REQUEST FOR OFFERS TO PURCHASE

FOR

THE SALE OF REAL PROPERTY

WHITLOCK MILLS

Issued by the
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

Date Issued: October 15, 2015

Responses due by 12:00 P.M. EST on December 18, 2015

New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
Trenton, NJ 08650

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Summary

The New Jersey Housing and Mortgage Finance Agency (the "Agency") was created by the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (N.J.S.A. 55:14K-1, et seq.) (the "Act") to provide a strong, unified advocate for housing production, financing and improvement in the State of New Jersey (the "State"). The Agency issues bonds and uses the proceeds to make single-family mortgage loans (i.e., loans to finance owner-occupied housing) and multifamily mortgage loans (i.e., loans to finance the construction and rehabilitation of rental units).

The Agency's Multifamily Division is primarily responsible for providing funds to finance the construction and rehabilitation of multifamily rental housing projects in the State. The primary source of funding of projects is through the sale of tax-exempt and taxable bonds. The Agency has also established additional multifamily financing programs funded with Agency General Funds. Agency loans are secured by mortgages upon the project assets. Generally, project loans are repaid with project rents, and, where applicable, such repayments are used to redeem bonds and/or reimburse the Agency General Fund. The Agency monitors project operations to ensure compliance with applicable federal and State law.

The Agency is the authorized housing tax credit agency for the State and is responsible for oversight of all aspects of the Low-Income Housing Tax Credit (LIHTC) Program for the State, including the allocation of Federal Low-Income Housing Tax Credits and the compliance and monitoring of projects which have already received federal tax credits. The Agency's programs are designed to increase the availability of affordable housing for low-moderate-and middle-income residents, to work with the private sector in meeting the Agency's mission, to assist in urban revitalization and develop innovative and flexible financing vehicles designed to provide low-interest mortgages financed by the sale of housing revenue bonds. The Agency also serves as a conduit for various federal and state subsidies, grants and demonstration funds.

The Agency's activities are governed by a nine-member board consisting of the Commissioner of the Department of Community Affairs, the State Treasurer, the Attorney General, the Commissioner of the Department of Banking and Insurance, the Commissioner of Human Services and four public members appointed by the Governor with the consent of the State Senate. The day-to-day operations are carried out by an Executive Director of the Agency, assisted by staff organized under the Deputy Director and Chief of Programs, the Chief Financial Officer, the Chief of Property Management and Technical Services, the Chief of Administration and the Chief of Legal and Regulatory Affairs.

The Agency acquired the Property, as defined in Section 1.1 below, together with all existing plans, permits and approvals, in January 2012 as part of a settlement of claims by the Agency against the prior owner/developer.

The Agency is offering the Property pursuant to this Request for Offers to Purchase (the "RFOTP"), for acquisition by substantial qualified purchasers seeking to complete the remaining construction, and own and operate this affordable housing project in Jersey City. Sale of the Property by the Agency is governed by the Act and the Agency's Policy for Sale of Property, attached hereto as ATTACHMENT #1.

1.0 PURPOSE AND SCOPE OF SERVICES

The Agency is requesting offers to purchase (the "Offer") from qualified individuals, or entities (the "Potential Purchaser") interested in purchasing a parcel of land and existing multi-family residential buildings in various stages of construction and rehabilitation thereon, known as 160 Lafayette Street, also known as Lot 12 in Block 17301 on the Tax Map of the City of Jersey City, also known generally as Whitlock Mills (the "Property"). The parcel map can be found in ATTACHMENT #2 of this RFOTP. The Agency is requesting proposals that comply with the existing plans, drawings and specifications, existing land-use regulations and approvals, including site plan approvals and variance relief, construction contracts and changes thereto, governmental inspection reports and notices, and all other documentation relevant to the above that has been produced, procured and obtained by the prior owner/developer ("Development Plan").

The Agency will convey fee simple title to the successful Potential Purchaser by way of a quit claim deed.

1.1 THE PROPERTY

Whitlock Mills is a former industrial complex consisting of various buildings. As currently planned, the restoration of Whitlock Mills includes a combination of adaptive reuses of the buildings together with the construction of new apartment buildings, all of which are consistent with and maintain the design theme of the original complex, and is nearly complete. Upon completion, the development will consist of five historic buildings and twenty-nine new structures, which will contain 330 residential units, common spaces, a parking deck and amenities consistent with a complex of this size and dimension. Under current plans, one hundred thirty-two (132) of the units will be market rate units, with the remaining one hundred ninety eight (198) units affordable to low income residents. The Property includes the records and documents described above as the Development Plan.

The Property as originally proposed was deemed eligible for an issuance of 30% present value credits in conjunction with tax-exempt bond financing, more commonly referred to as 4% LIHTCs. Provided the requirements of New Jersey's Qualified Allocation Plan ("QAP") and §42 of the Internal Revenue Code ("IRC") continue to be met, the Property could remain eligible for LIHTCs.

1.2 DEVELOPMENT OF THE PROPERTY

The Agency seeks to sell the Property to a Potential Purchaser who will develop the Property in accordance with the existing Development Plan and remain as the owner of the Property, which condition shall survive closing. Development of the Property is governed by the records and documents referred to above as the Development Plan, available at the construction office located at Whitlock Mills, and in the appropriate government offices with oversight regarding the various elements of the project. Where a proposal in response to the RFOTP is determined by the Agency to be inconsistent with the Development Plan, the Agency may require the adoption of either a Development Plan amendment and any zoning variances or additional site plan approvals that might be required prior to resumption of construction of the project. The Agency may amend the Development Plan in its sole discretion to accommodate a development concept that is not consistent with the Development Plan.

1.3 AFFORDABLE HOUSING REQUIREMENT

Offers must include a commitment that the Potential Purchaser will comply with any and all of the existing affordable housing component, as currently provided within the Development Plan. These units shall be affordable to low- and moderate-income households as determined by State law. Where feasible, the affordable units should be interspersed with the market-rate units. While the Agency encourages the use of LIHTCs as part of Potential Purchasers' funding mix, the Agency reserves the right to reject any Offer that seeks to make the closing of title contingent on the Potential Purchaser's receipt of LIHTCs.

1.4 PREVAILING WAGE REQUIREMENT

Potential Purchaser shall comply with the Prevailing Wage requirements set forth in N.J.S.A. 55:14K-42.

1.5 ALTERNATE OFFERS

To be considered by the Agency, Potential Purchasers must provide an Offer for completion of the project as provided in the Development Plan. Additionally, Potential Purchasers may provide a second, alternate Offer for predominately multi-family residential development of the Property consistent with their vision of the Property's highest and best use ("Alternate Offer"). Alternate Offers may deviate from the land uses, development yields and/or densities, land use controls and requirements, and affordability requirements set forth in the Development Plan. If an Alternate Offer is submitted, it must include an economic justification for the deviation and be documented through financial pro formas and market data. Additionally, the Alternative Offer must comply with the federal set-asides under Section 42 of the Internal Revenue Code and under Section 1602 to be eligible for LIHTCs. The Alternate Offer should include separate responses to items listed in 5.0 below.

2.0 PUBLIC INSPECTION OF DOCUMENTS

Due diligence material and documents held by the Agency pertaining to the Property and/or building(s) will be made available for the review and inspection by Potential Purchaser(s) by

appointment during normal business hours at the construction office located at the Property or at the Agency offices, depending on the type and nature of the documents sought to be reviewed. Appointments may be made by contacting:

Donald P. Schlachter
Senior Director of Technical Services
dschlachter@njhmfa.state.nj.us
609-278-7652

Limited materials and documents will be available for review and inspection during the period permitted for requested walk-throughs referred to in Section 3.0 below. In addition, interested Potential Purchasers may arrange for paper or digital copies to be made by the Agency of the paper documents by request to the Senior Director of Technical Services. The actual cost of any such copies shall be paid by the requesting Potential Purchaser upon notice from the Agency of such cost and in advance of any such copies being made.

In connection with this offering, the Agency will produce various documents and information and may make certain representations express or implied. Additionally representatives of the Agency, its employees, officers, consultants, professionals and other associated with the Agency may provide various documents and information and may make certain representations express or implied. Collectively taken together these documents, information and representations shall constitute the "Project Information." As a condition of the disclosure of this Project Information, Potential Purchasers agree and represent that it shall be used only in connection with an Offer and for no other purpose. Any information, documents or representations provided by the Agency, its employees, officers, consultants, professionals and other associated with the Agency shall not constitute a specific representation of any kind or nature whatsoever. Potential Purchasers acknowledge and agree that the Agency, its employees, officers, consultants, professionals and other associated with the Agency have no duty to provide particular information and documents, and there is no representation that information or documents actually provided are complete or accurate. Potential Purchasers understand and acknowledge that they are required to perform their own due diligence in reviewing all aspects of this project and/or the Property and that any information or documents are provided by the Agency, its employees, officers, consultants, professionals and other associated with the Agency as a courtesy and without representation or warranty of any kind or nature. Potential Purchasers agree to hold harmless, indemnify, and defend the Agency, its employees, officers, consultants, professionals and other associated with the Agency and each of its officers, directors, employees, successors and assigns from any and all claims, losses, suits, damages (including, without limitation, reasonable attorneys' fees) arising or alleged to have arisen from the review, use or dissemination of any information or documents provided. Potential Purchasers acknowledge and agree that they have no rights or entitlement to any damages as a result of this production of Project Information and by receipt and use of the Project Information, Potential Purchasers release and discharge the Agency, its employees, officers, consultants, professionals and other associated with the Agency from any and all liability of any nature whatsoever.

3.0 TOURS OF THE PROPERTY

Potential Purchasers may request a walk-through of the Property. All requested walk-throughs of the Property must be completed by close of business on December 11, 2015 A walk-through may be scheduled by contacting Donald P. Schlachter, Senior Director of Technical Services, dschlachter@njhmfa.state.nj.us; 609-278-7652 at least 48 hours prior to the requested walk-through date and time and may be granted or modified by the Agency based on site and staff availability.

4.0 OFFER SUBMISSION

Ten (10) paper copies of the Offer (one (1) unbound, original; nine (9) bound copies) and one (1) digital copy in PDF format on a CD must be submitted marked "REQUEST FOR OFFERS TO PURCHASE FOR THE SALE OF REAL PROPERTY – WHITLOCK MILLS" in a sealed package and addressed to:

Anthony L. Marchetta
Executive Director

U.S. Mail Address:
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

Hand-Delivery, Courier or Overnight Delivery Address:
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
Trenton, New Jersey 08611

Offers may be delivered via mail, hand-delivery, courier or an overnight service to the address above. All such deliveries must be received at the offices of the Agency by December 18, 2015 at 12:00 P.M., prevailing Eastern time. Offers will be publically opened on December 18, 2015 at 1:00 P.M. at the offices of the Agency.

No faxed or email Offers will be accepted. Offers received after the time and date listed above will not be considered.

The Agency will not be responsible for any expenses in the preparation and/or presentation of the Offers or for the disclosure of any information or material received in connection with this solicitation, whether by negligence or otherwise.

The Agency reserves the right to request additional information if necessary, or to reject any and all Offers with or without cause, and, in its sole discretion, waive any irregularities or informalities, such as minor elements of non-compliance with regard to the requirements of this RFOTP, in the Offers submitted pursuant to applicable law. The Agency further reserves the

right to make such investigations as it deems necessary as to the qualifications of any and all firms submitting Offers. In the event that all Offers are rejected, the Agency reserves the right to re-solicit Offers.

The Agency also may seek to obtain business terms that better suit the interests of the Agency and the State, price and other factors considered, by negotiating with the Potential Purchasers(s) that submit the best purchase offer(s) in accordance with the evaluation criteria set forth in this RFOTP. The Agency reserves the right to exclude from negotiations any and/or all Offers received based on the initial submissions pursuant to applicable law. Negotiations with a Potential Purchaser will not preclude the Agency from negotiating with other Potential Purchasers unless the Agency has entered into an exclusive negotiating period with a Potential Purchaser in accordance with its Guidelines for Sale of Real and Personal Property.

Responding Potential Purchasers may withdraw their Offers at any time prior to the final filing date and time, as indicated on the cover page to this RFOTP and in this Section 4.0, by written notification signed by an authorized agent of the firm(s). Offers may thereafter be resubmitted, but only up to the final filing date and time.

The responding Potential Purchaser assumes sole responsibility for the complete effort required in this RFOTP. No special consideration shall be given after the Offers are opened because of a Potential Purchaser's failure to be knowledgeable about all requirements of this RFOTP. By submitting an Offer in response to this RFOTP, the Potential Purchaser represents that it has satisfied itself, from its own investigation, of all of the requirements of this RFOTP.

Documents and information submitted in response to this RFOTP shall become property of the Agency and generally shall be available to the general public as required by applicable law, including the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq. and State right-to-know laws.

Communications with representatives of the Agency by the Potential Purchaser or the Potential Purchaser's representatives concerning this RFOTP are **NOT** permitted during the term of the submission and evaluation process. Communications regarding this RFOTP in any manner (except as set forth in Sections 2, 3 and 4 above and Section 6 below or negotiations initiated by the Agency) **will result in the immediate rejection** of the Potential Purchaser's Offer.

5.0 OFFER REQUIREMENTS

In order to be considered, all Offers must include the following:

a. **Cover Letter.** A letter identifying the Offer and disclosing the documentation included. The Potential Purchaser must indicate the name and contact information for the individual who will be its senior contract person for its Offer. The Potential Purchaser must also indicate whether the firm is operating as an individual proprietorship, partnership, corporation or a joint venture. The cover letter should also indicate the state of incorporation of the Potential Purchaser.

b. **Offer Sheet.** A signed document stating the purchase price, which includes all proposed consideration to be given for the Property, including cash, assumption of debt and proposed Agency financing ("Purchase Price"), and all elements set forth in this Section 5.0.

c. **Offer Deposit.** A payment of two percent (2.0%) of the Purchase Price offered by the Potential Purchaser which shall be held in an interest bearing account as an initial deposit and applied to the purchase for the accepted Offer, and returned to all others. An additional deposit of three (3.0%) percent of the Purchase Price offered shall be payable to the Agency on the earlier of:
   i. The Agency and the Potential Purchaser entering into an exclusive negotiating period in accordance with the Guidelines for the Sale of Real and Personal Property; OR
   ii. a purchase agreement with the Agency being fully negotiated and signed by the Potential Purchaser. The initial deposit and the additional deposit shall be applied to the Purchase Price at closing.

   The deposit shall be in the form of a certified, cashier's or bank check made payable to the Agency issued by a FDIC accredited financial institution.

d. **Affordability.** Acknowledgment of the existing affordable housing requirements in the Development Plan and agreement to comply with same.

e. **Conceptual Redevelopment Plan.** A written statement accepting and agreeing to adhere to the Development Plan, and stating the estimated costs and the manner in which such improvements shall comply with the requirements of the Development Plan.

f. **Financing Plan.** The Potential Purchaser(s) financial(s) and committed resources evidencing the Potential Purchaser's financial ability to meet the financial requirements of the Potential Purchaser's development completion plan.

g. **Schedule of Critical Paths.** Time to complete the purchase, timelines for obtaining any additional governmental approvals sought, completion of construction, estimated leasing and occupancy timeframe.

h. **Management & Organizational Plan.** A detailed summary of management and experience, organizational chart, as well as total number of other projects of similar size completed by the Potential Purchaser.

6.0 QUESTIONS AND ANSWERS

The Agency will also accept questions from Potential Purchasers regarding any aspect of this RFOTP via e-mail only until 5:00 p.m. prevailing Eastern time on December 11, 2015. Questions should be directed via e-mail to:

James E. Robertson
Chief of Legal and Regulatory Affairs
jrobertson@njhmfa.state.nj.us

Any answers to questions posed will be posted on the Agency's website. It is the sole responsibility of Potential Purchasers to check the website for posted information and to be knowledgeable about the value, condition, and all other aspects of the Property.

