

October 03, 2024

BCC Agenda Date/Item: _____

Board of County Commissioners
 Clackamas County

Approval of a Board Order to authorize a loan of HOME American Rescue Plan funds to the limited partnership for Phase 1 Buildings A&B of the Hillside Park Redevelopment project and delegate limited signing authority to the County Administrator and the Director of the Department of Health, Housing and Human Services for all documents necessary for financial closing on the loan. Total Loan Value is \$3,102,082 for 55 years. Loan is through federal HOME American Rescue Plan funds. No County General Funds are involved.

Previous Board Action/Review	Approval of the Hillside Park Master Plan Design – October 2019 Board Approval of HOME ARP Plan and Grant: March 2, 2023 Policy Session on Hillside Park Redevelopment: March 20, 2024 Approval of a \$4 M HOME Loan to the Hillside Park Redevelopment Project Building C: June 13, 2024 Briefed at issues: 10/03/2024		
Performance Clackamas	1. Which indicator of success does this item affect? Ensure Safe, Healthy, and Secure Communities		
Counsel Review	Yes	Procurement Review	N/A
Contact Person	Mark Sirois	Contact Phone	503-351-7240

EXECUTIVE SUMMARY: On behalf of the Housing and Community Development Division (HCDD), Health, Housing & Human Services requests approval of a \$3,102,082 HOME American Rescue Plan (HOME ARP) Loan to the Hillside Park Buildings A&B Housing Partners Limited Partnership, and approval of a Board Order authorizing the Clackamas County Chair of the Board of Commissioners, the County Administrator, and/or the Director of the Department of Health, Housing, and Human Services limited signing authority to negotiate, approve, and execute all documents reasonably necessary to complete the HOME ARP Loan and the Building A& B portion of the Project including, but not limited to, the HOME ARP Loan documents, subordination agreements, closing documents, and other documents reasonably related to completion of the Building A& B portion of the Project.

Phase 1 of the Hillside Park Redevelopment includes the development of 275 new units of amenity-rich affordable housing located in three adjacent buildings referred to as Buildings A, B, and C. Building C includes 100 units and was the first of the three buildings to break ground, with construction commencing in July. Building A, consisting of 92 units, and Building B, consisting of 83 units, are scheduled to start construction in November 2024. A site plan map for Phase 1 is included on the following page.

The Board previously approved a loan of \$4M of HOME funds in June for Building C, and this board order will authorize a loan of \$3,102,082 in HOME ARP funds to Building A&B. The board order will also delegate limited signature authority to finalize the loan. Near-final drafts of the loan documents have been reviewed by County Counsel and are

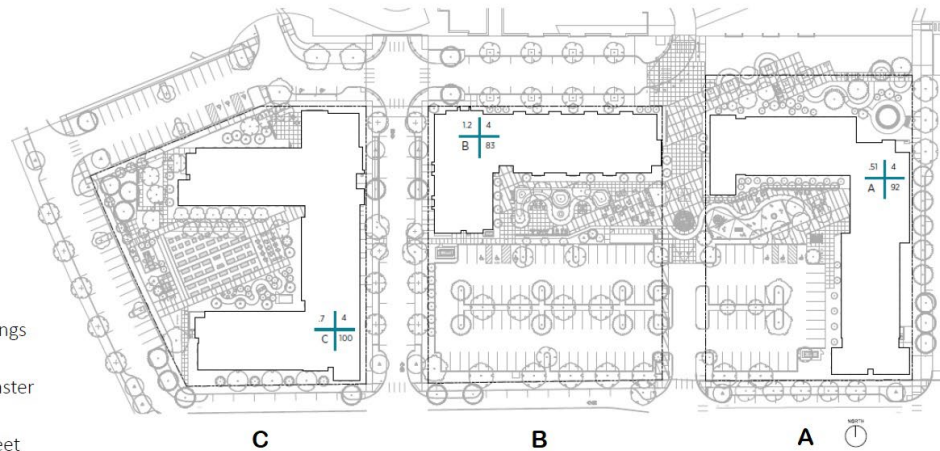
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attached for Board review. All final closing documents will also be reviewed by County Counsel before signing.

Phase 1 Site Plan

Highlights

- 275 units of affordable housing
- Three, four story buildings
- Development of more outdoor space than master plan
- Inclusion of a living street between buildings A & B
- 0.8 parking ratio



RECOMMENDATION: The Staff respectfully requests that the Board of County Commissioners approve the Board Order to finalize the HOME ARP loan of \$3,102,082 to the Hillside Park A&B development project.

Respectfully submitted,

Rodney A. Cook
Rodney A. Cook
Director of Health Housing and Human Services

ATTACHMENTS:

- **Board Order**
- **Draft HOME ARP loan**
- **Draft Promissory Note**
- **Draft Trust Deed**
- **Draft Land Use Restrictive Covenant**

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving HOME
Loan for Hillside Park Phase 1
Buildings A & B



Order No. _____
Page 1 of 2

Whereas, the Clackamas County Board of County Commissioners (the “Board”) has authority to sign all contracts and any amendments or renewals of the same;

Whereas, the Housing Authority of Clackamas County (“HACC”) is currently initiating a partial redevelopment of HACC’s Hillside Park Project (the “Project”), which is expected to include redevelopment of Hillside Park Buildings A, B, and C;

Whereas, HACC, together with Related/Hillside Park Buildings A&B Development Co., LLC, has formed a limited partnership, Hillside Park Buildings A&B Housing Partners Limited Partnership (“Borrower”), for purposes developing the Hillside Park Buildings A and B portions of the Project;

Whereas, the Borrower has applied for a HOME Investment Partnership Program loan under 24 CFR Part 92, in the amount of \$3,102,082 (the “HOME Loan”) to be issued through the Clackamas County Department of Health, Housing, and Human Services, Housing and Community Development Division;

Whereas, the HOME Loan will include a loan agreement, a promissory note, a trust deed, and a declaration of restrictive covenants, in substantially the form attached hereto, together with additional documents as may be necessary to allow Borrower to obtain necessary financing for the Buildings A and B portion of the Project including, but not limited to, subordination agreements, closing documents, and other documents reasonably related to the same;

Whereas, the Board has determined it is in the best interest of Clackamas County to authorize the issuance of the HOME Loan to Borrower in the amount of \$3,102,082;

Whereas, the Board has determined it is in the best interest of the County to delegate limited signing authority to the Clackamas County Chair of the Board of Commissioners (the “Chair”), the County Administrator, and/or the Director of the Department of Health, Housing and Human Services, to negotiate, approve, and execute all documents reasonably necessary to complete the HOME Loan and the Buildings A and B portion of the Project including, but not limited to, the HOME Loan documents, subordination agreements, closing documents, and other documents reasonably related to completion of the Buildings A and B portion of the Project;

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of Approving HOME
Loan for Hillside Park Phase 1
Buildings A+B



Board Order No. _____
Page 2 of 2

NOW, THEREFOR, the Clackamas County Board of County Commissioners orders as follows:

1. The Board hereby approves the Department of Health, Housing, and Human Services issuing the HOME Loan to Borrower, in the amount of \$3,102,082; and
2. The Clackamas County Chair, the County Administrator, and/or the Director of the Department of Health, Housing and Human Services are each hereby delegated limited signing authority to negotiate, approve, and execute all documents reasonably necessary to complete the HOME Loan and the Buildings A and B portion of the Project including, but not limited to, the HOME Loan documents, subordination agreements, closing documents, and other documents reasonably related to completion of the Buildings A and B portion of the Project.

DATED this ___ day of _____, 2024.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

LOAN AGREEMENT

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Buildings A&B

This Loan Agreement (“Agreement”) is entered into between **Hillside Park Buildings A&B Housing Partners Limited Partnership**, an Oregon limited partnership (“Owner”), of which Related/Hillside Park Buildings A&B Development Co., LLC, a California limited liability company (the “General Partner”) the “General Partner” is the sole general partner, and Clackamas County (“County”), a Participating Jurisdiction under the HOME Partnerships Program (“HOME”).

This Agreement includes the following exhibits:

- | | |
|------------------------------------|--|
| A. Legal Description | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| B. Sources and Uses | G. Project Completion documentation |
| C. Schedule of Tasks | H. HOME Payment Request Form |
| D. HOME Match Contributions | I. VAWA Notification and Certification |
| E. HOME Affordability Requirements | J. HOME ARP CPD 21-10-Notice |

The parties, in consideration of the mutual promises and obligations set forth below, agree as follows:

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
- a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **CHDO.** Community Housing Development Organization. This is a HOME specific designation. There is no CHDO designated for this project.
 - d. **Effective Date.** Effective Date has the meaning set forth in Section 35 of this Agreement.
 - e. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units (“HOME Units”) are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - f. **HOME Funds.** HOME Funds, including HOME American Rescue Plan (ARP), funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement, as set forth in Section 2 below.
 - g. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD’s regulations and requirements for the HOME Program are located in 24 CFR Part 92. This Agreement shall be construed to ensure compliance with all applicable HOME regulations. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - h. **HUD.** The United States Department of Housing and Urban Development
 - i. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - j. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County’s Median Income. A Very Low-Income household is one whose total income does not exceed 50% of the County’s Median Income.

- k. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
- l. **Owner.** The initial Owner and any subsequent Project owner, subject to the County consenting to any transfer.
- m. **Period of Affordability.** Has the meaning set forth in Section 9 below.
- n. **Project.** The Project will consist of Owner's leasehold interest in the real property located at 2981 Meek Street and 3097 SE Meek Street, Milwaukie, Oregon 97222 (**the Property**), upon which Owner will build two buildings of residential units. This Project is currently described as Buildings A&B. The legal description of the property (the "Property") comprising the Project is set forth in **Exhibit A**.
- o. **Project Completion Date.** The later of the date when (a) the construction is completed, (b) the final HOME drawdown has been disbursed to the Project, and (c) the County has entered the project completion information into HUD's disbursement and information system. County must enter the project completion information into the HUD system, or otherwise provide it to HUD, within 120 days following the final project drawdown. This date will start the HOME Period of Affordability, as set forth in Section 9 below. In no event may the Project Completion Date exceed 4 years of project commitment.
- p. **Transfer.** For purposes of this Agreement, "Transfer" shall mean any refinance, sale, assignment, or transfer, whether voluntary or involuntary, of (i) any rights and/or obligations under the Loan Documents and/or (ii) any interest in the Property (including the Project and any other improvement thereon); provided, however, that "Transfer" shall not mean, and no County consent shall be required for, (a) the transfer of the Property to a limited partnership of which Owner (or a limited liability company of which Owner is the sole member) is the general partner or to a limited liability company of which Owner is the managing member or to the Housing Authority of Clackamas County, or (b) transfers of partnership interests in Owner, (c) easements for establishment, operation, or maintenance of utilities and non-exclusive easements and licenses that are limited in duration and necessary for development of neighboring parcels of land and do not unreasonably interfere with residential tenants' quiet enjoyment of the Project. Provided, however, Owner shall provide County written notice of the transfers described in subsections (a) and (b), above. County shall approve other Transfers requested by Owner if the proposed transferee has the necessary qualifications and experience to construct the Project and/or own, operate and maintain the Project, as applicable, as contemplated by this Agreement, as reasonably determined by the County.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME ARP funds in the amount of **\$3,102,082** to the **Owner** for the Project. The HOME funds will be used for the development of the Project as specified in **Exhibit B**. The HOME Funds will only be used for HOME eligible costs (see 24 CFR 92.206 and 92.214). Use of the HOME Funds for any other purpose, without the express written consent of the County is prohibited and may constitute a breach of this agreement. Pursuant to 24 CFR 92.504, Owner may not request disbursement of funds until funds are needed for payment of eligible costs and documentation to substantiate costs is provided to County. Requests for disbursement must be limited to the amount needed.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan, with a maturity date of 55 years**. Loan repayment, satisfaction or conveyance shall not relieve Owner of any performance, affordability or programmatic obligations and requirements of the HOME program.
 - ii. Notwithstanding the loan terms described above, the entire amount of the loan (\$3,102,082) together with any accrued interest or fees, shall be paid in full upon occurrence of a Transfer without County's approval or the date Owner is otherwise in default under any of the Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Sections 9 & 10 below, or failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents) and such default continues beyond any applicable notice, grace or cure periods.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, and a Declaration of Land Use Restrictive Covenants, and secured by a Trust Deed executed by Owner in favor of the County

all of which together are incorporated by reference into this Agreement and are referred to collectively as the "Loan Documents."

- d. **Recording Requirement:** The Owner agrees to execute and record, or cause to be recorded, on the Project, the Trust Deed and the Declaration of Land Use Restrictive Covenants, within 30 days after signing the Loan Documents.

3. PAYMENT OF OBLIGATION.

- a. The outstanding principal balance of the loan shall be repaid in full on the maturity date set forth in Section 2(b)(i) above or upon occurrence of the events described in Section 2(b)(ii) above. Except as provided in Section 2(b)(i) and (ii) above, or upon the occurrence of an event of default under the Loan Documents, payment of principal shall not be required prior to such maturity date. No late fees will be charged.
- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

4. HOME-ASSISTED UNITS

- a. Twenty (20) units in the project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the project, including, but not limited to, this loan.

The HOME units are as follows:

Bedroom Size	TOTAL UNITS	Non HOME Assisted Units	Total HOME Assisted Units
0-bedroom (tenant) unit:	43	38	5
1-bedroom (tenant) unit:	97	82	15
2-bedroom (tenant) unit:	29	29	0
3-bedroom (tenant) unit:	6	6	0
TOTALS	175	155	20

- b. Fixed/Floating: The HOME-Assisted units are designated as **FLOATING HOME** units as defined at 24 CFR 92.252.
- c. See Section 10 below and **Exhibit E** for rent and income limits for the HOME-Assisted Units.
- d. Special Needs Set-aside. A minimum of 5% of the units in the project (but not less than one) must be accessible to individuals with mobility impairment, and an additional 2%, at a minimum, of the units (but not less than one unit) must be accessible to individuals with sensory impairments. 9 units will be accessible to individuals with physical/mobility impairment; and 4 units will be accessible to individuals with sensory impairments.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All sources and uses of funds for the acquisition phase of the Project are set forth in **Exhibit B**. The Uses Statement shall specify by line item the source of funds for each such line item. Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Exhibit C**.
- c. The County represents and warrants to the Owner that the HOME Funds subject to this Agreement were issued to the County prior to August 1, 2024.

6. MATCH REQUIREMENT

The Owner certifies that it will provide a match for the HOME funds, in an amount equal to or greater than 25% of the HOME funds, from eligible non-federal sources as allowed by 24 CFR 92.218 through 92.222. **Exhibit D** documents the project-related eligible sources of matching contributions.

7. HOME REGULATIONS

The Owner agrees to comply with all applicable HOME Regulations and all other applicable federal regulations, which are hereby incorporated by this reference herein, and with the other requirements of the Loan Documents. The County acknowledges and agrees that the Project's affordability requirements, and the provision of services to residents therein, satisfy the HOME Regulations with respect to the provision of housing and services to target populations.

8. ENVIRONMENTAL REVIEW (24 CFR 92.352)

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973, as amended from time to time.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY (24 CFR 92.252)

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. This shall be 15 years for all new HOME Units**, without regard to the term of the loan or the transfer of ownership, except as noted in Subsection (d), below. The Initial Period of Affordability begins on the Project Completion Date entered into HUD IDIS.
- b. The **Extended Period of Affordability**, begins at the end of the Initial Period of Affordability and continues for an additional 40 years or until such time as the loan is deemed paid in full.
- c. The Period of Affordability includes both the Initial and the Extended Periods of Affordability, for a total Period of Affordability of 55 years.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability shall be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the Owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former Owner or any partner or those with whom the former Owner has or had family or business ties, obtains an ownership interest in the Project or the Property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES (24 CFR 92.252))

- a. Prior to occupancy of new units, Owner shall provide to County documentation to demonstrate compliance with program requirements on unit designation, HOME rents, tenant selection, and lease provisions including:
 - i. HOME tenant lease;
 - ii. Written tenant selection criteria
 - iii. Any waiting list preferences
 - iv. Initial HOME assisted designated units and sizes
 - v. HOME rent levels and utility costs for each HOME tenant
 - vi. Identification by unit number of each HOME-assisted unit no later than the time of initial occupancy (listed on Rental Completion HUD form 40097).

County staff will review and determine that HOME Program requirements are met before assisted units are occupied. County will confirm with Owner that HOME Program requirements are satisfied.

- b. **Eligible Beneficiaries:** HOME Units shall be restricted to eligible individuals and families that meet one of the “qualifying populations” defined in the HOME ARP CPD 21-10-Notice (“Notice”), attached hereto as Exhibit J.¹
- c. **Household Income:** Owner shall apply the following income requirements to determining eligibility for HOME units:
 - i. **Qualifying Households:** At initial occupancy and each subsequent year during the Period of Affordability, the Owner must use the definition of annual income at 24 CFR 5.609 and the process described in the Notice to determine the household’s contribution to rent.
 - ii. **Low-Income Households:** The Owner must use the definition of annual income at 24 CFR 5.609 and the process described in the Notice to examine the household’s income at initial occupancy and each subsequent year during the Period of Affordability to determine the household’s ongoing income eligibility and applicable contribution to rent.
- d. **Tenant Contribution to Rent:** A qualifying household may not contribute to rent more than is affordable based on the Owner’s determination of the household’s income.
- e. **Rent Limitations:** Subject in each such case to the exceptions applicable to the HOME ARP program as set forth on **Exhibit E** to the Loan Agreement, the Owner must comply with the rent limitations for units restricted to qualifying households and units restricted for low-income households set forth in Notice, which limitations include, but are not limited to, the following:
 - i. **Units Restricted for Occupancy by Qualifying Households:** The HOME Unit rent may not exceed 30 percent of the adjusted income of a household whose annual income is equal to or less than 50 percent of the median income for the area, as determined by HUD.
 - ii. **Units Restricted for Occupancy by Low-Income Households:** HOME Unit rental units restricted for low-income households must comply with the rent limitations at 24 CFR 92.252(a).
- f. **Additional HOME Unit limitations.** If applicable, the Owner shall comply with the following additional terms and conditions:
 - i. **Federal/State Project-Based Rental Subsidy:** A HOME Unit that receives Federal or state project-based rental subsidy may charge the rent allowable under the rental subsidy program.
 - ii. **Single Room Occupancy Units (SRO):** If an SRO unit has both sanitary and food preparation facilities, the maximum HOME Unit rent is based on the zero-bedroom fair market rent. If the SRO unit only has sanitary facilities, the maximum HOME Unit rent is based on 75 percent of the zero-bedroom fair market rent.
- g. **Changes in Income and Over Income Households:** Owner must take action to address over income households occupying HOME Units as follows:
 - i. **Qualifying Households:** A qualifying household whose annual income at the time of recertification is above 50 percent of median income for the area but below 80 percent of median income for the area must pay the rent specified in 24 CFR 92.252(a).
 - ii. **Low-Income Households:** A low-income household whose income is above 80 percent of the median income for the area must pay rent that complies with 24 CFR 92.252(i)(2).
- h. **Certification and Recertification of Tenant Income:** Owner must certify each tenant’s household income, and must recertify such income annually in accordance with HOME regulations.

- i. The maximum monthly allowances for utilities and services, excluding telephone, are attached hereto as **Exhibit E**. These maximum monthly allowances are updated annually, and Owner is responsible for contacting County to ensure compliance with the maximum monthly allowance amounts.
- j. Procedures for any rent increases for HOME units: Each year that HUD updates the HOME ARP rent limits, County will send these updated HOME ARP rent limits to the Owner. Owner will provide the County with information on rents and occupancy of HOME-assisted units to demonstrate compliance during the annual re-certification process that includes a HOME RENTAL PROJECT COMPLIANCE REPORT which lists the HOME units and rent amounts. The County will contact the OWNER during or after the annual recertification process to approve or disapprove any HOME rent levels.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS (24 CFR 92.253)

- a. Owner shall adopt written tenant selection policies and criteria, which must be pre-approved by the County. The criteria must: (i) be consistent with the purpose of providing housing for very-low-income and low-income households, (ii) be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, (iii) provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and (iv) give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. Owner shall comply with all terms and conditions of 24 CFR 92.253, regardless of whether specified herein.
- d. In compliance with 24 CFR 92.253(d), neither the Owner nor General Partner may discriminate against rental assistance subsidy holders.
- e. Tenant leases may not contain any of the following provisions:
 - i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner;
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties;
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act;
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant;
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease; or
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may, however, be obligated to pay costs and attorney fees if the tenant loses.
 - viii. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered.
- f. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must serve written notice on the tenant specifying the grounds for the action at least 30 days before the termination of the tenancy.

- g. The Owner must ensure that each household occupying a HOME unit has an executed lease that complies with the tenant protection requirements set forth in the Notice.

12. Labor (24 CFR 92.354)

If the Project involves construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds, Owner shall comply with the Davis–Bacon Act (40 U.S.C. 3141) and all regulations related to the same, and shall pay all laborers and mechanics employed in the development of any part of the housing not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis–Bacon Act (40 U.S.C. 3141). Owner shall further comply with the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

Owner shall comply with the Copeland “Anti-Kickback” Act (40 USC 3145), as supplemented by Department of Labor regulations at 29 CFR Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States), which are incorporated by reference into this Agreement. Owner shall include this clause in any contract with a contractor or subcontractor. A breach of the contract clause above may be grounds for termination of this Agreement, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

13. Construction

If the Project involves construction such that it meets the definition of a federally assisted construction contract, the following shall apply:

During performance of this Agreement, Owner agrees as follows:

- a. Owner hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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 setting forth the provisions of this nondiscrimination clause.
- (2) The contractor 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 race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Owner further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Owner agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Owner further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

14. PROPERTY STANDARDS (24 CFR 92.251)

- a. Upon completion, the Project must meet all of the applicable Property Standards in 24 CFR 92.251 for new construction. County staff will periodically inspect the Project during construction and at completion to assure compliance with the Property Standards.

- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

15. INDEMNIFICATION AND INSURANCE

Owner agrees to indemnify, defend and hold harmless the County and its elected officials, officers, agents and employees against all liability, loss and costs arising from actions, suits, claims, or arising out of or related to Owner's acts or omissions in performance of this Agreement. This includes, but is not limited to, any and all claims by HUD for repayment as result of the funds disbursed hereunder being used for an ineligible purpose under the HOME Program, HOME Regulations, or applicable law, or because the Project does not meet requirements of the HOME Program, HOME Regulations, or other applicable law. Owner's indemnification obligations do not apply to claims arising solely out of County's own negligent acts or omissions.

Owner shall maintain all-risk property insurance in the amount of the full replacement value of the Property, commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this Agreement, and again upon request of the County. Owner shall give County no less than 30 days' notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

To the extent of available insurance proceeds, if the Project, or any part thereof, shall be damaged or destroyed, Owner shall diligently undertake to repair or restore the Project to substantially the same condition as existed prior to the event causing damage, with such work commencing no later than 120 days after the damage or 30 days following receipt of the insurance proceeds; provided, however, if repair or restoration of the Property is not practicable, Owner shall not be obligated to repair or restore the Property, and any insurance proceeds up to the amount of the then-outstanding principal balance of the loan evidenced by the Promissory Note shall, subject to the rights of the ground lessor and any senior lender, be paid to the County (and any remaining proceeds shall be paid to Owner).

Article II of the Trust Deed shall control in the event that any part of or interest in the Project is taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation")

16. EVENTS OF DEFAULT

Owner will be in default under this Agreement upon the occurrence of one or more of the following:

- Owner's noncompliance with the term and conditions of the Loan Documents;
- A petition, proceeding, or case is filed by or against Owner under federal or state bankruptcy, insolvency, receivership, or other law;
- Owner's non-payment of judgments within 30 days;
- Owner's suspension of business;
- Liens against the Project are not paid in 60 days;
- Construction is abandoned for more than 15 days for cause not beyond reasonable control of developer;
- Construction is stopped by governmental authority or entitlement withdrawn or suspended;
- A prohibited Transfer of the Property occurs;
- Any representation, warranty or statement made by Owner in this Agreement or in any documents or reports relied upon by County to measure performance under this Agreement is untrue in any material respect when made;
- Owner's noncompliance with the Affordability Requirements at any time during the Period of Affordability;
- Owner's noncompliance with any applicable term and condition set forth in the Notice;
- Owner's default under other secured loans or Owner's default under the Ground Lease Agreement dated on or around October 1, 2024, the occurrence of which permits the ground lessor thereunder to terminate Owner's leasehold interest in the Property;
- Owner's failure to execute the Trust Deed and Declaration of Land Use Restrictive Covenants within 30 days of signing the Loan Documents.

