dormitory.

In addition to eligibility standards, the QAP sets forth project scoring and ranking criteria (Section 2040.3(f) of the QAP), which incorporate both Code-mandated project selection criteria and HCR project preferences. LIHTC scoring provisions are described in detail in the QAP and the HCR Multi-Family Programs RFP issued under HCR's 9% RFP application process. Subject to the availability of Credit, and the issuance of a Notice of Credit Availability and RFP, DHCR may choose to provide one or more set-asides of Credit for additional types of projects, which are specified in the 9% RFP.

In addition, Section 42(h)(5) of the Code requires that state housing credit agencies set-aside 10% of its annual Credit Ceiling (see 2.03.04.A below) for qualified non-profit organizations which own an interest in the project and materially participate in the development and operation of the project throughout the project's regulatory term.

In regard to multiple-building developments, DHCR will treat these as one project provided it is consistent with Section 42(g)(7) of the Code, the QAP, and meets the following parameters:

- Buildings on Adjacent Sites:
 - on same or adjacent tracts of land.
 - have the same ownership entity and common construction/permanent financing sources.
- Buildings on Scattered Sites:
 - in non-metropolitan counties, such projects must be located in the same municipality (i.e., town, city or village).

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- in metropolitan counties, such projects must be located in the same neighborhood, or if recognized neighborhood boundaries do not exist, in no more than two adjacent census tracts.
- have the same ownership entity and common construction/permanent financing sources.

2.03.03.C Eligible Areas

All areas of New York State are eligible.

2.03.03.D Eligible Occupants

Eligible occupants are low-income households earning up to 60% of area median income, as adjusted for household size (or up to 80% of area median income if the Average Income set-aside is utilized). LIHTC may only be utilized on units that are occupied at the time of initial occupancy by eligible occupants. To be eligible for LIHTC, project occupancy must meet Code minimum set-aside requirements. Units must be available for use by the general public pursuant to Section 42(g)(9) of the Code. Project owners may, however, give preference in renting units, or limit occupancy to, certain categories of persons with special needs as defined in Section 2040.2(q) of the QAP or to persons as otherwise determined by HCR's Office of Fair and Equitable Housing. Further, according to federal statute, projects which would otherwise meet the general public use requirement may have occupancy preferences that favor tenants who are involved in artistic and literary activities. Projects must also comply with all Federal and State fair housing laws, regulations and applicable policies.

2.03.03.E Eligible Project Costs

See Section 5.05 of the CPM.

2.03.04 Program Requirements

This section describes the Ceiling Allocation, DHCR Credit Allocation Process and the LIHTC Extended Use Period.

2.03.04.A LIHTC Ceiling Allocation

New York State receives an annual allocation of Credit called the Low-Income Housing Tax Credit Ceiling based on a formula set forth in Section 42(h)(3) of the Code (the Ceiling). This Credit is also referred to as “9% LIHTC” and is awarded to projects on a competitive basis pursuant to HCR’s 9% RFP and the QAP.

Ceiling Allocation to HCAs

DHCR may sub-allocate a portion of the Ceiling, and/or the authority to allocate 4% LIHTC (per Section 42(h)(4) of the Code), to other State and Local HCA’s, which in turn makes allocations to eligible projects.

DHCR’s Credit Allocation Authority

The portion of the Ceiling which is not allocated to other State and local HCA’s represents DHCR Allocation Authority. DHCR allocates Credit (i.e., 9% LIHTC) on a competitive basis as defined in DHCR’s QAP to projects which utilize Credit on a standalone basis (i.e., projects not receiving HCR capital financing assistance) or in conjunction with HCR’s other capital financing programs as specified in the 9% RFP.

2.03.04.B DHCR Credit Allocation Process

The process for the allocation of Credit to projects conforms to Section 42(h) of the Code, as further detailed in Section 2040.3 of the QAP. This section of the QAP references the following:

- LIHTC application and funding cycle;
- LIHTC application, binding agreement allocation and/or other processing fees;
- Requirements for issuance of Credit reservations, binding agreement, carryover allocations and the Internal Revenue Service Form 8609 (explained in more detail below);
- threshold eligibility review criteria;
- project scoring and rating criteria;

- other important project review factors such as site suitability and location, architectural design, consistency with underwriting standards, and whether a project advances the State's housing goals and objectives, including any goals set forth by a Regional Economic Development Council strategic plan applicable to the area in which a project is located; and,
- other factors involved in the determination of the Credit allocation amount for a project.

The LIHTC Notice of Credit Availability and the RFP provide additional detailed parameters and criteria of Credit application review, the maximum per unit and per project annual Credit allocation amounts which may be requested, HCR's specific housing goals, objectives, and project preferences, as well as notification of the outcome of HCR's review.