7.0 COMPLIANCE WITH STATE LAW

7.1 Chapter 51 and Executive Order No. 117.

In order to safeguard the integrity of State government, including the Agency, procurement by imposing restrictions to insulate the negotiation and award of State and Agency contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c. 51 (codified at N.J.S.A. 19:44A-20.13 – 25)("Chapter 51"), on March 22, 2005, effective retroactive October 15, 2004, superseding the terms of Executive Order No. 134. In addition, on September 24, 2008, Governor Corzine issued Executive Order No. 117, effective on November 15, 2008 ("EO 117") setting forth additional limitations on the ability of Executive Branch agencies to contract with consultants who have made or solicited certain contributions. Pursuant to the requirements of Chapter 51 and EO 117, the terms and conditions set forth in this section are material terms of this engagement:

I. Definitions:

For the purpose of this section, the following shall be defined as follows:

a. "Contribution" means a contribution reportable as a recipient under The New Jersey Campaign Contributions and Expenditures Reporting Act. P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Contributions in excess of $300 during a reporting period are deemed "reportable" under these laws.

b. "Business Entity" means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of the State or any other state or foreign jurisdiction. The definition of a business entity includes:

i. All principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate and for a for profit entity, the following:

1. In the case of a corporation: the corporation, any officer of the corporation, and any Person or business entity that owns or controls 10% or more of the stock of the corporation;

2. In the case of a general partnership: the partnership and any partner;

3. In the case of a limited partnership: the limited partnership and any partner;

4. In the case of a professional corporation: the professional corporation and any shareholder or officer;

5. In the case of a limited liability company: the limited liability company and any member;

6. In the case of a limited liability partnership: the limited liability partnership and any partner;

7. In the case of a sole proprietorship: the proprietor;

8. In the case of any other form of entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

ii. Any subsidiaries directly or indirectly controlled by the business entity;

iii. Any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. If a business entity is a natural person, that person's spouse or civil union partner, or child residing in the same household provided, however, that, unless a contribution made by such spouse, civil union partner, or child is to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of Chapter 51.

II. Breach of Terms of Chapter 51 and EO 117 is a breach of this engagement:

It shall be a breach of the terms of this engagement for the Business Entity to do any of the following:

a. Make or solicit a contribution in violation of the Chapter 51 and EO 117;

b. Knowingly conceal or misrepresent a contribution given or received;

c. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;

d. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;

e. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 and EO 117;

f. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;

g. Engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or

h. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 and EO 117.

III. Certification and disclosure requirements:

a. The State or the Agency shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds $17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, or to any State, county political party, or to a legislative leadership or municipal political party, committee during certain specified time periods.

b. Prior to entering any contract with any Business Entity, the Business Entity proposed as the Potential Purchaser under the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a continuing political committee within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions for completion and submission to the Agency at the time of submission of an offer in response to the RFOTP are available for review on the Purchase Bureau website at http://www.state.nj.us/treasury/purchase/forms.htm#eo134.

c. Further, the Potential Purchaser is required, on a continuing basis, to report any contributions and solicitations Potential Purchaser makes during the term of the contract, and any extension(s) thereof, at the time any such contribution or solicitation is made.

d. Potential Purchaser's failure to submit the required forms will prevent the Agency from entering into a Purchase and Sale Agreement with the Potential Purchaser. The State Treasurer or his designee shall review the Disclosures submitted by the Potential Purchaser pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Potential Purchaser, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Potential Purchaser violated Chapter 51 or EO 117, the State Treasurer shall disqualify the Potential Purchaser from award of such contract. If the State Treasurer or his designees determines that any contribution or action constitutes a breach of contract that poses a conflict of interest, pursuant to Chapter 51 and EO 117, the State Treasurer shall disqualify the Potential Purchaser from award of such contract.

Please refer to ATTACHMENT #3 for copies of the Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form and instructions. Failure to submit the attached Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form shall be cause for rejection of your firm's offer.

The Potential Purchaser selected to provide services to the Agency shall maintain compliance with Chapter 51 and EO 117 during the term of their engagement.

7.2 Ownership Disclosure. The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2, and for any contract it must be completed and submitted with the offer. The contract is not completed unless and until the Ownership Disclosure is properly completed and accepted. The form can be downloaded from the Department of the Treasury website under the heading Vendor Forms: http://www.state.nj.us/treasury/purchase/forms.htm#eo134 . A copy of the Ownership Disclosure Form is attached hereto as ATTACHMENT #3

7.3 Affirmative Action Supplement with Affirmative Action Employee Information Report. Affirmative Action Supplement with Affirmative Action Employee Information Report addresses the requirements of N.J.S.A. 10:5-31 to -34 and N.J.A.C. 17:27-3.1 et seq., and for any contract must be completed and submitted with the offer. The contract is not completed unless and until the form is properly completed and accepted. The forms can be downloaded from the Department of the Treasury website under the heading Vendor Forms: http://www.state.nj.us/treasury/purchase/forms.htm#eo134. A copy of the Affirmative Action Supplement with Affirmative Action Employee Information Report is attached hereto as ATTACHMENT #3.

7.4 Prevailing Wage Requirement. Potential Purchaser shall comply with the Prevailing Wage requirements set forth in N.J.S.A. 55:14K-42.

7.5 Certification of Non-Involvement in Prohibited Activities in Iran. Pursuant to N.J.S.A. 52:32-58, the bidder must certify that neither the bidder, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56 (e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56 (f). If the bidder is unable to so certify, the bidder shall provide a detailed and precise description of such activities.

7.6 Political Contribution Disclosure. The C. 271 Political Contribution Disclosure Form addresses the requirements of N.J.S.A. 19:44A-20.26, and for any contract it must be completed and submitted with the offer. The contract is not completed unless and until the Political Contribution Disclosure is completed and accepted. A copy of the Political Contribution Disclosure Form is attached hereto as ATTACHMENT #3.

7.7 New Jersey Business Registration: Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under contract amended hereby, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the Sales and Use Tax Act, P.L. 1966, c. 30 (http://www.state.nj.us/treasury/revenue/busregcert.shtml. N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

8.0 EVALUATION CRITERIA

The Agency will evaluate each offer received in accordance with this RFOTP and shall identify the Offer(s) determined to be responsive to all material elements set forth in the notice, including, but not limited to: purchase price; estimated jobs to be created at or relocated to the parcel; purchase term including due diligence period as well as payment for such period; proposed project capital investment; Potential Purchaser(s) financial capability to meet the proposed terms of purchase and project completion; future use of the Property; impact to host municipality, and confirmation that the Potential Purchaser's proposed use is consistent with the Development Plan. ATTACHMENT #4 contains the proposed evaluation score sheet and weightings.

After evaluating all Offers received, the Agency shall proceed as set forth in the Policy for Sale of Property, which may result in a purchase agreement contemplated in Section 16 of the Policy ("Agreement for Purchase and Sale"). The initial draft of an Agreement for Purchase and Sale

shall be provided by the Agency at a time the Agency deems appropriate during or after any negotiations with Potential Purchasers. Potential Purchasers are advised that the provisions set forth on ATTACHMENT #5 will be required in any Agreement for Purchase and Sale executed by the Agency.

The Agency shall be under no obligation whatsoever, legal or otherwise, to sell or convey the Property or any interest in the Property unless and until an Agreement for Purchase and Sale is fully negotiated with a Potential Purchaser and approved for execution by the Agency Board in its sole and absolute discretion. No Potential Purchaser or other party shall have any legal right or interest in the Property unless and until an Agreement for Purchase and Sale is properly executed and delivered by the Agency.

ATTACHMENT #1

Policy For Sale of Property

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
POLICY FOR SALE OF PROPERTY

The New Jersey Housing and Mortgage Finance Agency has adopted this policy for the sale of property as to the sale of Agency assets as part of its mission, authorizations, and duties provided under the New Jersey Housing and Mortgage Finance Agency Law of 1983, L.1983, c. 530, as amended and supplemented (N.J.S.A. 55:14K-1, et seq.), which include the disposition of real and personal property taken into ownership by the Agency. The Agency intends to execute the aforementioned dispositions through one of the two processes set forth in these guidelines: the sealed bid process and the offer to purchase process when real and personal property have been advertised for sale.

1. Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Agency" means the New Jersey Housing and Mortgage Finance Agency as created pursuant to the New Jersey Housing and Mortgage Finance Agency Law of 1983, L. 1983, c. 530, as amended and supplemented (N.J.S.A. 55:14K-1, et seq.).

"Agency staff" means the Executive Director and staff responsible for carrying out the policies, mission and purpose of the New Jersey Housing and Mortgage Finance Agency.

"Executive Director" means the Executive Director of the Agency, appointed pursuant to N.J.S.A. 55:14K-5j.

"Offer to purchase process" means an invitation to submit an offer to purchase a particular parcel or Property that has been advertised as being available for sale through the offer to purchase process with the offer period remaining open until the date specified in the advertisement.

"Policy" means this policy for the sale of Property by the Agency.

"Property" means (a) the Agency's interests as a lender in any loan made or acquired by the Agency, together with any note or instrument of obligation from a borrower to the Agency, any mortgage or encumbrance securing such obligation and any other documents relevant to same, and (b) any real property and any personal property, business property, tangible and intangible assets that may accompany said real property, acquired by the Agency, by deed in lieu of foreclosure or otherwise in connection with the Agency's security interest in any loan made or acquired by the Agency.

"Sealed bid process" means a solicitation for competitive sealed bids to purchase Property that has been advertised as being available for sale through the sealed bid process with a requirement that sealed bids be received by the advertised bid due date.

2. Sealed bid process

(a) For any Property to be sold through the sealed bid process, Agency staff shall advertise a notice of each solicitation for sealed bids for such Property on the Agency's website and

on the New Jersey State business portal and shall place an advertisement for same in the "Public/Legal Notice" section of the Star Ledger, the Asbury Park Press, The Times of Trenton and, if Agency staff deems it appropriate, in other regional newspaper(s) or other publications. Advertisements on the Agency's website and the New Jersey State business portal shall be maintained until the close of the bidding period.

(b) In addition, Agency staff may contact potential purchaser(s) directly to seek to increase the number of sealed bids received in response to an advertised solicitation to purchase.

3. Sealed bid requests

(a) The notice of solicitation for sealed bids shall request sealed bids for the purchase of Property and shall include the time, date and format in which the sealed bids are to be submitted. The notice shall also include a name and phone number or other contact information potential purchaser(s) can use to obtain additional information about the solicitation.

(b) Each solicitation to purchase through the sealed bid process shall specify material terms of the sale that are to be proposed by bidders and material terms of sale that are required for the particular sale and not subject to bid which shall be specified either through the solicitation to purchase, a specimen form of purchase agreement, or on the Agency's website.

(c) Sealed bids will be opened on the date specified in the solicitation. After sealed bids have been publicly opened, Agency staff may seek best and final sealed bids from one or more bidders that timely submitted a responsive bid for the Property.

4. Submission of sealed bids

(a) All sealed bids shall be submitted on or before the specified time and date required by the public notice and contain all information requested by Agency staff. Unless otherwise specified in the notice, a sealed bid shall not be submitted by telephone, facsimile, or other electronic means.

(b) All sealed bids shall include a certified, cashiers or bank check made payable to the Agency in an amount to be determined by the Agency and stated in the notice given under Section 3(a), up to ten percent (10.0%) of the bid price, which shall be held by the Agency as a deposit and applied to the purchase price at closing for the accepted bid, and returned to all others.

(c) Deposit checks shall be deposited by Agency staff into an interest bearing account with interest accruing to the benefit of the bidder. Deposits paid by unsuccessful bidders, with accrued interest, shall be returned when Agency staff issues its notice of intent to award a purchase contract in accordance with Section 16(e).

(d) Sealed bids received by Agency staff shall be held unopened until the close of the bidding period, at which time all bids received shall be publicly opened and the identities of the bidders, but not the substance of the bids, will be read.

5. Extension of time to submit sealed bids

(a) The Executive Director may extend the time for opening sealed bids or at the request of a potential purchaser who notifies Agency staff that he or she intends to submit a sealed bid and gives valid reasons why he or she will not meet the formal opening date. The potential purchaser making this request shall do so in writing and specify the length of additional time requested. The written request must be received by Agency staff no later than one week prior to the close of the bid submission period.

(b) The Executive Director may extend the time for opening sealed bids in accordance with the solicitation of sealed bids.

(c) Extensions of time under this section for opening of sealed bid(s) shall be applicable to all potential purchaser(s) and shall be posted only on the Agency's website. All sealed bid(s) shall be held and remain sealed until the expiration of the time extension granted by the Executive Director.

6. Sealed bid prices

(a) A sealed bid shall include all material information required by the solicitation. Prices shall be typewritten, photocopied, or written in ink or some other indelible substance.

(b) Unless the solicitation states otherwise, the prices submitted with a sealed bid shall remain effective for 90 days after the opening date, subject to any negotiations conducted in accordance with Section 14(a).

7. Withdrawal of sealed bid

(a) Prior to the opening of the sealed bid(s), a potential purchaser may, for any reason, request the withdrawal of his or her sealed bid. The request shall be made in writing to Agency staff and shall be signed by a person authorized to submit the sealed bid (such as the owner or owner's designated representative, or an attorney or real estate broker with written permission to negotiate and act as attorney in fact for owner). Proof of authorization shall accompany the request.

(b) After the opening of the sealed bid(s), if either the potential purchaser(s) or Agency staff discover a material error in a sealed bid, the potential purchaser(s) may request the withdrawal of the sealed bid. If the error is discovered by Agency staff, the potential purchaser(s) will be notified in writing, and the potential purchaser will have five (5) business days from receipt of the notice to request withdrawal of the sealed bid. Any request to withdraw from the potential purchaser(s) shall be addressed to the Executive Director and Agency staff which will return the sealed bid if the potential purchaser(s) can demonstrate that he or she exercised reasonable care in preparing and submitting the sealed bid, and that it would be unconscionable for Agency staff to enforce the proposed purchase agreement. The decision to grant or deny any such request shall be at the sole discretion of the Executive Director.

8. Correction of pricing error

Agency staff shall correct a pricing error in a sealed bid under the following circumstance: Unless the solicitation states otherwise, or the result would be unconscionable, where a sealed bid price contains a discrepancy between a unit price and a total price based on those units, the unit price shall govern. Where the sealed bid price contains any other price discrepancy, Agency staff shall determine the price if the sealed bid contains clear evidence of the intended price.

9. Offer to purchase process

(a) Before advertising Property as being available for sale through the offer to purchase process, the Agency shall review and approve a recommendation of Agency staff to offer the property for sale through the offer to purchase process. In its determination to use the offer to purchase process, the Agency also may consider various factors including, but not limited to, purchase price, furtherance of the Agency's mission and timing, to determine whether the offer to purchase process will enhance the economic value to the Agency and serve the interests of the State of New Jersey. If a party has approached Agency staff with an offer, in its determination to use the offer to purchase process, the Agency also may consider the proposed purchase price as compared to a valuation of the Property established by an appraisal report prepared by a professional licensed appraiser.

(b) For Property to be sold through the offer to purchase process, Agency staff shall advertise a notice of the availability of the Property for sale through the offer to purchase process on the Agency's website, on the New Jersey State business portal and shall place an advertisement for same in the "Public/Legal Notice" section of the Star Ledger, the Courier Post and The Times of Trenton and, if Agency staff deems it appropriate, in other regional newspapers or publications.

(c) Each notice of availability for sale through the offer to purchase process shall specify the period of time for submitting an offer to purchase the particular Property which period for submitting offers to purchase shall not be less than thirty (30) days.

(d) In addition, Agency staff may contact potential purchasers directly to seek to increase the number of offers to purchase received in response to an advertised solicitation.

10. Submission of offers to purchase

(a) The time for submitting an offer to purchase shall remain open until the date specified in the advertisement. Unless otherwise specified in the notice, an offer to purchase shall not be submitted by telephone, facsimile, or other electronic means.