The following shall also be an event of default under the Loan Documents:

- a. Failure to Secure all Funding. The Owner must secure all fund sources identified in **Exhibit B**, as evidenced by a commitment letter or similar agreement, within 12 months from the Effective Date identified in Section 35.
- b. Failure to Meet Full Occupancy Requirement. Within 18 months from the Project Completion Date, the Project must achieve full occupancy. HOME assisted units must be occupied by HOME eligible households.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Agreement.
- d. Failure to complete the Project by the Project Completion Date.

Upon occurrence of an event of default hereunder or under any other Loan Document, County will provide Owner thirty (30) days' written notice of the default with an opportunity to cure. County will provide a copy of any such notice to Owner's limited partner at Red Stone Equity Partners, LLC, 90 Park Avenue, 28th Floor, New York, NY 10016, Attention: General Counsel and President. Owner's limited partner shall have the right, but not the obligation, to cure any default hereunder or under any other Loan Document, and the County will accept or reject such action as curing such default on the same basis as if payment or cure were made directly by Owner.

17. REMEDIES FOR DEFAULT

- a. In the event of occurrence of an event of default, and subject to any applicable cure period, County may pursue any remedy available to it at law, in equity, or under the terms of this Agreement. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed, (iii) in accordance with 2 CFR 200.339, suspend or terminate this Agreement if Owner fails to materially comply with any term of this Agreement, (iv) permit the Agreement to be terminated in whole or in part in accordance with 2 CFR 200.339, (v) seek injunctive relief or specific performance to ensure Owner complies with Affordability Requirements; (vi) require repayment of any HOME Funds spent for an ineligible purpose; (vii) exercise any right and remedy available under the Trust Deed including, but not limited to, foreclosure; and/or (viii) pursue any other remedy available at law, under contract, or in equity including, but not limited to, any additional remedy set forth in 2 CFR 200.339.
- b. The County, and any tenant or applicant who meets the income limitation applicable under 24 CFR Part 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, subject to any applicable cure period, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Agreement in state court.

18. AFFIRMATIVE MARKETING (24 CFR 92.351)

If the Project contains five or more HOME-Assisted Units, the Owner must comply with 24 CFR 92.351 and 24 CFR 92.253, and must implement and follow the adopted Affirmative Marketing Plan of the County, **Exhibit F** (the "Plan"). Owner shall maintain records evidencing compliance with the Plan.

19. MINORITY/WOMEN'S BUSINESS

In accordance with Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), the County has adopted procedures and requirements for HOME projects for the purpose of encouraging the use of minority and women's business enterprises. The Owner certifies that it will follow and implement the adopted procedures and requirements in **Exhibit F**.

20. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These Other Federal

requirements apply to both employment opportunities and the provision of housing and are specified in 24 CFR 5.105(a), (b) and 24 CFR 5.106:

- i. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - ii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iii. Equal Employment Opportunity, Executive Order 11246, as amended;
 - iv. Section 3 of the Housing and Urban Development Act of 1968 as may be amended;
 - v. Section 504 of the Rehabilitation Act of 1973 as may be amended;
 - vi. The Fair Housing Act of 1988 as may be amended (42 U.S.C. 3601-3620);
 - vii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - viii. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101);
 - ix. Americans with Disabilities Act of 1990 as may be amended (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225); and
 - x. Equal Access in accordance with the individual's gender identity
- b. Disclosure requirements. The disclosure requirements and prohibitions of 31 U.S.C. 1352 on limitations of influence and implementing regulations at 24 CFR Part 87 on lobbying; and the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3531 et seq.).
- c. Owner shall maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

21. CHDO Designation: Not Applicable for this Project.

22. DISBURSEMENT OF FUNDS

- a. County will disburse HOME funds when the following conditions are satisfied:
 - i. All the Loan Documents are signed;
 - ii. The Trust Deed and Declaration of Land Use Restrictive Covenants are signed and recorded; and
 - iii. The Owner has provided the County with the most recently available documentation that all sources of financing for the Project are committed or in the process of being committed.
- b. Draw Request
 - i. Owner agrees to complete and return a new vendor packet to set up payment location. This will be provided by the County, once the Loan Documents have been signed.
 - ii. Owner agrees to request funds under this Agreement only when they are needed for payment by Owner of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
 - iii. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
 - iv. Draw Documentation: Owner shall initiate each request for a disbursement of HOME funds by delivering the following documentation to the County, with a copy to Umpqua Bank, as senior lender. Completed **Exhibit H:** HOME Disbursement Request Forms must be accompanied by detailed source documentation for actual expenses that reflected on payment request section of Disbursement Request Form.
 - v. Review of Draw Requests by County. The County will review each HOME disbursement Request Form packet that will be funded in whole or in part with HOME dollars. In the event that the County has any objection to any such draw request, County will provided notice via email to Owner within eight (8) business days after the date on which the County received the draw

documentation with respect to such draw request and shall specify in detail the basis for each of the objections and requirements for correction of each such objection.

- c. Other Submittals and Approvals
 - i. Cost certification audit (this item should be submitted within 30 days of completion of construction and lease up, and is required to receive IRS Form 8609)
 - ii. Annual operating budget 60 days prior to beginning of the fiscal year for the Project
 - iii. Replacement reserve withdrawals within 30 days of such withdrawals.
 - iv. Operating reserve withdrawals within 30 days of such withdrawals.
 - v. Annual project financial statements/audit within 90 days of the end of the Project's fiscal year
 - vi. Owner financial statements/audit, within 90 days of the end of their fiscal year (June 1st to July 30th).
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Exhibit G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

23. CONTRACTOR DEBARMENT AND SUSPENSION

In order to comply with the requirements of 2 CFR 2424, the Owner must obtain a certification guaranteeing that no participants in lower tier covered transactions, having to do with the Project financed in whole or in part by the HOME Funds, are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in federal projects.

24. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, applies to:

- Projects for which HUD's share of the project cost exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share of project costs exceeds \$200,000 and the contract or subcontract exceeds \$100,000.

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the Project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the Project area.

25. LEAD BASED PAINT AND HAZARDOUS MATERIALS (24 CFR 92.355)

- a. For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner shall comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq.) as amended requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978. **This part is not applicable to new construction.**
- b. For purposes of this Section 25, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992. For the purposes of this Section 23, "Hazardous Substance" means any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under any Environmental Law.
- c. If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require the Owner to obtain or may itself obtain,

at Owner's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Owner shall promptly provide to County a complete copy of any environmental assessment obtained by Owner.

- d. In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Owner shall, within 30 days after written demand by County for Owner's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Owner including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Owner shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- e. Owner shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against, any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Owner's warranties in this Section 25, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines.
- f. To the best of Owner's knowledge, Owner represents and warrants to County that:
 - i. Neither the Property nor Owner is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - ii. Owner has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained to construct or use the Improvements.
 - iii. To the best of Owner's knowledge, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- g. All representations, warranties, and covenants in this Section 25 shall survive the satisfaction of the Obligations, the reconveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

26. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT (24 CFR 92.353)

In accordance with the County HCD Anti-displacement Policy and Relocation Assistance Plan, the Owner shall comply with all the regulations and laws regarding displacement, relocation, acquisition and replacement of housing, including those contained in 24 CFR 92.353, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC §4601-4655), and the Notice.

27. VIOLENCE AGAINST WOMEN ACT (VAWA) REQUIREMENTS (24 CFR 92.359)

Owner shall comply with all requirements of the Violence Against Women Act (VAWA) set forth in 24 CFR Part 5, Subpart L, and all other requirements set forth in 24 CFR 92.359. VAWA notice and certification form is located in **Exhibit I**.

28. CONFLICT OF INTEREST (24 CFR 92.356)

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no covered person, as defined in 24 CFR 92.356(c), may engage in any activity prohibited by 24 CFR 92.356. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

29. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program pursuant to 24 CFR 5.109, may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

30. RECORDS

- a. Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review. Owner must further retain all required records set forth in the Notice.
- b. Owner must annually provide tenant eligibility records to the County.
- c. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Owner shall maintain records pertaining to each tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the Agreement terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- d. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Owner must assist the County by serving notice to affected tenants, as required under Oregon Law.

31. MONITORING

- a. Within 60 days of the Project completion Date, as defined in 24 CFR 92.2, the County staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.
- b. The County will monitor PROJECT performance to ensure compliance with the requirements of this Agreement. During the initial Period of Affordability, the monitoring will be conducted in accordance with applicable law including, but not limited to, 24 CFR 92.251 and 24 CFR 92.504(d), and will include on-site inspections and a review of all records required in Section 30 above.

32. WAIVER

Failure by either party to enforce any right under this Agreement shall not be deemed to be a waiver of that right or of any other right.

33. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the heirs, successors, and permitted assigns of each party, provided that written consent, if required, is obtained from the other party.

34. AUTHORITY TO SIGN

Each party signing this Agreement, and the other Loan Documents, represents that it has full power and authority to enter into this Agreement and all other documents contemplated thereby, and the persons signing this Agreement for such party, if such party is not an individual, have full power and authority to sign for such party and to bind it to this Agreement and the Loan Documents. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority, or other party is required.

35. EFFECTIVE DATE AND TERM

The Effective Date of this Agreement is the date it is signed by all parties. This Agreement is effective through the Period of Affordability required under Section 9 of this Agreement.

36. ADDITIONAL TERMS AND CONDITIONS

- a. Owners shall comply with all applicable terms and conditions set forth in the Notice and whether or not specifically referenced herein. All required terms and conditions set forth in the Notice and applicable to the Agreement are hereby incorporated by this reference herein.
- b. Program income: "program income," as defined under 24 CFR 92.2, shall be remitted to the County.
- c. Owner must comply with all applicable uniform administrative requirements as described in 24 CFR 92.505 or other applicable law.
- d. Owner shall carry out each activity under this Agreement in compliance with all applicable Federal laws and regulations described in subpart H of 24 CFR Part 92.
- e. Reversion of assets: upon expiration of this Agreement, Owner must transfer to County any HOME funds on hand at the time of expiration and any accounts receivable attributable to use of HOME funds.
- f. Repayment: any repayment or recapture of HOME funds must be remitted to the County.
- g. Fees: Owner is prohibited from charging fees that are not customarily charged in rental housing such as laundry room access fees, and other fees. However, Owner may charge reasonable application fees to prospective tenants may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary. If this project is a homeownership project, developers are prohibited from charging servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.
- h. Owner shall comply with the project requirements of 24 CFR Part 92, Subpart F.
- i. Owner shall comply with all other applicable requirements and restrictions set forth in 24 CFR Part 92, whether or not specifically described herein.

37. COMPLIANCE AND FURTHER ASSURANCES. Owner shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. Owner agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to perform under this Agreement and the other Loan Documents including, but not limited to, executing all additional documentation necessary for County to comply with applicable Federal requirements. All terms and conditions required under applicable federal law regarding the HOME Program and HOME Regulations are hereby incorporated by this reference herein.

- 38. GOVERNING LAW.** This Agreement, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Owner that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Owner, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 39. SEVERABILITY.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 40. TIME IS OF THE ESSENCE.** Owner agrees that time is of the essence in the performance this Agreement.
- 41. WAIVER.** The failure of County to enforce any provision of this Agreement shall not constitute a waiver by County of that or any other provision.
- 42. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- 43. LIMITATION OF LIABILITIES.** This Agreement and the other Loan Documents are expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and are contingent upon funds being appropriated therefor. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 44. MERGER.** THIS AGREEMENT AND THE LOAN DOCUMENTS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN OR THEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. OWNER, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, AND OWNER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
- 45. NOTICES.** All notices and demands in connection with this Agreement shall be in writing and shall be given in accordance with Section 7.03 of Trust Deed

OWNER:
HILLSIDE PARK BUILDINGS A&B
HOUSING PARTNERS LIMITED
PARTNERSHIP
44 Montgomery, 13th Floor
San Francisco, CA 94104

CLACKAMAS COUNTY
Chair: Tootie Smith
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Mark Shull
Commissioner: Ben West

By: Related/Hillside Park Buildings A&B
Development Co., LLC,
a California limited liability company
EIN: 92-3895819

Title: General Partner

By

Name: Ann Silverberg
Title: President

DRAFT

(signature)

By:
Its:

Date

Date

Exhibit A. Legal Description

PROPERTY DESCRIPTION – HILLSIDE PARK PHASE I

Parcel 1, PARTITION PLAT 2024-031, in the City of Milwaukie, County of Clackamas and State of Oregon, recorded June 14, 2024 as Document No. 2024-020995.

DRAFT

Exhibit B. Sources and Uses of Funds

Sources of funding for project: as of pro-forma data provided on 08/15/2024

[Note A&TT: confirm at closing]

Source of Funding	Amount	Use of Funds summary (list proforma line item details for use and timing)
HOME	\$ 3,102,082	Development & Construction Costs
4% LIHTC (Equity)	\$26,354,180	Development & Construction Costs
Permanent Bank Loan	\$17,137,000	Development & Construction Costs
Metro Bond Funds (HACC)	\$23,509,307	Development & Construction Costs
LIFT (OHCS)	\$ 6,653,696	Development & Construction Costs
Deferred Development fee	\$ 6,580,141	Development & Construction Costs
Total Proposed Development Cost	\$83,336,406	

Uses of HOME funds: Eligible expenses include acquisition, construction, engineering and architectural services and other related activities.

Exhibit C. Schedule of Tasks

As of date: 5/15/2024

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed	9/12/2022		
Site Acquisition	N/A		
Zoning Approval	11/16/2021		
Site Analysis	12/6/2023		
Building Permits & Fees	7/1/2024		
Off-site Improvements	9/12/2022		
PRE-DEVELOPMENT			
Plans Completed (permit)	2/1/2024		
Final Bids	5/20/2024		
Contractor Selected	5/1/2022		
FINANCING			
CONSTRUCTION LOAN:			
Proposal	1/29/2024		
Firm Commitment (submittal)	6/20/2024		
Closing/Funding of Loan	10/23/2024		
PERMANENT LOAN			
Proposal	1/29/2024		
Firm Commitment	6/20/2024		
Closing/funding of Loan	10/23/2024		
DEVELOPMENT			
Syndication Agreement	10/23/2024		
Construction Begins	10/24/2024		
Construction Completed	8/15/2026		
Certificate Of Occupancy	8/15/2026		
MARKETING			
Lease up begins	5/1/2026		
Lease up completed	7/1/2027		
Absorption (units per month)	15		

Exhibit E. HOME Affordability Requirements
(Not applicable to HOME ARP Projects)

[Note A&TT: if these rent/income limits aren't applicable, please provide the limits that are applicable]

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver-Hillsboro, OR-WA MSA
Effective: June 1, 2024

	Low HOME	High HOME
0 Bedroom	\$1,032	\$1,323
1 Bedroom	\$1,106	\$1,419
2 Bedroom	\$1,327	\$1,704
3 Bedroom	\$1,534	\$1,960

Notes:

- Utility Allowance: The gross rents must be reduced if the tenant pays for any utilities besides telephone. The utility allowances prepared by the County Housing Authority shall be used when adjusting rents. Utility adjustments may be proposed by Owner for the Project, but must be approved by the County.
- Residents will pay their own electricity. A utility allowance will cover electric heating, lighting and cooking. Water and sewer will be paid by the owner, along with garbage and natural gas to heat the hot water. The utility allowances are \$69 for a 0-bedroom, \$76 for a 1 bedroom; \$96 for a 2 bedroom, and \$115 for a 3 bedroom, per month.
- Throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective: May 1, 2024

HOUSEHOLD SIZE	30% OF MEDIAN	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$ 24,800	\$ 41,300	\$ 49,650	\$ 66,100
2 Person	\$ 28,350	\$ 47,200	\$ 56,640	\$ 75,550
3 Person	\$ 31,900	\$ 53,100	\$ 63,720	\$ 85,000
4 Person	\$ 34,500	\$ 59,000	\$ 70,800	\$ 94,400
5 Person	\$ 38,250	\$ 63,750	\$ 76,500	\$ 102,000
6 Person	\$ 41,100	\$ 68,450	\$ 82,140	\$ 109,550
7 Person	\$ 43,900	\$ 73,200	\$ 87,840	\$ 117,100
8 Person	\$ 46,750	\$ 77,900	\$ 93,480	\$ 124,650

Note: This schedule will be updated from time to time when adjustments are provided by HUD.

Exhibit F.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owner to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project Owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the Owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, County will assess the efforts of Owner through the use of certifications of compliance by the Owner or Property Manager. Thereafter, County will annually assess the efforts and the success of the affirmative marketing actions by the project Manager.

In the event the Owner fails to comply with the affirmative marketing requirements, County will require corrective actions which include, but are not limited to, requiring the Owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. County may require other corrective actions as necessary.

**OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED
BUSINESSES ENTERPRISES (MBE/WBE)**

Clackamas County Housing and Community Development Division (HCD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME project Owner.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that Owners of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, HCD will:
 - ◆ Encourage project sponsors, developers and HOME Project Owners to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. HCD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and HOME Project Owners to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

Exhibit G.

1. **Monthly Progress Reports.**

During the construction phase, the Owner or its representative must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The Owner or its representative submits all of the following documentation:
 - i. Documentation that relocation (If any) was conducted in accordance with Section 24 of this Agreement;
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(3);
 - iii. Certificate of Occupancy;
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget;
 - v. Documentation for each source of match;
 - vi. Contractor information:
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002);
 - (e) Minority- and Woman-Owned Business Enterprise Activity (form HUD-40107); and
 - (f) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease;
 - ix. Copy of the written tenant selection criteria; and
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted within 120 days of the request for final disbursement.

Exhibit I.

VAWA NOTIFICATION AND CERTIFICATION

Hillside Park Building AB or subsequent Owner (s)

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that **the HOME Program** is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under **the HOME Program** you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under **the HOME Program**, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or

¹ Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

occupancy rights under **the HOME Program** solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

HP may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If HP chooses to remove the abuser or perpetrator, HP may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, HP must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, HP must follow Federal, State, and local eviction procedures. In order to divide a lease, HP may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, HP may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, HP may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- (1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence,

dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.

(2) You expressly request the emergency transfer. Your housing provider may choose to require that you submit a form, or may accept another written or oral request.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

HP will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

HP's emergency transfer plan provides further information on emergency transfers, and HP must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

HP can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from HP must be in writing, and HP must give you at least 14 business days (Saturdays, Sundays, and Federal holidays do not count) from the day you receive the request to provide the documentation. HP may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to HP as documentation. It is your choice which of the following to submit if HP asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by HP with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, “professional”) from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that HP has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, HP does not have to provide you with the protections contained in this notice.

If HP receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), HP has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, HP does not have to provide you with the protections contained in this notice.

Confidentiality

HP must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

HP must not allow any individual administering assistance or other services on behalf of HP (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

HP must not enter your information into any shared database or disclose your information to any other entity or individual. HP, however, may disclose the information provided if:

- You give written permission to HP to release the information on a time limited basis.
- HP needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires HP or your landlord to release the information.

VAWA does not limit HP's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, HP cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if HP can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

- 1) Would occur within an immediate time frame, and
- 2) Could result in death or serious bodily harm to other tenants or those who work on the property.

If HP can demonstrate the above, HP should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

VAWA does not replace any Federal, State, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **[insert contact information for any intermediary, if applicable]** or **[insert HUD field office]**.

For Additional Information

You may view a copy of HUD's final VAWA rule at

https://www.hud.gov/program_offices/housing/mfh/violence_against_women_act

Additionally, HP must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **contact information able to answer questions on VAWA]**.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact

<https://www.womenslaw.org/laws/or/housing-laws>

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact [24-hour Crisis Line/Línea de Crisis:888-654-2288](https://www.womenslaw.org/laws/or/housing-laws)

Victims of stalking seeking help may contact [24-hour Crisis Line/Línea de Crisis:888-654-2288](https://www.womenslaw.org/laws/or/housing-laws)

Attachment: Certification form HUD-5382:

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

10. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

EXHIBIT J
HOME ARP CPD NOTICE 21-10

DRAFT



Special Attention of:

CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

Notice: CPD-21-10

Issued: September 13, 2021

Expires: **This NOTICE is effective until it is amended, superseded, or rescinded**

Cross Reference: 24 CFR Part 92

Subject: Requirements for the Use of Funds in the HOME-American Rescue Plan Program

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Appendix – Waivers and Alternative Requirements for HOME Investment Partnerships Program – American Rescue Plan (HOME-ARP)

I. PURPOSE

This Notice establishes requirements for funds appropriated under section 3205 of the American Rescue Plan Act of 2021 (P.L. 117-2) (“**ARP**”) for the HOME Investment Partnerships Program (HOME) to provide homelessness assistance and supportive services.

II. BACKGROUND

On March 11, 2021, President Biden signed ARP into law, which provides over \$1.9 trillion in relief to address the continued impact of the COVID-19 pandemic on the economy, public health, State and local governments, individuals, and businesses.

To address the need for homelessness assistance and supportive services, Congress appropriated \$5 billion in ARP funds to be administered through HOME to perform four activities that must primarily benefit qualifying individuals and families who are homeless, at risk of homelessness, or in other vulnerable populations. These activities include: (1) development and support of affordable housing, (2) tenant-based rental assistance (TBRA), (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter units. The program described in this notice for the use of the \$5 billion in ARP funds is the **HOME-American Rescue Plan** or “**HOME-ARP**.”

ARP defines qualifying individuals or families as those that are (1) homeless, as defined in section 103(a) of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11302(a)) (“**McKinney-Vento**”); (2) at risk of homelessness, as defined in section 401 of McKinney-Vento; (3) fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; (4) part of other populations where providing supportive services or assistance would prevent a family’s homelessness or would serve those with the greatest risk of housing instability; or (5) veterans and families that include a veteran family member that meet the criteria in one of (1)-(4) above.

ARP authorized HUD to allocate HOME-ARP funds to states, units of general local government, insular areas, and consortia of units of general local government that qualified for an allocation of HOME funds in Fiscal Year (FY) 2021, pursuant to section 217 of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (42 U.S.C. 12701 et seq.) (“**NAHA**”). On April 8, 2021, HUD allocated HOME-ARP funds to 651 grantees using the HOME formula established at [24 CFR 92.50](#) and [92.60](#). The HOME-ARP allocation amounts can be found [here](#).

III. ESTABLISHMENT OF HOME-ARP REQUIREMENTS

ARP provides funds for homelessness and supportive services assistance under the HOME statute of Title II of NAHA (42 U.S.C. 12721 et seq.) and authorizes the Secretary of HUD to waive or specify alternative requirements for any provision of NAHA or regulation for the administration of the HOME-ARP program, except requirements related to fair housing, civil rights, nondiscrimination, labor standards, and the environment, upon a finding that the waiver

or alternative requirement is necessary to expedite or facilitate the use of HOME-ARP funds. Pursuant to ARP, the per-unit cost limits (42 U.S.C. 12742(e)), commitment requirements (42 U.S.C. 12748(g)), matching requirements (42 U.S.C. 12750), and set-aside for housing developed, sponsored, or owned by community housing development organizations (CHDOs) (42 U.S.C. 12771) in NAHA do not apply to HOME-ARP funds.

This Notice describes the requirements applicable to a participating jurisdiction's (PJ's) use of HOME-ARP funds. Consolidated plan requirements for HOME are in title I of NAHA and [24 CFR part 91](#). HOME program regulations are in [24 CFR part 92](#). Except as described in ARP and this Notice, HOME statutory and regulatory provisions apply to a PJ's use of HOME-ARP funds. Sections I-IX of this Notice describe the HOME-ARP requirements imposed on a PJ for the use of HOME-ARP funds to assist the qualifying populations through HOME-ARP projects or activities. The Appendix describes the waivers and alternative requirements imposed on PJs for the use of HOME-ARP funds and is included in any reference to "this Notice." Specific citations in the Notice shall mean the statute or regulation cited, as may be revised by the Appendix to this Notice. PJs and insular areas must comply with all applicable statutory, regulatory, and alternative requirements, as described in this Notice, including the Appendix.

IV. QUALIFYING POPULATIONS, TARGETING AND PREFERENCES

ARP requires that funds be used to primarily benefit individuals and families in the following specified "qualifying populations." Any individual or family who meets the criteria for these populations is eligible to receive assistance or services funded through HOME-ARP without meeting additional criteria (e.g., additional income criteria). All income calculations to meet income criteria of a qualifying population or required for income determinations in HOME-ARP eligible activities must use the annual income definition in [24 CFR 5.609](#) in accordance with the requirements of [24 CFR 92.203\(a\)\(1\)](#).