2.03.05 LIHTC Processing Documents

2.03.05.A Reservation Letter

The Reservation letter (the Reservation) serves as HCR's initial commitment of Credit to a project approved for a Credit award. The Credit Reservation includes the following significant sections:

- 1) The first section, the Reservation letter itself, contains the terms, conditions, and specific documentation submission timeframes and requirements which the project sponsor must provide and meet in order for DHCR to approve the issuance of a binding agreement and/or carryover allocation to the project. This section further sets forth the maximum dollar amount of Credit to be provided pursuant to the Reservation, the Reservation expiration date (i.e., the date by which the project must meet the terms and conditions of the Reservation and close on construction financing) and the dates by which the project must start construction and submit carryover eligibility documentation. This section also provides programmatic advisories in regard to notification requirements pertaining to changes in project scope, design or budget, and the prohibition against the use of contractors and sub-contractors listed on federal or state debarment lists. Requests to extend the Reservation expiration date or otherwise amend the terms of the Reservation are subject to HCR review and may be approved by HCR, in its sole

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discretion. Failure to meet the deadlines or any other terms and conditions of the Reservation, or changes to project scope may adversely impact the scoring and competitiveness of application submitted by the project sponsor in future application rounds and/or may result in termination of the Reservation, at HCR's sole discretion.

2) The second section of the Reservation, the Reservation Addendum, contains additional project specific issues and submission requirements which the project sponsor must address prior to the Reservation expiration date and date of construction financing closing. Generally, these include open items that were not sufficiently explained or resolved in the initial 9% RFP application which was submitted to HCR. The section reflects the documentation submissions required by the HCR technical units involved in project review, such as Underwriting, Design, Program Management, FEHO, Special Needs, EAU, and AMU. The Reservation Addendum, in the Underwriting Issues section, sets forth the project's anticipated credit equity conversion factor (i.e., the credit equity pay-in per dollar which the Credit investor will provide to purchase the ownership interest in the project). Should a project sponsor obtain a higher credit equity pay-in at any time prior to project completion and issuance of the IRS Form 8609 Credit allocation, such an increase is subject to the provisions of DHCR's LIHTC Equity Increase Policy. The specific guidelines are set forth at the following website address: hcr.ny.gov/system/files/documents/2019/03/lihcequityincreasepolicy.pdf

However, note that the Reservation Addendum does not provide a comprehensive list of all requirements a project sponsor must meet to proceed to construction financing closing, which may be transmitted under separate correspondence or documentation.

3) The third section of the Reservation, Attachment A, cites the specific provisions which will be incorporated in the project's Regulatory Agreement (see Section 2.03.05.E). The provisions are based on those project amenities, population targets, and other features proposed in the initial funding application, and for which the project may have been mandated to provide under threshold eligibility (Section 2040.3(e) of the QAP) and/or received scoring points (Section 2040.3(f)). This includes but is not limited to requirements for operating the completed project based on standards for green buildings; energy efficiency; special needs and supportive housing; income and affordability targets;

not-for-profit participation in the project's ownership and/or right of first refusal; tenant buy-out; prohibitions against using debarred contractors on an ongoing basis; project unit visitability, accessibility and adaptability for persons with physical disabilities; and treatment of additional rental income received by the project through collection of rent subsidized by Section 8 Tenant Based Vouchers (or similar tenant based subsidy).

Attachment A further provides that the project awardee (and ultimately, the project owner), by executing the Reservation, agree to waive any right to request a Qualified Contract to purchase the project at the end of the credit compliance period as defined in Section 42(h)(6)(F) of the Code (see Section 2.03.05.E).

2.03.05.B Binding Agreement

Projects which meet the terms and conditions of their Reservation may request a Binding Agreement letter. Issuance of a Binding Agreement is not required by HCR; rather it is often requested by the project sponsor or their tax credit investor as confirmation that the project has met the terms and conditions of the LIHTC/SLIHC reservation letter and to facilitate the closing on construction financing. In order to secure a Binding Agreement, the project sponsor must submit evidence that all local approvals necessary to proceed to construction have been obtained, and commitments from all sources of construction and permanent financing cited in the project's approved development budget to complete the project. The Binding Agreement may only be issued and released upon completion of the project's second HCR underwrite, as mandated by the Code, and review and approval of the above-referenced documentation by HCR's OLA. A summary of HCR's second underwrite of the project's development and operating budgets is incorporated in the Binding Agreement.

The Binding Agreement also provides instructions for submission of carryover certification documentation, and an invoice for payment of pertinent Credit application (if not previously paid) and allocation fees.

2.03.05.C Carryover Allocation

Projects which meet the terms and conditions of their Reservation and/or Binding Agreement may request a Carryover Allocation, which DHCR will issue pursuant to Section

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42(h)(1)(E)/(F) of the Code. The Carryover Allocation represents an actual allocation of Credit from that specific year's Credit Ceiling to the project though it is not binding upon the IRS until HCR issues the IRS Form 8609 Certification (i.e., the final credit allocation) subsequent to a final underwrite of project costs. Receipt of a Carryover Allocation provides the project owner with up to two years from the last day of the calendar year in which the allocation was issued to place the project in service (pursuant to IRS Notice 88-116), unless otherwise amended by any subsequent IRS guidance.