(b) All offers to purchase shall include a certified, cashiers or bank check made payable to the Agency in an amount to be determined by the Agency and stated in the notice given under Section 9(b), up to five percent (5.0%) of the offer price, which shall be held as an initial deposit.

An additional deposit in an amount to be determined by the Agency, up to ten percent (10%) of the offer price, shall be payable to the Agency on the earlier of:

1. Agency staff and the potential purchaser entering into an exclusive negotiating period in accordance with Section 15; or

2. A purchase agreement being fully negotiated and signed by the purchaser. The initial deposit and the additional deposit shall be applied to the purchase price at closing.

(c) Deposit checks shall be deposited by the Agency into an interest bearing account with interest accruing to the benefit of the party who submitted the offer to purchase. In the event an offer to purchase cannot be negotiated into an acceptable offer, deposits paid by the party that submitted the offer, with accrued interest, shall be returned when the Agency determines to terminate negotiations regarding the particular offer to purchase.

11. Verification of sealed bid or offer to purchase

Agency staff may seek information outside of the sealed bid or offer to purchase to verify the accuracy and responsiveness of the sealed bid or offer to purchase, and whether the potential purchaser(s) is responsible. Agency staff may request such information from the potential purchaser(s), from public records, or from others familiar with the potential purchaser(s). Such information may clarify, but not modify, a sealed bid or offer to purchase. Such investigation may include, but shall not be limited to, contacting the potential purchaser surety companies, financial institutions, and review of corporate or personal financial records, reports and statements.

12. Rejection of all sealed bids or offers to purchase, re-advertisement and termination

The Agency reserves the right to reject all sealed bid(s) and offer(s) to purchase and to either re-advertise or terminate an advertised solicitation if the Agency determines that insufficient competition results from the initial advertisement, the price is unfavorable in the current market, or for any other reason in the best interests of the Agency or the State of New Jersey, as determined by the Agency.

13. Evaluation

(a) Agency staff shall evaluate each sealed bid and offer to purchase received in accordance with this Policy and shall identify the sealed bid(s) or offer(s) to purchase determined to be responsive to all material elements set forth in the solicitation or notice of availability, which may include, but not be limited to:

1. The purchase price (including other financial consideration, including but not limited to assumption of debt associated with the Property as may be applicable and appropriate);

2. The purchase term including due diligence period as well as payment for such period;

3. The proposed project capital investment;

4. The potential purchaser's financial, technical and logistical capacity to meet the proposed terms of purchase and project completion;

5. The future use of the Property; and

6. Confirmation that the potential purchaser's proposed use is consistent with the mission of the Agency, including, but not limited to, housing affordability and maintenance of affordability controls.

(b) Evaluation of sealed bids and offers to purchase will be made based on the best interests of the Agency and the State of New Jersey, price and other factors considered. In evaluating purchase price, Agency staff will consider purchase price as compared to a valuation of the Property established by an appraisal report prepared by a professional licensed appraiser. The Agency staff may accept a lower purchase price from a governmental purchaser or public/private partnership if the proposal is based upon factors consistent with the mission of the Agency.

14. Negotiations

(a) When the sealed bid process is used to sell Property, Agency staff may negotiate with one or more bidders that have submitted advantageous sealed bid(s) terms that are in the best interests of the Agency and the State of New Jersey, price and other factors considered, in accordance with the evaluation criteria in Section 13. Agency staff reserves the right to negotiate with some but not all potential purchasers who submitted a sealed bid based on initial submissions.

(b) When the offer to purchase process is used to sell Property, from time to time as offers are received, Agency staff may negotiate terms of sale that are in the best interests of the Agency and the State of New Jersey, price and other factors considered, in accordance with the evaluation criteria in Section 13. Negotiating with a potential purchaser will not preclude Agency staff from negotiating with other potential purchasers unless Agency staff has entered into an exclusive negotiating period with a potential purchaser in accordance with Section 15.

15. Exclusive negotiating period

(a) When the offer to purchase process is used to sell Property and upon the request of a party who has made an offer to purchase Property, Agency staff may agree that it will not negotiate with any other party for that particular Property provided that the following conditions are met:

1. The time for submitting offers to purchase that particular Property has expired;

2. Agency staff determines there is a reasonable likelihood that the exclusive negotiating period will lead to an offer to purchase that will be acceptable to the Agency;

3. Subject to extensions pursuant to (b) and (c) below, an exclusive negotiating period shall not exceed 60 days;

4. The prospective purchaser makes an additional deposit of an amount to be determined by the Agency, up to ten percent (10%) of the purchase price; and

5. The prospective purchaser agrees in writing to negotiate exclusively with Agency staff during the exclusive negotiating period and terminate negotiations and discussions with other parties who seek to sell or lease the property.

(b) The Executive Director may extend an exclusive negotiating period for an additional 60 days.

(c) The Agency may extend an exclusive negotiating period for such period of time and upon such terms and conditions as the Agency determines to be in the best interests of the Agency and the State of New Jersey considering price and other factors.

16. Determinations, recommendation, review and award

(a) For sales conducted through the sealed bid process, the Executive Director shall have the discretion and authority to determine that all bids shall be rejected and that no notice of intent to award a purchase agreement be made, all potential bidders' deposits, with accrued deposit be returned and that the Property be re-advertised for bids or any other appropriate action.

(b) For sales conducted through the offer to purchase process, the Executive Director shall have the discretion and authority to determine that negotiations regarding a particular offer to purchase should terminate and the potential purchaser's deposit, with accrued interest, be returned, to issue a new notice of availability of Property for sale, or to take other appropriate action.

(c) Agency staff shall recommend to the Agency bids and offers to purchase, which may have been modified through negotiations, that will provide purchase agreements which are in the best interests of the Agency and the State of New Jersey considering price and other factors. Any recommendation to accept a bid or offer to purchase shall also identify competing bids or offers to purchase that will be rejected by awarding a purchase agreement to the selected purchaser.

(d) After a recommendation by Agency staff to accept a bid or offer to purchase, the Agency shall determine whether to issue a notice of intent to award a purchase agreement and reject competing bids and offers to purchase, or in the alternative to reject all bids or to take other appropriate action.

(e) Upon approval by the Agency of an award of a purchase contract, Agency staff shall issue a notice of intent to award a purchase agreement and send it to all bidders or parties who submitted an offer to purchase. The notice of intent to award a purchase agreement shall set forth all of the material terms of the purchase agreement. Agency staff shall finalize the purchase agreement which shall be executed by the Executive Director or other officer so authorized by the Agency board, subject to the provisions of Section 17.

17. Challenges

(a) After the date of the notice of intent to award a particular purchase agreement, unsuccessful bidders or parties who submitted an offer to purchase for the particular Property, as applicable, will have ten (10) business days from the date of the notice to review:

1. The sealed bids or offers to purchase submitted by other potential purchasers;

2. Agency staff's comparative summary of sealed bids or offers to purchase received;

3. The records of the negotiations, if any; and

4. Any supporting documents to (a)1, 2 and 3 above.

(b) Challenges to the notice of intent to award a particular purchase agreement shall be submitted in writing to the Executive Director within ten (10) business days from the date of the letter giving notice of intent to award and shall state with specificity all arguments, materials and/or other documents that may support the challenger's position that the proposed award should be overturned. The Executive Director may extend the time for reviewing documents or submitting a challenge on good grounds shown to the satisfaction of the Executive Director in his or her sole discretion.

(c) If a challenge is timely received, the Executive Director shall assign a hearing officer to review the challenge and make a final recommendation to the Agency. The Executive Director, in consultation with the hearing officer, has sole discretion to determine if an oral presentation by the challenger is necessary to reach an informed decision on the merits of the challenge. Challenges of the type described in this Policy, for the purpose of this Policy, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

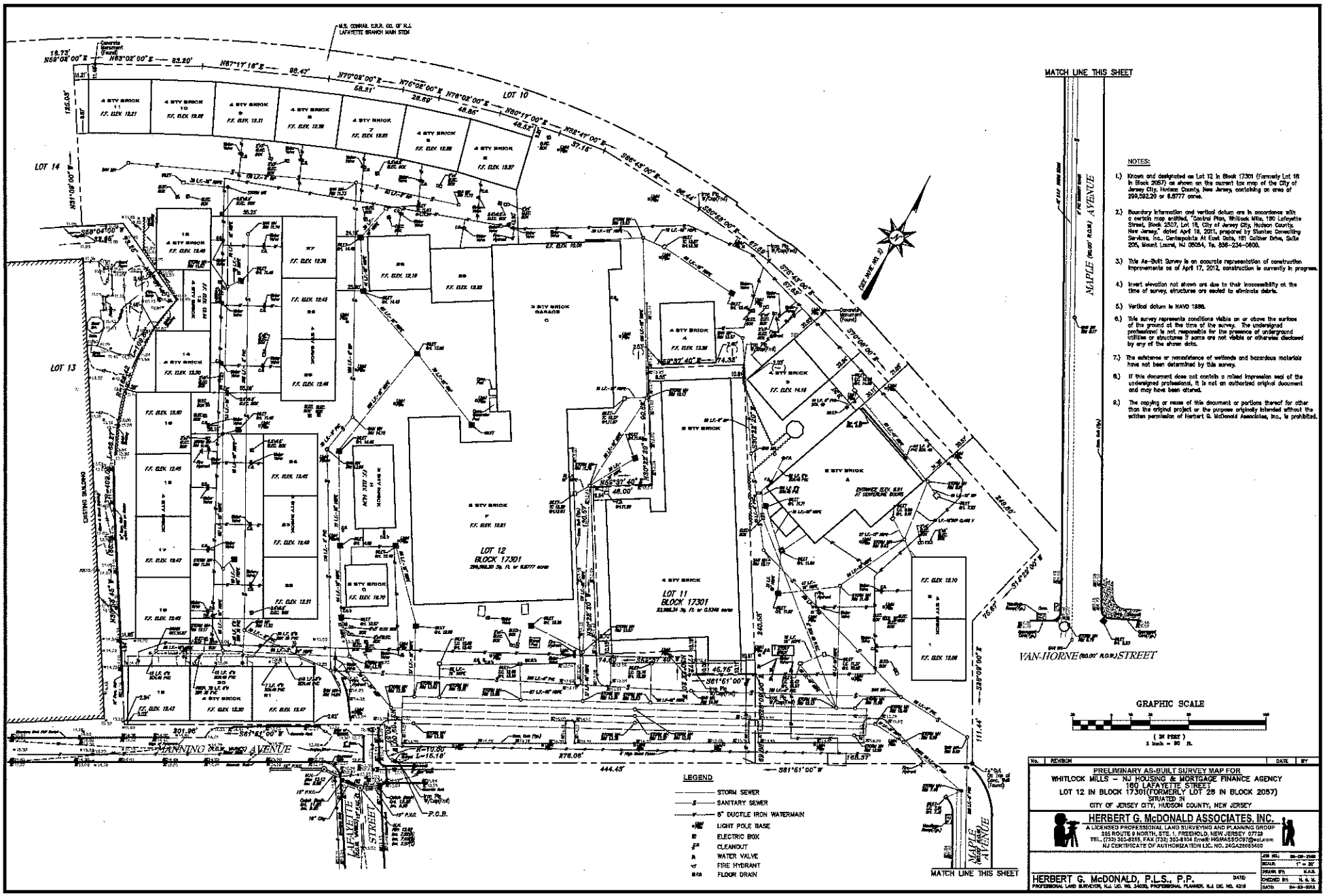
18. Documents considered public information

(a) For sales conducted through the sealed bid process, after Agency staff's issuance of notice of intent to award a purchase agreement, sealed bids and other documents submitted by potential purchasers (excluding those items exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq.) shall be considered public information, notwithstanding any disclaimers submitted by the potential purchaser(s) to the contrary.

(b) For sales conducted through the offer to purchase process, after a purchase agreement has been signed by the Agency and a purchaser, documents submitted by potential purchasers (excluding those items exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq.) shall be considered public information, notwithstanding any disclaimers submitted by the potential purchaser(s) to the contrary.

ATTACHMENT #2
Description of Property

EXHIBIT A
SURVEY



NOTES:

1.) Known and designated as Lot 12 in Block 17301 (Formerly Lot 18 in Block 2057) as shown on the current tax map of the City of Jersey City, Hudson County, New Jersey, containing an area of 299,592.20 or 6.8777 acres.

2.) Boundary information and vertical datum are in accordance with a certain map entitled, "Control Plan, Whitlock Mills, 180 Lafayette Street, Block 2507, Lot 18, City of Jersey City, Hudson County, New Jersey," dated April 19, 2011, prepared by Stantec Consulting Services, Inc., Centerpointe At East Gate, 181 Caliber Drive, Suite 205, Mount Laurel, NJ 08054, Ph. 856-234-0800.

3.) This As-Built Survey is an accurate representation of construction improvements as of April 17, 2012, construction is currently in progress.

4.) Invert elevation not shown are due to their inaccessibility at the time of survey, structures are sealed to eliminate debris.

5.) Vertical datum is NAVD 1988.

6.) This survey represents conditions visible on or above the surface of the ground at the time of the survey. The undersigned professional is not responsible for the presence of underground utilities or structures if same are not visible or otherwise disclosed by any of the shown data.

7.) The existence or nonexistence of wetlands and hazardous materials have not been determined by this survey.

8.) If this document does not contain a raised impression seal of the undersigned professional, it is not an authorized original document and may have been altered.

9.) The copying or reuse of this document or portions thereof for other than the original project or the purpose originally intended without the written permission of Herbert G. McDonald Associates, Inc., is prohibited.