A. Qualifying Populations

1. **Homeless**, as defined in [24 CFR 91.5](#) *Homeless* (1), (2), or (3):

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities, chronic physical health or mental health conditions, substance addiction, histories of domestic violence or childhood abuse (including neglect), the presence of a child or youth with a disability, or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment;

2. **At risk of Homelessness**, as defined in [24 CFR 91.5](#) *At risk of homelessness*:

(1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as “homeless” under this section, but qualifies as “homeless” under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(l) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(l)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as “homeless” under this section but qualifies as “homeless” under section 725(2) of the McKinney-Vento Homeless Assistance Act (42

U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

3. Fleeing, or Attempting to Flee, Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking, as defined by HUD.

For HOME-ARP, this population includes any individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking. This population includes cases where an individual or family reasonably believes that there is a threat of imminent harm from further violence due to dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return or remain within the same dwelling unit. In the case of sexual assault, this also includes cases where an individual reasonably believes there is a threat of imminent harm from further violence if the individual remains within the same dwelling unit that the individual is currently occupying, or the sexual assault occurred on the premises during the 90-day period preceding the date of the request for transfer.

Domestic violence, which is defined in [24 CFR 5.2003](#) includes felony or misdemeanor crimes of violence committed by:

- 1) A current or former spouse or intimate partner of the victim (the term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship);
- 2) A person with whom the victim shares a child in common;
- 3) A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- 4) A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving HOME-ARP funds; or
- 5) Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating violence which is defined in [24 CFR 5.2003](#) means violence committed by a person:

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. The length of the relationship;
 - b. The type of relationship; and
 - c. The frequency of interaction between the persons involved in the relationship.

Sexual assault which is defined in [24 CFR 5.2003](#) means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent.

Stalking which is defined in [24 CFR 5.2003](#) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) Fear for the person's individual safety or the safety of others; or
- 2) Suffer substantial emotional distress.

Human Trafficking includes both sex and labor trafficking, as outlined in the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7102). These are defined as:

- 1) *Sex trafficking* means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- 2) *Labor trafficking means* the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

4. **Other Populations** where providing supportive services or assistance under section 212(a) of NAHA ([42 U.S.C. 12742\(a\)](#)) would prevent the family's homelessness or would serve those with the greatest risk of housing instability. HUD defines these populations as individuals and households who do not qualify under any of the populations above but meet one of the following criteria:

(1) **Other Families Requiring Services or Housing Assistance to Prevent Homelessness** is defined as households (i.e., individuals and families) who have previously been qualified as "homeless" as defined in [24 CFR 91.5](#), are currently housed due to temporary or emergency assistance, including financial assistance, services, temporary rental assistance or some type of other assistance to allow the household to be housed, and who need additional housing assistance or supportive services to avoid a return to homelessness.

(2) **At Greatest Risk of Housing Instability** is defined as household who meets either paragraph (i) or (ii) below:

- (i) has annual income that is less than or equal to 30% of the area median income, as determined by HUD and is experiencing severe cost burden (i.e., is paying more than 50% of monthly household income toward housing costs);

- (ii) has annual income that is less than or equal to 50% of the area median income, as determined by HUD, **AND** meets one of the following conditions from paragraph (iii) of the “At risk of homelessness” definition established at [24 CFR 91.5](#):
- (A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;
 - (B) Is living in the home of another because of economic hardship;
 - (C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;
 - (D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals;
 - (E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;
 - (F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or
 - (G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan

Veterans and Families that include a Veteran Family Member that meet the criteria for one of the qualifying populations described above are eligible to receive HOME-ARP assistance.

B. Use of Funds to Benefit Qualifying Populations

ARP states that funds must be used to primarily benefit the qualifying populations through the four eligible activities: (1) TBRA, (2) development and support of affordable housing, (3) provision of supportive services; and (4) acquisition and development of non-congregate shelter (NCS) units. Recognizing the urgent needs of individuals and families in qualifying populations, HUD is requiring that:

- 100% of HOME-ARP funds used by a PJ for TBRA, supportive services, and acquisition and development of non-congregate shelter units must benefit individuals and families in qualifying populations. Individuals and families in qualifying populations may be assisted by one or more of the HOME-ARP eligible activities, consistent with the requirements in this Notice.
- Not less than 70 percent of affordable rental housing units acquired, rehabilitated, or constructed with HOME-ARP funds by a PJ must be occupied by households in the qualifying populations. Units that are not restricted to occupancy by qualifying populations are subject to income targeting and rent requirements established under the

HOME-ARP Rental Program rules and are only permitted in projects with rental units restricted for occupancy by qualifying populations.

HUD recognizes that, because many households in the qualifying populations are unable to pay rents sufficient to cover unit operating costs, PJs and project owners should attempt to obtain Federal or state project-based rental subsidies, if available. Since project-based rental subsidies can be difficult to secure, additional flexibility may be necessary to structure and underwrite projects so that they remain both affordable and financially viable. HUD is providing PJs with additional flexibilities in [Section VI.B.](#) to structure and underwrite HOME-ARP rental projects so they remain financially viable during the minimum compliance period. One of these flexibilities is permitting up to 30 percent of HOME-ARP rental housing units funded by a PJ to be occupied by low-income households. PJs are encouraged to use this flexibility only when it is required to facilitate development of a HOME-ARP rental project.

PJs must determine and document that households meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not restricted to these populations, that households are low-income.

C. Preferences Among Qualifying Populations, Referral Methods, and Subpopulations

1. Preferences

ARP establishes the qualifying populations that are eligible for assistance with HOME-ARP funds. A PJ may establish reasonable preferences among the qualifying populations to prioritize applicants for HOME-ARP projects or activities based on the PJ's needs and priorities, as described in its HOME-ARP allocation plan. For example, a PJ may set a preference among qualifying individuals and families for a HOME-ARP non-congregate shelter for individuals and families who are homeless; fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking; and veterans and families with a veteran family member that meet the criteria of one of these prior qualifying populations, consistent with its HOME-ARP allocation plan.

The PJ must comply with all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in [24 CFR 5.105\(a\)](#) when applying preferences through its referral methods. Persons who are eligible for a preference must have the opportunity to participate in all HOME-ARP activities of the PJ in which they are eligible under this Notice, including activities that are not separate or different, and cannot be excluded because of any protected characteristics or preferential status.

Targeted assistance: If HOME-ARP funds are used for TBRA, the PJ may establish a preference for individuals with special needs or persons with disabilities among the HOME-ARP qualifying populations. Within the qualifying populations, participation may be limited to persons with a specific disability only, if necessary, to provide effective housing, aid, benefit, or services that would be as effective as those provided to others in accordance with [24 CFR 8.4\(b\)\(1\)\(iv\)](#). The PJ may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) within the qualifying

populations only if the specific category is identified in the PJ's HOME-ARP allocation plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

2. Referral Methods for Projects or Activities

A PJ may use the referral methods described below to administer HOME-ARP assistance to qualifying individuals and families. Regardless of the referral method used by the PJ, HUD holds the PJ responsible for determining and documenting that beneficiaries meet the definition of a qualifying population or, for the portion of HOME-ARP rental units not restricted to qualifying populations, that beneficiaries are low-income.

A PJ may use the coordinated entry or coordinated entry process (CE) of a continuum of care (CoC) for referrals for projects and activities as described below. Under 24 CFR 578.3, a CE is a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals within a defined area. HUD requires each CoC to establish and operate a CE with the goal of increasing the efficiency of local crisis response systems and improving fairness and ease of access to resources, including mainstream resources. A PJ may permit a CoC CE to collect information and documentation required to determine whether an individual or family meets the criteria of a HOME-ARP qualifying population at any point in the coordinated entry process, (i.e., after or concurrently with the assessment and intake processes) as long as that information is not used to rank a person for HOME-ARP assistance other than as specified by the preferences or method of prioritization established by the PJ, in accordance with HOME-ARP requirements. If the PJ uses CE, the PJ cannot require HOME-ARP victim service providers to use the CE but may permit them to do so.

The PJ must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in [24 CFR 5.105\(a\)](#) and any other applicable fair housing and civil rights laws and requirements when using the following referral methods:

i. Use of Expanded CE in HOME-ARP

Under this referral method, a PJ may use a CE established by a CoC operating within its boundaries for one or more projects or activities if the CE accepts all HOME-ARP qualifying populations eligible for those activities or projects, in accordance with the preferences and prioritization, if any, established or approved by the PJ in its HOME-ARP allocation plan and imposed through the PJ's written agreements.

Before using a CoC's CE, PJs should consider whether the CE covers the same service area as the HOME-ARP project or activity that would use that CE. At a minimum, the PJ must establish policies and procedures that describe the relationship of the geographic area(s) served by the project or activity to the geographic area(s) covered by the CoC CE and address how the CE will provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

The PJ must require a project or activity to use CE along with other referral methods (as provided in section ii below) or to use only a project/activity waiting list (as provided in section iii below) if:

1. the CE does not have a sufficient number of qualifying individuals and families to refer to the PJ for the project or activity;
2. the CE does not include all HOME-ARP qualifying populations; or,
3. the CE fails to provide access and implement uniform referral processes in situations where a project's geographic area(s) is broader than the geographic area(s) covered by the CE.

ii. Use of CE with Other Referral Methods

The PJ may use a CoC CE with additional referrals from outside organizations or project-specific waiting lists consistent with HOME-ARP requirements. If using this referral method, the PJ must establish or approve any preferences or prioritization criteria applied by a CoC CE or other referral sources. The PJ may also use a waiting list to receive referrals from a CoC CE and other referral agencies for a project or activity, where a CoC CE or referral agency refers an applicant that is placed on the waiting list for that project or activity in chronological order.

If applicable, a PJ must establish policies and procedures for applying a PJ's established preferences and method of prioritization, if any, when accepting direct referrals from a CoC CE and other referral agencies and must document that such the policies and procedures were followed for each applicant served.

iii. Use of a Project/Activity Waiting List

The PJ may establish a waiting list for each HOME-ARP project or activity. All qualifying individuals or families must have access to apply for placement on the waiting list for an activity or project. Qualifying individuals or families on a waiting list must be accepted in accordance with the PJ's preferences, if any, consistent with this Notice or, if the PJ did not establish preferences, in chronological order, insofar as practicable.

3. Limiting Eligibility to Subpopulations

PJs must follow all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in [24 CFR 5.105\(a\)](#). This includes, but is not limited to, the Fair Housing Act, Title VI of the Civil Rights Act, section 504 of Rehabilitation Act, HUD's Equal Access Rule, and the Americans with Disabilities Act, as applicable.

HOME-ARP rental housing or NCS may be limited to a specific subpopulation of a qualifying population identified in [Section IV.A.](#) of this Notice, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in [24 CFR 5.105](#) (*e.g.*, the housing may be limited to homeless households and at risk of homelessness households,

veterans and their families, victims of domestic violence, dating violence, sexual assault, stalking or human trafficking and their families).

Recipients may limit admission to or provide a preference for HOME-ARP rental housing or NCS to households who need the specialized supportive services that are provided (e.g., domestic violence services). However, no otherwise eligible individuals with disabilities or families including an individual with a disability who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

Consistent with the statutory authority under ARP, HOME-ARP NCS may be converted to permanent housing under the CoC program or used as shelters under the ESG program, when all program and fair housing and nondiscrimination requirements are met. As such, HOME-ARP NCS may need to limit eligibility to households that are homeless and/or at risk of homelessness if the shelter will be converted to permanent housing under the CoC program or used as an emergency shelter in the ESG program.

V. HOME-ARP ALLOCATION PLAN

PJs develop annual action plans as part of their application for HOME funding. To receive its HOME-ARP funds, a PJ must engage in consultation and public participation processes and develop a HOME-ARP allocation plan that meets the requirements established in this section of the Notice and submit it to HUD as a substantial amendment to its Fiscal Year 2021 annual action plan. HUD is using the waiver and alternative requirement authority provided by ARP to establish requirements for the HOME-ARP allocation plan in this Notice. The HOME-ARP allocation plan must describe how the PJ intends to distribute HOME-ARP funds, including how it will use these funds to address the needs of HOME-ARP qualifying populations. A PJ's HOME-ARP allocation plan must include:

- A summary of the consultation process and results of upfront consultation;
- A summary of comments received through the public participation process and a summary of any comments or recommendations not accepted and the reasons why;
- A description of HOME-ARP qualifying populations within the jurisdiction;
- An assessment of unmet needs of each qualifying population;
- An assessment of gaps in housing and shelter inventory, homeless assistance and services, and homelessness prevention service delivery system;
- A summary of the planned use of HOME-ARP funds for eligible activities based on the unmet needs of the qualifying populations;
- An estimate of the number of housing units for qualifying populations the PJ will produce or preserve with its HOME-ARP allocation; and
- A description of any preferences for individuals and families in a particular qualifying population or a segment of a qualifying population.

All the above required elements of the HOME-ARP allocation plan shall be part of the FY 2021 annual action plan for purposes of the HOME-ARP program. Consequently, PJs are not required to amend their consolidated plans.

A. Consultation

Before developing its HOME-ARP allocation plan, a PJ must consult with agencies and service providers whose clientele include the HOME-ARP qualifying populations to identify unmet needs and gaps in housing or service delivery systems. In addition, a PJ should use consultation to determine the HOME-ARP eligible activities currently taking place within its jurisdiction and potential collaborations for administering HOME-ARP. This consultation will provide a basis for the PJ's strategy for distributing HOME-ARP funds for eligible activities to best meet the needs of qualifying populations. At a minimum, a PJ must consult with the CoC(s) serving the jurisdiction's geographic area, homeless and domestic violence service providers, veterans' groups, public housing agencies (PHAs), public agencies that address the needs of the qualifying populations, and public or private organizations that address fair housing, civil rights, and the needs of persons with disabilities. State PJs are not required to consult with every PHA or CoC within the state's boundaries; however, local PJs must consult with all PHAs (including statewide or regional PHAs) and CoCs serving the jurisdiction. In its plan, a PJ must describe its consultation process, list the organizations consulted, and summarize the feedback received from these entities.

B. Public Participation

PJs must provide for and encourage citizen participation in the development of the HOME-ARP allocation plan. Before submitting the HOME-ARP allocation plan to HUD, PJs must provide residents with reasonable notice and an opportunity to comment on the proposed HOME-ARP allocation plan of no less than 15 calendar days. The PJ must follow its adopted requirements for "reasonable notice and an opportunity to comment" for plan amendments in its current citizen participation plan. In addition, PJs must hold at least one public hearing during the development of the HOME-ARP allocation plan prior to submitting the plan to HUD.

For the purposes of HOME-ARP, PJs are required to make the following information available to the public:

- The amount of HOME-ARP funds the PJ will receive.
- The range of activities the PJ may undertake.

A PJ must consider any comments or views of residents received in writing, or orally at a public hearing, when preparing the HOME-ARP allocation plan. In its plan, a PJ must describe its public participation process, including any efforts made to broaden public participation. In its plan, the PJ must also include a summary of comments and recommendations received through the public participation process and any comments or recommendations not accepted and the reasons why.

Throughout the HOME-ARP allocation plan public participation process, the PJ must follow its applicable fair housing and civil rights requirements and procedures for effective communication, accessibility and reasonable accommodation for persons with disabilities and providing meaningful access to participation by limited English proficient (LEP) residents that are in its current citizen participation plan as required by [24 CFR 91.105](#) and [91.115](#).

C. HOME-ARP Allocation Plan Requirements

The HOME-ARP allocation plan must describe the distribution of HOME-ARP funds and the process for soliciting applications and/or selecting eligible projects. The plan must also identify any preferences being established for eligible activities or projects. However, PJs are not required to identify specific projects that will be funded in the HOME-ARP allocation plan.

1. **Needs Assessment and Gaps Analysis:** A PJ must evaluate the size and demographic composition of qualifying populations within its boundaries and assess the unmet needs of those populations. In addition, a PJ must identify any gaps within its current shelter and housing inventory as well as the service delivery system. A PJ should use current data, including point in time count, housing inventory count, or other data available through CoCs, and consultations with service providers to quantify the individuals and families in the qualifying populations and their need for additional housing, shelter, or services. A PJ should identify and consider the current resources available to assist qualifying populations, including congregate and non-congregate shelter units, supportive services, TBRA, and affordable and permanent supportive rental housing. A PJ must consider the housing and service needs of qualifying populations, including but not limited to:
 - Sheltered and unsheltered homeless populations;
 - Those currently housed populations at risk of homelessness;
 - Other families requiring services or housing assistance to prevent homelessness; and
 - Those at greatest risk of housing instability or in unstable housing situations.

A PJ should include data in its HOME-ARP allocation plan that describes the qualifying populations.

In addition, a PJ must include a narrative description that:

- Identifies the characteristics of housing associated with instability and an increased risk of homelessness if the PJ will include such conditions under HUD’s definition of “other populations” as established in [Section IV.A.4.2.ii.G.](#) of this Notice.
 - Identifies the PJ’s priority needs for qualifying populations; and,
 - Explains how the PJ determined the level of need and gaps in its shelter and housing inventory and service delivery systems.
2. **HOME-ARP Activities:** The HOME-ARP allocation plan must describe how a PJ will distribute HOME-ARP funds in accordance with its priority needs. The plan must describe the PJ’s method for soliciting applications for funding and/or selecting developers, service providers, subrecipients and/or contractors and whether the PJ will administer eligible activities directly. If the PJ will provide any portion of its HOME-ARP administrative funds to a subrecipient or contractor prior to HUD’s acceptance of the PJ’s HOME-ARP allocation plan because the subrecipient or contractor is responsible for the administration of the PJ’s entire HOME-ARP grant, the plan must identify the subrecipient or contractor and describe its role and responsibilities in administering all of the PJ’s HOME-ARP program.

PJs must indicate in the HOME-ARP allocation plan the amount of HOME-ARP funding that is planned for each eligible HOME-ARP activity type, including administrative and

planning activities. In addition, a PJ must demonstrate that any planned funding for nonprofit organization operating assistance, as described in [Section VI.F](#), nonprofit capacity building, and administrative costs is within HOME-ARP limits. PJs must also include a narrative description about how the characteristics of its shelter and housing inventory, service delivery system, and the needs identified in the PJ's gap analysis provided a rationale for its plan to fund eligible activities.

3. **HOME-ARP Production Housing Goals:** The HOME-ARP allocation plan must estimate the number of affordable rental housing units for qualifying populations that a PJ will produce or support with its HOME-ARP allocation. The plan must also include a narrative about the specific affordable rental housing production goal that the PJ hopes to achieve and describe how it will address the PJ's priority needs.
4. **Preferences:** The HOME-ARP allocation plan must identify whether the PJ intends to give preference to one or more qualifying populations or a subpopulation within one or more qualifying populations for any eligible activity or project. For example, PJs may include a preference for:
 - homeless individuals and families as defined in the ESG and CoC programs;
 - individuals with special needs or persons with disabilities among qualifying individuals and families;
 - a specific category of qualifying individuals and families (e.g., chronically homeless as defined in [24 CFR 91.5](#)).

PJs are not required to describe specific projects to which the preferences will apply in the HOME-ARP allocation plan. However, a PJ must explain how the use of a preference or method of prioritization will address the unmet need or gap in benefits and services received by individuals and families in the qualifying population or category of qualifying population, consistent with the PJ's needs assessment and gap analysis. The PJ must also describe how it will still address the unmet needs or gaps in benefits and services of the other qualifying populations that are not included in a preference through the use of HOME-ARP funds.

Preferences cannot violate any applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in [24 CFR 5.105\(a\)](#). The PJ must comply with all applicable nondiscrimination and equal opportunity laws and requirements listed in [24 CFR 5.105\(a\)](#) and any other applicable fair housing and civil rights laws and requirements when establishing preferences or methods of prioritization.

5. **HOME-ARP Refinancing Guidelines:** If a PJ intends to use HOME-ARP funds to refinance existing debt secured by multifamily rental housing that is being rehabilitated with HOME-ARP funds, it must state its refinancing guidelines in accordance with [24 CFR 92.206\(b\)\(2\)](#). The guidelines must describe the conditions under which the PJ will refinance existing debt for a HOME-ARP rental project. At a minimum, the guidelines must:
 - Establish a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing to demonstrate that rehabilitation of HOME-ARP rental housing is the primary eligible activity.

- Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long-term needs of the project can be met; and that the feasibility of serving qualified populations for the minimum compliance period can be demonstrated.
 - State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.
 - Specify whether the required compliance period is the minimum 15 years or longer.
 - State that HOME-ARP funds cannot be used to refinance multifamily loans made or insured by any federal program, including CDBG.
6. **Substantial Amendments to the HOME-ARP Allocation Plan:** PJs must make a substantial amendment to the HOME-ARP allocation plan for changes in the method of distributing funds; to carry out an activity not previously described in the plan; or, to change the purpose, scope, location, or beneficiaries of an activity, including new preferences not previously described in the plan. In addition, the requirements for substantial amendments at [24 CFR 92.63](#) apply to the HOME-ARP allocation plan for insular areas. PJs are not required to make a substantial amendment to describe individual projects selected for funding if the eligible activity is included in the PJ’s plan. PJs must make the proposed substantial amendment public and provide for a 15-day public comment period prior to submission. Upon completion of the public comment period, PJs must submit substantial amendments to HUD in accordance with the process for submitting the HOME-ARP allocation plan as described in [Section V.D.](#)
7. **Certifications and SF-424:** PJs must submit the required certifications in accordance with the requirements in this Notice, including the following:
- a. Affirmatively Further Fair Housing;
 - b. Uniform Relocation Assistance and Real Property Acquisition Policies Act and Anti-displacement and Relocation Assistance Plan;
 - c. Anti-Lobbying;
 - d. Authority of Jurisdiction;
 - e. Section 3; and,
 - f. HOME-ARP specific certification that a PJ will only use HOME-ARP funds consistent with ARP and the HOME-ARP Notice for eligible activities and eligible costs.

PJs must also submit the SF-424, SF-424B, and SF-424D with the HOME-ARP allocation plan.

D. Submission and Review Process

1. **HOME-ARP Submission and the eCon Planning Suite:** Upon completion of the HOME-ARP allocation plan, a PJ must submit the HOME-ARP allocation plan to HUD. To submit the HOME-ARP allocation plan, PJs must follow the process in IDIS to make an amendment to the Fiscal Year (FY) 2021 annual action plan. Once the FY 2021 annual action plan is reopened, a PJ must upload a Microsoft Word or PDF version of the plan as an attachment next to the “HOME-ARP allocation plan” option on the AD-26 screen (for

PJs whose FY. 2021 annual action plan is a Year 2-5 annual action plan) or the AD-25 screen (for PJs whose FY 2021 annual action plan is a Year 1 annual action plan that is part of the 2021 consolidated plan), unless instructed by HUD to follow a different submission procedure. PJs are not required to make any other edits to the FY 2021 annual action plan or applicable consolidated plan screens in the eCon Planning Suite. For more information on how to upload an attachment in the eCon Planning Suite, PJs can refer to the [eCon Planning Suite Desk Guide](#).

2. **HUD Review of the HOME-ARP Allocation Plan:** The PJ must submit its HOME-ARP allocation plan to HUD for review in accordance with [24 CFR 91.500](#), as revised by this Notice. Unless instructed otherwise by HUD, the HOME-ARP allocation plan is received by HUD when the SF-424 is submitted electronically, which means that it is uploaded in the eCon Planning Suite as an attachment on AD-25 or AD-26 screen, as applicable, and the action plan status is changed to “Submitted for Review.” HUD will review a PJ’s HOME-ARP allocation plan to determine that it is:
- Substantially complete, and
 - Consistent with the purposes of ARP.

HUD may disapprove a PJ’s HOME-ARP allocation plan in accordance with [24 CFR 91.500\(b\)](#). HUD may also disapprove a HOME-ARP allocation plan or a portion of a plan if HUD determines that the plan is inconsistent with the purposes of ARP or substantially incomplete. A PJ’s plan is inconsistent with ARP if it allocates HOME-ARP funds for uses other than a HOME-ARP eligible activity, as described in this Notice. A PJ’s HOME-ARP allocation plan is substantially incomplete if:

- The PJ does not complete the required public participation or consultation or fails to describe those efforts in the plan;
- The PJ fails to include the required elements outlined in this Notice, including the amount of HOME-ARP funds for each eligible HOME-ARP activity type;
- The PJ fails to identify and describe the responsibilities of the subrecipient or contractor administering all of its HOME-ARP award, if applicable; or,
- HUD rejects the PJ’s HOME-ARP certification as inaccurate.

In accordance with section 105(c) of NAHA (42 U.S.C. 12705(c)) and [24 CFR 91.500\(a\)](#), if the PJ’s HOME-ARP allocation plan is not disapproved within 45 days, then the plan is deemed approved 45 days after HUD receives the plan, and HUD shall notify the PJ that the plan is accepted.