In order to qualify for a Carryover Allocation, the project's second underwrite must be completed. DHCR also mandates that the project sponsor must obtain approval from the Office of Legal Affairs based on a review of all construction closing documentation, commitments of permanent financing, and evidence of construction start, remit all application and allocation fees owed and submit a completed "Attachment B – Carryover Allocation Information Form" and "Attachment C – LIHTC Basis and Site Control Opinion and Certification." These forms, which are provided to the project sponsor in the Reservation Letter and Binding Agreement, contain the specific-project related information to be completed by the project owner, their attorney and/or accountant, as required by the IRS rules for the LIHTC Program (CFR 1.42.1 to 1.42.14), for preparation of the Carryover Allocation.

These completed forms include, but are not limited to, the project owner's identification of the project address, anticipated placed in service date and provision of a legal opinion certifying that site control has been obtained and that more than 10% of reasonably expected basis in the project has been incurred (pursuant to 26 CFR 1.42-6(c) of the IRS Credit Regulation). As a standard requirement, DHCR will generally not issue a Carryover Allocation until this 10% test has been met and certified.

2.03.05.D Notice of Satisfaction of Conditions and Binding Commitment

Projects which meet the terms and conditions of their Reservation and/or Binding Agreement and have submitted all documentation necessary to qualify for a Carryover Allocation (see 2.03.05.C above) may receive a Notice of Satisfaction of Conditions and Binding Commitment letter pursuant to Section 42(h)(1)(C) of the Code. Issued by HCR with the consent of the project owner, the Binding Commitment provides the project owner with

confirmation that the project has qualified for a carryover allocation, but that issuance of that allocation will be provided from a future year's Credit Ceiling. This provides HCR with the administrative flexibility to better manage its portfolio of open Credit projects and provide Credit to projects from the Credit allocation year best suited to that project's investor needs and construction completion timeframe. Provision of the Binding Commitment no later than the year a project is placed in service holds the project owner harmless should they receive a carryover allocation in a future taxable year (which would otherwise be prohibited by the Code).

2.03.05.E Extended Use Period/Final Credit Allocation

Pursuant to the Code and Section 2040.5 of the QAP, the owner of a Credit project must execute an Extended Use Agreement (also referred to as a LIHTC Regulatory Agreement) which requires that a building's Credit-assisted units be available for low-income households for an Extended Use Period, as specified in the project's Reservation Letter. Section 2040.3(e)(17) of the QAP indicates that the regulatory term will be minimum term of 30 years, and provides that the minimum term may be increased as set forth in the RFP. (Note: The most recent 9% RFP's have required a 50 year minimum project regulatory term, unless otherwise indicated).

The Regulatory Agreement (as described in QAP Section 2040.5), is binding on all successors, provides an enforcement mechanism for HCR (which performs a compliance monitoring function), and residents to assure that the Credit-assisted units will be maintained as a qualified low-income housing project (per Section 42(g) of the Code) through the Extended Use Period.

In general, HCR requires that the Regulatory Agreement be executed by the project owner at or prior to the construction financing closing date set forth in the Reservation. However, HCR may consider requests to defer this requirement based on submission of an explanation for the delay. In such instances, HCR reserves the right to condition carryover allocation and issuance, or subsequent administrative action, upon receipt of an executed and filed Regulatory Agreement, with evidence of recording by the locality in which the Regulatory Agreement was filed.

To initiate the process of requesting, preparing and executing the LIHTC Regulatory Agreement, HCR encourages project sponsors to review the LIHTC/SLIHC Regulatory

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Agreement Document Submission List, which is available at HCR's website at: hcr.ny.gov/low-income-housing-credit-program-lihc.

In addition, a boilerplate copy of the LIHTC Regulatory Agreement is available on HCR's website at the following address: hcr.ny.gov/low-income-housing-credit-program-lihc

DHCR's responsibilities and requirements for Credit project monitoring; the tenant income certification process and compliance inspections are set forth in Sections 2040.7 - 2040.10 of the QAP.

2.03.05.F 8609 Issuance

The IRS Form 8609 Low-Income Housing Credit Allocation and Certification (the 8609) serves as the final allocation of Credit to the project, subsequent to the project's building(s) being placed in service and completion of the third statutorily required underwrite of the project. Specific review parameters and guidelines and requirements for the third underwriting are set forth in Section 5.00. To initiate HCR's issuance of the 8609, HCR encourages project owners to review Section 5.00 of the CPM and the 8609 submission document checklist, which are available, at the following two HCR web address: hcr.ny.gov/low-income-housing-credit-program-lihc

2.03.06 Projects Financed by Private Activity Bonds

Pursuant to Section 2040.4(f) of the QAP, as of March 1, 2008, HCR accepts applications for 4% Credit for projects financed by private activity tax-exempt bonds through HFA. HFA serves as the State HCA with the responsibility for the review of all such 4% Credit applications and the issuance of allocations for such projects on a statewide basis. Such allocations are made by HFA pursuant to its QAP and its 4% Credit requirements and standards. DHCR does not accept applications for 4% Credit for projects financed by private activity bonds.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.04 The New York State HOME Program

2.04.01 Summary

The New York State HOME Program (HOME) provides loans and grants to eligible applicants to undertake eligible rental activities. See 24 CFR Part 92.205 for eligible activities. Please also refer to the New York State Action Plan for further information on the HOME Program.