No.	REVISION	DATE	BY

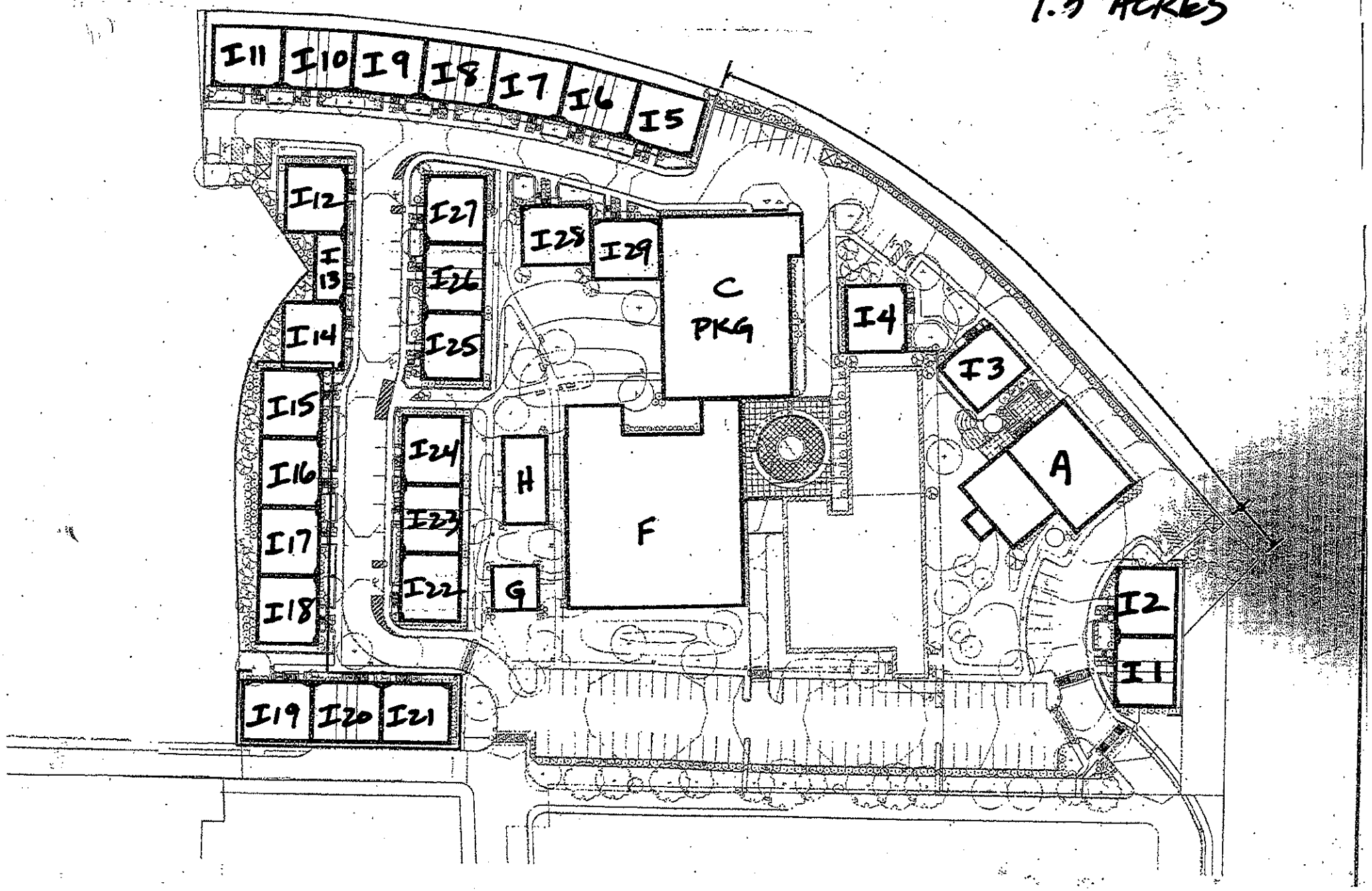
PRELIMINARY AS-BUILT SURVEY MAP FOR
WHITLOCK MILLS – NJ HOUSING & MORTGAGE FINANCE AGENCY
180 LAFAYETTE STREET
LOT 12 IN BLOCK 17301(FORMERLY LOT 28 IN BLOCK 2057)
SITUATED IN
CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY

HERBERT G. McDONALD ASSOCIATES, INC.
A LICENSED PROFESSIONAL LAND SURVEYING AND PLANNING GROUP
205 ROUTE 9 NORTH, STE. 1, FREEHOLD, NEW JERSEY 07728
TEL. (732) 303-9255, FAX (732) 303-8104 Email: HGMASSOC92@aol.com
NJ CERTIFICATE OF AUTHORIZATION LIC. NO. 24GA28065460

JOB NO.	08-09-2588
SCALE:	1" = 30'
DRAWN BY:	M.A.R.
CHECKED BY:	H. G. M.
DATE:	04-23-2012

HERBERT G. McDONALD, P.L.S., P.P. DATED
PROFESSIONAL LAND SURVEYOR, N.J. LIC. NO. 34393, PROFESSIONAL PLANNER, N.J. LIC. NO. 4218

WHITLOCK MILLS
7.3 ACRES



ATTACHMENT #3
REQUIRED FORMS

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)
N.J.A.C. 17:27

CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY

AFFIRMATIVE ACTION COMPLIANCE NOTICE
N.J.S.A. 10:5-31 and N.J.A.C. 17:27

CONTRACTS

This form is a summary of the successful bidder's requirement to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

The successful bidder shall submit to the public agency, after notification of award but prior to execution of this contract, one of the following three documents as forms of evidence:

(a) A photocopy of a valid letter that the contractor is operating under an existing Federally approved or sanctioned affirmative action program (good for one year from the date of the letter);

OR

(b) A photocopy of a Certificate of Employee Information Report approval, issued in accordance with N.J.A.C. 17:27-4;

OR

(c) A photocopy of an Employee Information Report (Form AA302) provided by the Division and distributed to the public agency to be completed by the contractor in accordance with N.J.A.C. 17:27-4.

The successful bidder(s) must submit the copies of the AA302 Report to the Division of Contract Compliance and Equal Employment Opportunity in Public Contracts (Division). The Public Agency copy is submitted to the public agency, and the bidder copy is retained by the bidder.

The undersigned bidder certifies that he/she is aware of the commitment to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27.1 et seq. and agrees to furnish the required forms of evidence.

The undersigned bidder further understands that his/her proposal shall be rejected as non-responsive if said contractor fails to comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq.

COMPANY: _____ SIGNATURE: _____

PRINT NAME: _____ TITLE: _____

DATE: _____

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE (Cont.)

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the applicable employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code and N.J.A.C. 17:27**.

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
REQUEST FOR OFFERS TO PURCHASE
FOR
WHITLOCK MILLS

OWNERSHIP DISCLOSURE FORM

Bidder:_____

PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE AGENCY ARE REQUIRED TO COMPLETE THIS FORM.

PLEASE NOTE: IF THE BIDDER IS A NON-PROFIT ENTITY, INDICATE BELOW AT QUESTION 1 AND EXECUTE THE CERTIFICATION BELOW; COMPLETION OF THE REMAINDER OF THIS OWNERSHIP DISCLOSURE FORM IS NOT REQUIRED. PLEASE COMPLETE THE DISCLOSURE OF INVESTIGATIONS AND THE DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN.

IF THE BIDDER IS A FOR PROFIT ENTITY, THIS OWNERSHIP DISCLOSURE FORM, THE DISCLOSURE OF INVESTIGATIONS AND THE DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN MUST BE COMPLETED IN THEIR ENTIRETY.

	YES	NO
1. Is the Bidder a Non-Profit Entity?	☐	☐

IF THE ANSWER TO QUESTION 1 IS YES, PLEASE EXECUTE THE CERTIFICATION AT THE END OF THIS EXHIBIT. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 1 IS NO, PLEASE ANSWER QUESTION 2 BELOW.

	YES	NO
2. Are there any individuals, corporations or partnerships owning a **10% or greater** interest in the Bidder?	☐	☐

IF THE ANSWER TO QUESTION 2 IS NO, PLEASE EXECUTE THE CERTIFICATION AT THE END OF THIS EXHIBIT. YOU DO NOT HAVE TO COMPLETE ANY MORE QUESTIONS ON THIS FORM. IF THE ANSWER TO QUESTION 2 IS YES, PLEASE ANSWER QUESTIONS 3-5 BELOW.

3. Of those parties owning a 10% or greater interest in the Bidder, are any of those parties **individuals**?	☐	☐
4. Of those parties owning a 10% or greater interest in the Bidder, are any of those parties **corporations or Partnerships**?	☐	☐
5. If your answer to Question 4 is YES, are there any parties owning a **10% or greater** interest in the corporation or partnership referenced in Question 3?	☐	☐

IF ANY OF THE ANSWERS TO QUESTIONS 3-5 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2-4 ANSWERED AS YES.
For Questions 2-5 answered YES, you must disclose identifying information related to the individuals, partnerships and/or corporations owning a 10% or greater interest in the Bidder. Further, if one or more of these entities is itself a corporation or partnership you must also disclose **all** parties that own a 10% or greater interest in that corporation or partnership. This information is required by statute.

TO COMPLETE PART 2, PLEASE PROVIDE THE REQUESTED INFORMATION PERTAINING TO EITHER INDIVIDUALS OR BUSINESS ENTITIES HAVING A 10% OR GREATER INTEREST IN THE BIDDER. USE ADDITIONAL SHEETS AS NECESSARY AND ATTACH.

Individuals	
Name: _____ Date of Birth _____ Office Held: _____ Ownership Interest _____ % Home Address: _____ City _____ State _____ Zip Code _____	

Business Entities	
Entity Name: _____ Partner Name: _____ Ownership Interest _____ % Business Address: _____ City _____ State _____ Zip Code _____ Are there additional entities holding 10% or greater ownership interest in the Bidder and its parent corporation/partnership? ☐ YES or ☐ NO If YES, complete an ownership disclosure for all such entities	

ONCE YOU IDENTIFIED ALL PARTIES HAVING A 10% OR GREATER OWNERSHIP INTEREST IN THE BIDDER AND ITS PARENT CORPORATION/PARTNERSHIPS, PLEASE EXECUTE THE CERTIFICATION BELOW, AND PROCEED TO THE DISCLOSURE OF INVESTIGATIONS FORM, AND THE DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM.

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that the Agency is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Agency to notify the Agency in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Agency and that the Agency at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

FEIN/SSN: _____

ALL BIDDERS MUST COMPLETE, IN ENTIRETY, THE DISCLOSURE OF INVESTIGATIONS AND DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
REQUEST FOR OFFERS TO PURCHASE
FOR
WHITLOCK MILLS

DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING BIDDER FORM

Bidder:_____

PART 1: PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR "NO" BOX.

PLEASE REFER TO THE PERSONS AND/OR ENTITIES LISTED ON YOUR OWNERSHIP DISCLOSURE FORM WHEN ANSWERING THE QUESTIONS BELOW.

NON-PROFIT BIDDERS: PLEASE LIST ALL OFFICERS/DIRECTORS IN PART 2 OF THIS FORM. YOU WILL BE REQUIRED TO ANSWER THE QUESTIONS BELOW WITH RESPECT TO THESE INDIVIDUALS.

	YES	NO
1. Has any person or entity listed on the Ownership Disclosure form and/or this form or its attachments ever been arrested, charged, indicted, or convicted in a criminal or disorderly persons matter by the State of New Jersey (or political subdivision thereof), any other state or the U.S. Government?	☐	☐
2. Has any person or entity listed on the Ownership Disclosure form and/or this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any government agency from bidding or contracting to provide services, labor, materials or supplies?	☐	☐
3. Are there currently any pending criminal matters or debarment proceedings in which the firm and/or its officers and/or managers are involved?	☐	☐
4. Has any person or entity listed on the Ownership Disclosure form and/or this form or its attachments been denied any license, permit or similar authorization required to engage in the work applied for herein, or has any such license, permit or similar authorization been revoked by any agency of this State (or political subdivision thereof) , federal, another state or local government?	☐	☐

IF ANY OF THE ANSWERS TO QUESTIONS 1-4 ARE YES, PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW. IF ALL OF THE ANSWERS TO QUESTIONS 1-4 ARE NO, PLEASE EXECUTE THE CERTIFICATION BELOW. NO FURTHER ACTION IS NEEDED. IF YOU ARE A NON-PROFIT, YOU MUST DISCLOSE ALL OFFICERS/DIRECTORS IN PART 2 BELOW.

PART 2: PROVIDING ADDITIONAL INFORMATION

For Questions 1-4 answered "YES", you must provide a detailed description of any investigation or litigation, including but not limited to administrative complaints or other administrative proceedings, involving public sector clients during the past 5 years. This description must include the nature and status of the investigation, and for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and if applicable, disposition. Please provide this information in the box labeled "Additional Information" below. Please provide thorough answers to each question. If additional entries are needed, provide on an attached sheet.

All Non-Profit Bidders must disclose the individuals serving as officers and/or directors for purposes of this form. Please indicate all individuals acting in either capacity by providing the information located in the "Officers/Directors" box. If additional entries are needed, provide on an attached sheet.

Once all required information has been disclosed, please execute the Certification at the end of this Exhibit. Failure to complete this certification will render your proposal non-responsive.

Additional Information

Complete for all Questions answered YES in Part 1 of this form above.

Person or Entity: _____ Date of Inception: _____

Current Status _____

Brief Description: _____

Caption of Action (if applicable) _____ Disposition of Action (if applicable) _____

Bidder Contact Name _____

Contact Phone Number _____

Officers/Directors

Complete for each Officer/Director:

Name: _____

Title: _____

Address: _____

City _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I acknowledge that the Agency is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Agency to notify the Agency in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Agency and that the Agency at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

PART 1: CERTIFICATION
BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.
FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

PLEASE CHECK THE APPROPRIATE BOX:

☐ **I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List").** I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. **I will skip Part 2 and sign and complete the Certification below.**

OR

☐ **I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below.** Failure to provide such will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. USE ADDITIONAL SHEETS AS NECESSARY AND ATTACH.

Name: _____ Relationship to Bidder: _____

Description of Activities: _____

_____

Duration of Engagement: _____ Anticipated Cessation Date: _____

BidderContact Name: _____ Contact Phone Number: _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the Agency is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the Agency to notify the Agency in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the Agency and that the Agency at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print):_____ Signature: _____

Title: _____ Date: _____

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM
Contractor Instructions

Business entities (contractors) receiving contracts from a public agency that are NOT awarded pursuant to a "fair and open" process (defined at N.J.S.A. 19:44A-20.7) are subject to the provisions of P.L. 2005, c. 271, s.2 (N.J.S.A. 19:44A-20.26). This law provides that 10 days prior to the award of such a contract, the contractor shall disclose contributions to:

- any State, county, or municipal committee of a political party
- any legislative leadership committee*
- any continuing political committee (a.k.a., political action committee)
- any candidate committee of a candidate for, or holder of, an elective office:
    - of the public entity awarding the contract
    - of that county in which that public entity is located
    - of another public entity within that county
    - or of a legislative district in which that public entity is located or, when the public entity is a county, of any legislative district which includes all or part of the county

The disclosure must list reportable contributions to any of the committees that exceed $300 per election cycle that were made during the 12 months prior to award of the contract. See N.J.S.A. 19:44A-8 and 19:44A-16 for more details on reportable contributions.

N.J.S.A. 19:44A-20.26 itemizes the parties from whom contributions must be disclosed when a business entity is not a natural person. This includes the following:

- individuals with an "interest" ownership or control of more than 10% of the profits or assets of a business entity or 10% of the stock in the case of a business entity that is a corporation for profit
- all principals, partners, officers, or directors of the business entity or their spouses
- any subsidiaries directly or indirectly controlled by the business entity
- IRS Code Section 527 New Jersey based organizations, directly or indirectly controlled by the business entity and filing as continuing political committees, (PACs).

When the business entity is a natural person, "a contribution by that person's spouse or child, residing therewith, shall be deemed to be a contribution by the business entity." [N.J.S.A. 19:44A-20.26(b)] The contributor must be listed on the disclosure.

Any business entity that fails to comply with the disclosure provisions shall be subject to a fine imposed by ELEC in an amount to be determined by the Commission which may be based upon the amount that the business entity failed to report.

The enclosed list of agencies is provided to assist the contractor in identifying those public agencies whose elected official and/or candidate campaign committees are affected by the disclosure requirement. It is the contractor's responsibility to identify the specific committees to which contributions may have been made and need to be disclosed. The disclosed information may exceed the minimum requirement.

The enclosed form, a content-consistent facsimile, or an electronic data file containing the required details (along with a signed cover sheet) may be used as the contractor's submission and is disclosable to the public under the Open Public Records Act.

The contractor must also complete the attached Stockholder Disclosure Certification. This will assist the agency in meeting its obligations under the law. **NOTE: This section does not apply to Board of Education contracts.**

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM

Required Pursuant To N.J.S.A. 19:44A-20.26

This form or its permitted facsimile must be submitted to the local unit no later than 10 days prior to the award of the contract.

Part I – Vendor Information

Vendor Name:			
Address:			
City:		State:	Zip:

The undersigned being authorized to certify, hereby certifies that the submission provided herein represents compliance with the provisions of N.J.S.A. 19:44A-20.26 and as represented by the Instructions accompanying this form.

Signature	Printed Name	Title

Part II – Contribution Disclosure

Disclosure requirement: Pursuant to N.J.S.A. 19:44A-20.26 this disclosure must include all reportable political contributions (more than $300 per election cycle) over the 12 months prior to submission to the committees of the government entities listed on the form provided by the local unit.

☐ Check here if disclosure is provided in electronic form.