If HUD determines that the plan is substantially incomplete or that the plan is inconsistent with ARP, HUD will notify the PJ in writing with the reasons for disapproval, in accordance with [24 CFR 91.500\(c\)](#). If a PJ’s plan is disapproved, the PJ may revise or resubmit the plan for HUD review within 45 days after the first notification of disapproval. HUD will respond to accept or disapprove the resubmitted plan within 30 days of receiving the revisions or resubmission.

Once HUD notifies a PJ that the plan is accepted, the PJ must make the final HOME-ARP allocation plan available to the public in accordance with the same requirements in the PJ’s

current citizen participation plan that are followed to make the PJ's adopted consolidated plan and substantial amendments available to the public, including the availability of materials in a form accessible to persons with disabilities, and translated materials in different languages to accommodate LEP persons, upon request.

3. **HUD Review of the HOME-ARP Allocation Plan for Insular Areas:** In addition to the standards for review described in [Section V.D.2](#), HUD will review an insular area's HOME-ARP allocation plan in accordance with [24 CFR 92.62](#). If HUD cannot make a determination based on the information submitted that the HOME-ARP allocation plan complies with HOME-ARP allocation plan requirements, or if the eligible activities described in the plan are not within the insular area's management capability as demonstrated by past performance in housing and community development programs, HUD will notify the insular area within 30 days of receipt of the HOME-ARP allocation plan that supporting documentation is needed. The insular area will have a mutually agreed upon period to submit the necessary supporting information or to revise the eligible activities in its HOME-ARP allocation plan.

VI. ELIGIBLE ACTIVITIES

A. Administration and Planning

The PJ may expend, for payment of reasonable administrative and planning costs, up to 15 percent of its HOME-ARP allocation. Reasonable administrative and planning costs for the HOME-ARP program include:

1. Reasonable costs of overall HOME-ARP program management, coordination, monitoring, and evaluation. Such HOME-ARP costs include, but are not limited to, necessary expenditures for the following:
 - a. Salaries, wages, and related costs of the PJ's staff. If a PJ charges costs to this category, the PJ may either include the entire salary and related costs allocable to the HOME-ARP program of each person whose *primary* responsibilities with regard to the HOME-ARP program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administrative assignments. A PJ may only use one of these two methods. Program administration includes:
 - i. Developing systems and schedules for complying with HOME-ARP program requirements, including systems to prevent a duplication of benefits among beneficiaries of HOME-ARP activities;
 - ii. Developing interagency agreements and agreements with entities receiving HOME-ARP funds;
 - iii. Monitoring HOME-ARP activities for progress and compliance with HOME-ARP program requirements;
 - iv. Preparing HOME-ARP reports and other documents related to the HOME-ARP program for submission to HUD;

- v. Coordinating the resolution of audit and monitoring findings on HOME-ARP activities;
 - vi. Evaluating HOME-ARP program results against stated objectives in the HOME-ARP allocation plan, and
 - vii. Managing or supervising persons whose primary responsibilities with regard to the HOME-ARP program include such assignments as those described above.
- b. Travel costs incurred for official business in carrying out the HOME-ARP program.
 - c. Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services.
 - d. Other costs for goods and services required for administering the HOME-ARP program, such as: rental or purchase of equipment, insurance, information systems necessary to track and implement beneficiaries of HOME-ARP activities in accordance with the requirements of this Notice, utilities, office supplies, and rental and maintenance (but not purchase) of office space.
 - e. Costs of administering HOME-ARP TBRA and HOME-ARP supportive services programs.
2. Staff and overhead costs of the PJ directly related to carrying out a HOME-ARP project, in accordance with [24 CFR 92.207\(b\)](#).
 3. The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME-ARP funds.
 4. Activities to affirmatively further fair housing (AFFH) in accordance with 24 CFR 5.151 and the PJ's certification as required under this Notice and 24 CFR 5.152. The AFFH definition in HUD's Interim Final Rule entitled, "Restoring Affirmatively Furthering Fair Housing Definitions and Certifications" (86 FR 30779, June 10, 2021), as amended, at 24 CFR 5.151, and the AFFH certification requirement, at 24 CFR 5.152, available at <https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications>.
 5. Indirect costs may be charged to the HOME-ARP program under a cost allocation plan prepared in accordance with [2 CFR part 200, subpart E](#), as amended.
 6. Preparation of the HOME-ARP allocation plan as required in this Notice. Preparation includes the costs of public hearing, consultations, and publications.
 7. Costs of complying with the applicable Federal requirements in [24 CFR part 92, subpart H](#). Project-specific environmental review costs may be charged as administrative or project costs in accordance with [24 CFR 92.206\(d\)\(8\)](#) and is at the discretion of the PJ.

Funds available under the HOME-ARP appropriation for administration and planning may not be used to pay costs attributable to the regular HOME Program.

PJs may provide all or a portion of its HOME-ARP administrative funds to subrecipients and contractors that are administering activities on behalf of the PJ (e.g., CoC entity, other non-Federal entity), in accordance with the requirements in this Notice. However, from the obligation date of the HOME-ARP funds in the HOME-ARP Grant Agreement and prior to HUD's acceptance of the PJ's HOME-ARP allocation plan, a subrecipient or contractor to the PJ may only incur and expend HOME-ARP funds for eligible administrative and planning costs if the subrecipient or contractor is responsible for the use of the PJ's entire HOME-ARP award and has executed a HOME-ARP written agreement that complies with [24 CFR 92.504](#) and this [Notice](#). The PJ must also identify the subrecipient or contractor administering the PJ's entire HOME-ARP award and describe the subrecipient or contractor's responsibilities in the PJ's HOME-ARP allocation plan.

All costs must comply with the Cost Principles contained in subpart E of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at [2 CFR part 200](#), as amended (Uniform Administrative Requirements).

Once HUD obligates the HOME-ARP funds, as described in [Section VIII.C.2](#) of this Notice, the PJ may incur and expend up to 5 percent of its HOME-ARP allocation on eligible administrative and planning costs, as described in this section and [24 CFR 92.207](#). Before HUD's acceptance of the PJ's HOME-ARP allocation plan, the PJ is only permitted to incur and expend HOME-ARP funds on eligible administrative and planning costs.

If the PJ does not submit a HOME-ARP allocation plan or if the PJ's plan is not accepted within a reasonable period of time, as determined by HUD, all HOME-ARP administrative and planning costs incurred by the PJ will be ineligible costs and any HOME-ARP funds expended by the PJ must be repaid to the PJ's HOME Investment Trust Fund Treasury account, in accordance with guidance issued by HUD. Moreover, if the PJ's HOME-ARP allocation plan does not identify or include a description of the responsibilities of the subrecipient or contractor that is responsible for the PJ's entire HOME-ARP award, if applicable, the administrative and planning costs incurred or expended by the subrecipient or contractor will also be ineligible and any HOME-ARP funds expended by the PJ's subrecipient or contractor must be repaid to the PJ's HOME Investment Trust Fund Treasury account, in accordance with guidance from HUD.

B. HOME-ARP Rental Housing

HOME-ARP funds may be used to acquire, rehabilitate, or construct affordable rental housing primarily for occupancy by households of individuals and families that meet the definition of one or more of the qualifying populations described in [Section IV.A](#) of this Notice (“**qualifying households**”). Unlike the regular HOME Program, which targets HOME-assisted rental units based on tenant income, 70 percent of all HOME-ARP units will admit households based only upon their status as qualifying households. This complicates the underwriting and operation of projects that include HOME-ARP units. As a result, the requirements for HOME-ARP rental housing provide significant flexibilities to enable HOME-ARP rental projects to remain

financially viable and affordable for the qualifying populations throughout the minimum compliance period.

Eligible HOME-ARP rental housing includes “housing” as defined at [24 CFR 92.2](#), including but not limited to manufactured housing, single room occupancy (SRO) units, and permanent supportive housing. Emergency shelters, hotels, and motels (including those currently operating as non-congregate shelter), facilities such as nursing homes, residential treatment facilities, correctional facilities, halfway houses, and housing for students or dormitories do not constitute housing in the HOME-ARP program. However, HOME-ARP funds may be used to acquire and rehabilitate such structures into HOME-ARP rental housing.

Developing financially feasible rental housing for qualifying households is challenging in the absence of project-based rental assistance. Most HOME-assisted rental projects rely on tenant rents to cover all or a portion of the debt service and project operating costs. Most HOME-ARP qualifying households will be unable to pay a rent that covers allocated debt service or operating costs, requiring PJs to use other techniques to determine that HOME-ARP units are affordable and that projects containing HOME-ARP units are sustainable throughout the minimum compliance period. PJs are encouraged to work with local PHAs and other state or local agencies to obtain project-based rental assistance for units funded with HOME-ARP. In the absence of such project-based rental assistance, the HOME-ARP units for qualifying households may require substantial capital investment through HOME-ARP and other Federal, state, local, or private sources to eliminate debt service on the units. ARP suspended the maximum per-unit subsidy limit for HOME-ARP units, enabling HOME-ARP funds to pay the entire cost to acquire, rehabilitate and/or construct the HOME-ARP rental units, eliminating the need for the HOME-ARP units to support debt. In mixed-income developments, revenue from market rate or higher income-restricted units may also provide an internal subsidy to cover a portion of the operating costs of HOME-ARP units.

To address these challenges and maintain affordability, HUD is using its HOME-ARP statutory authority to:

- Establish alternative rent requirements to [24 CFR 92.252\(b\)](#) and extend an owner’s ability to charge the maximum rent permissible under a rental assistance program (to units occupied by recipients of tenant-based rental assistance (e.g., Housing Choice Vouchers, HOME TBRA, HOME-ARP TBRA).
- Establish a minimum compliance period of 15 years for all HOME-ARP rental units irrespective of the amount of subsidy per unit or whether the units are acquired, rehabilitated, and/or newly constructed.
- Permit the use of HOME-ARP funds to provide ongoing operating cost assistance or capitalize a project operating cost assistance reserve to address operating deficits of the HOME-ARP units restricted for qualifying households during the compliance period.
- Allow not more than 30 percent of the total number of rental units assisted with HOME-ARP funds by the PJ to be restricted to households that are low-income as defined in [24 CFR 92.2](#) (“low-income households”). These units may only be located in projects containing HOME-ARP units restricted for qualifying households. The HOME-ARP rental units occupied by low-income households must operate under the regulations applicable to HOME rental units at [24 CFR 92.252](#) (i.e., be occupied by low-income

households and bearing a rent not greater than the lesser of a. the Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or b. a rent equal to 30 percent of the adjusted income of a family with annual income at 65 percent of median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit).

1. **Targeting and Occupancy Requirements:** ARP requires HOME-ARP activities to primarily benefit households in the qualifying populations. To improve the feasibility and maintain the long-term viability of projects with HOME-ARP rental units for qualifying households, a PJ may invest HOME-ARP funds in units that are not restricted for occupancy solely for qualifying populations as described in this section. Specifically, participating jurisdictions must comply with the following requirements:
 - a. **Targeting:** HOME-ARP funds can only be invested in units restricted for qualifying households or low-income households as follows:
 - i. Not less than 70 percent of the total number of rental units assisted with HOME-ARP funds by the PJ must be restricted for occupancy by households that are qualifying households at the time of the household's initial occupancy; and,
 - ii. Not more than 30 percent of the total number of rental units assisted with HOME-ARP funds by the PJ may be restricted to low-income households. These rental units do not have to be restricted for occupancy by qualifying households, however rental units restricted to low-income households are only permitted in projects that include HOME-ARP units for qualifying households.
 - b. **Occupancy Requirements:**
 - i. **Qualifying Households.** Units restricted for occupancy by qualifying households must be occupied by households that meet the definition of a qualifying population at the time of admission to the HOME-ARP unit. A qualifying household after admission retains its eligibility to occupy a HOME-ARP rental unit restricted for qualifying populations, irrespective of the qualifying household's changes in income or whether the household continues to meet the definition of a qualifying population. As such, a unit restricted for a qualifying household remains in compliance with the HOME-ARP unit restriction as long as the unit is occupied by a qualifying household that met the definition of a qualifying population at the time of admission.
 - ii. **Low-Income Households.** At initial occupancy, units restricted for low-income households must be occupied by households that meet the definition of low-income in [24 CFR 92.2](#). If a tenant's income increases above the applicable low-income limit during the compliance period, the unit will be considered temporarily out of compliance. Noncompliance requires the PJ to take action in accordance with the rent and unit mix requirements in [Sections VI.B.15](#) and [VI.B.17](#) of this Notice, respectively.

2. **Eligible Activities:** A PJ may use HOME-ARP funds for acquisition, construction, and rehabilitation, including reconstruction as defined in [24 CFR 92.2](#), of affordable rental housing for qualifying and low-income households. Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide HOME-ARP rental housing within the timeframes provided in [Section VI.B.](#) of this Notice. A HOME-ARP rental project must meet the definition of *project* in [24 CFR 92.2](#).

HOME-ARP funds may be used to assist one or more units in a project. Only the eligible development costs of the HOME-ARP units may be charged to the HOME-ARP program. Cost allocation in accordance with [24 CFR 92.205\(d\)\(1\)](#) is required if the assisted and non-assisted units are not comparable. After project completion, the number of HOME-ARP units in a project cannot be reduced. During the HOME-ARP minimum compliance period and prior to the end of the HOME-ARP budget period, a PJ may invest additional HOME-ARP funds to provide operating cost assistance but is prohibited from investing additional HOME-ARP funds for capital costs except within the 12 months after project completion. A qualifying household admitted to a HOME-ARP rental unit may still receive HOME-ARP supportive services or TBRA in accordance with the requirements in this Notice.

3. **Forms of Assistance:** The PJ may invest HOME-ARP funds in accordance with the eligible forms of assistance described in [24 CFR 92.205\(b\)](#). Each PJ has the right to establish the terms of assistance, subject to the HOME-ARP requirements described in this Notice.
4. **Minimum Amount of Assistance:** The minimum amount of HOME-ARP funds that must be invested in a rental housing project is \$1,000 times the number of HOME-ARP-assisted units in the project as established in [24 CFR 92.205\(c\)](#).
5. **Eligible Costs:** HOME-ARP funds may be used to pay for up to 100% of the following eligible costs associated with the acquisition, development, and operation of HOME-ARP rental units:
 - a. *Development hard costs* – defined in [24 CFR 92.206\(a\)](#).
 - b. *Refinancing* – the cost to refinance existing debt secured by a rental project that is being rehabilitated with HOME-ARP funds in accordance with [24 CFR 92.206\(b\)\(2\)](#) and the PJ's HOME-ARP refinancing guidelines, as stated in their HOME-ARP Allocation Plan.
 - c. *Acquisition* – the costs of acquiring improved or unimproved real property.
 - d. *Related soft costs* – defined in [24 CFR 92.206\(d\)](#).
 - e. *Relocation costs* – as defined in [24 CFR 92.206\(f\)](#), [24 CFR 92.353](#), and described in this Notice.
 - f. *Costs relating to payment of loans* – If the HOME-ARP funds are not used to directly pay a cost specified in this HOME-ARP rental housing section, but are used to pay off a

construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if: (1) the loan was used for eligible costs specified in this HOME-ARP rental housing section, and (2) the HOME-ARP funds are part of the original financing for the project and the project meets the requirements of this Notice.

- g. *Operating Cost Assistance* – A PJ may pay ongoing operating cost assistance or capitalize an operating cost assistance reserve for HOME-ARP-assisted units restricted for occupancy by qualifying populations in a project where the PJ determines in its underwriting that the reserve is necessary to maintain the HOME-ARP units’ long-term operational feasibility. However, HOME-ARP funds cannot be used for both a capitalized operating cost assistance reserve and ongoing payments for operating cost assistance during the minimum compliance period. The allowable amount of the reserve shall not exceed the amount determined by the PJ to be necessary to provide operating cost assistance for HOME-ARP units restricted for occupancy by qualifying populations for the 15-year HOME-ARP minimum compliance period.

The operating cost assistance reserve for HOME-ARP units for qualifying households must be held by the project owner in a separate interest-bearing account and sized, based on an analysis of projected deficits remaining after the expected payments toward rent by qualifying households are applied to the units’ share of operating costs. Funds in a capitalized operating cost assistance reserve can only be drawn to address operating deficits associated with HOME-ARP units restricted for occupancy by the qualifying populations. A PJ must use the definition of operating costs in this Notice in its calculation of operating deficits to determine the amount of HOME-ARP funds needed for an operating cost assistance reserve or when providing operating cost assistance. Unexpended operating cost assistance reserve amounts remaining at the end of the minimum compliance period must be returned in accordance with [Section VI.B.24](#) of this Notice.

A PJ may provide operating cost assistance to a HOME-ARP rental project to cover an operating deficit associated with HOME-ARP units restricted for occupancy by qualifying households except for when an operating cost assistance reserve is already established for the project. Operating cost assistance committed to a project cannot be provided beyond the HOME-ARP budget period, as described in [Section VIII.C.4](#) of this Notice.

Operating costs include costs for administrative expenses, property management fees, insurance, utilities, property taxes, and maintenance of a unit that is designated as a HOME-ARP-assisted unit and required to be occupied by a qualifying household. . Operating costs must be reasonable and appropriate for the area, size, population(s) served, and type of project.

Project administrative expenses include payroll costs, which are gross salaries and wages paid to employees assigned to the property, including payroll taxes, employee compensation, and employee benefits; employee education, training, and travel; advertising; and general administrative costs which are costs for goods and services

required for administration of the housing, including rental or purchase of equipment, supplies, legal charges, bank charges, utilities, telephone/internet services, insurance, and other administrative costs that are reasonable and customary for the general administration of a rental unit occupied by qualifying populations. HOME-ARP permits the pro-rated staffing costs of a Resident Services Coordinator to be included in the operating costs allocated to a HOME-ARP unit for low-income or qualifying households if such costs are not already paid by another source. Typically, the role of a Resident Services Coordinator is to arrange community activities for residents and link residents to outside service agencies as needed.

A property management fee includes the total fee paid to a management agent by the owner for the day-to-day management of a HOME-ARP rental unit restricted for occupancy by qualifying populations. A management agent must cover its costs of supervising and overseeing operations of a HOME-ARP unit out of the fee they receive.

A reserve for replacement must be based on the useful life of each major system and expected replacement cost in a HOME-ARP project. Scheduled payments to a reserve for replacement of major systems included in the operating costs allocated to a HOME-ARP unit restricted for a qualifying household may be made from the operating cost assistance reserve. A reserve for replacement allocated to the HOME-ARP units may also be capitalized in the initial year of the minimum compliance period of the HOME-ARP units. HOME-ARP funds cannot be used to both capitalize a reserve for replacement and provide payments to the reserve for replacement from a capitalized operating reserve during the minimum compliance period.

Supportive services costs are not eligible operating costs of HOME-ARP units, however, qualifying households occupying HOME-ARP rental units may receive supportive services through the HOME-ARP supportive services eligible activity.

6. **Prohibited Activities and Fees:** HOME-ARP may not be used for any of the prohibited activities, costs or fees in [24 CFR 92.214](#), as revised by the Appendix to this Notice.
7. **HOME-ARP Funds and Public Housing:** HOME-ARP funds must be used in accordance with the requirements in [24 CFR 92.213\(a\)-\(c\)](#).
8. **Commitment:** The affordable housing requirements in the definition of *Commitment* in [24 CFR 92.2](#), including the provisions in (2) *Commit to a specific local project*, apply to rental housing units assisted with HOME-ARP funds. This includes but is not limited to the requirements that the PJ and project owner have an executed legally binding written agreement under which HOME-ARP assistance will be provided to the owner for an identifiable project for which all necessary financing has been secured, a budget and schedule have been established, and underwriting has been completed and under which construction is scheduled to start within 12 months of the agreement date.
9. **Maximum Per-Unit Subsidy and Limitations on Costs:** The maximum per-unit subsidy established in NAHA does not apply to HOME-ARP units. PJs may pay up to 100 percent of the eligible and reasonable HOME-ARP costs allocated to a HOME-ARP unit, including

operating cost assistance associated with units restricted for occupancy by qualifying households. All costs paid by HOME-ARP funds must comply with the requirements of this Notice and the Cost Principles at [2 CFR part 200](#), subpart E of the Uniform Administrative Requirements, as amended.

- 10. Underwriting, Subsidy Layering:** Before the PJ can commit HOME-ARP funds to a project, it must evaluate the project to determine the amount of HOME-ARP capital subsidy and operating cost assistance necessary to provide quality affordable housing that meets the requirements of this Notice and is financially viable throughout the minimum 15-year HOME-ARP compliance period. The PJ must evaluate the project in accordance with underwriting and subsidy layering guidelines it has developed for HOME-ARP projects.

The PJ's project underwriting must include an in-depth review of underlying project assumptions, development sources and uses, and projected operating income and expenses, and the project's long-term financial viability to determine the project's need for HOME-ARP assistance while preventing over-subsidization of the project. HUD anticipates that project developers will rely on Low-Income Housing Tax Credit (LIHTC) financing, HOME funds, Housing Trust Fund grants, project-based vouchers, project-based rental assistance, operating cost reserves, state or local sources, or a combination of these and other resources to create a feasible HOME-ARP project and maintain compliance with HOME-ARP requirements. HOME-ARP units for qualifying households that do not receive a commitment of project-based vouchers or project-based rental assistance may require both deep capital subsidy and operating cost assistance to remain financially sustainable for the minimum 15-year HOME-ARP compliance period. However, the PJ, through its underwriting, must also determine that the HOME-ARP capital and operating subsidies do not result in over-subsidization of the project.

To secure HOME-ARP rental units for qualifying households, HOME-ARP funds may be invested in different types of projects, including permanent supportive housing, mixed-finance affordable housing, and market-rate projects. While the viability of the HOME-ARP units is the PJ's primary concern, it must not limit its underwriting analysis to the HOME-ARP units. The long-term viability of HOME-ARP units is contingent upon the financial health of the entire project. PJs must therefore take a holistic approach to underwriting that examines the overall feasibility of the entire project to determine that the property will be financially sustainable for the duration of the 15-year HOME-ARP compliance period.

For projects that will receive operating cost assistance through a capitalized operating cost assistance reserve or on-going operating cost assistance for a specific period, the on-going operating cost assistance or operating cost assistance reserve must be included in the underwriting. Unless placed into an operating cost assistance reserve, operating cost assistance committed to a project for a specific period cannot be provided beyond the budget period, as described in [Section VIII.C.4.](#) of this Notice. HOME-ARP units that have commitments for a form of project-based rental assistance must be underwritten with the projected rental assistance and not with operating cost assistance. An operating cost assistance reserve must be sized based on an analysis of projected operating deficits

remaining after the expected payments toward rent by qualifying households are applied to the HOME-ARP unit's share of operating costs. While a PJ may offer on-going project operating cost assistance instead of providing an operating cost assistance reserve, it may find this approach makes it more difficult to develop HOME-ARP units.

- a. *Underwriting and Subsidy Layering Guidelines*: PJs must develop standardized underwriting guidelines for HOME-ARP rental projects. These guidelines must provide for underwriting that accommodates and is appropriate for different types of projects. For example, a standard market analysis does not provide the necessary data for a project where 100% of the units are restricted as permanent supportive housing for qualifying populations. In contrast, if a mixed-income property relies on rental income from market-rate units to subsidize the operating costs of permanent supportive housing units for which little or no tenant-paid rental income is projected, then a market study confirming that the proposed market rents are achievable is needed to demonstrate the long-term financial viability of the project.

PJs with existing HOME rental underwriting standards may use these standards as the foundation for their HOME-ARP underwriting guidelines, but all PJs are required to develop and implement standardized underwriting guidelines for HOME-ARP that require the following:

- i. An examination of the sources and uses of funds for the project and a determination that costs are necessary and reasonable. In examining a project's proposed sources and uses, a PJ must determine the amount of HOME-ARP development subsidy required to fill the gap between other committed funding sources and the cost to develop the project.

A developer fee is a permitted development cost under the HOME-ARP program, but the PJ must review the fee and determine that it is reasonable. A PJ may set limits on the developer fee and other fees (e.g., asset management fee, property management fee) to be paid by HOME-ARP funds that differ from other funding sources (e.g., LIHTC underwriting standards).