PLEASE NOTE: The HOME Program is currently administered in two parts by HCR. This manual should only be used for Rental projects receiving Capital funding from HCR's OF&D. All other HOME activities are administered by HCR's Office of Community Renewal (OCR).

All of the units in site-specific projects seeking HOME under the 9% RFP process must serve households at or below 60 percent of AMI. Rental projects which are assisted by the HOME Program are required to remain affordable to low-income households for the applicable regulatory period, the term of which is based on several factors, including the amount of the HOME subsidy and the type of activity funded.

The New York State HOME Program is administered by HTFC. However, HTFC's degree of involvement varies depending on the type of activity proposed. Site-specific (or single-site) projects, which may involve acquisition, new construction, or substantial rehabilitation of low-income housing on a site or sites under common ownership may be undertaken by all eligible applicants, and are administered directly by the HTFC.

New York State is required to reserve a minimum of 15 percent of HOME funds for locally-based non-profit entities that qualify as Community Housing Development Organizations (CHDO's) (See 24 CFR 92.300-303). All areas of the State are eligible for HOME projects; however, in addition to the 15 percent CHDO set-aside, at least 80 percent of the State's HOME allocation must be spent on projects that are not in localities designated by HUD as participating jurisdictions.

2.04.02 Statutory Provisions

2.04.02.A Purpose

The HOME Program was authorized by Title II of the National Affordable Housing Act (NAHA) of 1990, for the purposes of increasing the number of families served with affordable housing and to expand the supply of such housing. The Final Rule for the program was originally published by HUD on September 16, 1996, at 24 CFR Part 92. The Final Rule has been amended and was published on July 24, 2013.

2.04.02.B Definitions

Definitions for the HOME Program can be found at 24 CFR Part 92.2 Definitions.

2.04.03 Eligibility Requirements

This Section describes the eligibility requirements that are specific to the HOME Program. Sub-section 2.04.03.C sets forth in detail the specific requirements of the various types of HOME projects that may be undertaken.

2.04.03.A Eligible Applicants

Eligible applicants for the New York State HOME Program include individuals and private for profit and non-profit organizations with a demonstrated capacity to develop feasible projects. Additionally, units of local government which are not participating jurisdictions, either directly or as part of a HOME consortium, are also eligible applicants, as are agencies under their control. Except in cases of not-for-profit organizations, which are at the time of application engaged in multiple activities, and HTFC has given its consent to those activities continuing, the project must be and remain the sole asset and business purpose of the project recipient.

2.04.03.B Eligibility Requirements for Community Housing Development Organizations (CHDO's)

New York State is required to reserve at least 15 percent of its HOME funds for housing that will be developed, sponsored, or owned by CHDO's which are community based, non-profit organizations with experience in providing low-income housing assistance. The HOME Program

provides for some exceptions to its requirements and eligibility standards when an entity is a CHDO. These special circumstances are discussed below.

While CHDO's may undertake any of the activities eligible under the HOME Program, only those projects developed, owned, or sponsored by qualified CHDO's count towards the 15 percent CHDO set-aside requirement. CHDO operating costs do not count toward the 15 percent set aside. CHDO's are required to develop and follow a plan for tenant participation in management decisions and must adhere to a fair lease and grievance procedure for any housing developed with HOME Program funds.

CHDO's must meet the following certification requirements to be considered and/or remain an eligible HCR CHDO:

- (i) CHDO's must demonstrate their ability to meet the HUD HOME criteria to be certified as a CHDO and successfully administer a HOME funded project. CHDO's applying to receive HOME capital funds will be certified by HCR on a per project basis. CHDO applicants may provide documentation to their HCR regional representative at any time. HCR will review submittal information, as prescribed by the HOME regulations, including organizational and financial documents, verification of staff capacity and experience, project underwriting, and market need. HCR will notify the CHDO of its approval specific to the development of a particular project. HCR does not accept certifications of other participating jurisdictions.
- (ii) CHDO certification material must include the name of each NYS county in which the applicant has or will have eligible CHDO status.

See Section 6.05 for the CHDO Determination Process.

2.04.03.C Eligible Projects

Certain activities undertaken with HOME Program funds are termed site-specific projects, which may be undertaken by any eligible applicant. While site-specific projects may involve more than one site, all sites comprising a site-specific project must be under common ownership, management and financing, and are to be assisted with HOME funds as a single

undertaking. Site-specific projects may involve new construction, substantial rehabilitation, or acquisition of low-income housing only.

2.04.03.D Eligible Areas

While all areas of the State are eligible for HOME Program funding, New York State requires that, in addition to the 15 percent CHDO set-aside, 80 percent of the State's HOME funds must be spent on projects located outside of HUD-designated Participating Jurisdictions (PJs). A list of current New York State PJs may be obtained from HTFC upon request.