Contributor Name	Recipient Name	Date	Dollar Amount
			$

☐ Check here if the information is continued on subsequent page(s)

NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY
C. 271 POLITICAL CONTRIBUTION DISCLOSURE FORM
(*Cont*)
Required Pursuant To N.J.S.A. 19:44A-20.26

Vendor Name:

Contributor Name	Recipient Name	Date	Dollar Amount
			$

☐ Check here if the information is continued on subsequent page(s)

ATTACHMENT #4
EVALUATION SCORE SHEET

New Jersey Housing and Mortgage Finance Agency (NJHMFA)
Request for Proposals
Whitlock Mills RFOTP

Bidder: _____
Evaluator #:_____

Sample Score Sheet	Score 1-10 x	Weight =	Criterion Score
1. Purchase price [weight = 30]		30	
2. Estimated jobs to be created at or relocated to the parcel [weight = 5]		5	
3. Purchase term including due diligence period as well as payment for such period [weight = 10]		10	
4. Proposed project capital investment [weight = 25]		25	
5. Potential Purchaser(s) financial capability to meet the proposed terms of purchase and project completion [weight = 10]		10	
6. Future use of the property [weight = 5]		5	
7. Impact to host municipality [weight = 5]		5	
8. Confirmation that the potential purchaser's proposed use is consistent with the Reuse Plan and complies with the Regulations. [weight = 10]		10	
Grand Total Score		100	

ATTACHMENT #5
Required terms and provisions in Agreement for Purchase and Sale

MANDATORY CONTRACT TERMS

The Agency reserves the right in its sole discretion to require the incorporation of some or all of the following contract terms in any final agreement depending upon the circumstances of the accepted offer.

1. **Applicable Law**. This Agreement shall be governed by and construed in accordance with the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and any U.S. Department of Housing and Urban Development ("HUD") or Treasury regulations, guidelines and applicable notices thereto (the "Act") and the laws and regulations of the State of New Jersey including, but not limited to, the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301 et seq. (the "Fair Housing Act"), the Agency's qualified allocation plan for Tax Credits, N.J.A.C. 5:80-33.1 et seq., the New Jersey Housing and Mortgage Finance Agency Law of 1983, N.J.S.A. 55:14K-1 et seq., the TCX Grant Agreement, and the TCX Guidelines (the "Guidelines"). To the extent possible, these authorities shall be construed in such a manner as to complement one another and not conflict. However, in the event of a conflict, the most restrictive authority shall prevail.

2. **Review**. The Developer represents that it has had an opportunity to review Project information, including the description of the Land on which the Project is to be situated, the Plans and Specifications for the construction and/or rehabilitation of the Project, the current state of the Existing Facilities, the tenant population which is to be housed in the Project, the number of units of each type to be included therein, the estimated cost of providing the Project, information as to the projected income and expenses of the Project once completed and placed in operation and arrangements for the payments in lieu of taxes with respect to the Project. **THE AGENCY MAKES NO REPRESENTATION OR WARRANTY AS TO THE TRUTH, ACCURACY OR COMPLETENESS OF ANY MATERIALS, DATA OR INFORMATION DELIVERED BY THE AGENCY TO THE DEVELOPER IN CONNECTION WITH THE TRANSACTION CONTEMPLATED HEREBY.** Developer represents and warrants that after expiration of the Due Diligence Period, from and after Closing, the Developer is accepting the Land and Existing Facilities in "AS IS" condition as more fully set forth in Section 4 hereinbelow.

3. The Agency and the Developer acknowledge that the provisions of Sections 2 and 4 are an integral part of the transactions contemplated in this Agreement and a material inducement to the Agency to enter into this Agreement and that the Agency would not enter into this Agreement but for the provisions of Sections 2 and 4. The Agency and the Developer agree that the provisions of this Section 3 and the Release shall survive Closing or any termination of this Agreement

4. **Premises Sold "AS IS" Release**. **THE DEVELOPER UNDERSTANDS AND AGREES THAT THE AGENCY IS NOT MAKING AND HAS**

NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LAND OR EXISTING FACILITIES. THE DEVELOPER ACKNOWLEDGES AND AGREES THAT UPON CLOSING THE AGENCY SHALL SELL AND CONVEY TO THE DEVELOPER AND THE DEVELOPER SHALL ACCEPT THE LAND AND EXISTING FACILITIES "AS IS, WHERE IS, WITH ALL FAULTS". THE DEVELOPER WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY AS THE DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE LAND AND EXISTING FACILITIES, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE AGENCY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. AS OF THE EFFECTIVE DATE AND AS OF THE CLOSING DATE THE DEVELOPER HEREBY REMISES, RELEASES AND FOREVER DISCHARGES THE AGENCY, ITS OFFICERS, DIRECTORS, PROFESSIONALS AND EMPLOYEES, AFFILIATES AND GOVERNMENTAL PARENTS, INCLUDING THE STATE, AND ITS SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL MANNER OF CLAIMS, DEMANDS, ACTIONS, CAUSES, DEFENSES, LIABILITIES, SUITS AND CAUSES OF ACTION, ASSERTED OR UNASSERTED, KNOWN OR UNKNOWN, CHOATE OR INCHOATE, THAT DEVELOPER MAY HAVE WITH RESPECT TO, RELATED TO OR ARISING FROM THE LAND, THE EXISTING FACILITIES AND THE GORE; PROVIDED, HOWEVER, THAT THIS RELEASE SHALL NOT OPERATE TO DISCHARGE OR AFFECT THE AGENCY'S OBLIGATIONS UNDER THIS AGREEMENT AND/OR ANY DOCUMENTS WHICH ARE TO BE EXECUTED IN CONNECTION HEREWITH. THE DEVELOPER REPRESENTS AND WARRANTS THAT THE TERMS OF THE RELEASE CONTAINED HEREIN AND ITS CONSEQUENCES HAVE BEEN COMPLETELY READ AND UNDERSTOOD BY THE DEVELOPER, AND THE DEVELOPER HAS HAD THE OPPORTUNITY TO CONSULT WITH, AND HAS CONSULTED WITH, LEGAL COUNSEL OF THE DEVELOPER'S CHOICE WITH REGARD TO THE TERMS OF THIS RELEASE. THE DEVELOPER ACKNOWLEDGES AND WARRANTS THAT THE DEVELOPER'S EXECUTION OF THIS RELEASE IS FREE AND VOLUNTARY. The foregoing release shall be restated in a release from Developer to the Agency at Closing (the "**Release**"), but such release shall not be in lieu of the foregoing release.

5. **Plans and Specification.** Developer is deemed to have approved the Plans and Specifications. The Plans and Specifications shall not be altered or revised without the consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the

preceding sentence, the consent of the Agency to any alteration or revision of the Plans and Specifications may be withheld or conditioned in the Agency's sole unreviewable discretion in the event that the Agency determines that (i) the revision or alteration materially and adversely impacts the Project or the TCX Grant or the Bonds, if any. The Agency shall have ten (10) days after receipt of any proposed revision to or alteration of the Plans and Specifications in which to notify Developer of the Agency's consent or the denial thereof. In the event that the Agency fails to respond to any such request, the Agency shall be deemed to have consented to the matter submitted by Developer. Developer shall complete construction of the Project and the Existing Facilities based upon the approved Plans and Specifications.

6. **Construction Contract**. Developer shall, at its sole cost and expense, prepare and submit to the Agency for its approval a proposed form of construction contract for the completion of the Existing Facilities and the development of the Project. The form of construction contract shall materially conform to the form marked **Exhibit __** attached hereto (the "Construction Contract").

7. **Bond.** The Construction Contract shall provide for a Performance Bond in favor of the Agency and Developer acceptable to the Agency in its sole unreviewable discretion. The Developer shall not do any act which would cause the release, in whole or in part, of the Performance Bond issued in connection with the Construction Contract, including, without limitation, deviation from the payment schedule, waiver of any requirements imposed on the general contractor or any subcontractor under the construction contract or consent to any change in the Plans and Specifications or the scope of work, unless such act would not cause any release because the surety has consented thereto.

8. **Construction.** Following Closing, Developer shall have the exclusive right and obligation, at its sole cost and expense, to conduct development at the Land, subject to and in accordance with and pursuant to this Agreement and to any other agreement between Developer and the Agency. The Developer agrees to comply with all the provisions of the Construction Contract. The Developer covenants and agrees to diligently pursue the construction of the Project to completion by the date of completion in the Construction Contract, **Time Being of the Essence**, in accordance with the Plans and Specifications for the Project as approved by the Agency. Construction of the Project shall at all times be subject to the discretionary inspection, discretionary review, regulation and approval of the Agency and its duly authorized representatives as provided in the Construction Contract. Any such inspection, regulation, review or approval of the Agency shall be solely for its benefit for the purpose of assuring that the programs and goals of the Agency are being fulfilled and when applicable, for the benefit of the holders of Bonds under the Resolution and in furtherance of its obligations under the Act and shall not be construed as making the Agency a party to the Construction Contract, nor shall it relieve

the Developer of any of its obligations under this Agreement, the Construction Contract or Loan Documents.

9. **Contractors and Subcontractors**. Pursuant to the Act the Developer agrees that it will not pay nor will it permit any contractor or any subcontractor engaged in the construction of the Project to pay any workers employed on the construction of the Project less than the prevailing wage rate as determined by the Commissioner of Labor and Industry pursuant to, and in accordance with, the New Jersey Prevailing Wage Rate Act, N.J.S.A. 34:11 et seq., to the extent that said Act applies.

10. **Certification.** The Developer covenants and agrees, upon completion of the Project, to certify to the Agency the actual cost of the Project. This cost as certified by the Developer shall be audited and verified by the Agency in accordance with its normal procedure. The certified cost may include the amount of $_____ which the Agency accepts as "in-place" cost related to the Existing Facilities from prior construction at the Land. In the event that the amounts advanced on the Loan shall exceed 90% of the cost of the Project, the Developer shall pay forthwith to the Agency as an allowed partial prepayment of the Loan, the amount of such excess, as determined by the Agency. When the Agency has completed its audit and verification, it shall promptly notify the Agency in writing of the actual Project cost as finally determined by the Agency.

11. **Loan Balancing** If at any time the Agency notifies Developer that, in the Agency's judgment, the undisbursed balance of the Loan together with all other verified sources of committed funds is insufficient to pay the cost of construction of the Project, the Developer shall, at the Agency's sole option, either (i) within ten (10) days of the Agency's notification as aforesaid, deposit with Agency an amount equal to such deficiency, which the Agency may from time to time apply, or allow the Developer to apply, to such cost of construction or (ii) pay for such cost of construction, as incurred, in the amount of such deficiency so that the amount of the Loan which remains to be disbursed shall be sufficient to pay all remaining costs of construction, and the Developer shall furnish the Agency with such evidence thereof as the Agency shall require. The Developer hereby agrees that the Agency shall have a lien on and security interest in any sums deposited pursuant to clause (i) above and that the Developer shall have no right to withdraw any such sums except for the payment of the aforesaid costs of construction as approved by the Agency. The Agency shall have no obligation to make any further advances of proceeds of the Loan until the sums required to be deposited pursuant to clause (i) above have been exhausted or until the Developer has actually paid such costs of construction pursuant to clause (ii) above, as the case may be, and, in either such case, the Loan is back "in balance". Any such sums not used as provided in said clause (i) shall be released to the Developer when and to the extent that the Agency determines that the amount thereof is more than

the excess, if any, of the total remaining costs of completion of the Project over the undisbursed balance of the Loan.

12. Advances.

a. The Developer shall establish a Project construction account with a bank or trust company in the State of New Jersey approved by the Agency and which is a member of the Federal Deposit Insurance Corporation, which account shall be under the joint control of the Developer and the Agency, but which shall also allow the Agency to unilaterally withdraw funds from said account for payment back to the Trustee or the Agency for construction interest payments, debt service payments, escrow requirement, Servicing Fees or other costs for construction of the Project or for any time that funds remain in the account for more than ninety (90) days, upon the provision of written notice to the Developer of its actions. Advances shall be deposited directly to such Project construction account.

b. The final advance shall be made only after the Agency has completed its cost certification for the Project in accordance with the Agency's normal procedures and only after the Agency has received a certificate of occupancy from the Developer for all dwelling units in the Project.

c. Advances during construction will normally be made once a month in an amount sufficient to pay the applicable percentage of Contractor's and/or Developer's requisitions (less retainage) for the cost of construction of the Project then due and payable under the terms of the Construction Contract and approved by the Agency, but advances may be made at such other times or intervals as may be determined by the Agency in its sole discretion.

d. Any advance by Agency of proceeds hereunder made prior to or without the fulfillment by Developer of all of the conditions precedent thereto, whether or not known to Agency, shall not constitute a waiver by Agency of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances.

e. During the existence of any event of default or in the event that the Agency has notified Developer that, in the Agency's judgment, the undisbursed balance of the Recast Loan together with all other verified sources of committed funds is insufficient to pay the cost of construction of the Project, the Developer hereby irrevocably authorizes Agency to advance any undisbursed loan proceeds directly to the Construction Contractor, subcontractors and other

persons or entities to pay for completion of the Improvements. All such direct advances shall satisfy pro tanto the obligations of the Agency to the Developer hereunder regardless of the disposition thereof by the Construction Contractor, any subcontractor or other person or entity.

f. Any and all advances made at any time by Agency pursuant to the irrevocable authorizations granted by clause (e) hereinabove shall require no further direction, authorization or request for disbursement from Owner and, except in the case of advances under clause (e) which may be made as stated therein, may be made whether or not there exists a default or event of default. Any and all such disbursements shall be added to the outstanding principal balance evidenced by the Loan Documents and shall be secured by the mortgage therefor. The aforesaid authorization shall (i) not prevent the Developer from paying the contractors and other persons, from paying the interest, or from satisfying the conditions and obligations referred to in said clause (e), out of its own funds, (ii) in no event be construed so as to relieve the Developer or others from their obligations to pay such contractors or other persons, or to satisfy such conditions and obligations and (iii) in no event obligate the Agency to disburse proceeds of the Loan for any such purposes.

g. The Developer agrees that, by its acceptance of any advance of Loan proceeds hereunder, it shall be bound in all respects by the requisition submitted on its behalf in connection therewith with the same force and effect as if the Developer had itself executed and submitted the requisition and whether or not the requisition is executed and/or submitted by an authorized person.

13. Owner Covenants. The Owner hereby represents, covenants, warrants and agrees that:

a. The Project shall be owned, managed, and operated exclusively as a multi- family residential rental property and, in the event the Project receives Tax-Exempt Financing, as a Residential Rental Project. The Project shall be comprised of a building or structure or several buildings or structures containing similarly constructed dwelling units, together with any functionally related and subordinate facilities and such other non-dwelling units as approved by the Agency, except that in the event the Project receives Tax-Exempt Financing or Tax Credits, the Project shall consist solely of a Residential Rental Project and no commercial or other facilities may be part of the Project unless permitted by the Agency, the Code or IRS Regulations.

b. The Project shall contain one or more similarly constructed dwelling units, each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink.

c. None of the units in the Project will be utilized at any time for an initial lease term of less than six months or as a hotel, motel, dormitory; fraternity house, sorority house, rooming house, nursing home, hospital, sanitarium, rest home, life care facility, trailer court or park.

d. All of the units shall be rented or available for rent on a continuous basis to members of the general public and the Owner will not give preference to any particular class or group in renting the dwelling units in the Project, except to the extent that dwelling units are required to be leased or rented to tenants as provided under this Agreement.

e. In the event the Project receives Tax-Exempt Financing or Tax Credits, the Project shall comply with any additional requirements of the Code or IRS Regulations dealing with the residential character of the Project.