- ii. An assessment of the current market demand for the proposed project.
 - (1) For HOME-ARP units for qualifying households, a market assessment is not required. Rather, the PJ can demonstrate that there is unmet need among qualifying populations for the type of housing proposed through their gap analysis, CoC data, public housing and affordable housing waiting lists, point-in-time surveys, housing inventory count, or other relevant data on the need for permanent housing for the qualifying populations.
 - (2) For projects containing units restricted for occupancy by low-income households or market-rate households, the PJ must conduct a market assessment in accordance with [24 CFR 92.250\(b\)\(2\)](#). A third-party market assessment completed by the developer or another funder meets this requirement, but the PJ must review the assessment and provide a written, dated acknowledgement that it accepts the assessment's findings and conclusions. The market assessment and the PJ's written, dated

acknowledgement must be retained for recordkeeping purposes.

- iii. Review of and determination that the developer's experience and financial capacity are satisfactory based on the size and complexity of the project. When assessing the developer, the PJ must review, at minimum, prior experience with similar projects and the current capacity to develop the proposed project. When determining whether the developer has the financial capacity to undertake the project, the PJ should examine financial statements and audits to determine the developer's net worth, portfolio risk, pre-development funding, and liquidity.
- iv. Firm written financial commitments for the project.
- v. A careful review of the project's operating budget, including the basis for assumptions, projections of a project's net operating income, and reasonably expected changes in revenue and expenses during the minimum compliance period, to determine if any HOME-ARP-funded operating cost assistance is necessary and if applicable, an operating cost assistance reserve is sized appropriately. Operating income of the project must be sufficient to cover operating expenses throughout the minimum compliance period. For HOME-ARP units for qualifying households, the proforma or budget projections should include any anticipated ongoing operating cost assistance or draws from an operating cost assistance reserve, if applicable, that will offset operating deficits associated with those units to demonstrate sufficient operating support.
 - (1) If project-based vouchers or project-based rental assistance is or will be awarded, this analysis must include that rental assistance revenue because operating cost assistance cannot be used for units for qualifying households with project-based vouchers or project-based rental assistance.
 - (2) A PJ's underwriting standards may permit projects to generate reasonable net operating income throughout the minimum compliance period. However, HOME-ARP operating cost assistance may only be used to offset operating deficits, in accordance with the requirements of this Notice. Net operating income resulting from HOME-ARP operating cost assistance is not permitted and must be prohibited in the written agreement between the participating jurisdiction and the owner.
- vi. An assessment of the project's overall viability through the minimum compliance period based on the households (i.e., qualifying households, low-income households, market-rate households) it will serve.

11. Property Standards: HOME-ARP rental units must comply with all property standards applicable to rental projects required in [24 CFR 92.251](#) paragraphs (a) new construction, (b) rehabilitation projects, (c)(1) and (2) acquisition of standard housing, (e) manufactured housing, and (f) on-going property condition standards.

12. Determining Household Income: The PJ must require all HOME-ARP units to be restricted for eligible households (i.e., either qualifying or low-income households)

throughout the minimum compliance period. Qualifying households are eligible for admission to HOME-ARP rental units solely by meeting the definition of one of the qualifying populations (i.e., HOME-ARP does not impose income restrictions on units restricted for qualifying populations). If there is no income requirement in the qualifying population's definition, a PJ is not required to perform an initial determination of household income except as necessary to determine an affordable rental contribution by the qualifying household or to establish eligibility for another funding source in the unit that imposes income restrictions (e.g., LIHTC). Each subsequent year during the compliance period, starting 1 year after initial occupancy, the PJ must use the definition of annual income as defined in [24 CFR 5.609](#) to examine the income of qualifying households to determine the household's contribution to rent. For low-income households, the PJ must use the definition of annual income as defined in [24 CFR 5.609](#) to examine the household's income at initial occupancy and each subsequent year during the compliance period to determine the household's ongoing income eligibility and applicable rental contribution.

- a. *Qualifying populations*: For purposes of establishing the qualifying household's rental contribution after initial occupancy, a PJ must examine a HOME-ARP qualifying household's income using [24 CFR 92.203\(a\)\(1\)\(i\) or \(iii\)](#), starting 1 year after initial occupancy. Each year during the minimum compliance period, the owner must examine the household's annual income in accordance with any one of the options in [24 CFR 92.203\(a\)\(1\)](#) specified by the PJ. A project owner who re-examines household income through a statement and certification in accordance with [24 CFR 92.203\(a\)\(1\)\(ii\)](#), must examine the income of each household, in accordance with [24 CFR 92.203\(a\)\(1\)\(i\)](#), every sixth year of the compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with [24 CFR 92.203\(a\)\(1\)\(ii\)](#) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.
- b. *Low-income Households*: In accordance with [24 CFR 92.252\(h\)](#), the income of each low-income household must be determined initially in accordance with [24 CFR 92.203\(a\)\(1\)\(i\)](#), and each year following the initial determination during the minimum compliance period in accordance with any one of the options in [24 CFR 92.203\(a\)\(1\)](#) specified by the PJ. An owner who re-examines household income through a statement and certification in accordance with [24 CFR 92.203\(a\)\(1\)\(ii\)](#), must examine the income of each household, in accordance with [24 CFR 92.203\(a\)\(1\)\(i\)](#), every sixth year of the minimum compliance period. Otherwise, an owner who accepts the household's statement and certification in accordance with [24 CFR 92.203\(a\)\(1\)\(ii\)](#) is not required to examine the household's income unless there is evidence that the household's written statement failed to completely and accurately state information about the household's size or income.
- c. *Households Assisted by Other Programs*: Notwithstanding paragraphs (a) and (b), if a family is applying for or living in a HOME-ARP-assisted rental unit, and the unit is assisted by a Federal or State project based rental subsidy then a PJ must accept a public housing agency, section 8 project owner, or CoC recipient or subrecipient's

determination of the family's annual income and adjusted income under that program's rules and does not need to obtain source documentation in accordance with [24 CFR 92.203\(a\)\(1\)](#) or calculate the annual income of the family. If a family is applying for or living in a HOME-ARP rental unit, and the family is assisted by a Federal tenant-based rental assistance program (e.g. housing choice vouchers) then a PJ may choose to accept the rental assistance provider's determination of the family's annual and adjusted income under that program's rules without need for review under [24 CFR 92.203\(a\)\(1\)](#).

13. Rent limitations: This Notice establishes rent limits for HOME-ARP units restricted for qualifying populations and for units that may be restricted for low-income households.

- a. *Units Restricted for Occupancy by Qualifying Households:* In no case can the HOME-ARP rents exceed 30% of the adjusted income of a household whose annual income is equal to or less than 50% of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. HUD will publish the HOME-ARP rent limits on an annual basis.

Notwithstanding the foregoing, a unit that receives a Federal or state project-based rental subsidy and is occupied by a qualifying household that pays as a contribution to rent no more than 30 percent of the household's adjusted income, may charge the rent allowable under the Federal or state project-based rental subsidy program (i.e., the tenant rental contribution plus the rental subsidy allowable under that program). If a household receives tenant-based rental assistance, the rent is the rent permissible under the applicable rental assistance program (i.e., the tenant rental contribution plus the rental subsidy allowable under that rental assistance program).

The rent limits for HOME-ARP units for qualifying households include the rent plus the utility allowance established pursuant to [Section VI.B.13.d](#) of this Notice.

- b. *Rent limitations – low-income households:* HOME-ARP rental units occupied by low-income households must comply with the rent limitations in [24 CFR 92.252\(a\)](#) (i.e., the lesser of the Fair Market Rent for existing housing for comparable units in the area, as established by HUD, or a rent equal to 30 percent of the income of a family at 65 percent of median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit). Notwithstanding the foregoing, when a household receives a form of Federal tenant-based rental assistance (e.g., housing choice vouchers), the rent is the rent permissible under the applicable rental assistance program (i.e., the tenant rental contribution plus the rent subsidy allowable under the rental assistance program). The rent limits for low-income households apply to the rent plus the utility allowance established pursuant to [Section VI.B.13.d](#) of this Notice.
- c. *Rent limitations – Single Room Occupancy (SRO) Units:* A HOME-ARP rental project may consist of SRO units. For the purposes of HOME-ARP rental, a SRO unit is defined as a unit that is the primary residence of the occupant(s) and must at least contain sanitary facilities but may also contain food preparation facilities. A project's

designation as a SRO cannot be inconsistent with the building's zoning and building code classification.

If the SRO units have both sanitary *and* food preparation facilities, the maximum HOME-ARP rent is based on the zero-bedroom fair market rent. If the SRO unit has only sanitary facilities, the maximum HOME-ARP rent is based on 75 percent of the zero-bedroom fair market rent. The rent limits for SRO units must also include the utility allowance established pursuant to [Section VI.B.13.d](#) of this Notice.

- d. *Initial Rent Schedule and Utility Allowance*: The PJ must establish maximum allowances for utilities and services and update the allowances annually. The PJ may adopt the utility allowance schedule of the PHA.

The PJ must review and approve the HOME-ARP rents proposed by the owner, subject to the HOME-ARP rent limitations. For HOME-ARP units where the tenant is paying utilities and services (e.g., trash collection), the PJ must determine that the rent for the unit does not exceed the maximum rent minus the monthly allowance for utilities and services.

- 14. Tenant Contribution to Rent – Qualifying Households**: The PJ must determine that the qualifying household's contribution to rent is affordable to the qualifying household based on a determination of the household's income. If the household is receiving project-based or tenant-based rental assistance, the household cannot be required to contribute more towards rent than the amount permitted by the requirements of the applicable rental assistance program (See [Section VI.B.13.a](#) of this Notice). If a qualifying household is not receiving project-based or tenant-based rental assistance and cannot contribute any income toward rent, or the contribution is insufficient to cover the unit rent, the project owner may draw from the project's operating cost assistance reserve if projected rental revenue minus the operating costs of the unit results in a deficit. If an operating cost assistance reserve was not capitalized at project completion:

- The PJ may provide ongoing HOME-ARP operating cost assistance to cover the operating deficits associated with units occupied by qualifying households, subject to the requirements in this Notice.
- The qualifying household may receive HOME-ARP TBRA to remain housed in the HOME-ARP rental unit or the PJ may offer, in conjunction with a qualifying household's admittance into a HOME-ARP rental unit, a simultaneous award of supportive services to the qualifying household in accordance with [Section VI.D](#) of this Notice. Any provision of supportive services must comply with all requirements of [Section VI.D](#) of the Notice and the PJ's policies and procedures.
- Operating cost assistance, HOME-ARP TBRA, and supportive services funds committed to a project cannot be provided beyond the budget period for the HOME-ARP funds, as described in [Section VIII.C.4](#) of this Notice.

- 15. Changes in Income and Over-income Households**:

A household that met the definition of one of the HOME-ARP qualifying populations at initial occupancy and whose annual income at the time of income re-certification is above

50 percent of median income for the area but at or below 80 percent of the median income for the area must pay the rent specified in [24 CFR 92.252\(a\)](#).

HOME-ARP-assisted units restricted for low-income households continue to qualify as HOME-ARP rental housing despite a temporary noncompliance caused by increases in the incomes of existing households if actions satisfactory to HUD are taken so that all vacancies are filled in accordance with HOME-ARP requirements until the noncompliance is corrected.

A qualifying or low-income household that is not low-income at the time of income recertification (i.e., whose income is above 80 percent of the median income for the area) must pay rent that complies with the over income regulatory requirements at [24 CFR 92.252\(i\)\(2\)](#), which includes requirements applicable to HOME units that also have LIHTC restrictions.

- 16. Unit Designation:** The PJ must determine the number of HOME-ARP units in the project restricted for qualifying households and low-income households, respectively, and whether the units are fixed or floating units at the time of project commitment. The total number of HOME-ARP rental units restricted for occupancy by qualifying households and the total number of HOME-ARP rental units restricted for low-income households must be identified as separate totals in the written agreement. In a project containing HOME-ARP and other units, the PJ must designate fixed or floating HOME-ARP units in accordance with [24 CFR 92.252\(j\)](#). The PJ must maintain this unit mix throughout the compliance period.
- 17. Maintaining Unit Mix:** At the time of admission to a HOME-ARP rental unit, a household must meet the definition for at least one qualifying population or be determined to be a low-income household, depending on the applicable HOME-ARP restriction on the rental unit to which it is being admitted and in accordance with the written agreement.

For HOME-ARP rental units restricted for occupancy by qualifying populations, a household that meets the definition of a qualifying population at the time of admission retains its eligibility to occupy a HOME-ARP rental unit restricted for occupancy by qualifying populations, irrespective of changes in income or whether the household continues to meet the definition of a qualifying population after initial occupancy. As an example, a household that qualifies as “Homeless” at admission does not meet the Homeless definition once the household occupies a HOME-ARP unit but remains a qualifying household and is eligible to remain in a HOME-ARP rental unit restricted for qualifying populations. Income determinations for qualifying households are therefore only for purposes of establishing a qualifying household’s rental contribution as described in [Section VI.B.15](#) of this Notice and not for maintaining continued eligibility in the HOME-ARP program. In a project with floating units, PJs are encouraged but not required to shift the HOME-ARP qualifying population designation to another unit to serve another qualifying household if the household’s income subsequently is certified to be at or above 80 percent AMI and the household no longer meets the definition of any qualifying population.

For HOME-ARP rental units restricted for occupancy by low-income households, units will be considered temporarily out of compliance if the household's income increases above 80 percent of area median income. The requirements for correcting any noncompliance using vacancies or redesignation of units depends on whether the HOME-ARP rental units are fixed or floating and whether other funding sources (e.g., LIHTC) impose income or other restrictions on the units. Please note, in accordance with the requirements in 24 CFR 92.253 and in [Section VI.B.19.c](#), an increase in a tenant's income does not constitute good cause to evict or refuse to renew a tenant's lease, regardless of program requirements associated with other funding sources such as LIHTC. In addition, compliance with unit restrictions for low-income households requires adjustment of rents as described in [Section VI.B.15](#) of this Notice.

- 18. Minimum Compliance Period:** HOME-ARP-assisted units must comply with the requirements of this Notice for a minimum period of 15 years, irrespective of the amount of HOME-ARP funds invested in the project or the activity being undertaken. A PJ may impose a longer compliance period but should plan for the project's financial feasibility for the longer period without HOME-ARP funds. The PJ may not use HOME-ARP funds to provide operating cost assistance, including a capitalized operating cost assistance reserve, to cover deficits during a PJ's extended compliance period.

If a project-based rental assistance Housing Assistance Payments (HAP) contract is awarded to a HOME-ARP rental project, a PJ must impose a minimum compliance period that is the greater of 15 years or the term of the HAP contract. PJs are also encouraged to extend restrictions for occupancy of the HOME-ARP units in accordance with the requirements in this section to match the term of eligible HAP contract renewals.

The provisions at [24 CFR 92.252\(e\)\(1\)-\(4\)](#) apply, including the requirement that the PJ must impose the HOME-ARP rental requirements through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws, or other mechanisms approved by HUD. The chart providing minimum affordability periods based on rental housing activity that is contained in 24 CFR 92.252(e) does not apply. The enforceable restriction must provide that units assisted with HOME-ARP comply with the requirements of this Notice throughout the minimum 15-year compliance period, including:

- a. Units restricted for qualifying populations must be occupied by households that met the definition of a qualifying population at the time of initial occupancy. The household's contribution toward rent during this period must be affordable in accordance with [Section VI.B.14](#) of this Notice. The rents for these units must comply with the rent limitations established in this Notice, including the rent provisions specified in [24 CFR 92.252\(i\)\(2\)](#) for households whose income increases above 80 percent of area median income and whose contribution to rent complies with the requirements in [Section VI.B.15](#).
- b. Units available for low-income households must be continuously occupied by households who are income eligible. The rents for these units must comply with the rent

limitations established in this Notice, including the rent provisions specified in [24 CFR 92.252\(i\)\(2\)](#) for households whose income increases above 80 percent of area median income.

- c. The units must comply with the ongoing property condition standards of [24 CFR 92.251\(f\)](#) throughout the compliance period as demonstrated by an on-site inspection within 12 months of project completion and an on-site inspection at least once every three years thereafter as required by [24 CFR 92.504](#).
- d. Each household that occupies a HOME-ARP unit has an executed lease that complies with the tenant protections required in [Section VI.B.19](#) of this Notice.

19. Tenant Protections: PJs must verify that each household that occupies a HOME-ARP assisted unit has an executed lease that complies with the tenant protection requirements of this Notice. The lease must be either be between the project owner and the household or between the project owner and a HOME-ARP sponsor with a sublease between the qualifying household and HOME-ARP sponsor. A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA by a qualifying household. PJs may permit a HOME-ARP sponsor to lease a HOME-ARP unit from an owner or execute a master lease with the owner of a HOME-ARP project for HOME-ARP units restricted for occupancy by qualifying households. The HOME-ARP sponsor may then sublease the HOME-ARP rental unit to the qualifying household. The sublease between the HOME-ARP sponsor and the qualifying household must comply with the rent limitations and tenant protection requirements of this Notice.

- a. *Lease Requirement:* There must be a lease between the qualifying household or the low-income household and the owner of the HOME-ARP-assisted project in accordance with [24 CFR 92.253\(a\)](#), except that a sublease is permitted if a HOME-ARP sponsor has executed a master lease or lease with the project owner for the leasing of the units restricted for occupancy by qualifying households.
- b. *Prohibited Lease Terms:* The lease between the low-income household, qualifying household, or HOME-ARP sponsor and the HOME-ARP project owner or the sublease between the HOME-ARP sponsor and a qualifying household may not contain any of the prohibited lease terms specified in [24 CFR 92.253\(b\)](#).
- c. *Termination of tenancy:* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of a HOME-ARP unit or of a HOME-ARP sponsor with a sublease with a qualifying household except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws; or for other good cause. Similarly, a HOME-ARP sponsor may not refuse to renew a sublease with a qualifying household except for serious or repeated violation of the terms and conditions of the sublease; for violation of applicable Federal, State, or local laws; or for

other good cause. An increase in the tenant's or sublessee's income does not constitute good cause.

In addition, if HOME-ARP funds were or are used to capitalize an operating cost assistance reserve or there is a current contract for the PJ to provide operating cost assistance to the project, an owner may not terminate the tenancy or refuse to renew the lease of a qualifying household because of the household's inability to pay rent during the minimum compliance period. A qualifying household's inability to pay rent shall mean that the qualifying household cannot pay more than 30 percent of the qualifying household's income toward rent, based on an income determination made by the PJ in the last 30 days.

Where there is no capitalized operating reserve or other operating cost assistance to cover the operating deficit for a HOME-ARP unit occupied by a qualifying household, the PJ may assist the qualifying household with HOME-ARP TBRA or supportive services in accordance with the requirements of this Notice.

The above tenant protections are necessary as HOME-ARP requires the PJ to perform underwriting that reviews the operating feasibility of units occupied by qualifying households for the 15-year compliance period to determine how HOME-ARP funds may address the potential for qualifying households to have little to no income to contribute toward rent.

To terminate or refuse to renew tenancy for any household occupying a HOME-ARP unit, the owner must serve written notice upon the tenant (and the HOME-ARP sponsor if the lease is between an owner and HOME-ARP sponsor) at least 30 days before termination of tenancy, specifying the grounds for the action. In the case of a sublease, to terminate or refuse to renew tenancy of a qualifying household, the HOME-ARP sponsor, in accordance with the policy established by the PJ, must notify the PJ in advance of serving written notice to the qualifying household and must serve written notice upon the qualifying household at least 30 days before termination of tenancy, specifying the grounds for the action.

20. Coordinated Entry and Project-Specific Waitlists: In accordance with [Section IV.C](#) of this Notice, PJs must determine whether an owner may use a CoC's CE, a CoC's CE and other referral sources, or a project-specific waitlist, to select qualifying households for HOME-ARP units restricted for occupancy by qualifying populations. PJs will make this determination on a project-by-project basis. Regardless of which method is selected, in all cases, the PJ must use a project-specific waitlist when selecting households to occupy units restricted for occupancy by low-income households. Any preferences among qualifying households must be disclosed in the HOME-ARP allocation plan through the PJ's public participation process in accordance with [Section V.C](#). of this Notice. The written agreement between the PJ and the project owner must specify the method the owner must use for selecting qualifying households for admission to HOME-ARP units.

- a. The owner of a HOME-ARP rental project must adopt and follow written tenant selection policies and criteria for HOME-ARP units that:

- i. Limits eligibility to households that meet one of the HOME-ARP qualifying populations definitions or low-income households in accordance with HOME-ARP requirements; Preferences for households in one or more of the HOME-ARP qualifying populations must comply with the PJ's preferences and the PJ's policies and procedures for applying those preferences, if any, and must not violate nondiscrimination requirements in [24 CFR 92.350](#).
 - ii. Do not exclude an applicant with a voucher under the section 8 Housing Choice Voucher Program ([24 CFR 982](#)), or an applicant participating in HOME, HOME-ARP or other Federal, state or local tenant-based rental assistance program because of the status of the prospective tenant as a holder of such a certificate, voucher, or comparable tenant-based assistance document;
 - iii. Limits eligibility or gives a preference to a particular qualifying population or segment of the qualifying population if permitted in its written agreement with the participating jurisdiction (and only if the limitation or preference is described in the participating jurisdiction's HOME-ARP allocation plan). A preference for households in one or more of the HOME-ARP qualifying populations must comply with the PJ's determined preference(s) and the PJ's policies and procedures for applying the preference(s), if any;
 - iv. Any limitation or preference must not violate nondiscrimination requirements in [24 CFR 92.350](#). If the PJ requires the use of a project-specific waitlist to select qualifying households and/or low-income households for occupancy of HOME-ARP units, provide for the selection of households from a written waiting list in the chronological order of their application, insofar as is practicable;
 - v. Gives prompt written notification to any rejected applicant of the grounds for any rejection; and,
 - vi. Complies with the VAWA requirements as described in [24 CFR 92.359](#).
- b. *Project-Specific Waitlist – Low-Income Households*: A project owner must use a project-specific waitlist to select households to occupy units restricted for occupancy by low-income households in accordance with the tenant selection requirements of [24 CFR 92.253\(d\)](#).

21. Project Completion and Occupancy: HOME-ARP rental projects must meet the definition of project completion at [24 CFR 92.2](#). If the PJ fails to complete a project within 4 years of project commitment, it must comply with the terminated project requirements at [24 CFR 92.205\(e\)\(2\)](#). If the HOME-ARP units are not occupied by eligible qualifying households or low-income households within six months following project completion, the PJ, as applicable, must submit to HUD information on its efforts to coordinate with a CoC, homeless service providers, social service, and other public agencies to fill units for qualifying households or must submit marketing information and, if appropriate, a marketing plan to fill units for low-income households. The PJ must repay any HOME-ARP funds invested in units that are not rented to eligible qualifying or low-income households within 12 months of project completion.

22. Penalties for Noncompliance: The PJ must repay HOME-ARP funds invested in rental housing that is terminated before completion or otherwise does not comply with initial or ongoing requirements of this Notice during the compliance period, as follows:

- a. If the noncompliance or termination occurs within the first 10 years of the compliance period, the PJ must repay the entire amount of HOME-ARP funds invested in the project.
- b. If the noncompliance or termination occurs in years 11 through 15, the repayment amount will be reduced by 20 percent for each year beyond the initial 10-years during which time the project was compliant.

Repayment of the HOME-ARP funds is not required if the project owner sells or transfers, either voluntarily or involuntarily, the HOME-ARP project during the compliance period if (1) the HOME-ARP restrictions remain, (2) the project and new project owner continues to comply with all HOME-ARP requirements, and (3) any HOME-ARP funds remaining in a project's operating cost assistance reserve or reserve for replacement remain with the project and convey upon sale or transfer of the project as a restricted operating cost assistance reserve or reserve for replacement subject to HOME-ARP Notice requirements.

23. Operating Cost Assistance Reserve - Management and Oversight: The PJ must require that any HOME-ARP funds expended for project operating cost assistance reserves are held by the project owner in a separate interest-bearing account. The PJ must require the project owner to request written approval from the PJ prior to disbursing funds from the project operating cost assistance reserve. The PJ must review each requested distribution from the operating cost assistance reserve, including supporting documentation, to determine that the distribution is reasonable and necessary to cover the operating deficit associated with HOME-ARP units occupied by qualifying households. The PJ must, no less than annually, review the operating cost assistance reserve account to determine that the account is appropriately sized based on the projected operating deficits of HOME-ARP units restricted for occupancy by qualifying households. The PJ may require the project owner to enter into a deposit account control agreement for the operating cost assistance reserve where the PJ must approve disbursements from the account.