2.04.03.E Eligible Occupants

HOME Program funds may only be used to assist low-income households, defined as those with incomes at or below 80 percent of AMI. In addition, the federal HOME regulations require that HOME rental projects must primarily serve households with incomes at or below 60 percent of AMI. All of the units in site-specific projects seeking HOME under the 9% RFP process must serve households at or below 60 percent of AMI.

2.04.03.F Eligible Project Costs

HOME Program funds may be used to pay for the eligible project costs set forth below, subject to the per-unit cost limitations published for the HOME Program which is available from HTFC upon request or from HCR's website: <https://hcr.ny.gov/>. Federal HOME regulations also require a minimum per-unit investment of \$1,000, excluding any matching funds.

HOME Program funds may be made available as grants, no-interest loans, or interest-bearing loans, depending upon the economics of the project and the type of assistance requested. HOME Program funds may not be used to capitalize a replacement reserve account or an operating reserve account; nor may HOME Program funds be used to provide project-based rental assistance. HOME funds may not be used for the new construction or rehabilitation of a free-standing community building in a multi-building project. HCR will not allow HOME funds to be used for the purchase of furniture and equipment. See 24 Part 92.206 for eligible project costs. The NYS Consolidated Plan and Action Plan should also be reviewed for additional

information on the HOME Program in New York State. Also see Section 5.06 Underwriting Criteria.

2.04.03.G Eligible Activities

Under HCR's HOME capital project financing available through the 9% RFP process, there are a number of eligible uses for HOME funds. Generally these include: acquisition of land or buildings, demolition, new construction and substantial rehabilitation of rental housing, and conversion of a commercial or retail space to a low-income residential housing use (see 24 CFR 92.205). HOME funds are also prohibited from being used in certain activities (see Section 24 CFR 92.214) and Section 5.06 Underwriting Standards.

2.04.04 Rental Project Requirements

This Section describes the eligibility and other general requirements that are specific to HOME Program projects involving rental housing units.

2.04.04.A General Requirements for Rental Projects

Applicants may use HOME Program funds to assist rental housing in site-specific projects. Site-specific rental projects may involve acquisition, new construction, or rehabilitation. Applicants for HOME funds involving rental projects may assume a number of different roles. They may retain ownership of completed projects, or transfer ownership to another entity which agrees to meet the HOME Program's long-term affordability and monitoring requirements. The applicant is responsible for ensuring compliance with all rental project requirements set forth herein for the duration of the period of affordability.

All housing assisted with HOME funds must, at a minimum, meet Federal Housing Quality Standards (HQS). Newly constructed or substantially rehabilitated HOME projects must meet all applicable local codes, rehabilitation standards, and zoning ordinances. Local programs providing rehabilitation assistance for rental housing must comply with HUD Regulations at 24 CFR Part 35 for Lead Based Paint Hazard Reduction. In addition, projects funded with HOME funds must comply with HCR's Design Guidelines.

2.04.04.B Eligible Rental Properties

Eligible HOME project rental properties include the following:

- (i) residential buildings that are in need of rehabilitation in order to meet the rehabilitation standards set forth in the HCR Design Guidelines;
- (ii) residential properties acquired to provide rental housing for eligible occupants;
- (iii) non-residential properties that can be converted into residential rental housing for eligible occupants; and,
- (iv) mixed-income and mixed-use properties are eligible, provided that all units receiving HOME funds meet all rental project requirements set forth herein.

2.04.04.C Eligible Tenants/Rents

HOME assisted rental units in site-specific projects must be occupied by low-income households with incomes at or below 60 percent of AMI. Multi-family projects (projects with five or more units) must reserve 20 percent of the units in the project for occupancy by very low-income families (those with incomes at or below 50 percent of AMI). No tenant may be excluded from leasing a HOME rental project because they hold a certificate, voucher, or comparable document from any rental assistance program.

Rents for HOME assisted units may not exceed the rent published by HUD for the applicable unit size, adjusted for any applicable utility allowance (known as the "High HOME Rent"). See 24 CFR 92.252(a)(1)(2). Please see Section 5.07 of the CPM for utility allowance requirements in HOME-funded units. Additionally, for projects with five or more units, at least 20 percent of the project's units must either be occupied by very low-income households paying 30 percent or less of their monthly adjusted gross income for rent, or must bear rents which are not greater than 30 percent of the annual income of a family whose income equals 50 percent of the AMI (known as the "Low HOME Rent"). See 24 CFR 92.252(b)(1)(2).

If a unit receives federal or state project-based rental subsidy and the very low-income family pays no more than 30% of the family's adjusted income as a contribution toward rent, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program. Tenants whose

incomes increase to more than 80 percent of AMI may continue to occupy their HOME-assisted unit provided they meet the requirements of 24 CFR 92.252(h)(i)(2).

2.04.04.D Regulatory Periods for Rental Projects

See 24 CFR 92.252(e) for information on the regulatory periods for rental projects.