14. Occupancy Restrictions.

a. The Owner acknowledges that as a condition of receiving financing pursuant to the Act, there are limits on the maximum income that tenants may earn in order to be eligible to lease, occupy, and/or reside in a unit at the Project. The Owner agrees to comply with the income restrictions as set forth in the Act and the Agency Regulations promulgated under the Act governing income restrictions.

b. The Owner also acknowledges that, in the event the Project receives Tax-Exempt Financing or Tax Credits, there are additional limits on the maximum income that tenants may earn in order to be eligible to lease, occupy and/or reside in a unit at the Project. In such event, the Owner agrees to comply with the income restrictions as set forth in the Code or IRS Regulations governing income restrictions.

c. In compliance with the foregoing income restrictions, the Owner agrees to rent 60% percent of the units at the Project to tenants whose income does not exceed 60 percent of the area's median income adjusted for family size, as median income is defined by

the United States Department of Housing and Urban Development, from time to time, and 40 percent of the units at the Project to market rate tenants. All of the units are additionally subject to the occupancy requirements regarding tenant income set forth in the Act and pursuant to N.J.A.C. 5:80-1, et seq. The Owner acknowledges that if the income restrictions set forth in this paragraph are- more restrictive than the restrictions prescribed under the Act and/or the Code, that the Owner will abide by such restrictions as an inducement for and part of the consideration for the Agency to make the Loan.

d. In the event the Project is receiving Tax-Exempt Financing, the Owner hereby represents, warrants and covenants that at all times throughout the Qualified Project Period, not less than 40% percent of the units shall be leased to qualified Low-Income Tenants. For purposes of complying with these requirements, any dwelling unit occupied by an individual or family who is a Low-Income Tenant at the commencement of occupancy shall continue to be treated as if occupied by a Low-Income Tenant even though such individual or family subsequently ceases to be a Low-Income Tenant. The preceding sentence shall not apply to any resident whose income as of the most recent income determination exceeds 140 percent of the income limit applicable to such resident, if after such determination, but before the next determination, any residential unit of comparable or smaller size in the Project is occupied by a new resident whose income exceeds the applicable income limit. If a unit is vacated by an individual or family who qualified as a Low-Income Tenant, such dwelling unit shall be treated as occupied by a Low-Income Tenant until reoccupied (other than for a temporary period of not more than 31 days), at which time the character of the unit shall be redetermined. All dwelling units have been and shall be occupied by or held available for rental only to members of the general public, without regard to race, creed, religion, national origin or sex.

e. In addition, if the Project is receiving Tax-Exempt Financing, the Owner hereby represents, warrants and covenants that at all times throughout the Qualified Project Period, the Owner shall comply with its representations, warranties and covenants in the Tax Certificate.

f. In compliance with the HUD Risk-Sharing Program the Owner agrees to rent not less than 40 percent of the units to tenants whose income does not exceed 60 percent of the area's median income adjusted for family size, as median income is defined by US Department of Housing and Urban Development. In the event of a

conflict among the above requirements, the most, stringent shall apply.

15. Reporting. The Owner agrees to comply with the following reporting requirements:

a. The Owner shall obtain from each tenant, prior to the date of such tenant's initial occupancy in the Project, an income certification in the form required by the Agency, or in the event the Project receives Tax-Exempt Financing and/or Tax Credits, the Owner shall obtain the certification in the form required by the Code or IRS Regulations. The Owner shall obtain income recertifications from each tenant at such times as required by the Act or the Agency Regulations or, if applicable, the Code or IRS Regulations.

b. The Owner shall file with the Agency, (i) on the fifth day of each month, copies of the initial occupancy income certifications specified in Section 7(a) hereof obtained by the Owner during the previous month and (ii) within 45 days of the end of each calendar year copies of the recertifications specified in Section 7(a) hereof, or at such other times as required by the Act or the Agency Regulations or, if applicable, the Code or IRS Regulations.

c. The Owner shall maintain complete and accurate records beginning with the date of initial occupancy pertaining to the income of each tenant and rent charged to tenants residing in the Project, and shall permit, with or without notice to the Owner, any duly authorized representative of the Agency to inspect the books and records of the Owner pertaining to the incomes of and rent charged to all tenants residing in the Project.

d. The Owner shall maintain and/or provide to the Agency such other reports, records and information as required by the Act, the Agency Regulations or, if applicable, the Code or IRS Regulations.

e. In the event the Project is receiving Tax-Exempt Financing, the Owner shall submit to the Secretary of the United States Department of the Treasury, at such time and in such manner as the Secretary shall prescribe, an annual certification as to whether the Project continues to meet the requirements of Section 142(d) of the Code. A copy of such certification shall be sent to the Agency.

16. Burden. The Agency and the Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth in this Agreement touch and concern the Land in that the Owner's legal interest in the Project and Land is rendered less valuable thereby. The Agency

and the Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the Project and Land by enhancing and. increasing the enjoyment and use of the Project and the Land by the tenants, contemplated under this Agreement and by furthering the public purposes for which the Loan is made and the Bonds, if any, are to be issued. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project and Land. Except as provided in subsection (b) below, the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and hereof and shall pass to and be binding upon the Owner's assigns and successors in title to the Land or Project. Each and every contract, deed or other instrument hereafter executed covering or conveying the Project or the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Project or Land are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Project and Land.

Upon termination of this Agreement in accordance herewith, said covenants, reservations and restrictions shall expire and in such event, the Agency shall, at the expense of the Owner, execute any and all instruments reasonably required to evidence of record the satisfaction, cancellation and discharge of this Agreement.

17. **Insurance Requirement**. During the term of the Loan, the Owner shall cause all the buildings on the premises and the fixtures arid articles of personal property covered by the Mortgage to be insured against loss by fire and against loss by such other hazards as may be required by the Agency for the benefit of the Agency including, but not by way of limitation, flood insurance if any part of the Project is located in an area designated by or on behalf of the Federal government as having specific flood hazard. Such insurance shall be written by such companies, in such forms as are satisfactory to the Agency, in an amount not less than the full replacement value of the Project. The Owner shall assign and deliver the policies to the Agency. The Agency shall be listed as mortgagee, loss payee and additional insureds under such policies. Such policies shall provide that the insurer may not cancel the policy and will not refuse to renew the policy except after thirty (30) days written notice to the Agency. If the Agency shall not receive evidence satisfactory to it of the existence of effective insurance coverage as required by the Agency, the Agency may (but shall not be required to) obtain such coverage, and the Owner shall reimburse the Agency on demand for any premiums paid for insurance procured by the Agency, and until so reimbursed the amount of such premiums shall be added to the principal sum as defined in the Note and shall bear interest at the interest rate in the Note.

a. **Condemnation**. If the Project shall be damaged, destroyed or taken by condemnation (in whole or in part), the Agency shall direct the Owner to promptly reconstruct the Project to substantially the same condition as existed prior to such damage, destruction or condemnation, with such changes, alterations and modifications as may be desired by the Owner and approved by the Agency, provided that the plans and specifications for reconstruction of the Project are approved by the Agency and, in the Agency's determination, the proceeds of the insurance or of the damages or award received as a consequence of such damage, destruction or condemnation, together with any other money available for such purpose, are sufficient to pay the cost of such reconstruction and upon completion of the reconstruction of the Project it shall be financially feasible.

b. **Reconstruction**. In the event of reconstruction of the Project, the Agency, upon receipt of a written request by the Owner that payments are required for such purpose, shall apply so much as maybe necessary of such proceeds of the insurance and any investment income earned thereon to the payment of the costs of such reconstruction as such work progresses. No money shall be disbursed to pay the costs of reconstruction unless no event of default exists hereunder and unless the Agency first shall have received all of the following:

    1. a certificate from the Owner to the effect that:

        a. the full amount of such disbursement and all of the prior disbursements constitute proper and reasonable costs of reconstruction work performed or materials delivered to the site of the Project;

        b. all work performed and material furnished for the reconstruction of the Project have been in accordance with plans and specifications; and

        c. all such work has been performed to the satisfaction of the architect retained to prepare the plans and specifications for reconstruction of the Project.

    2. appropriate insurance from a title insurance company, licensed to do business in the State and acceptable to the Agency, insuring that there are no liens or encumbrances on the Project other than Permitted Encumbrances;

3. if the location of any improvement is to be altered, a currently dated, certified survey showing that all improvements are on the Land within any required set-backs and do not encroach on the real property of others; and

4. a certificate signed by the Owner that the Project remains financially feasible.

c. **Proceeds.** If in the Agency's determination, the proceeds of the insurance or of the damages or award received as a result of damage, destruction or condemnation together with any other money available for such purpose are not sufficient to pay the cost of reconstruction or if the Project will not be financially feasible upon such reconstruction, then the proceeds of such insurance shall be applied to the indebtedness on the Loan. Nothing in this Section shall affect the lien of this Agreement and the Loan or the liability of the Owner for payment of the entire balance of the Loan.

d. **Additional Coverages**. The Owner shall maintain continuously in effect such other insurance coverage of the types and in the amounts specified by the Agency, including worker's compensation insurance and other insurance required by law with respect to employees of the Owner, and liability insurance with limits of not less than $5,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and $5,000,000 per accident or occurrence on account of damage to the properly of others, and a blanket excess liability policy in an amount not less than $15,000,000, protecting the Owner and the Agency against any loss or liability or damage for personal injury or property damage with respect to the Project. The Owner shall also maintain use and occupancy insurance covering loss of revenues derived from the Project by reason of interruption, total or partial, of the use of the Project resulting from loss or physical damage thereto in an amount not less than one year's gross rental income. The Owner shall carry fidelity bond insurance covering all employees of the Owner authorized to handle the revenues derived from the Project in an amount equal to one and one-half times the maximum monthly rent roll. In the event the Project receives financing from proceeds of Bonds, the Owner covenants and agrees to provide such additional insurance coverage as required in the Resolution.

e. **Ongoing Obligations**. All policies of insurance required herein shall be modified as required by the Agency from time to time to conform to the specifications then mandated by the Agency.

18. Covenant to Pay. The Developer covenants and agrees to pay all taxes, payments in lieu of taxes, assessments, water charges, sewer charges and other

charges imposed on the Project or Land by the municipality, county, state or other governmental body having jurisdiction over the Project. If such charges are not paid by the developer, the Agency may pay the same. Any such sum(s) so paid by the Agency shall be payable by the Developer on demand by the Agency and until paid the amount of such sums shall be added to the principal sum as defined in the Note and shall bear interest at the interest rate in the Note.

19. Liens and Encumbrances

a. **Clear Title**. The Developer covenants and agrees to maintain its right, title and interest in the Project, Land and all items enumerated in the Mortgage and the Security Agreement, as security for repayment of the Loan, free and clear of all liens, security interests and other encumbrances except for Permitted Encumbrances. The foregoing covenant and agreement shall not prevent Developer from leasing or renting the Project or Land in the manner as otherwise provided in this Agreement. Except with the written consent of the Agency, the Developer will not install any item of tangible personal property as part of the fixtures or furnishings of the Project which is subject to a purchase money lien or security interest.

b. **Agency Right to Discharge**. The Agency may, at is sole option, pay the amount necessary to discharge any lien or other encumbrance, and the Developer shall reimburse the Agency upon demands for any amounts so paid. Until reimbursement of the Agency of any amounts so paid, such amount shall be added to the principal sum as defined in the Note and shall bear interest at the interest rate in the Note.

20. Maintenance, Repair and Replacement

a. **Maintenance.** The Developer covenants and agrees to maintain the Project and the Land, including, but not limited to, the dwelling units contained therein, any related facilities, the appurtenant equipment and grounds in good repair and condition so as to provide decent, safe and sanitary housing accommodations. In the event that any investigation, site monitoring, containment, clean-up, removal, restoration, remediation or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Laws at, on, about, under or within the Project or the Land, the Developer agrees to commence and diligently perform and complete such Remedial Work in compliance with all applicable Environmental Laws, at its own expense. In the event the Developer shall fail to timely commence, perform and complete such Remedial Work, the Agency may, at its sole and absolute discretion, cause such Remedial Work to be performed and the Developer shall reimburse the Agency upon demand for all costs incurred by the Agency in connection with the performance, completion and monitoring of such Remedial Work.

Until the reimbursement of the Agency of any costs so incurred, such amount shall be added to the principal sum as defined in the promissory note (the "Note") from the Owner to the Agency and shall bear interest at the interest rate in the promissory note.

b. **No Alterations**. The Developer will not make any substantial alteration in the Project without the consent of the Agency, nor will the Owner permit the removal of any fixtures or articles of personal property, except with the consent of the Agency, which consent may be withheld in its sole discretion, and in connection with the replacement thereof with appropriate property of at least equal value that is free of all liens and claims.

c. **No Demolition**. The Developer will not demolish any part of the Project, substantially subtract from or permit any waste of real or personal property comprising the Project or the Land, or make alteration which will increase the risk of fire or other casualty.

21. Advanced Amortization Payments

a. **Limit on Prepayment**. Because the public purposes of the Agency include maximizing the period during which the dwelling units in the Project are available to persons whose incomes do not exceed the maximums provided by the Act, the Agency Regulations, and if applicable, the Code or IRS Regulations, the Owner shall not make any advance principal repayment except as allowed by the Agency Regulations and if the Project is financed by Bonds, as allowed under the Resolution. With respect to any advance amortization payment, if the Agency shall have consented thereto, the Owner shall, if the Loan is financed from Bonds, pay to the Agency an amount sufficient (a) to enable the Agency to redeem Bonds of the appropriate series in the principal amount as required under the Resolution, (b) to pay the interest accrued and to accrue on the Bonds to be redeemed to the redemption date thereof, (c) to pay the redemption premium, if .any, on the Bonds to be redeemed, (d) to pay the cost and expense of the Agency in effecting the redemption of the Bonds to be redeemed including legal fees of the Agency, as determined by the Agency, including any investment shortfall resulting from liquidation of investments, and (e) to pay any other cost, expense and liability incurred by the Agency in connection with the financing of the Project and issuance of its Bonds for such purpose not previously paid or provided for by the Agency including, without limitation, underwriting discount or other unamortized Bond discount; provided, however, that only the amount of such advance amortization payment applied as provided in (a) above shall be credited against the unpaid balance of the Loan.

22. Reserve and Escrow Payments

a. **Reserve**. On the date of the execution of this Agreement, the Owner will deposit with the Agency the full amount required for the Working Capital Account set forth in the Working Capital Disbursement Agreement of even date herewith. The required Working Capital Account funding is $_____ comprising cash in the amount of $_____ and an irrevocable letter of credit in the amount of $_____. The Working Capital Account shall be used to pay operating expenses, including debt service, until such time as the Project achieves Stabilized Occupancy as defined in the Working Capital Disbursement Agreement;

b. **Escrow Payments**. Commencing with the Amortization Date, as defined in the Note, and on the first day of each month thereafter, the Owner will pay to the Agency, along with the monthly Servicing Fee, principal and interest payments, the following:

i. an initial deposit equal to one-half (1/2) of the estimated annual insurance payments and on the first of each month one-twelfth (1/12) of the estimated annual amounts necessary to pay insurance premiums; and

ii. an amount equal to one-quarter (1/4) of the estimated annual real property taxes or payments in lieu of taxes and on the first of each month one-twelfth (1/12) of the estimated annual amounts necessary to pay taxes or payments in lieu of taxes;

iii. the sum of $_____ to be held by the Agency in the Mortgage Insurance Premium ("MIP") escrow. This sum represents one quarter (1/4) of the first annual MIP payment payable to HUD. Simultaneously, the Borrower shall also pay the Lender the first annual MIP payment of $_____. On the first day of each month thereafter, the Borrower shall deposit with the Lender an amount equal to one-twelfth (1/12) of the next pending annual MIP payment. Subsequent annual MIP payments shall be recalculated on the anniversary of the Amortization Date and shall be equal to the sum of the next 12 principal payments due under this Note, divided by 12, then multiplied by 0.0375.

iv. one-twelfth (1 /12) of the amount as the Agency may determine pursuant to its established management policy as a reserve for repairs and replacements (the repair and replacement account funding currently required is [$400 per rehab unit per year ($32,800) plus $350 per new unit per year ($86,800). $32,800 + $86,800 = $119,600 / 12 = $9,966.67 per month)]; and

v. one-twelfth (1/12) of the annual Principal, interest and Servicing Fee due under the Loan. When the Note is paid in full, escrows, to the extent not needed for Project costs, will be refunded to the Owner.