24. End of Compliance Period and Return of Operating Cost Assistance Reserve: Any unexpended operating cost assistance reserve remaining at the end of the compliance period must be returned as follows:

- a. If the HOME-ARP rental project will continue to operate in accordance with the HOME-ARP requirements and serve qualifying households beyond the HOME-ARP 15-year compliance period as demonstrated by enforceable restrictions imposed by the PJ, the project can retain the operating cost assistance reserve amount to address any operating deficits associated with the HOME-ARP units occupied by qualifying households.
- b. If the HOME-ARP project will not continue to operate in accordance with the HOME-ARP requirements and serve qualifying households beyond the 15-year HOME-ARP compliance period and the HOME-ARP grant has expired or is closed out, the remaining operating cost assistance reserve funds must be deposited in the PJ's local HOME

account and recorded as HOME program income receipt in the Integrated Disbursement and Information System (IDIS) and used for eligible costs under [24 CFR part 92](#).

C. Tenant-Based Rental Assistance (TBRA)

HOME-ARP funds may be used to provide tenant-based rental assistance to qualifying households (“**HOME-ARP TBRA**”). In HOME-ARP TBRA, the PJ assists a qualifying household with payments to cover the entire or insufficient amounts that the qualifying household cannot pay for housing and housing-related costs, such as rental assistance, security deposits, and utility deposits. HOME-ARP TBRA assisted households may choose to rent a unit in a HOME-ARP rental project or any other eligible rental unit. HOME-ARP TBRA is a form of rental assistance that is attached to the household and not a particular rental unit. Therefore, the HOME-ARP TBRA assisted household may choose to move to another unit with continued HOME-ARP TBRA as long as the new unit meets the applicable property standards of this Notice. If a HOME-ARP TBRA assisted household chooses to move, the rental assistance contract terminates and a new rental assistance contract for the new unit will be executed according to HOME-ARP TBRA requirements. The HOME-ARP TBRA assisted household must notify the PJ before moving in order to receive continued HOME-ARP TBRA.

- 1. Tenant Selection:** Only individuals and families in the qualifying populations are eligible to receive HOME-ARP TBRA assistance. PJs must perform tenant selection in accordance with [Section IV.C](#) of this Notice. The PJ must select qualifying households for HOME-ARP TBRA in accordance with written tenant selection policies and criteria that are based on local housing needs established in the HOME-ARP allocation plan. The PJ must follow written tenant selection policies and criteria that:
 - a. Limit eligibility to households that meet one of the HOME-ARP qualifying populations definitions in accordance with HOME-ARP requirements. Preferences for households in one or more of the HOME-ARP qualifying populations, if any, must comply with the preferences and/or method of prioritization in the PJ’s HOME-ARP allocation plan and the PJ’s policies and procedures for applying such preferences, if any, and must not violate nondiscrimination requirements in [24 CFR 92.350](#).
 - b. If the PJ selects HOME-ARP TBRA applicants off a waiting list, it must provide for the selection of qualifying households from a written waiting list in accordance with the PJ’s preferences or method of prioritization in the chronological order of their application, insofar as is practicable.
 - c. Give prompt written notification to any rejected applicant of the grounds for any rejection, and
 - d. Comply with the VAWA requirements as described in [24 CFR 92.359](#).

Finally, the PJ may offer, in conjunction with HOME-ARP TBRA assistance, a simultaneous award of services in accordance with [Section VI.D](#) of this Notice, and also provide particular types of other nonmandatory services that may be most appropriate for persons with a special need or a particular disability. Any provision of supportive services must comply with all requirements of [Section VI.D](#) of the Notice and the PJ’s policies and procedures.

2. **Tenant Protections:** PJs must require and verify that there is an executed lease between the qualifying household that receives HOME-ARP TBRA and the owner of the rental unit or between the owner of the rental unit and a HOME-ARP sponsor with a sublease between the qualifying households and the HOME-ARP sponsor, in accordance with [24 CFR 92.253\(a\)](#). A HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitates the leasing of a rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA by a qualifying household. PJs may permit a HOME-ARP sponsor, as defined in [Section VI.B.19](#), to execute a lease or master lease with a project owner. The HOME-ARP sponsor must then sublease a unit to a qualifying household. The lease between the qualifying household and the rental unit owner or the sublease between the HOME-ARP sponsor and the qualifying household cannot contain any of the prohibited lease terms specified in [24 CFR 92.253\(b\)](#).
3. **Eligible Costs:** Eligible costs under HOME-ARP TBRA include rental assistance, security deposit payments, and utility deposit assistance to qualifying households. HOME-ARP funds may be used to pay for up to 100% of these eligible costs. A PJ may use HOME-ARP TBRA funds to provide loans or grants to qualifying households for security deposits for rental units regardless of whether the PJ provides any other HOME-ARP TBRA assistance. The amount of funds that may be provided for a security deposit may not exceed the equivalent of two months' rent for the unit. Utility deposit assistance is an eligible cost only if rental assistance or a security deposit payment is provided. Costs of inspecting the housing are also eligible as costs of HOME-ARP TBRA. Administration of HOME-ARP TBRA is an eligible cost only if executed in accordance with general management oversight and coordination at [24 CFR 92.207\(a\)](#), except that the costs of inspecting the housing and determining the income eligibility of the family are eligible project costs under HOME-ARP TBRA.
4. **Ineligible Costs:** HOME-ARP TBRA may not be used to pay for the homebuyer program as defined at [24 CFR 92.209\(c\)\(2\)\(iv\)](#).
5. **Portability of Assistance:** A PJ may require the HOME-ARP TBRA assisted household to use HOME-ARP TBRA within the PJ's boundaries or may permit the household to use the assistance outside its boundaries pursuant to [24 CFR 92.209\(d\)](#).
6. **Term of Rental Assistance Contract:** The requirements at [24 CFR 92.209\(e\)](#) defining the term of the rental assistance contract for providing assistance with HOME funds are waived for HOME-ARP TBRA. The PJ must determine the maximum term of the rental assistance contract. The rental assistance contract continues until the end of the rental assistance contract term, as determined by the PJ, or until the lease or sublease is terminated, whichever occurs first. The term of the rental assistance contract may be renewed, subject to the availability of HOME-ARP funds. The term of the rental assistance contract must begin on the first day of the term of the lease or sublease. HOME-ARP TBRA funds cannot be used after the end of the budget period.
7. **Maximum Subsidy:** The PJ must establish policies for the allowable maximum subsidy, which may differ from the maximum subsidy requirements at [24 CFR 92.209\(h\)](#). PJs may

provide up to 100 percent subsidy for rent, security deposit payments, and utility bills. The PJ must also establish policies for determining any household contribution to rent based on a determination of the qualifying household's income.

8. **Rent Standard:** Consistent with [24 CFR 92.209\(h\)\(3\)](#), PJs must also establish a rent standard for HOME-ARP TBRA by unit size that is based upon local market conditions or the section 8 Housing Choice Voucher program under [24 CFR part 982](#). The PJ must determine whether the rent for a HOME-ARP TBRA household complies with the rent standard established by the PJ for the HOME-ARP program and must disapprove a lease if the rent does not meet the PJ's rent standard for HOME-ARP TBRA.
9. **Housing Quality Standards:** Housing occupied by a household receiving HOME-ARP TBRA must comply with all housing quality standards required in [24 CFR 982.401](#) (or successor inspection standards issued by HUD) unless the tenant is residing in a HOME or HOME-ARP unit, in which case the PJ may defer to initial and ongoing inspection standards.
10. **Program Operation:** The PJ may operate HOME-ARP TBRA itself or may contract with a PHA or other entity with the capacity to operate a rental assistance program. In either case, the PJ or entity operating the program must approve the lease. HOME-ARP TBRA may be provided through an assistance contract with (1) an owner that leases a unit to a qualifying household; (2) the qualifying household, or (3) an owner and the qualifying household in a tri-party contract. In the case of HOME-ARP TBRA provided in coordination with a HOME-ARP sponsor, as described below, the PJ may require that payments be made directly to the HOME-ARP sponsor that will make rental payments to the owner on behalf of the qualifying household or require payments directly to the owner of the unit.
11. **HOME-ARP TBRA with a HOME-ARP Sponsor:** HOME-ARP TBRA may be provided in coordination with a HOME-ARP sponsor. As defined in [Section VI.B.19](#), a HOME-ARP sponsor is a nonprofit organization that provides housing or supportive services to qualifying households and facilitates the leasing of a HOME-ARP rental unit to a qualifying household or the use and maintenance of HOME-ARP TBRA by a qualifying household. A HOME-ARP sponsor may make rental subsidy payments and a security deposit payment on behalf of a qualifying household. Under HOME-ARP TBRA, a qualifying household may reside in housing leased by a HOME-ARP sponsor if there is a sublease that complies with HOME-ARP lease requirements between the HOME-ARP sponsor and the qualifying household.
 - a. *Rental Assistance Contract:* There must be a rental assistance contract between the PJ and at least one of the following:
 - HOME-ARP sponsor;
 - Qualifying household; or
 - Owner of the housing.

Rental subsidy payments are made on behalf of the HOME-ARP TBRA household pursuant to a rental assistance contract. The rental assistance contract continues until the

lease is terminated or the term of the rental assistance contract expires (and is not renewed). Regardless of the role of the HOME-ARP sponsor, the HOME-ARP TBRA household has the right to continued HOME-ARP TBRA assistance if the household chooses to move from the unit. HOME-ARP TBRA funds cannot be used beyond the end of the HOME-ARP budget period.

The HOME-ARP sponsor may only receive the TBRA subsidy directly from the PJ on behalf of the qualifying household if the rental assistance contract is between the HOME-ARP sponsor and the PJ or the HOME-ARP sponsor and the PJ have entered into a written agreement as outlined below. The HOME-ARP sponsor must make rental subsidy payments to the owner on behalf of the qualifying household per the terms and conditions of the HOME-ARP TBRA contract or written agreement with the PJ. When the HOME-ARP TBRA assisted household moves to a new unit, the HOME-ARP sponsor is not required to continue its sponsor relationship with the HOME-ARP TBRA assisted household for the new rental unit but may do so with the consent of the HOME-ARP TBRA household.

The PJ must establish policies and procedures regarding termination of HOME-ARP TBRA assistance for qualifying households who are absent from the rental unit for a minimum of 60 days and where a HOME-ARP sponsor is leasing the rental unit and subleasing to the qualifying household or providing HOME-ARP TBRA rental subsidy payments on behalf of the household.

- b. *Lease and Sublease*: PJs must require and verify that each household that receives HOME-ARP TBRA assistance has an executed lease that complies with the tenant protection requirements of this Notice. The lease agreement may be between the project owner and the HOME-ARP TBRA household, or PJs may permit a HOME-ARP sponsor to execute a lease with an owner for an individual unit or a master lease for more than one unit restricted for occupancy by HOME-ARP TBRA households. If the lease agreement is between the HOME-ARP sponsor and owner, the HOME-ARP sponsor must execute a sublease agreement with a HOME-ARP TBRA household. The sublease between the HOME-ARP sponsor and the HOME-ARP TBRA household must meet the tenant protection requirements of this Notice.
- c. *Written Agreement with HOME-ARP Sponsor*: The PJ must enter into a written agreement with the HOME-ARP sponsor if the HOME-ARP TBRA rental assistance contract is not with the HOME-ARP sponsor and the HOME-ARP sponsor will receive the HOME-ARP TBRA subsidy directly from the PJ. The written agreement must specify the requirements for the HOME-ARP sponsor receiving the HOME-ARP TBRA subsidy on behalf of the qualifying household and the HOME-ARP sponsor's obligation to provide the HOME-ARP TBRA payment to the owner for the unit's required rent.

12. Project Completion: Project completion for a HOME-ARP TBRA project means the final drawdown has been disbursed for the project.

D. Supportive Services

HOME-ARP funds may be used to provide a broad range of supportive services to qualifying individuals or families as a separate activity or in combination with other HOME-ARP activities. Supportive services include: a) services listed in section 401(29) of the McKinney-Vento Homeless Assistance Act (“**McKinney-Vento Supportive Services**”)¹ (42 U.S.C. 11360(29)); b) homelessness prevention services, as described in [Section VI.D.3.](#) and [D.4](#) below; and c) housing counseling services.

1. **Eligible Program Participants**: Supportive services may be provided to individuals and families who meet the definition of a qualifying population under [Section IV.A](#) of this Notice and who are not already receiving these services through another program. Program participants in other HOME-ARP activities are eligible for supportive services under this Notice in accordance with policies and procedures developed by the PJ. These policies and procedures should identify the length of time that program participants may be served by HOME-ARP TBRA and/or HOME ARP rental housing before they will no longer be eligible as a qualifying population for purposes of this section.
2. **Client Selection**: HOME-ARP funds may only be used to provide supportive services to individuals or families that meet the definition of a qualifying population in [Section IV.A](#) of this Notice. PJs must develop policies and procedures for the selection of program participants for services under this section of the Notice that comply with [Section IV.C](#) and this section of this Notice.
3. **Eligible Supportive Services under HOME-ARP**: There are three categories specifically included as supportive services under HOME-ARP:
 - a. *McKinney-Vento Supportive Services*: McKinney-Vento Supportive Services under HOME-ARP are adapted from the services listed in section 401(29) of McKinney-Vento.
 - b. *Homelessness Prevention Services*: HOME-ARP Homelessness Prevention Services are adapted from eligible homelessness prevention services under the regulations at [24 CFR 576.102](#), [24 CFR 576.103](#), [24 CFR 576.105](#), and [24 CFR 576.106](#), and are revised, supplemented, and streamlined in [Section VI.D.4.c.i](#) below.
 - c. *Housing Counseling Services*: Housing counseling services under HOME-ARP are those consistent with the definition of housing counseling and housing counseling services defined at [24 CFR 5.100](#) and [5.111](#), respectively, except where otherwise noted. The requirements at [24 CFR 5.111](#) state that any housing counseling, as defined in [24 CFR 5.100](#), required under or provided in connection with any program administered by HUD shall be provided only by organizations and counselors certified by the Secretary under [24 CFR part 214](#) to provide housing counseling, consistent with [12 U.S.C. 1701x](#).

¹ The Consolidated Appropriations Act, 2021 (P.L. 116-260) enacted changes that renumbered section 401(27) to (29) of McKinney-Vento.

HUD-approved Housing Counseling Agencies can be found on HUD’s website at:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hcc.

Program requirements and administration under [24 CFR part 214](#) apply to the provision of HOME-ARP Housing Counseling supportive services except those provisions related to current homeowners do not apply. Eligible HOME-ARP topics under Housing Counseling include but are not limited to the following examples:

Rental Housing Counseling Topics (24 CFR 214.300(e)(4))	Pre-Purchase Homebuying Topics (24 CFR 214.300(e)(1))	Homeless Services Topics (24 CFR 214.300(e)(5))
HUD rental and rent subsidy programs	Advice regarding readiness and preparation	Homeless assistance information regarding emergency shelter
Other federal, state, or local assistance	Federal Housing Administration insured financing	Other emergency services
Fair housing	Housing selection and mobility	Transitional housing
Rental search assistance	Housing search assistance	Referral to local, state, and federal resources (24 CFR 214.300(b)(2))
Landlord tenant laws	Fair housing and predatory lending	
Lease terms	Budgeting and credit	
Rent delinquency	Loan product comparison	
Referrals to local, state, and federal resources	Purchase procedures and closing costs	
	Referrals to local, state, and federal resources	

Housing Counseling surrounding the following topics are **ineligible** under HOME-ARP:

- Resolving or preventing mortgage delinquency, including, but not limited to default and foreclosure, loss mitigation, budgeting, and credit;
- Home maintenance and financial management for homeowners, including, but not limited to: Escrow funds, budgeting, refinancing, home equity, home improvement, utility costs, energy efficiency, rights and responsibilities of homeowners, and reverse mortgages.

In accordance with [24 CFR 214.300\(a\)\(2\)](#), housing counselors must establish an action plan for each participating qualifying individual or family. Additionally, as per [24 CFR](#)

[214.300\(c\)](#), housing counselors must also make reasonable efforts to have follow-up communications with participating qualifying individuals, when possible, to assure that the individual or family is progressing toward the housing goal established in the plan, to modify or terminate housing counseling, and to learn and report outcomes.

- 4. Eligible Costs of Supportive Services for Qualifying Individuals and Families:** HOME-ARP funds may be used to pay eligible costs associated with the HOME-ARP supportive services activity in accordance with the requirements in this Notice. Eligible costs that may be paid using HOME-ARP funds are limited to only those identified in [Section VI.D.4.c](#) below. Any ineligible costs paid using HOME-ARP funds must be repaid in accordance with the requirements of this Notice.

HUD has used its discretion in ARP to include eligible costs for supportive services that are necessary to assist the qualifying populations, prevent homelessness, or to enable qualifying households to obtain and maintain housing. The list of eligible costs associated with McKinney-Vento Supportive Services and Homelessness Prevention Services is in [Section VI.D.4.c.i](#) of this Notice.

While all qualifying households are eligible to receive supportive services under this activity, the PJ must establish requirements for documenting eligible costs for an individual or family in a qualifying population (as defined in [Section IV.A](#) of this Notice) as McKinney-Vento supportive services, homelessness prevention services, or Housing Counseling.

If a person is homeless, then the person is eligible to be provided the supportive services as McKinney-Vento supportive services for the costs allowable in [Section VI.D.4.c](#) below. If a person is housed and the supportive services are intended to help the program participant regain stability in the program participant's current permanent housing or move into other permanent housing to achieve stability in that housing then the person is eligible for homelessness prevention services for the costs allowable in [Section VI.D.4.c.i](#) below. Housing Counseling services may be provided regardless of whether a person is homeless or currently housed.

PJs must document in their files which types of supportive services they wish to offer program participants. If PJs are using a supportive services provider, PJs must document in their written agreements with supportive service providers whether they are authorizing McKinney-Vento supportive services, homelessness prevention services, Housing Counseling services or some combination of the three. Only the supportive services that are authorized in the written agreement with the supportive service provider may be provided to program participants by that supportive service provider and only program participants that are eligible for those supportive services may be served. As such, supportive services providers must demonstrate through their documentation that the individuals served were eligible to receive the supportive services that were authorized under the written agreement in order for those costs to be eligible.

Consistent with the requirements in this section, the PJ may set a maximum dollar amount that a program participant may receive for each type of service described in [Section VLD.4.c.](#) below and may also set a maximum period for which a program participant may receive any of the types of assistance or services.

- a. Oversight of Eligible Costs: All supportive service costs paid for by HOME-ARP must comply with the requirements of this Notice, including requirements in [2 CFR part 200](#), subpart E, Cost Principles that require costs be necessary and reasonable. If a qualifying household is already receiving the same eligible supportive service or has been approved to receive the same service through another program or provider, the program participant does not have a need for the HOME-ARP service and the costs related to the service do not comply with the Cost Principles. The PJ is responsible for establishing requirements that allow a program participant to receive only the HOME-ARP services needed so there is no duplication of services or assistance in the use of HOME-ARP funds for supportive services. This may include the use of systems such as Homeless Management Information Systems in coordination with local supportive service providers, CoCs, and other nonprofit organizations.
- b. Direct provision of services: PJs contracting with service providers engaged directly in the provision of services under the HOME-ARP eligible supportive services categories, shall have written agreements or contracts that comply with the requirements of this Notice and, to the extent practicable, enter into agreements or contracts in amounts that cover the actual total program costs and administrative overhead to provide the services contracted.

If the services outlined in paragraph c. below are being directly delivered by the PJ or a subrecipient, the following costs are eligible project delivery costs for those services:

- the costs of labor or supplies and materials incurred by the PJ or subrecipient in directly providing supportive services to program participants.
- the salary and benefit packages of the PJ and subrecipient staff who directly deliver the services.

These project delivery costs must be attributable to the identifiable objective of the service delivered, otherwise they are administrative costs of the PJ or subrecipient.

- c. Eligible Costs:
 - i. Eligible Costs for McKinney Vento Supportive Services and Homelessness Prevention Services: Eligible costs for supportive services under either of these two categories include costs associated with the following services:
 - (A) Child care: The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible. The child care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible. The following conditions also apply:

- Children must be under the age of 13 unless the children have a disability.
 - Children with a disability must be under the age of 18.
- (B) Education services: The costs of improving knowledge and basic educational skills are eligible costs including:
- Instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).
 - Screening, assessment, and testing; individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.
- (C) Employment assistance and job training: The costs of establishing and/or operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.
- Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.
 - Services that assist individuals in securing employment consist of:
 - Employment screening, assessment, or testing;
 - Structured job skills and job-seeking skills;
 - Special training and tutoring, including literacy training and pre-vocational training;
 - Books and instructional material;
 - Counseling or job coaching; and
 - Referral to community resources.
- (D) Food: The cost of providing meals or groceries to program participants is eligible.
- (E) Housing search and counseling services: Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible. Services are:
- Development of an action plan for locating housing;
 - Housing search;
 - Tenant counseling;
 - Securing utilities;
 - Making moving arrangements;
 - Outreach to and negotiation with owners;
 - Assistance submitting rental applications and understanding leases;
 - Assessment of housing for compliance with HOME-ARP requirements for TBRA assistance in [Section VI.C](#) of this Notice and financial

assistance for short-term and medium-term rental payments provided under [Section VI.D.4.c.i.\(R\)](#) below;

- Assistance obtaining utilities; and
- Tenant counseling;
- Mediation with property owners and landlords on behalf of eligible program participants;
- Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- Payment of rental application fees;
- Other Housing counseling costs, as defined in [24 CFR 5.100](#), funded with or provided in connection with grant funds must be carried out in accordance with [24 CFR 5.111](#).

Please Note: When PJs or subrecipients provide housing services to eligible persons that are incidental to a larger set of holistic case management services, these services do not meet the definition of Housing counseling, as defined in [24 CFR 5.100](#), and therefore are not required to be carried out in accordance with the certification requirements of [24 CFR 5.111](#).

- (F) Legal services: Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision of licensed attorneys, for advice and representation in matters that interfere with a qualifying individual or family's ability to obtain and retain housing.
- Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other legal remedies for victims of domestic violence, dating violence, sexual assault, human trafficking, and stalking; appeal of veterans and public benefit claim denials; landlord-tenant disputes; and the resolution of outstanding criminal warrants; landlord/tenant matters, provided that the services must be necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the program participant currently resides.
 - Legal services for immigration and citizenship matters and for issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are prohibited.
 - Services may include client intake, receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.
 - Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

- (G) Life skills training: The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, dating violence, sexual assault, stalking, human trafficking, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Life skills training includes:
- the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.
- (H) Mental health services: Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals.
- Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or symptom management.
 - Services are crisis interventions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.
- (I) Outpatient health services: Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:
- Providing an analysis or assessment of a program participant's health problems and the development of a treatment plan;
 - Assisting program participants to understand their health needs;
 - Providing directly or assisting program participants to obtain and utilize appropriate medical treatment;
 - Preventive medical care and health maintenance services, including in-home health services and emergency medical services;
 - Provision of appropriate medication;
 - Providing follow-up services; and
 - Preventive and non-cosmetic dental care.
- (J) Outreach services: The costs of activities to engage qualified populations for the purpose of providing immediate support and intervention, as well as identifying potential program participants, are eligible.
- Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.
 - Costs associated with the following services are eligible: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and

mainstream programs; and publicizing the availability of the housing and/or services provided within the PJ's geographic area.