2.04.04.E Regulatory Restrictions of HOME Rental Projects

Rental projects assisted with HOME funds must remain affordable for a period of between five and twenty years, and must meet all applicable requirements of 24 CFR 92.252 and 253. These sections require recipients to secure assistance provided to rental housing by means of a deed restriction or other similar mechanism that runs with the land.

Recipients should regularly review the management and financial condition of projects so that they can intervene before projects reach the point of default and foreclosure. In the event that a project is found to be encountering financial difficulties, or if a recipient is notified that foreclosure proceedings have been initiated against an assisted rental project, the recipient must notify their HCR regional office immediately, and must work with the project owner and the primary lenders to maintain the project as affordable housing for the remaining affordability period, or repay the full amount of HOME funds invested in the project to HTFC. Re-subordination of HOME financing to permit refinancing of the primary mortgage is generally not permitted in assisted rental projects.

2.04.04.F CHDO Multi-Family Rental Projects

In order for a HOME multi-family rental project to be considered a CHDO project, the project ownership structure must comply with the terms of 24 CFR 92.300. This section states that funds may be provided to a CHDO, its subsidiary or a partnership or a limited liability company of which the CHDO or its subsidiary is the sole general partner or sole managing member. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the sole general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. A CHDO

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applicant must state in its application and document in the project owner's organizational documents that the CHDO has effective project control.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.05 New York State Low-Income Housing Tax Credit (SLIHC) Program

2.05.01 Summary

The New York State Low-Income Housing Tax Credit (SLIHC or State Tax Credit) was created in 2000 by Article 2-A of the Public Housing Law (The Law). The Law authorizes the Commissioner of DHCR to administer the SLIHC Program according to procedures established in 9 NYCRR Part 2040.14 (the SLIHC regulation) and in the same manner as the federal LIHTC Program, as authorized by Section 42 of the U. S. Internal Revenue Code (the Code).

Owners/investors can receive a dollar-for-dollar reduction in certain New York State tax liability to be taken over a 10-year period in return for building and maintaining affordable housing for income eligible tenants for the number of years the project is subject to an HCR Regulatory Agreement (generally 50 years).

The SLIHC Program differs from the federal 9% LIHTC Program by serving tenants having an income level of up to 90% of AMI, as opposed to the federal LIHTC limit of 60% of AMI. SLIHC may therefore assist low-income households in those housing markets where the rents of conventionally financed rental housing are not affordable. SLIHC Program scoring, which includes many of the scoring criteria associated with 9% LIHTC, also allots scoring points for those projects that propose serving households in multiple income bands.

All processes, policies, and procedures applicable to the 9% LIHTC Program pursuant to the Code and the QAP, apply to the SLIHC Program except for specific programmatic requirements modified by the Law and the SLIHC Regulations. Therefore, the guidance provided in Section 2.03 pertaining to LIHTC applies to SLIHC except as noted below.

2.05.02 Additional Definitions

LIHTC Program definitions, which are applicable to SLIHC, are set forth in the Code and Section 2040.2 of the QAP. Additional definitions pertaining to SLIHC alone are set forth in the Law and Section 2040.14(b) of the Regulation. SLIHC is also subject to federal LIHTC Regulations and other IRS and HUD guidance pertaining to the LIHTC Program.

2.05.03 Eligibility Requirements

This Section describes only specific SLIHC eligibility requirements that differ from the LIHTC Program. Unless otherwise specified below, LIHTC program eligibility requirements (see Section 2.03.03 of the CPM and the QAP) are fully applicable to SLIHC.

2.05.03.A Eligible Applicants/Owners

The same requirements under the LIHTC Program apply to SLIHC (see Section 2.03.03.A), except that the owner must also have New York State tax liability in order to utilize the State Tax Credit, unless the SLIHC allocation is bifurcated and transferred to a third party investor pursuant to the Law.

2.05.03.B Eligible Projects

The same requirements under the LIHTC Program apply to SLIHC (see Section 2.03.03.B of the CPM), except in the following manners:

- (i) Qualified low-income housing projects under SLIHC must meet a minimum set-aside of low-income units as set forth in Section 2014.14(b)(2) of the Regulation. Any 9% LIHTC set-asides specified in the 9% RFP which may be made available under 9% LIHTC do not apply to SLIHC unless otherwise specified in the 9% RFP.
- (ii) State Tax Credit allocations are not subject to the Code requirement that 10% of the annual SLIHC allocations made be set-aside for qualified non-profit organizations.

2.05.04 Project Scoring and Ranking Criteria

SLIHC project applications are scored subject to criteria set forth in Section 2040.14(d) of the regulation.

2.05.05 Additional State Tax Credit Exceptions to 9% LIHTC

- The 9% LIHTC Program Requirements set forth in Section 2.03.04.A of the CPM pertaining to the Ceiling Allocation do not pertain to SLIHC.

- Section 2.03.06 of the CPM, in regard to 4% LIHTC projects financed by Private Activity Bonds does not pertain to SLIHC.
- All references to the IRS Form 8609 Final Credit allocation, including those in Section 2.03.05.F, should be replaced with references to the NYS DTF-625 allocation form, which is used for the final allocation of State Tax Credit to a project.