All reserve and escrow payments required pursuant to this Section shall be held in accounts under the sole control of the Agency and shall be paid out for the benefit of the Project as needed on request of the Owner or on the Agency's own initiative. Any interest that may be earned on such reserves shall remain in the escrow accounts and shall be used for similar purposes unless the Owner and Agency mutually agree to apply the funds to some other Project purpose. If the Agency determines that the payments specified herein are insufficient to insure prompt payment of debt service, taxes, payments in lieu of taxes, insurance premiums, MIP payments, or to properly fund painting, decorating, repair and replacement needs with respect to the Project, then the Agency may require increases in the required payments necessary to assure proper funding.

23. Compliance Requirements

a. **The Act and the Code**. The Owner covenants and agrees to comply with the Act and the Agency Regulations, and with any amendments or supplements to the Act or Agency Regulations. If the Project receives Tax-Exempt Financing or Tax Credits, the Owner covenants and agrees to comply with the Code or IRS Regulations and with any amendments or supplements to the Code or IRS Regulations, and, in addition, if the Project receives Tax-Exempt Financing, the Owner shall comply with its representations and covenants in the Tax Certificate throughout the term hereof.

b. **Bond Counsel Requirements**. The Owner acknowledges that the proceeds of the Loan have been or are expected to be funded through the issuance of Bonds. The Owner agrees that it will execute and be bound by any amendments to this Agreement or the other Loan Documents and any additional documents as may be required by Qualified Bond Counsel for the issuance of the Bonds and/or to comply with the Code or IRS Regulations. The Owner further agrees to comply, with any other requirements of the Agency that Qualified Bond Counsel reasonably believes to be necessary in connection with its marketing and issuance of Bonds. To the extent any amendments, modifications or changes to the Code or IRS Regulations shall, in the written opinion of Qualified Bond Counsel, impose requirements upon the construction, rehabilitation, ownership, occupancy or operation of the Project, the parties agree that this Agreement and/or the other Loan Documents shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the

opinion of and in the form approved by Qualified Bond Counsel to effectuate the intent of this Section.

c. **Obligated Person Requirement**. If the Project receives financing from proceeds of Bonds, the Owner acknowledges receipt of the Continuing Disclosure Agreement, and the Owner agrees that in the event it subsequently becomes an "Obligated Person" meeting the objective criteria set forth in the Continuing Disclosure Agreement, it shall provide the Agency with the Obligated Person Data (as defined in the Continuing Disclosure Agreement) and the audited general purpose financial statements referred to in the Continuing Disclosure Agreement at the times necessary so as to allow the Agency to file the Annual Reports provided for in the Continuing Disclosure Agreement.

d. **Tax Exempt Financing Applicability**. The Owner and Agency acknowledge that the Owner is receiving Tax-Exempt Financing and is receiving Tax Credits. Accordingly, the Owner acknowledges that [all/none] of the provisions concerning Tax-Exempt Financing are applicable and that [all/none] of the provisions concerning Tax Credits are applicable.

e. **HUD.** The Owner further covenants and agrees to comply with all applicable requirements of the HUD Risk-Sharing Program as set forth in Section 542 of the Housing and Community Development Act of 1992 and regulations promulgated hereunder. Not by way of limitation of the foregoing, the Owner covenants and agrees that so long as the Mortgage is insured pursuant to the HUD Risk-Sharing Program it shall:

   i. not use tenant selection procedures that discriminate against families with children, except in case of a project that constitutes housing for older persons as defined in Section 807(b) of the Fair Housing Act (42) U.S.C. 3607 (b) (2);

   ii. not discriminate against any family because of the sex of the head of household;

   iii. comply with the Fair Housing Act, as implemented by 24 CFR part 100; Titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act, as implemented by 12 CFR part 202; Executive Order 11063, as amended, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable Federal laws and regulations

issued pursuant to these authorities and applicable State and local fair housing and equal opportunity laws.

24. Lease of Dwelling Units – Maximum Rents

a. **Residential Leases**. The Owner shall offer dwelling units for lease and occupancy in strict accordance with the Act or Agency Regulations governing tenant marketing, eligibility and selection. The form of lease to be used by the Owner in leasing to residential tenants shall be previously approved by the Agency and shall comply in all respects with the Agency Regulations and the requirements of the Agency. Initial rents may not exceed such amounts as approved by the Agency. In the event the Project receives Tax-Exempt Financing or Tax Credits, rents may not exceed such amounts as prescribed by the Code or IRS Regulations. The form and terms of all leases for any other portion of the Project and/or Land, if permitted under this Agreement, are subject to the prior consent of the Agency, Rent increases for any dwelling unit shall be made pursuant to procedures prescribed by the Agency Regulations, or if applicable, the Code or IRS Regulations.

b. **Lease Consideration**. The Owner covenants and agrees not to require as a condition of the occupancy or leasing of any dwelling unit in the Project and not to accept or allow any employee or agent to accept any consideration other than the prepayment of the first month's rent plus a security deposit not in excess of one and one-half (1 and a 1/2) month's rent or such lesser amount as may be mandated by HUD, unless otherwise approved in writing by the Agency to guarantee the performance of the covenants of the lease or occupancy agreement.

c. **Security Deposits**. The Owner covenants and agrees to deposit all monies paid to the Owner by any residential tenant as a security deposit for the payment of rent in a separate interest bearing bank account held and maintained in accordance with applicable law and instructions of the Agency as to its custody and control.

25. Project Operations

a. **Accounts for Revenues**. The Owner covenants and agrees to establish an account for Project revenues with a bank or trust company or savings and loan institutions approved by the Agency and maintaining an office within the State, the deposits of which are insured by the Federal Deposit Insurance Corporation. "**Project Revenues**" shall mean all rents and other revenues of any type whatsoever received in respect of the Project or the Owner, except for advances of the Loan. Project Revenues shall be deposited in such account. The Agency may elect, in its sole discretion, to require that this account shall be under the joint control of the Agency and the

Owner, with all withdrawals requiring a countersignature by one of the authorized representatives of the Agency. The Owner may not withdraw or use Project Revenues except to pay debt service due under the Note, the Servicing Fee or other Project expenses approved by the Agency or return on investment payments due under Article 33 hereof. Project Revenues may not be transferred to or invested in any other accounts or investment vehicles, except as permitted by Agency Regulations.

b. **Agency Inspections**. The Owner covenants and agrees to permit the Agency, its agents or representatives to enter upon and inspect the Project without prior notice, pursuant to the provisions of the Act.

c. **Books and Records**. The Owner covenants and agrees to maintain adequate books and records of its transactions with respect to the Project in the form required by the Agency. Such books and. records shall be available for inspection and audit by the Agency or its agents at any time during business hours, with or without notice, pursuant to the provisions of the Act. The Owner further covenants and agrees to cause its financial affairs to be audited at least annually by independent certified public accountants and shall furnish the Agency with the audit report of such accountants when received and in any event within three (3) months of the close of each of its fiscal years. The Owner shall adopt and use such uniform systems of accounts and records as may from time to time be required by the Agency.

d. **Management Contract**. The Owner may, and if the Agency so elects, shall, contract for the services of a firm experienced in real estate management to act as the managing agent for the Project. The selection of any such managing agent, the scope of the agent's duties and the basis of the agent's compensation shall be subject to the approval of the Agency, and any contract for the employment of any managing agent shall provide that such contract may be terminated by the Agency at any time by notice of such determination by the Agency given to the Owner and managing agent.

e. **Prohibited Actions**. Except with the express approval of the Agency and in accordance with the Agency policies, the Owner shall not:

    i. incur any liabilities except in connection with the acquisition, construction, rehabilitation, repair, improvement and rental of the Project and Land, and. its operation and maintenance;

    ii. engage in any business activity except the ownership and operation of the Project and Land;

iii. enter into contracts to be paid from Project Revenues, as here defined, for managers, attorneys, accountants, or other services without the prior written approval of the Agency;

iv. pay more than the fair market value thereof for goods or services;

v. transfer or invest Project revenues in any other accounts or investment vehicles, except as permitted by Agency Regulations; or

vi. pay compensation from Project Revenues to any officer, director, member, partner, or shareholder in his capacity as such or make any cash distribution to any of the foregoing; provided, however, that if no event of default has occurred; the Owner may make distributions of a return on investment in an amount not to exceed the amount permitted under the Act, the Agency Regulations, and then only to the extent of its retained earnings not previously distributed, or as otherwise approved by the Agency. The Owner, however, shall not make any distribution payment without the express agreement of the Agency that retained earnings (or other funds) are available for such distribution. The Agency shall make its best efforts to respond to a request for a distribution within thirty (30) days of receipt of a fully documented request. To the extent return on investment has been earned but is unavailable for distribution in a given year, the Owner may thereafter apply semiannually for such distributions to the extent there is available cash in accordance with Agency requirements. All requests may be made only after receipt and approval of the annual certified audit.

f. **Agency's Determination Conclusive**. The Agency shall, at all times, be free to independently establish to its satisfaction and in its discretion the existence or nonexistence of any fact or facts the existence or nonexistence of which is a condition hereof.

26. Change of Owner Status The Owner shall not dissolve, liquidate, sell, transfer, convey or exchange the Project and/or Land or any portion thereof without prior approval of the Agency and the Owner's compliance with the Agency Regulations. The Owner shall not dissolve, liquidate, sell, transfer, convey or exchange, any shares, partnership or other ownership interest in the Owner except in accordance with the Agency Regulations. The Agency acknowledges the right of the investor limited partner entity to make changes within the investor limited partner entity, The Owner shall notify in writing and obtain the agreement in writing of any buyer or successor or other person

acquiring the Project or Land or any interest therein, in a form acceptable to the Agency, that such acquisition is subject to the requirements of the Loan Documents, Act and Agency Regulations and, if applicable, the Code or IRS Regulations. This notice provision shall not act to waive any other Agency restriction on such dissolution, liquidation, sale, transfer, conveyance or exchange.

27. Estoppel. Within ten (10) business days of demand by the Agency, the Owner will furnish to the Agency in writing a statement of the outstanding balance of the principal sum plus all the accrued interest remaining due on the Loan, together with a statement of any defenses which may exist as to any liability of the Owner on the Note, or otherwise hereunder.

28. Financing Statements The Owner hereby irrevocably authorizes the Agency to execute on its behalf one or more UCC-1 Financing Statements or renewals thereof in respect of any of the security interests granted by the Mortgage or the Security Agreement. The Owner hereby assigns all its rights and interests in accounts established under this Agreement to the Agency, to the extent that such interest may be needed, pursuant to this Agreement. Upon demand by the Agency, the Owner shall execute one or more UCC-1 Financing Statements or renewals thereof.

29. Assignment

a. **Plans and Approvals**. The Owner transfers and assigns to the Agency all of its right, title and interest, but not its liability, in, under, and to all construction, architectural and design contracts, all architectural plans and specifications and all government permits, licenses and approvals for the construction of the Project (the foregoing collectively referred to as the "**Final Plans and Approvals**"). The owner represents and warrants that the copies of the Final Plans and Approvals delivered to the Agency are and shall be true and complete copies of the Final Plans and Approvals, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that the Owner's interest therein is not subject to any claim, setoff, or encumbrance. Neither this assignment nor any action by the Agency shall constitute an assumption by the Agency of any obligation under or with respect to the Final Plans and Approvals; the Owner shall continue to be liable for all obligations of Owner with respect thereto; and the Owner hereby agrees to perform all of its obligations under the Final Plans and Approvals.

b. **Consent to Re-assignment**. The Owner hereby consents to any assignment of the Agreement by the Agency. No assignment or delegation of this Agreement by the Owner is permitted unless approved in writing by the Agency.

30. Default By Owner. Each of the following shall be an event of default, provided that such event shall remain ongoing and uncured beyond any applicable cure period:

a. failure by the Owner to pay more than ten (10) days after the due date any installment of principal or interest under the Note, or on the Servicing Fee or any other payment required by the Owner to the Agency or any other person pursuant to the terms of this Agreement, the Note, or the Loan Documents;

b. commission by the Owner of any act prohibited by the terms of this Agreement, or the Loan Documents, or failure by the Owner to perform or observe in a timely fashion any action, obligation or covenant required by any of the terms of this Agreement or the Loan Documents or failure by the Owner to produce satisfactory evidence of compliance therewith. The events set forth in this subsection shall not constitute Events of Default until the prohibited acts or failure to perform or observe shall remain uncured for a period of thirty (30) days after the Agency's written notice to the Owner, specifying such prohibited act or failure and requesting that it be remedied, unless the Agency shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the prohibited act or failure stated in each notice is correctable, but cannot be corrected within the 30-day period, the Agency may consent to an extension of up to 120 days from the delivery of the written notice referred to herein if corrective action is instituted by the Owner within the initial 30-day period and diligently pursued;

c. the filing by the Owner under any Federal or State bankruptcy or insolvency law or other similar law, or any petition in bankruptcy or for reorganization or composition with creditors or the making of an assignment for the benefit of creditors;

d. the filing against the Owner of a petition seeking an adjudication as a bankrupt or the appointment of a receiver for the benefit of its creditors which shall not have been dismissed within forty-five (45) days of the filing thereof, or the adjudication of the Owner as a bankrupt or the appointment of a receiver for the benefit of its creditors; or the appointment by court order of a custodian (such as a receiver, liquidator or trustee) of the. Owner or of any of its property or the taking of possession of the Owner or any of its property for the benefit of its creditors and such order remains in effect or such possession continues for more than forty-five (45) days;

e. the occurrence of substantial destruction of the Project by an uninsured casualty or the inability to replace or restore the Project in accordance with this Agreement;

f. any representation in conjunction with the Loan Documents or the Project by or on behalf of the Owner which is false or misleading in any material respect or any covenant, warranty, or representation of the Owner which is breached;

g. any occurrence which results in the dissolution or liquidation of the Owner pursuant to the formation documents of the Owner;

h. failure to comply with applicable provisions of the Act, the Agency Regulations, and if applicable, the Code or IRS Regulations;

i. failure to substantially complete the Project pursuant to the Construction Contract.