- (K) Substance abuse treatment services: Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. The costs include:
- Program participant intake and assessment;
 - Outpatient treatment;
 - Group and individual counseling
 - Drug testing;
 - Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.
- (L) Transportation: Eligible costs are:
- The costs of program participant's travel on public transportation or in a vehicle provided by the PJ or subrecipient to and from medical care, employment, childcare, or other services eligible under this Notice;
 - Mileage allowance for service workers to visit program participants and to carry out housing inspections;
 - The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;
 - The cost of gas, insurance, taxes, and maintenance for the vehicle;
 - The costs of PJ or subrecipient staff to accompany or assist program participants to utilize public transportation; and
 - If public transportation options are not sufficient within the area, the PJ may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:
 - Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);
 - Payments for car repairs or maintenance must be paid by the PJ or subrecipient directly to the third party that repairs or maintains the car; and
 - PJs or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.
 - The PJ must establish policies and procedures surrounding payments for the cost of gas, insurance, taxes, the one-time payment for car repairs or maintenance described above, and maintenance for vehicles of program participants. Such costs must be limited to program participants with the inability to pay for such costs and who, without such assistance, would not be able to participate in eligible services under this [Section VI.D.4.c.i.](#)

- (M) Case management: The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. PJs and subrecipients providing these supportive services must have written standards for providing the assistance. Eligible costs are those associated with the following services and activities:
- Conducting the initial evaluation, including verifying and documenting eligibility, for individuals and families applying for supportive services;
 - Counseling;
 - Developing, securing, and coordinating services;
 - Using a centralized or coordinated assessment system that complies with the requirements of [Section IV.C](#) of the Notice;
 - Obtaining federal, State, and local benefits;
 - Monitoring and evaluating program participant progress;
 - Providing information and referrals to other providers;
 - Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking;
 - Developing an individualized housing and service plan, including planning a path to permanent housing stability; and
 - Conducting re-evaluations of the program participant's eligibility and the types and amounts of assistance the program participant needs.
- (N) Mediation: HOME-ARP funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the program participant currently resides.
- (O) Credit repair: HOME-ARP funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. This assistance does not include the payment or modification of a debt.
- (P) Landlord/Tenant Liaison: Costs of liaison services between property managers/owners and program participants are eligible HOME-ARP costs and may include:
- Landlord outreach;
 - Physical inspections and rent reasonable studies as needed to secure units;
 - Rental application fees and security deposits for clients, in accordance with the financial assistance costs requirements in [\(R\)](#);
 - Mediation services in [\(N\)](#) for housing issues that may arise between owner, property manager, or other residents and clients;

- Coordination or assistance with the provision of other HOME-ARP eligible services to assist clients to maintain permanent housing.
- (Q) Services for special populations: HOME-ARP funds may be used to provide services for special populations, such as victim services, so long as the costs of providing these services are eligible under this section. The term victim services means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, stalking, or human trafficking.
- (R) Financial assistance costs: HOME-ARP funds may be used to pay housing owners, utility companies, and other third parties for the following costs, as applicable:
- Rental application fees: Rental housing application fee that is charged by the owner to all applicants.
 - Security deposits: A security deposit that is equal to no more than 2 months' rent. This assistance is separate and distinct from the provision of financial assistance for First and Last Month's rent provided under this section and cannot be used to duplicate those costs.
 - Utility deposits: HOME-ARP funds may pay for a standard utility deposit or initiation fee required by the utility company or owner (if owner-paid utilities are provided) for all program participants for the following utilities:
 - Gas
 - Electric
 - Water
 - Sewer
 - Utility payments: HOME-ARP funds may pay for up to 24 months of utility payments per program participant, per service, including up to 6 months of utility payments in arrears, per service. A partial payment of a utility bill counts as one month. This assistance may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments. Eligible utility services are gas, electric, water, and sewage. No program participant shall receive more than 24 months of utility assistance within any 3-year period.
 - Moving costs: HOME-ARP funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance under this section of the Notice and before the program participant moves into permanent housing. Payment of temporary storage fees in arrears is not eligible.

- First and Last month's rent: If necessary to obtain housing for a program participant, HOME-ARP funds may be used to make a pre-payment of the first and last month's rent under a new lease to the owner at the time the owner is paid the security deposit for the program participant's tenancy in the housing. This assistance must not exceed two month's rent and must be tracked for purposes of determining the total short- and medium-term financial assistance for rent that the program participant may receive. This assistance is separate and distinct from financial assistance for Security Deposits provided under this section and cannot be used to duplicate those costs.
 - Payment of rental arrears: HOME-ARP funds may be used for a one-time payment for up to 6 months of rent in arrears, including any late fees or charges on those arrears, if necessary for the household to maintain their existing housing or, for those without housing, if necessary to remove a demonstrated barrier to obtaining housing.
- (S) Short-term and medium-term financial assistance for rent: Subject to the following conditions, a PJ may provide a program participant with short-term or medium-term financial assistance for rent, provided that the total financial assistance provided, including any pre-payment of first and last month's rent as described above, does not exceed 24 months of rental payments over any 3-year period.
- Short-term means up to 3 months.
 - Medium-term means more than 3 months but not more than 24 months.
 - The PJ may make rental payments only to an owner with whom the PJ has entered into a financial assistance agreement for rental payment. The financial assistance agreement must set forth the terms under which rental payments will be provided, including the requirements that apply under this Notice. The financial assistance agreement must provide that, during the term of the agreement, the owner must give the PJ a copy of any notice to the program participant to vacate the housing unit or any complaint used under State or local law to commence an eviction action against the program participant. The owner must serve written notice upon the program participant at least 30 days before termination of tenancy specifying the grounds for the action. Each financial assistance agreement that is executed or renewed must comply with the requirements in [24 CFR 92.359](#).
 - The PJ must make timely payments to each owner in accordance with the financial assistance agreement. The financial assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. The PJ is solely responsible for paying late payment penalties that it incurs with non-HOME-ARP funds.
 - Rental payments cannot be provided unless the rent does not exceed the Fair Market Rent established by HUD, as provided under [24 CFR](#)

[part 888](#), and complies with HUD's standard of rent reasonableness, as established under [24 CFR 982.507](#).

- Each program participant receiving financial assistance for rental payments must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. Where the financial assistance is solely for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks. New leases must have an initial term of 1 year unless a shorter period is agreed upon by the program participant and owner. The lease requirements in [24 CFR 92.359](#) apply to this financial assistance.
- PJs must establish requirements to prevent the provision of short- or medium-term financial assistance for rent for the same period for which a program participant is receiving rental assistance or living in housing provided with ongoing assistance (such as project-based rental assistance or operating subsidies).
- If a program participant receiving financial assistance for short- or medium-term rental payments under this section meets the conditions for an emergency transfer under [24 CFR 5.2005\(e\)](#), HOME-ARP funds may be used to pay amounts owed for breaking a lease to effectuate an emergency transfer. These costs are not subject to the 24-month limit on rental payments.

Ineligible costs - Financial assistance cannot be provided to a program participant who is receiving the same type of assistance through other public sources. Financial assistance also cannot be provided to a program participant who has been provided with replacement housing payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601 et seq.) and its implementing regulations at [49 CFR part 24](#), or Section 104(d) of the Housing and Community Development Act of 1974 (42 USC 5304(d) and its implementing regulations at [24 CFR part 42](#), during the period of time covered by the replacement housing payments.

- ii. *Eligible Costs Associated with Housing Counseling under 24 CFR 5.100 and 5.111*: Costs associated with housing counseling services as defined at [24 CFR 5.100](#) and [5.111](#) are eligible under HOME-ARP. As homeowner assistance and related services are not eligible HOME-ARP activities, costs for the provision of services related to mortgages and homeownership to existing homeowners are also not eligible under HOME-ARP. If a program participant is a candidate for homeownership, costs associated with pre-purchase homebuying counseling, education and outreach are eligible under HOME-ARP. Eligible costs are those costs associated with the services listed in [24 CFR part 214](#) and include, but are not limited to:

- (A) Staff salaries and overhead costs of HUD-certified housing counseling agencies related to directly providing eligible housing counseling services to HOME-ARP program participants;
- (B) Development of a housing counseling workplan;
- (C) Marketing and outreach;
- (D) Intake;
- (E) Financial and housing affordability analysis;
- (F) Action plans that outline what the housing counseling agency and the client will do to meet the client's housing goals and that address the client's housing problem(s);
- (G) Follow-up communication with program participants.

5. Termination of assistance to program participants:

- a. *Termination of assistance:* The PJ may terminate assistance to a program participant who violates program requirements or conditions of occupancy or no longer needs the services as determined by the PJ. Termination under this section does not bar the PJ from providing further assistance at a later date to the same individual or family under this Notice.
- b. *Due process:* The PJ must establish policies and procedures for termination of assistance to program participants. In terminating assistance to a program participant, the PJ must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:
 - i. Providing the program participant with a written copy of the program rules and the termination process before the participant begins to receive assistance;
 - ii. Written notice to the program participant containing a clear statement of the reasons for termination;
 - iii. A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and
 - iv. Prompt written notice of the final decision to the program participant.

During this process, the PJ must provide effective communication and accessibility for individuals with disabilities, including the provision of reasonable accommodations. Similarly, the PJ must provide meaningful access to persons with LEP.

- 6. Commitment:** For supportive services, commitment means that before disbursing any HOME-ARP funds to any entity, the PJ executed a legally binding written agreement that complies with HOME-ARP requirements with the contractor or subrecipient providing the supportive service (that includes the date of the signature of each person signing the agreement).
- 7. Policies and Procedures:** PJs must establish the following policies and procedures in compliance with this notice:

- a. Tenant selection procedures in accordance with [Section IV.C.2](#) and this section;
 - b. Eligibility of program participants in other HOME-ARP activities for supportive services under [Section VI.D.4.c.i](#) above including the length of time that program participants may be served by HOME-ARP TBRA and/or HOME ARP rental housing before they will no longer be eligible as a qualifying population for purposes of this section;
 - c. If the PJ chooses to set maximum amounts and/or maximum periods for assistance or services, the maximum dollar amount that a program participant may receive for each type of service described in [Section VI.D.4.c.i](#) above and/or maximum periods for which a program participant may receive any of the types of assistance or services under this section;
 - d. Documentation of eligible costs;
 - e. Requirements that allow a program participant to receive only the HOME-ARP services needed so there is no duplication of services or assistance in the use of HOME-ARP funds for supportive services;
 - f. Payments for the cost of gas, insurance, taxes, the one-time payment for car repairs or maintenance described above, and maintenance for vehicles of program participants;
 - g. Financial assistance for short-term and medium-term rental payments under this Notice, including requirements to prevent a duplication of rental or financial assistance provided to a program participant;
 - h. Housing stability case management; and
 - i. Termination of assistance to program participants.
8. **Project Completion**: Project completion for a HOME-ARP Supportive Services project means the final drawdown has been disbursed for the project.

E. Acquisition and Development of Non-Congregate Shelter

A non-congregate shelter (NCS) is one or more buildings that provide private units or rooms as temporary shelter to individuals and families and does not require occupants to sign a lease or occupancy agreement. HOME-ARP funds may be used to acquire and develop HOME-ARP NCS for individuals and families in qualifying populations. This activity may include but is not limited to the acquisition of land and construction of HOME-ARP NCS or acquisition and/or rehabilitation of existing structures such as motels, hotels, or other facilities to be used for HOME-ARP NCS. HOME-ARP funds may not be used to pay the operating costs of HOME-ARP NCS. Consequently, PJs must consider the availability of ongoing operating funds for the HOME-ARP NCS so that the HOME-ARP NCS can remain viable through the restricted use period specified in this Notice.

During the restricted use period, HOME-ARP NCS may:

- Remain as HOME-ARP NCS in compliance with the requirements of this Notice.
 - Be used as a non-congregate emergency shelter under the Emergency Solutions Grants (ESG) program (Subtitle B of title IV of the McKinney-Vento Homeless Assistance Act) (42 USC 11371 et seq.), in which case the non-congregate shelter must be operated in compliance with all requirements at [24 CFR part 576](#) that apply when ESG funds are provided for operating costs or essential services in the shelter. During any period for which ESG funds are provided, the applicable ESG requirements shall govern in the event of any conflict with HOME-ARP requirements.
 - Be converted to permanent affordable housing according to the requirements established in [Section VI.E.11](#) of this Notice.
 - Be converted to permanent housing as defined in Subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 USC 11381 et seq.) according to requirements of this Notice and [24 CFR part 578](#).
1. **Admission and Occupancy:** HOME-ARP NCS units may only be occupied by individuals or families that meet the criteria for one or more of the qualifying populations as defined in [Section IV.A.](#) of this Notice. Where applicable, occupancy of NCS units by qualifying populations must be in accordance with the requirements in [Section IV.C](#) of this Notice. The PJ must not allow qualifying populations to be charged occupancy fees or other charges to occupy a HOME-ARP NCS unit unless the PJ determines such fees and charges to be customary and reasonable and the charges comply with [24 CFR 578.77\(b\)](#).

To ensure that access to HOME-ARP NCS by qualifying populations is effectively integrated with other assistance and services, PJs are encouraged to incorporate each HOME-ARP NCS into the CE established by the CoC(s) for the area the NCS is funded to serve, provided that the CE is used in accordance with [Section IV.C](#) of this Notice. Whether or not packaged with NCS funding, HOME-ARP supportive services may also be provided as needed to qualifying individuals and families served by the HOME-ARP NCS in accordance with the requirements contained in [Section VI.D](#) of this Notice.

No individual or family may be denied admission to or removed from a HOME-ARP NCS unit on the basis or as a direct result of the fact that the individual or family is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the individual or family meets the criteria of one of the qualifying populations.

2. **Eligible Activities:** HOME-ARP funds may be used to acquire and/or rehabilitate or construct HOME-ARP NCS units to serve qualifying populations. Acquisition of vacant land or demolition of existing structures may be undertaken only as part of a HOME-ARP NCS project. HOME-ARP NCS units acquired and/or developed with HOME-ARP funds must meet the requirements of this Notice, i.e., be used as HOME-ARP NCS or used as emergency shelter under ESG for the restricted use period established in [Section VI.E.9](#) of this Notice.
3. **Eligible Costs:** HOME-ARP funds may be used for actual costs of acquiring NCS or developing HOME-ARP NCS as follows:

- a. Acquisition Costs: Costs to acquire improved or unimproved real property.
- b. Demolition Costs: Costs of demolishing existing structures for the purpose of developing HOME-ARP NCS.
- c. Development Hard Costs: Costs identified in [24 CFR 92.206\(a\)](#) to rehabilitate or construct HOME-ARP NCS units, except costs must be for meeting the physical standards established in [Section VI.E.7](#) of this Notice.
- d. Site Improvements: Costs to make improvements to the project site, including installation of utilities or utility connections, and the construction or rehabilitation of laundry, community facilities, on-site management, or supportive service offices.
- e. Related Soft Costs: Reasonable and necessary costs incurred by the PJ and owner associated with the financing, acquisition, and development of HOME-ARP NCS projects, including costs identified in [24 CFR 92.206\(d\)](#) with the following exceptions:
 - i. Costs to provide information services such as affirmative marketing to prospective homeowners and tenants are not eligible.
 - ii. Costs of funding an initial operating deficit reserve are not eligible.
 - iii. Costs of project-specific assistance to community housing development organizations, including technical assistance and site control loans or seed money loans as specified in [24 CFR 92.301](#) are not eligible.
- f. Replacement Reserve: Costs to capitalize a replacement reserve to pay the reasonable and necessary costs of replacing major systems and their components whose useful life will end during the restricted use period. Major systems include structural support, roofing, cladding, and weatherproofing, plumbing, electrical and HVAC. The costs of replacing major systems must be determined through a Capital Needs Assessment or documented in writing after an inspection by the PJ or PJ-selected contractor to assess the remaining useful life of major systems expected upon completion of the HOME-ARP NCS project. The costs of a replacement reserve must be included in the project budget in the written agreement along with a list of major systems to be replaced with the reserve and projected replacement schedule during the restricted use period (i.e., reserve for replacement analysis). Rehabilitation planned to be completed with HOME-ARP NCS reserve funds at a later date must be included in IDIS as a rehabilitation activity at initial commitment.

4. Prohibited Costs: HOME-ARP funds **may not** be used to:

- a. Pay any operating costs of a HOME-ARP NCS project.
- b. Provide additional HOME-ARP investment in a HOME-ARP NCS project during the restricted use period, except that additional HOME-ARP funds can be invested in the project up to one year after project completion in IDIS for eligible costs.

- c. Pay costs of a conversion of HOME-ARP NCS as described in [Section VI.E.11](#) of this Notice.
 - d. Provide non-Federal matching contributions required under any other Federal program.
 - e. Provide assistance for uses authorized under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (Public Housing Capital and Operating Funds).
 - f. Provide assistance to eligible low-income housing under [24 CFR part 248](#) (Prepayment of Low-Income Housing Mortgages).
 - g. Pay for the acquisition of property owned by the PJ, except for property acquired by the PJ with HOME-ARP NCS funds, or property acquired in anticipation of carrying out a HOME-ARP NCS project.
 - h. Pay delinquent taxes, fees, or charges on properties to be assisted with HOME-ARP NCS funds.
 - i. Pay for any cost that is not eligible under this Notice.
5. **Commitment:** PJs must commit HOME-ARP funds before disbursing funds for a HOME-ARP NCS project. HOME-ARP funds are committed to a HOME-ARP NCS project when the PJ executes a legally binding written agreement that meets the requirements in this Notice.

If the project is an acquisition-only activity, the PJ may commit HOME-ARP funds if it reasonably expects the project will be operated as HOME-ARP NCS within 6 months of the date of acquisition. Acquisition-only HOME-ARP NCS projects may be performed when the PJ reasonably determines that the units acquired will not require rehabilitation to meet the property standards in [Section VI.E.7](#) of this Notice. If the project is not in active use as HOME-ARP NCS within 6 months of the acquisition, HUD may require the PJ to submit a schedule for placing the project into operation within a period determined by HUD or may require the PJ to repay the funds to its HOME-ARP Treasury Account.

For projects that will involve rehabilitation or new construction with or without acquisition, the PJ may commit HOME-ARP funds if it reasonably expects development to begin within 12 months of the date of commitment.

6. **Project Development Due Diligence:** HOME-ARP NCS projects must meet the requirements of this Notice for the restricted use period. Consequently, before awarding HOME-ARP funds to a HOME-ARP NCS project, PJs must determine that acquisition and/or development is financially feasible. The PJ is responsible for maintaining continued operation of the NCS in accordance with this Notice throughout the restricted use period. Therefore, the PJ must consider whether the HOME-ARP NCS project has secured or has a high likelihood of securing operating funding because operating costs cannot be paid with HOME-ARP.

PJs must assess HOME-ARP NCS projects, including a review of information from the owner and/or developer that demonstrates the project's financial feasibility throughout the restricted use period. Before awarding funds for HOME-ARP NCS, the PJ must:

- Require that the developer submit evidence of appropriate skills and experience related to the development of shelters or similar facilities.
- Require the owner to submit evidence of prior experience with operating shelters.
- Require an acquisition or development budget, timeline, and sources and uses statement for the acquisition and/or development of the project be submitted for review.
- Require the owner to submit a proposed operating budget, including secured sources for operating costs and any operating gap that will require additional assistance. If there is a gap in the operating budget, the PJ should require the owner to submit a plan for securing additional private, local, state, or Federal funding sufficient for successful operation of the project.

Before committing funds, PJs should also determine whether the owner intends to continue operating the project as HOME-ARP NCS or emergency shelter NCS under ESG for the entire full restricted use period or plans to convert the HOME-ARP NCS to permanent affordable housing or CoC permanent housing during the restricted use period, once the minimum use period for HOME-ARP NCS established in this section is completed. If a HOME-ARP NCS project owner intends to convert the project to CoC permanent housing or permanent supportive housing during the restricted use period, the PJ is encouraged to pursue partnership and leveraging opportunities with the CoC early in the planning stage of a HOME-ARP NCS project. In such instances, the PJ should consider the physical design needs of an eventual conversion in its evaluation of the HOME-ARP NCS project.

- 7. Property and Habitability Standards:** HOME-ARP NCS projects must meet the minimum HOME-ARP property standards prior to occupancy and the HOME-ARP NCS ongoing property standards throughout the restricted use period as described in this Notice. An “acquisition only” project must meet the HOME-ARP NCS minimum property standards described in paragraph a. below at the time of acquisition. If the project requires rehabilitation or repair to meet the minimum property standards, the project is considered acquisition and rehabilitation irrespective of the source of funds used for the rehabilitation or repair and must meet the NCS rehabilitation standards in paragraph b. below. In addition, PJs must meet the standards required in this Notice for rehabilitation or new construction, as applicable. The PJ must determine that construction contracts and documents describe the work to be completed in adequate detail to establish a basis for inspection to determine that all work was completed to contracted specifications and that the project met the HOME-ARP NCS property standards. Project classification as rehabilitation or new construction is determined by the PJs local code requirements based on specific work to be completed. PJs may also choose to adopt a standard that exceeds the minimum standards described here. The written agreement must impose the HOME-ARP NCS property standards or the PJ's locally developed standards and require that the PJ or its representatives have access to the property to perform inspections during development and throughout the restricted use period.

- a. Minimum HOME-ARP NCS Property Standards: All HOME-ARP NCS units and common areas must meet all applicable State and local codes, ordinances, and requirements and the applicable provisions of HUD's Lead Safe Housing Rules at [24 CFR Part 35](#). In addition, all HOME-ARP NCS projects must meet the following minimum safety, sanitation, accessibility, and privacy standards:
- i. Must be structurally sound to protect occupants from the elements and not pose any threat to health and safety of the occupants.
 - ii. Must be accessible in accordance with section 504 of the Rehabilitation Act ([29 U.S.C. 794](#)) and implementing regulations at [24 CFR part 8](#); the Fair Housing Act ([42 U.S.C. 3601 et seq.](#)) and implementing regulations at [24 CFR part 100](#); and Title II of the Americans with Disabilities Act ([42 U.S.C. 12131 et seq.](#)) and implementing regulations at [24 CFR part 35](#), all as applicable.
 - iii. Must provide each individual or family with an acceptable, individual room to sleep which includes adequate space and security for themselves and their belongings.
 - iv. Must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of occupants.
 - v. Must have a water supply free of contamination.
 - vi. Must have in-unit sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.
 - vii. Must provide necessary heating/cooling facilities in proper operating condition.
 - viii. Must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances.
 - ix. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
 - x. Must provide one working smoke detector and one working carbon monoxide detector in each unit. All smoke and carbon monoxide detectors and alarm systems must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector and one carbon monoxide detector. There must also be a second means of exiting the building in the event of fire or other emergency.

Minimum HOME-ARP NCS Rehabilitation Standards: HOME-ARP NCS rehabilitation projects must meet all applicable State and local codes, ordinances, and requirements, or in the absence of such codes, International Residential Code or the International Building Code (as applicable), and must comply with the Lead Safe Housing Rule at [24 CFR Part 35](#). Additionally, PJs must consider the remaining useful life of major systems. PJs are encouraged to use a Capital Needs Assessment to determine the reasonable and necessary investment of HOME-ARP funding in rehabilitation projects and expected cost of ongoing replacement needs during the restricted use period. If HOME-ARP funding will capitalize a replacement reserve, the PJ must determine the remaining useful life of major systems through a Capital Needs Assessment or other PJ inspection documented in writing, in accordance with requirements for capitalized replacement reserve costs in [V.I.E.3](#).

Minimum HOME-ARP NCS New Construction Standards: HOME-ARP NCS projects that are newly constructed must meet all applicable State and local codes, ordinances, and requirements, or in the absence of such codes, the International Residential Code or the International Building Code (as applicable to the type of structure). HOME-ARP funds cannot be used to fund a replacement reserve for newly constructed HOME-ARP NCS.

- b. *On-going Property Standards and Inspections:* PJs must develop ongoing inspection procedures to verify that HOME-ARP NCS projects meet the minimum HOME-ARP NCS property standards established in this Notice throughout the restricted use period. A PJ's inspection procedures must require annual inspections that are applied consistently to all HOME-ARP NCS projects. When deficiencies are identified, a follow-up inspection to verify that deficiencies are corrected must occur within 6 months. The PJ may establish a list of non-hazardous deficiencies for which correction can be verified by third party documentation (e.g., paid invoice or work order) rather than reinspection. If life-threatening deficiencies exist, the owner or operator of the HOME-ARP NCS must correct such deficiencies immediately. In such instances, the PJ must re-inspect to verify the deficiency has been corrected within 14 days.

8. Project Completion: Project Completion for HOME-ARP NCS means:

- All necessary title transfer requirements and construction work has been performed;
- The project complies with the requirements of this Notice, including the HOME-ARP NCS property standards as evidenced by a final inspection;
- The project is actively operating as a HOME-ARP NCS;
- Final drawdown of HOME-ARP funds has been disbursed; and
- Project completion information is entered into IDIS.

All HOME-ARP NCS projects must be completed within 4 years of the date of commitment of the HOME-ARP funds based on the date of the last signature on the written agreement. If the PJ fails to complete a project within 4 years of project completion, it must comply with the terminated project requirements at [24 CFR 92.205\(e\)\(2\)](#). HOME-ARP NCS rehabilitation and new construction projects must begin operating as active shelters within 6 months after the date of completion of the construction work. If the HOME-ARP NCS project is not in use within 6 months, HUD may require the PJ to submit a schedule for placing the project into operation as an active shelter within a period determined by HUD or may require the PJ to repay the HOME-ARP funds to its HOME-ARP Treasury Account.

- 9. Restricted Use Period:** HOME-ARP NCS projects must comply with the requirements of this Notice for not less than the restricted use period specified in this Notice. PJs must impose the HOME-ARP NCS requirements through a deed restriction, covenant running with the land, legally binding agreement restricting the use of the property and recorded on the property in accordance with State recordation laws, or other mechanism approved by HUD. The use restriction should not identify that the property is prioritized for victims of domestic violence, dating violence, sexual assault, stalking or human trafficking. This use restriction must require that the property is operated as HOME-ARP NCS or non-congregate emergency shelter under ESG for the required restricted use period except that HOME-ARP

NCS projects may be converted to permanent affordable housing or CoC permanent housing after being operated as HOME-ARP NCS for the applicable minimum use period prior to conversion as described in [Section VI.E.11](#). If the HOME-ARP NCS is converted, the PJ must amend its use restriction to reflect the change in requirements for the remainder of the restricted use period.