2.05.06 SLIHC Bifurcation and Transfer

In 2018, the Law was amended to allow for the bifurcation and transfer of the SLIHC allocation from the recipient of the federal LIHTC allocation to a third-party investor. Prospective applicants which may propose utilizing SLIHC Bifurcation and Transfer are advised to review additional HCR guidance (see <https://hcr.ny.gov/system/files/documents/2019/05/hcr-slihc-bifurcation-and-transferability-information-may-2019.pdf>) and identify such a proposal in their initial funding application.

Project sponsors utilizing SLIHC bifurcation and transfer which obtain an HCR funding award are required to submit the documentation listed below, in a form acceptable to HCR, prior to construction financing closing and/or DTF-625 final allocation issuance. Templates of some of these forms may be obtained from your HCR Project Manager.

- (i) SLIHC Transfer Statement;
- (ii) SLIHC Transfer Contract (i.e., SLIHC Purchase and Sale Agreement);
- (iii) SLIHC Guaranty Agreement;
- (iv) SLIHC Guarantor's most recent audited financial statements;
- (v) SLIHC Transfer loan documents; and,
- (vi) SLIHC Bifurcation organizational chart and related organizational documents.

HCR retains the discretionary authority to approve the use of SLIHC bifurcation and transfer on a project-specific basis, subject to a consideration of a number of factors, including project economics and financial benefit.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.06 Urban Initiatives (UI) Program

2.06.01 Summary

PLEASE NOTE: The Urban Initiatives Program (UI) is currently administered in two parts by HCR. This manual should only be used for UI when incorporated with other funds as part of a larger 9% RFP project proposal administered by HCR's OF&D. All other UI funding is administered by HCR's OCR.

The purpose of the UI Program is to provide financial/technical grants to New York communities for the restoration and improvement of housing, commercial areas, and public/community facilities in urban neighborhoods.

2.06.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law or, if unincorporated, is not organized for the private profit or benefit of its members.

2.06.03 Eligible Projects

- 1) New construction, preservation, or improvement of residential housing units in a neighborhood.
- 2) New construction, preservation, or improvement of local commercial facilities and public facilities or other aspects of the area environment when carried out in connection with or incidental to a program of housing activities.

Applicants must have an ownership interest in a project during the contract period.

2.06.04 Eligible Areas

Eligible areas are neighborhoods within a municipality, having a population of 25,000 or more with established boundaries consistent with a determination of neighborhood eligibility under Article 16 of the PHFL. A substantial proportion of the residential population must be

persons of low income, and may include populations with persons of special needs with unmet housing needs.

2.06.05 Eligible Occupants/Beneficiaries

Occupants of UI Program projects are persons and families whose income does not exceed 80% of the AMI for the MSA, county, or municipality in which the project is located. Non-residential projects must benefit municipalities in which at least 50% of the population has incomes of 80% or less of the median income of the municipality.

2.06.06 Eligible Project Costs

UI funds may be used for material expenses related to the proposed project incurred subsequent to contract document execution including: the costs of acquisition; construction; repair; renovation; rehabilitation; demolition; and clearance and sealing of any building or other structure. Eligible project costs also include fees to consultants retained by the qualified applicant to provide the eligible activities listed in Section 2.06.03.

2.06.07 Ineligible Project Costs

In no event shall program funds be used for:

- 1) acquisition of property unless such acquisition is in conjunction with the construction, repair, renovation, demolition, clearance, or sealing of any building or of the structure;
- 2) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the UI Program and Regulatory Agreement, and Grant Conditions Compliance Enforcement Mortgage; or,
- 3) other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses, or other administrative expenses.

2.06.08 Regulatory Term

The regulatory term for a project with UI funds is seven years. Projects that are awarded UI grant monies will be required to sign and record a UI Program and Regulatory

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Agreement and a Grants Conditions Compliance Enforcement Mortgage. The contract documents must be recorded in the municipality in which the project is located.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.07 Rural Area Revitalization Program (RARP)

2.07.01 Summary

PLEASE NOTE: The Rural Area Revitalization Program (RARP) is currently administered in two parts by HCR. This manual should only be used for RARP when incorporated with other funds as part of a larger 9% RFP project proposal administered by HCR's OF&D. All other RARP funding is administered by HCR's OCR.

The purpose of the RARP program is to provide financial/technical grants to New York communities for the restoration and improvement of housing, commercial areas and public/community facilities in rural communities.

2.07.02 Eligible Applicants

Eligible applicants include not-for-profit corporations or charitable organizations, organized for a period of one or more years, which is either incorporated under the not-for-profit corporation law together with any other applicable law or, if unincorporated, is not organized for the private profit or benefit of its members.

2.07.03 Eligible Projects

- 1) New construction, preservation or improvement of residential housing units in a neighborhood.
- 2) New construction, preservation or improvement of local commercial facilities and public facilities.
- 3) Other aspects of the area environment when carried out in connection with or incidental to a program of housing activities.

Applicants must have an ownership interest in a project during the contract period.