31. Remedies. Upon the occurrence of any event of default, the Agency may at its option take any one or more of the following actions or remedies and no failure or delay to exercise any remedy or take any action enumerated shall constitute a waiver of such right or preclude a subsequent exercise by the Agency of any such remedy:

a. declare the outstanding balance of the principal sum under the Note plus all accrued interest, the Servicing Fee and all other liabilities of the Owner under the Loan Documents to be immediately due and payable;

b. cease making disbursements from reserves held by the Agency;

c. apply any reserves held by the Agency or the balance in the accounts for Project Revenues or any combination of these monies to the payment of the Owner's liabilities under the Loan Documents;

d. foreclose the lien of the Mortgage on the Project and Land including, without limitation, all improvements existing or hereafter placed in or on the Project and Land. In any action to foreclose, the Agency shall be entitled to the appointment of a receiver of the rents and profits of the Project as a matter of right, with power to collect the rents, uses, and profits of the Project, due and becoming due during the pendency of such foreclosure suit, such rents and profits being hereby expressly assigned and pledged as additional security for the payment of the indebtedness secured by the Mortgage without regard to the value of the Project or the solvency of any person or persons liable for payment of the mortgaged indebtedness. The Owner, for itself and any such subsequent owner, hereby waives any and all defenses to the application for a receiver as above and hereby specifically consents to such appointment, but nothing herein contained is to be construed to deprive the holder of the Mortgage of any other right, remedy or

privilege it may now have under the law to have a receiver appointed. The provisions for the appointment of a receiver of the rents and profits and the assignment of such rents and profits are made express conditions upon which the Loan is made. Upon such foreclosure the Agency shall have the right to have a receiver appointed for the Project and the rent from the Project;

e. take possession of the Project;

f. without judicial process, collect all rents and other revenue including Federal and State subsidies as the assignee of the Owner, and apply the same, at the Agency's option, either to the operation and maintenance of the Project or to the liabilities of the Owner under the Loan Documents and to accept assignment of leases;

g. act as landlord of the Project and rent or lease the same on any terms or dispossess by summary proceedings or other available means any tenant defaulting under the terms of the lease of a dwelling unit;

h. take possession of equipment, appliances and other tangible personal property in which a security interest has been granted by the Loan Documents and dispose of the same in any commercially reasonable manner. The Agency shall have the option to dispose of any such equipment and personal property either separately from the Project or Land. In conjunction with a sale of the Project or Land, the Owner agrees that either method of disposition shall be commercially reasonable;

i. sue under or make effective an assignment by the Owner to the Agency of any warranty for the Project or any contract for construction, rehabilitation, repair, renovation, reconstruction or improvement of the Project, in which event the Agency is specifically empowered by the Owner to exercise any and all rights of the Owner under the said contract or warranty to recover any amount payable to the Owner pursuant to the contract or any such warranty and to settle any such claim or liability and release the same and apply the proceeds of any such suit, settlement or release to the liabilities of the Owner under the Note, this Agreement, or the Loan Documents;

j. sue the Owner for mandatory injunction or other equitable relief requiring performance by the Owner of any of its obligations under this Agreement or the other Loan Documents. The Owner agrees with the Agency that the Agency's remedy at law for the violation and nonperformance of the Owner's obligations under this Agreement or the Loan Documents is not adequate by reason, among other things, of the Agency's public purpose to provide adequate, safe and sanitary dwelling units for the tenants contemplated under this Agreement;

k. replace the general partner, officers, managers, directors, managing members or partners of, or other persons exercising control over the affairs of the Owner with such person or persons as the Agency in its sole discretion deems advisable, including officers or employees of the Agency, who shall exercise all of the authority of managing general partner or other manager of the Owner. Such appointment by the Agency shall be for the duration provided in Section 7 (b)(6) of the Act and any person so appointed shall be entitled to the same immunities and compensation as provided in such Act. If the Agency decides to remove and replace the general partner, officers, managers, directors, managing members or partners of the Owner pursuant to its rights under the Act, the Agency will provide notice of such decision to the limited partner. The Agency may require from the newly appointed officers, managers, directors, managing members or partners a deed to the Project in lieu of foreclosure;

l. exercise any rights of the Owner under the Plans and Approvals and to take in its name or in the name of Owner such action as the Agency may determine to be necessary pursuant to the assignment of Plans and Approvals (as set forth in Section 25.1). The Agency may use the Plans and Approvals for any purpose relating to the Project. The Owner irrevocably constitutes and appoints the Agency as the Owner's attorney-in-fact, in the Owner's name or in the Agency's name, to enforce all rights of the Owner under any Plans and Approvals.

Notwithstanding the above enumeration of remedies, the Agency shall have available to it all other remedies provided at law or in equity or any other action permitted by law.

Anticipatory Breach. If the Owner threatens to commit a breach of any of the provisions of this Agreement or the other Loan Documents, the Agency shall have the right, without posting bond or other security, to seek injunctive relief or specific performance, it being acknowledged and agreed that any such breach, or threatened breach, will cause irreparable injury to the Agency and that money damages will not provide an adequate remedy.

32. Expenses Due To Default

a. **Expenses Paid on Demand.** All expenses (including reasonable attorney's fees and costs and allowances) incurred in connection with an action to foreclose the Mortgage or in exercising any other remedy provided by this Agreement or the Loan Documents, including the curing of any event of default, shall be paid by the Owner on demand, together with interest at the interest rate in the Note whether or not an action or proceeding is instituted. Expenses of foreclosure for purposes

of this paragraph shall include the items enumerated in this Agreement.

b. **Interest**. The Owner hereby acknowledges that if the Project receives Bond financing, the payments to be made by the Owner pursuant to the Note may be used by the Agency to pay interest and principal on the Bonds. In the event that the Owner fails to make any payment due under the Note and the Agency is required to advance funds to pay interest or principal on the Bonds, the Owner shall be required to pay the Agency interest on any amounts so advanced by the Agency on demand, which interest shall be equal to the interest rate in the Note.

33. Waivers

a. **WAIVER OF TRIAL BY JURY. THE DEVELOPER AND THE AGENCY, EACH HEREBY AGREE NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVE ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE GRANT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY THE DEVELOPER AND THE AGENCY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE DEVELOPER AND THE AGENCY ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER.**

b. **ADDITIONAL WAIVERS IN THE EVENT OF ENFORCEMENT. THE DEVELOPER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY OR ON BEHALF OF THE AGENCY ON THIS AGREEMENT, ANY AND EVERY RIGHT THE DEVELOPER MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN COMPULSORY COUNTERCLAIMS), AND (III) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING. NOTHING HEREIN CONTAINED SHALL PREVENT OR PROHIBIT THE DEVELOPER FROM INSTITUTING OR MAINTAINING A SEPARATE ACTION AGAINST THE AGENCY WITH RESPECT TO ANY ASSERTED CLAIM.**

34. Disclaimer Of Warranties, Liability And Indemnifications

a. **No Warranties, Consequential Damages and Indemnity**. The Owner acknowledges and agrees that (i) the Agency has not heretofore and does not make any warranty or representation, either express or implied as to the value, condition, or fitness for particular purpose or any use of the Project or Land or any portions thereof or any other warranty or representation with respect thereto; (ii) in no event shall the Agency or its agents or employees be liable or responsible for any incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or any of the other Loan Documents or from the acquisition, rehabilitation, reconstruction, repair, improvement, ownership, operation or maintenance of the Project or Land or any items or services provided for in this Agreement or the Loan Documents; and (iii) during the term of this Agreement and the Loan Documents and to the fullest extent permitted by law, the Owner shall indemnify and hold the Agency harmless against, and the Owner shall pay any and all liability, loss, cost, damage, claims, judgments or expenses of any and all kinds or nature and however arising, imposed by law, which the Owner and the Agency may sustain, be subject to, or caused or incurred by reason of any claim, suit or action based upon personal injury, death or damage to property or any other damage or loss sustained, whether real, personal or mixed, or arising out of any alleged violation of the Environmental Laws or the alleged use, storage or disposal of Hazardous Materials by the Owner or by any person or entity or other source related to the Project or Land, or upon or arising out of contracts entered into by the Owner, or arising out of the Owner's acquisition, construction, rehabilitation, reconstruction, repair, improvement, ownership, operation or maintenance of the Project or Land.

b. **No Personal Liability**. It is mutually agreed by the Owner and the Agency that the Agency and its directors, officers, agents, servants and employees shall not be liable for any action performed under this Agreement, and that the Owner shall hold them harmless from any claim or suit of whatever nature."

c. **New Jersey Contractual Liability Act**. Any claims asserted against the Agency shall be subject, to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. (except for N.J.S.A. 59:13-9 thereof). While this statute is not applicable by its terms to claims arising under contracts with the Agency, the Owner agrees that it shall be applicable to claims arising under this Agreement or the other Loan Documents. It is acknowledged by the parties that the Agency is a public entity covered by the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

35. Equal Opportunity and Non-Discrimination The Owner covenants and agrees that it will comply with the Agency guidelines with respect to equal opportunity and non-discrimination in its purchase of goods and services for the operation and maintenance of the Project throughout the term of this Agreement.

36. Investment Funding and Return on Investment

a. **Equity Investment**. The Owner agrees to make an investment in the Project and Land in an amount which is not less than 10% of the total Project cost as determined by the Agency pursuant to the Act. In the event the principal sum set forth in the Note that is advanced to the Owner is determined by the Agency to exceed 90% of the total Project cost, the Owner agrees to reimburse the Agency an amount that would reduce the Loan to 90% of the total Project cost.

b. **Return on Investment**. The total Project cost and the portion thereof that is contributed by the Owner as investment shall be determined by the Agency in accordance with the cost certification procedures under the Act. The Owner shall be eligible for a cumulative, but not compounded, return on its investment at the rate of 8.59% annually in the manner set forth in the Agency Regulations.

37. Miscellaneous Provisions

a. **Choice of Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Jersey. The Developer hereby irrevocably submits to the nonexclusive jurisdiction of any State of New Jersey or Federal court sitting in the City of Trenton, County of Mercer, over any suit, action or proceeding arising out of or relating to this Agreement, and the Developer hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any State of New Jersey or Federal court sitting in the City of Trenton, County of Mercer, may be made by certified or registered mail, return receipt requested, directed to the Developer at _____, and service so made shall be complete five (5) days after the same shall have been so mailed.

b. **Injunctive Relief.** The Parties acknowledge and agree that in the event of a breach of this Agreement money damages are likely to be inadequate to compensate for such breach, and authorize the granting of injunctive relief to enforce this Agreement.

c. **Recording**. This Agreement shall be duly recorded in the Office of the Clerk for the county in which the Land is located.

38. Definitions

"Agency" is the New Jersey Housing and Mortgage Finance Agency created by the New Jersey Housing and Mortgage Finance Agency Law of 1983, as amended (N.J.S.A. 55:14K-1, et seq.)

"Amortization Date" is the amortization date defined in the promissory note from the Owner to the Agency.

"Bonds" means the New Jersey Housing and Mortgage Finance Agency Multi-Family Housing Revenue Bonds, Series 2004 and/or 2007, issued under the Resolution.

"Closing" shall mean the date set forth in this Agreement for the closing of the transfer of title from the Agency to the Developer.

"Continuing Disclosure Agreement" means the continuing disclosure Agreement between the Agency and the Trustee pertaining to the Bonds as the same may hereafter be modified, supplemented or amended.

"Developer" shall mean the other party to this Agreement with the agency.

"Due Diligence Period" shall mean the period, if any, in this Agreement during which the Developer may investigate the condition of the Land.

"Environmental Laws" shall mean and include any Federal, State, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, element, compound, mixture or material, as now or at any time hereafter in effect including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, 42 U.S.C. Sections 9601 et seq., the Federal Hazardous Materials Transportation Act, as amended 42 U.S.C. Section 1801 et seq., the Federal Resource Conservation and Recovery Act as amended, 42 U.S.C. Sections 6901 et seq., the Superfund Amendments and Reauthorization Act, 42 U.S.C. Sections 9601 et seq., the Federal Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Federal Hazardous Material Transportation Act, 49 U.S.C. Sections 1801 et seq., the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401 et seq., the Residential Lead-Based Paint Hazard Reduction Act of 1992,42 U.S.C. Sections 4852d, the New Jersey Environmental Cleanup Responsibility Act, as amended N.J.S.A. 13:lK-6 et seq., the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:lK-6 et seq., the Spill Compensation and Control Act, as amended, N.J.S.A. 58:10-23.11, et seq., the New Jersey Tank Registration Act, N.J.S.A. 58:10A-21 et seq., the New Jersey Water Pollution Control Act, as amended, N.J.S.A. 58:10A-1 et seq., and all rules and regulations adopted and publications promulgated thereto, or any other so-called "Superfund" or "Superlien" laws,

or any other Federal, state or local environmental law, ordinance, rule, or regulation, as any of the foregoing have been, or are hereafter amended.

"Existing Facilities" shall mean the current partially completed residential housing project on the Land.

"Hazardous Materials" shall mean and include those elements, materials, compounds, mixtures or substances which are contained in any list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA") or any list of toxic pollutants designated by Congress, the EPA, or the New Jersey Department of Environmental Protection ("NJDEP"), or which are defined as hazardous, toxic, pollutant, infectious, flammable or radioactive by any of the Environmental Laws, and, whether or not included in such lists, shall be deemed to include all products or substances containing petroleum, asbestos, lead, and polychlorinated biphenyls.

"Land" shall mean the one or more contiguous parcels of real property aggregating approximately 6.6 acres, commonly known as the Whitlock Mills Development, in Jersey City, Hudson County, New Jersey more particularly described on Exhibit __ attached hereto.

"Loan" means the mortgage loan made to the Owner by the Agency to refinance a portion of the cost of the development, construction, rehabilitation and/or acquisition of the Project, which is evidenced by a promissory note and secured by the Mortgage.

"Loan Documents" means and includes this Agreement, the Mortgage, the promissory note from the Owner to the Agency, any assignment of leases, any UCC-1 financing statements, the Security Agreement, the Disbursement Agreement regarding the Working Capital Account, and in the event the Project is receiving Tax-Exempt Financing, the Tax Certificate.

"Low-Income Tenants" means occupants of the Project who have income of 60 percent or less of the area median gross income, adjusted for family size, as determined under Section 142(d) of the Code.

"Mortgage" means the first mortgage given by the Owner to the Agency to secure the payment of the promissory note from the Owner to the Agency.

"Mortgage Insurance Premium" means the premium payable to HUD on an annual basis for the mortgage insurance under the risk sharing program administered by HUD.

"Owner" means Developer.

"Permitted Encumbrances" means any

(i) Utility, access and other easements and rights of way, restrictions and exceptions that do not, individually or in the aggregate, materially impair the utility or value of the Project or Land for the purposes for which it is intended;

(ii) Liens which are being contested in good faith and for. which the Owner has provided security satisfactory to the Agency;

(iii) Liens subordinate to the Loan arising due to any monies loaned in connection with the Project or other monies loaned to the Owner, provided such liens are disclosed to and approved by the Agency in writing; and

(iv) Any other encumbrances approved by the Agency in writing.

"Performance Bond" means the 100% payment and performance bond required of the Construction Contractor under the Construction Contract.

"Plans and Specifications" shall mean the final site plan, drawings, specifications and building elevation plans used in the construction of the Existing Facilities, a copy of which has been provided to the Developer.

"Project" shall mean the three hundred thirty (330) dwelling units of which one hundred thirty-two (132) are to be market rate units and the balance affordable to low income residents which are to be completed and/or constructed on the Land.

"Qualified Bond Counsel" means an attorney or law firm acceptable to the Agency with respect to the issuance of bonds by States and their political subdivisions for the purpose of financing housing projects.

"Qualified Project Period" means the period beginning on the first day on which 10 percent of the residential units in the Project are occupied and ending on the latest of —

(i) the date which is 15 years after the date on which 50 percent of the residential units in the Project are occupied,

(ii) the 1st day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

"Loan" means the first lien of mortgage loan made to the Owner by the Agency to refinance a portion of the cost of the development, construction, rehabilitation and/or acquisition of the Project, which is evidenced by a promissory note and secured by the Mortgage.

"Residential Rental Project" means a qualified residential rental project as defined in Section 142(d) of the Code.

"Resolution" means the General and Series Resolutions and/or supplemental Resolutions of the Agency authorizing the sale and issuance of the Agency's Bonds, in connection with the financing or refinancing of the Project.

"Security Agreement" means the Security Agreement dated the Closing date by and between the Agency and the Owner.

"Servicing Fees" means the servicing fee that is due from the Owner to the Agency as set forth in the promissory note from the Owner to the Agency.

"Tax Certificate" means the Tax Certificate for Borrowers of Tax-Exempt Bond Proceeds, if the Project is receiving Tax-Exempt Financing.

"Tax Credits" means low income housing tax credits that the Project may receive pursuant to the Code.

"Tax-Exempt Financing" means financing received by the Owner from the proceeds of the tax-exempt Bonds issued by the Agency, the interest on which is excludable from gross income for purposes of Federal or State income taxation.

"TCX Grant Agreement" shall mean the agreement evidencing a grant from the Agency funded by the Grants to States for Low-Income Housing Projects in Lieu of Low-Income Housing Credits Program ("TCX Program") authorized by Section 1602 of the American Recovery and Reinvestment Tax Act of 2009 ("ARRA") in the amount of $11,700,000.00.

"TCX Guidelines" shall mean the guidelines governing the TCX Grant.

"Working Capital Account" shall mean the account for working capital set forth in the Working Capital Disbursement Agreement used to pay operating expenses, including debt service, until such time as the Project achieves Stabilized Occupancy as defined in the Working Capital Disbursement Agreement.

"Working Capital Disbursement Agreement" shall mean the agreement between the Owner and the Agency for the establishment of the Working capital Account.