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2.07.04 Eligible Areas

Towns and villages with populations of less than 25,000 are eligible areas. A substantial proportion of the residential population of the region must be persons of low income and may include population for persons with special needs with unmet housing needs requirements.

2.07.05 Eligible Occupants/Beneficiaries

Eligible occupants of RARP projects are persons and families whose income does not exceed 90% of the AMI for the MSA or county in which the project is located. Non-residential projects must benefit municipalities or rural area in which at least 50% of the population has incomes of 90% or less of the MSA or county median income.

2.07.06 Eligible Project Costs

RARP funds may be used for material expenses related to the proposed project incurred subsequent to contract execution including:

- 1) the costs of acquisition, construction, repair, renovation, rehabilitation, demolition, clearance and sealing of any building or other structure; and,
- 2) fees to consultants retained by the qualified applicant to provide the eligible services listed in subdivision 1) of this section.

2.07.07 Ineligible Project Costs

In no event shall program funds be used for:

- 1) acquisition of property unless such acquisition is in conjunction with the construction, repair, renovation, rehabilitation, demolition, clearance, or sealing of any building or of the structure;
- 2) payment of salaries and wages to employees of the qualified applicant, unless specifically authorized and set forth in the RARP Program and Regulatory Agreement, and Grant Conditions Compliance Enforcement Mortgage; or,
- 3) other costs or expenses directly related to the applicant's employees or consultants, including office rentals, office equipment, fringe benefits, office expenses or other administrative expenses.

2.07.08 Regulatory Term

The regulatory term for a project with RARP funds is seven years. Projects that are awarded RARP grant monies will be required to sign and record a RARP Program and Regulatory Agreement and a Grants Conditions Enforcement Mortgage. The contract documents must be recorded in the municipality in which the project is located.

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Section: 2.00 PROGRAM DESCRIPTIONS

Sub Section: 2.08 Rural and Urban Community Investment Fund (CIF) Program

2.08.01 Summary

The Rural and Urban Community Investment Fund Program (CIF) will provide loans to eligible applicants to develop and complete a retail, commercial, or community facility that is or will be part of, or which is in close proximity to and clearly serves the needs of, tenants residing in an Affordable Residential Development financed by an HCR agency. CIF funds may also be used for the preservation of multifamily affordable housing in rural areas of the State (Rural Preservation Projects) that may or may not have a retail, commercial, or community facility space. Please review the latest 9% RFP or Open Window CIF RFP as applicable, for more specific program details.

2.08.02 Statutory Provisions

The CIF Program was created by Article 27 of the PHFL. HTFC has been designated to administer the CIF program, and within the limit of the funds available for the program, HTFC is authorized to make payments, grants or loans available to eligible applicants to develop eligible projects. The following are the specific legislative findings on which the CIF program is based:

- 1) There exists a serious need to assist communities with the creation and improvement of affordable housing; and,
- 2) There exists a serious need to assist communities with the creation and improvement of the retail, commercial, and community service facilities related to mixed use affordable residential developments.

2.08.03 Eligible Applicants

Eligible applicants shall include a not-for-profit corporation or charitable organization, or the wholly-owned subsidiary of such a corporation or organization, or a private for-profit developer such as a person, corporation, partnership, or limited liability company.

2.08.04 Eligible Areas

Rural areas of the state shall mean cities, towns, and villages having a population of less than 25,000 as determined by the last federal decennial census. Urban areas of the state shall mean any unit of local government within the state with a population of more than or equal to 25,000 persons as determined by the last decennial census.

2.08.05 Fund Allocation

Sixty percent of the total funds shall be awarded pursuant to this article in any fiscal year shall be allocated to projects located in urban areas of the state. Forty percent of the total funds awarded pursuant to this article in any fiscal year shall be allocated to projects located within rural areas of the state.

2.08.06 Eligible Occupants/Beneficiaries

Affordable Residential Development shall include residential units that are rent restricted and occupied by persons and families whose income does not exceed ninety percent of AMI for the county in which the project is located as calculated by the United States Department of Housing and Urban Development. Please review the latest CIF RFP for more specific program details.

2.08.07 Match Requirements

A one-third match of requested CIF amount shall be required of any eligible applicant. The match may include but is not limited to cash, developer equity, deferred developer fee, donated property, materials, or labor, and other non-HCR/HFA resources as qualified in the applicants development budget and supported by funding commitment documentation. The match requirement may be reduced or eliminated for projects located within a declared disaster area and if the proposed project clearly addresses an impact resulting from the disaster. Applicants seeking a reduction or elimination of the CIF matching requirement must request a waiver detailing the basis for the reduction or elimination at least 10 business days prior to the application submission.

2.08.08 Allowable Developer Fee

CIF funds may not be used for payment of a developer fee on the non-residential portion of the project with the exception of non-residential space in a 9% LIHTC project which qualifies as an IRC Section 42 CSF. If the applicant is requesting a developer fee on the CSF space, HCR will not allow for the maximum amount of CIF to be awarded to the project. The CIF award will be reduced by the amount of the fee budgeted.