The restricted use period begins at project completion as defined in [Section VI.E.8](#) of this Notice and must be imposed for at least the following periods:

- a. *New Construction*: Newly constructed HOME-ARP NCS units must be operated as HOME-ARP NCS units for qualifying populations for a restricted use period of 15 years, regardless of the amount of HOME-ARP funds invested in the project.
- b. *Rehabilitation*: HOME-ARP NCS units which receive any amount of HOME-ARP funds for rehabilitation but are not designated as new construction by the PJ's state or local building code requirements must be operated as HOME-ARP NCS units for qualifying populations for a restricted use period of 10 years.
- c. *Acquisition Only*: Units acquired for use as HOME-ARP NCS that do not require rehabilitation for occupancy must serve the qualifying populations for a restricted use period of 10 years.
- d. PJs may impose longer restricted use periods but must require the project remain financially viable for the extended period.

10. Return of Replacement Reserve: HOME-ARP funds may capitalize a replacement reserve for HOME-ARP NCS projects performing rehabilitation as described in [Section VI.E.3](#) of this Notice. Any unexpended HOME-ARP funds remaining in a project's replacement reserve at the completion of the restricted use period or upon conversion must be used or returned as follows:

- a. If the HOME-ARP NCS project will continue to operate in accordance with the HOME-ARP NCS requirements and serve qualifying households beyond the HOME-ARP NCS restricted use period demonstrated by enforceable restrictions imposed by the PJ in accordance with [Section VI.E.9](#), the project can retain the replacement reserve to pay reasonable and necessary costs of replacing major systems and their components.
- b. If the HOME-ARP NCS project will not continue to operate in accordance with the HOME-ARP NCS requirements because the NCS is being converted to either CoC permanent housing or permanent affordable housing as described in [Section VI.E.11](#) of this Notice and the HOME-ARP grant is still open, the remaining HOME-ARP funds in the replacement reserve must be returned to the PJ's HOME Investment Trust Fund Treasury account.
- c. If the HOME-ARP NCS grant has expired or is closed out, any remaining HOME-ARP funds in the replacement reserve must be deposited in the PJ's local HOME account,

recorded as a program income receipt in IDIS and used for eligible costs under [24 CFR part 92](#).

11. Conversion of Non-Congregate Shelter to Rental Housing: The ARP authorizes the conversion of HOME-ARP NCS units into permanent housing under subtitle C of title IV of McKinney-Vento or permanent affordable housing as described in this section, during the restricted use period. No HOME-ARP funds may be used for conversion. The written agreement between the PJ and the owner of the HOME-ARP NCS project must describe conversion as a possible outcome of the HOME-ARP NCS project; specify the conditions under which conversion will be permitted; and require that the PJ approve any conversion in advance.

- a. *Minimum Use Period*: All HOME-ARP NCS projects must be operated as NCS for a minimum period of time prior to conversion. The minimum use period prior to conversion varies based on the original HOME-ARP NCS eligible activity undertaken and the amount of funds invested in the project. If the HOME-ARP NCS project involves rehabilitation, the minimum use period prior to conversion is based on the total cost of the rehabilitation as a percentage of the total appraised value of the improved property. A larger investment for rehabilitation will require operation as HOME-ARP NCS for a longer minimum use period prior to conversion.
 - i. Acquisition Only: HOME-ARP NCS activities not requiring rehabilitation for occupancy must be operated as HOME-ARP NCS for no less than 3 years from project completion prior to conversion.
 - ii. Moderate Rehabilitation: Occurs when an NCS HOME-ARP project requires rehabilitation and the total rehabilitation expenditure from all sources of less than 75 percent of the total appraised value of the improved property. HOME-ARP NCS projects that receive moderate rehabilitation must be operated as HOME-ARP NCS for no less than 5 years from project completion prior to conversion.
 - iii. Substantial Rehabilitation: Occurs when an NCS HOME-ARP project requires rehabilitation and the total rehabilitation expenditure from all sources exceeds 75 percent of the total appraised value of the improved property. HOME-ARP NCS projects that receive substantial rehabilitation must be operated as HOME-ARP NCS for no less than 10 years from project completion before conversion.
 - iv. New Construction: Any HOME-ARP NCS project defined by the PJ's state or local code requirements as new construction must be operated as HOME-ARP NCS for no less than 10 years from project completion prior to conversion.

Requirements for conversions vary depending on the type of conversion, as follows:

- b. *Permanent Affordable Housing*: During the HOME-ARP NCS restricted use period but only after the HOME-ARP NCS minimum use period, a PJ may provide written approval to convert the project from HOME-ARP NCS to permanent affordable housing (e.g., affordable multifamily rental housing, transitional housing) in accordance with the requirements prescribed in the PJ's written agreement with the HOME-ARP NCS owner.

The converted permanent affordable housing project must meet the following requirements:

- i. Additional HOME-ARP Investment: The PJ is prohibited from investing additional HOME-ARP funds to pay for the cost of converting the project from HOME-ARP NCS to permanent affordable housing or to pay for operating the project as permanent affordable housing. However, the PJ must determine that adequate financial resources are committed to the project to bring it into compliance with the property standards of [Section VI.B.11](#) of this Notice and maintain the financial feasibility of the project to be operated as permanent affordable housing for the qualifying populations throughout the remaining restricted use period. If permitting conversion of HOME-ARP NCS into permanent affordable housing, a PJ must develop and evaluate the project in accordance with standardized underwriting guidelines for conversion. At minimum, the PJ's underwriting guidelines for conversion must include an examination of the sources and uses of funds for the conversion and a careful review of the project's operating budget, including the assumptions, projections, and reasonably expected increases in expenses throughout the minimum compliance period defined in the section below, to determine that the project will remain financially feasible to serve the qualifying populations for the remainder of the restricted use period.

The PJ may assist households living in affordable rental housing units in converted projects by providing HOME-ARP TBRA in accordance with [Section VI.C](#) of this Notice or financial assistance services in accordance with [Section VI.D.4.c.i.R.](#)

- ii. Minimum Compliance Period: The minimum compliance period for converted housing is the period that the housing must continue to comply with the requirements of this Notice and is equal to the balance of the HOME-ARP NCS restricted use period. A PJ may impose a longer compliance period but should plan for the project's financial feasibility for the longer period. The PJ may not use HOME-ARP funds to provide operating assistance, including a capitalized operating reserve, to cover deficits during the minimum or an extended compliance period.

The PJ must amend the use restriction for HOME-ARP NCS to reflect the conversion to permanent affordable housing. The provisions for imposing affordability requirements at [24 CFR 92.252\(e\)\(1\) through \(e\)\(4\)](#) apply to the amended use restriction. In addition, the amended use restriction for the permanent affordable housing must be enforceable to maintain compliance with the requirements of this Notice for the minimum compliance period, including the following:

- (1) The same number of units that were operated as HOME-ARP NCS for qualifying populations must be restricted for and must be occupied by households that meet the definition of a qualifying population at the time of initial occupancy of the permanent affordable housing. The household's contribution toward rent during this period must be affordable in accordance with [Section VI.E.11](#) of this Notice.

- (2) The units must comply with the ongoing property condition standards of [24 CFR 92.251\(f\)](#) throughout the minimum compliance period as demonstrated by an on-site inspection within 12 months of project completion and an on-site inspection at least once every three years thereafter as required by [24 CFR 92.504\(d\)\(ii\)](#).
 - (3) Each household that occupies a HOME-ARP assisted rental unit must have an executed lease that complies with the tenant protections required in [Section VI.B.18](#) of this Notice.
- iii. Property Standards: For the remaining restricted use period, the PJ must require that project owners maintain the housing as decent, safe and sanitary housing in good repair in accordance with the ongoing property condition standards of [24 CFR 92.251\(f\)](#) as demonstrated by an on-site inspection at least once every three years in accordance with [24 CFR 92.504\(d\)\(ii\)](#).
- iv. Tenant Contribution to Rent: The PJ must confirm that the qualifying household's contribution to rent is affordable to the household based on a determination of the household's income. If the household is receiving project-based or tenant-based rental assistance, it cannot contribute towards rent more than is permitted in accordance with the requirements of the applicable program. If a qualifying household cannot contribute to rent, or the contribution is insufficient to cover the unit rent, the PJ may provide HOME-ARP TBRA or supportive services to assist the qualifying household but may not provide operating cost assistance or fund an operating cost assistance reserve.
- v. Tenant Protections: Following conversion, each qualifying household that occupies a permanent affordable housing unit must have an executed lease or sublease that complies with the tenant protections requirements of this Notice.
 - (1) Lease Requirement: There must be a lease between the qualifying household and the owner of the permanent affordable housing project or, if there is a sublease with a qualifying household, a lease between a HOME-ARP sponsor and the owner in accordance with [24 CFR 92.253\(a\)](#).
 - (2) Prohibited Lease Terms: The lease between the qualifying household and the owner, lease between HOME-ARP sponsor and the owner, and sublease between a HOME-ARP sponsor and qualifying household may not contain any of the prohibited lease terms specified in [24 CFR 92.253\(b\)](#).
 - (3) Termination of tenancy: An owner may not terminate the tenancy or refuse to renew the lease of a qualifying household (or of a HOME-ARP sponsor with a sublease with a qualifying household) in a permanent affordable housing unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local laws, or for other good cause. An increase in the qualifying household's income does not constitute good cause.

To terminate or refuse to renew tenancy, the owner must serve written notice upon the qualifying household and the HOME-ARP sponsor if the lease is between an owner and HOME-ARP sponsor, specifying the grounds for the action at least 30 days before termination of tenancy. In the case of a sublease, to terminate or refuse to renew tenancy of a qualifying household, the HOME-ARP sponsor, in accordance with the policy established by the PJ, must notify the PJ in advance of serving written notice to the qualifying household and must serve written notice upon the qualifying household at least 30 days before termination of tenancy, specifying the grounds for the action.

- vi. Coordinated Entry and Project-Specific Waitlists: On a project-by-project basis, the PJ must use the method of tenant selection in [Section VI.B.19](#) of this Notice to select qualifying households for occupancy of permanent affordable housing.
 - vii. Penalties for Noncompliance: The PJ must repay HOME-ARP funds invested in HOME-ARP NCS that was converted to permanent affordable housing if the permanent affordable housing does not comply with initial or ongoing requirements of this Notice during the compliance period.
- c. CoC Permanent Housing: During the HOME-ARP NCS restricted use period but only after the HOME-ARP NCS minimum use period, a PJ may permit the conversion of a HOME-ARP NCS project to permanent housing or permanent supportive housing under [24 CFR 578.43](#) (acquisition) and/or [24 CFR 578.45](#) (rehabilitation) of the CoC program regulations. Conversions may only occur in accordance with the requirements prescribed in the PJ's written agreement with the HOME-ARP NCS owner. If conversion is approved by the PJ, the HOME-ARP NCS use restrictions must remain in place until the project is approved for CoC funding and the required CoC restrictions are imposed on the property.

Conversion to CoC permanent housing or permanent supportive housing may serve the following eligible households as defined in [24 CFR 578.3](#), subject to any further eligibility conditions that may apply to the use of CoC Program funds to provide rental assistance in the housing or otherwise support the project:

- Chronically homeless individuals
- Homeless individuals or families

PJs are prohibited from investing additional HOME-ARP funds to pay for the cost of converting the project to CoC permanent housing or permanent supportive housing. The CoC designates eligible applicants for grant funds under [24 CFR Part 578](#), which includes nonprofit organizations, States, local governments, and instrumentalities of State or local governments. For-profit entities are not eligible to apply for CoC grants or to be subrecipients of grant funds. Consequently, if a HOME-ARP NCS project owner intends to convert the project to CoC permanent housing or permanent supportive housing during the restricted use period, the PJ is encouraged to pursue partnership and leveraging opportunities with the CoC early in the planning stage of a HOME-ARP NCS

project. Additionally, PJs may provide supportive services or HOME-ARP TBRA to qualifying households that must move because of the conversion. (See [Section VII.F.4.b](#) for more information on relocations involving shelter occupants).

F. Nonprofit Operating and Capacity Building Assistance

A PJ may use up to 5 percent of its HOME-ARP allocation to pay operating expenses of CHDOs and other nonprofit organizations that will carry out activities with HOME-ARP funds. A PJ may also use up to an additional 5 percent of its allocation to pay eligible costs related to developing the capacity of eligible nonprofit organizations to successfully carry out HOME-ARP eligible activities.

PJs may award operating expense assistance or capacity building assistance to a nonprofit organization if it reasonably expects to provide HOME-ARP funds to the organization for any of the eligible HOME-ARP activities within 24 months of the award.

1. Eligible Costs

- a. *Operating Expense Assistance*: Operating expenses are defined as reasonable and necessary costs of operating the nonprofit organization. These costs include employee salaries, wages and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment, materials, and supplies.

HOME-ARP funds used for operating expenses must be used for the “**general operating costs**” of the nonprofit organization. These operating costs must not have a particular final cost objective, such as a project or activity, or must not be directly assignable to a HOME-ARP activity or project. For example, HOME-ARP funds for operating expenses may *not* be used for staffing costs to provide supportive services or develop HOME-ARP rental housing (as operating costs to develop HOME-ARP rental housing are paid for by a developer fee which is a project delivery or soft cost). Because ARP does not permit any HOME-ARP funds to be used to operate a shelter, all costs related to operating a non-congregate shelter (e.g., allocable overhead and staffing costs, insurance, utilities) also cannot be paid with HOME-ARP funds.

The actual costs of implementing a specific activity or project, including staff costs to deliver supportive services or administer HOME-ARP TBRA, are considered HOME-ARP project delivery costs or project soft costs and are not eligible costs under Nonprofit Operating and Capacity Building Assistance. HOME-ARP project delivery costs are those allowable costs incurred for implementing and carrying out eligible HOME-ARP projects or activities, such as supportive services. All project delivery costs are allocable to a HOME-ARP project, including direct project and related delivery costs integral to developing the project or providing the activity. HOME-ARP project delivery costs may be paid, if eligible, by HOME-ARP funds provided under a written agreement for the activity or project and must not be paid with nonprofit operating expense or capacity building assistance.

- b. Capacity Building Assistance: Capacity building expenses are defined as reasonable and necessary general operating costs that will result in expansion or improvement of an organization's ability to successfully carry out eligible HOME-ARP activities. Eligible costs include salaries for new hires including wages and other employee compensation and benefits; costs related to employee training or other staff development that enhances an employee's skill set and expertise; equipment (e.g., computer software or programs that improve organizational processes), upgrades to materials and equipment, and supplies; and contracts for technical assistance or for consultants with expertise related to the HOME-ARP qualifying populations.
2. Limitations on Assistance: NAHA and the HOME regulations limit the amount of operating expense assistance that an organization can receive annually. ARP extends this limitation to the capacity building assistance paid with HOME-ARP funds.

In any fiscal year, operating assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described above, for that fiscal year or \$50,000.

In any fiscal year, capacity building assistance provided to a nonprofit organization may not exceed the greater of 50 percent of the general operating expenses of the organization, as described above, or \$50,000.

If an organization receives both operating assistance and capacity building assistance in any fiscal year, the aggregate total amount of assistance it may receive is the greater of 50 percent of the organization's total operating expenses for that fiscal year or \$75,000.

To implement the above limitations on assistance, HUD has established separate fund types in IDIS for operating expense assistance and capacity building assistance. This will facilitate accurate tracking and ensure that PJs do not exceed the limits established in NAHA and ARP.

3. Commitment of Operating Expense and Capacity Building Assistance: A PJ commits operating expense assistance or capacity building assistance when it enters into a legally binding agreement with the nonprofit organization to provide the assistance.

VII. OTHER FEDERAL REQUIREMENTS

HOME-ARP funds are federal financial assistance and, therefore, are subject to requirements applicable to such funds. PJs must comply with the following requirements: [24 CFR part 92, subpart H](#), 92.352 – Environmental review; 92.353 – Displacement, relocation, and acquisition; and 92.355 – Lead-based paint.

A. Other Federal Requirements and Nondiscrimination

The requirements in [24 CFR 92.350](#) apply to the HOME-ARP program. PJs must comply with the Federal requirements set forth in [24 CFR part 5, subpart A](#), including: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; drug-free work; and housing counseling and the nondiscrimination requirements at section 282 of NAHA. The requirements in section 282 of NAHA are waived in connection with the use of HOME-ARP funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108). PJs must also comply with the Violence Against Women Act (VAWA) requirements set forth in 24 CFR 92.359.

B. Affirmative Marketing and Minority Outreach

The requirements in [24 CFR 92.351](#) apply to HOME-ARP activities.

C. National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and Related Laws

The environmental requirements in [24 CFR 92.352](#) apply to eligible activities under this Notice. The environmental effects of each activity carried out with HOME-ARP funds must be assessed in accordance with the provisions of NEPA and the related authorities listed in HUD's implementing regulations at [24 CFR part 58](#). The applicability of the provisions of [24 CFR part 58](#) is based on the HOME-ARP project as a whole (i.e., all individual project activities, such as acquisition and rehabilitation, aggregated according to the requirements at [24 CFR 58.32](#)), not on the type of the cost paid with HOME-ARP funds. In accordance with the provisions in [24 CFR part 58](#), activities undertaken with HOME-ARP funds are subject to environmental review by a PJ or State recipient. The PJ or State recipient (referred to as the "Responsible Entity" or "RE") must assume responsibility for environmental review, decision making, and action for each activity that it carries out with HOME-ARP funds, in accordance with the requirements at [24 CFR Part 58](#). A state PJ must assume responsibility for approval of Requests for Release of Funds and Certification (RROF/C) submitted by State recipients.

No funds may be committed to a HOME-ARP activity or project before the completion of the environmental review and approval of the RROF/C, as applicable. Neither a HOME-ARP recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance on an activity or project until the environmental review has been completed and HUD or the state has approved the recipient's RROF/C from the RE as applicable. In addition, until the RROF/C have been approved, neither a HOME-ARP recipient nor any participant in the development process may commit non-HUD funds on or undertake a HOME-ARP activity or project if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. Therefore, it is important for REs to begin and complete any required environmental reviews as soon as possible.

1. HOME-ARP TBRA and Supportive Services

HOME-ARP TBRA and supportive services as defined at [24 CFR 58.35\(b\)](#) are categorically excluded, not subject to the Federal laws and authorities at [24 CFR 58.5](#) (CENST) or exempt from review under NEPA. A RE may complete a single CENST review categorized under [24 CFR 58.35\(b\)](#) for their supportive services program or their HOME-ARP TBRA program where participants choose their own unit and are not restricted to units within a pre-determined specific project site or sites. There is no need to complete reviews for every unit selected by participants.

2. HOME-ARP Rental Housing

Acquisition of a structure to be used as HOME-ARP rental housing is categorically excluded, subject to the Federal laws and authorities referenced at [24 CFR 58.5](#) (CEST) under [24 CFR 58.35\(a\)\(5\)](#) (with the possibility of converting to exempt under [24 CFR 58.34\(a\)\(12\)](#)) if the structure acquired will be retained for the same use (e.g., residential). Rehabilitation of buildings for residential use with one to four units for HOME-ARP rental housing is CEST under [24 CFR 58.35\(a\)\(3\)\(i\)](#), if the density is not increased beyond four units, and the land use is not changed. Rehabilitation of buildings for use as HOME-ARP multifamily rental housing is CEST [under 24 CFR 58.35\(a\)\(3\)\(ii\)](#) only if:

1. the unit density is not changed more than 20 percent;
2. the project does not involve changes in land use from residential to non-residential; and
3. the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

Rehabilitation for HOME-ARP rental housing that does not meet the thresholds for multifamily residential buildings listed above requires completion of an Environmental Assessment in accordance with [24 CFR Part 58, Subpart E](#). An Environmental Assessment is also required for new construction, demolition, acquisition of vacant land for new construction, and acquisition of non-residential structures for demolition and new construction.

3. HOME-ARP NCS

HOME-ARP NCS activities are subject to environmental review by the RE under [24 CFR part 58](#). Acquisition of a structure to be used as HOME-ARP NCS is CEST under [24 CFR 58.35\(a\)\(5\)](#) (with the possibility of converting to exempt under [24 CFR 58.34\(a\)\(12\)](#)) if the structure acquired will be retained for the same use (e.g., residential). Rehabilitation of a structure for HOME-ARP NCS is CEST if the project meets the thresholds listed at [24 CFR 58.35\(a\)\(3\)\(i\) or \(ii\)](#). Rehabilitation that does not meet these thresholds requires completion of an Environmental Assessment pursuant to [24 CFR part 58, subpart E](#). An Environmental Assessment is also required for new construction, demolition, acquisition of vacant land for new construction, and acquisition of non-residential structures for demolition and new construction.

HOME-ARP NCS projects which may convert to emergency shelter or permanent housing pursuant to Sec. 3204(a)(4)(B) or (C) of the ARP may complete a single environmental review that covers all proposed HUD funding sources and project activities. Conversion to a program using project-based rental assistance is CEST and requires completion of an environmental review. If conversion or other additional HUD funding sources are proposed after the

environmental review has been completed, a CENST review for supplemental assistance under [24 CFR 58.35\(b\)\(7\)](#) can be performed if the review is completed by the same RE that conducted the original review and if re-evaluation is not required by [24 CFR 58.47](#).

The PJ or subrecipient, or any contractor of the PJ or subrecipient, may not acquire, rehabilitate, convert, repair, dispose of, demolish, or construct property for a HOME-ARP NCS project, or commit or expend HUD or non-HUD funds for NCS under HOME-ARP, until the RE has completed an environmental review under [24 CFR part 58](#) and received HUD or state approval of the RROF/C, as applicable.

D. Labor Standards

The requirements in [24 CFR 92.354](#) apply to HOME-ARP activities.

E. Lead Hazard Control Requirements

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at [24 CFR Part 35](#), subparts A, B, J, K, M, and R apply to HOME-ARP-assisted activities.

For HOME-ARP NCS, a project must comply with [24 CFR part 35, Subpart K](#) when the HOME-ARP activity is acquisition only. HOME-ARP NCS projects that involve rehabilitation of pre-1978 facilities, whether the rehabilitation is funded with HOME-ARP or other funds, must comply with the requirements of [24 CFR part 35, Subpart J](#).

F. Uniform Relocation Assistance and Real Property Acquisition Policies Act, Section 104(d), and HOME-ARP Displacement, Relocation and Acquisition Program Requirements

HOME-ARP funding is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and section 104(d) of the Housing and Community Development Act of 1974, in addition to the Displacement, Relocation and Acquisition regulatory requirements of [24 CFR 92.353](#). This Notice also includes HOME-ARP program specific relocation requirements applicable to HOME-ARP-assisted projects. PJs must comply with all applicable requirements, as described in this section.

1. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970:

Costs incurred to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. § 4601 *et seq.*) (URA) are eligible HOME-ARP project costs pursuant to this Notice and [24 CFR 92.206\(f\)](#). The URA establishes minimum requirements for the acquisition of real property and the displacement of persons from their homes, businesses, or farms as a direct result of acquisition, rehabilitation, or demolition for federally-assisted programs and projects. The URA implementing regulations at [49 CFR part 24](#) establish:

- Requirements for the provision of replacement housing assistance, advisory services, and moving costs to persons displaced as a result of a program or project that receives federal financial assistance;
- Requirements for acquisitions, including the payment of just compensation pursuant to [49 CFR part 24, subpart B](#), and provisions for voluntary acquisitions set forth in [49 CFR 24.101](#).
- Minimum requirements for temporary relocation of persons, businesses, or farms as a result of a project or program that receives federal financial assistance. These requirements are found in [Appendix A, Section 24.2\(a\)\(9\)\(ii\)\(D\)](#).

Additional HUD URA policy and guidance is available in [HUD Handbook 1378](#).

2. **Section 104(d) of the Housing and Community Development Act of 1974:** HOME-ARP is HOME funding and subject to the requirements in section 104(d) of the Housing and Community Development Act of 1974, as amended, (42 USC § 5304(d)), (“section 104(d)”) unless waived, as described in this section and Appendix. Costs incurred to comply with section 104(d) requirements are eligible HOME-ARP project costs under [24 CFR 92.206\(f\)](#). section 104(d) applies to the demolition or conversion, as defined in [24 CFR 42.305](#), of a lower-income dwelling unit in connection with a HOME or Community Development Block Grant Program (CDBG) assisted activity. section 104(d) includes the following requirements:

- A PJ must have a residential anti-displacement and relocation assistance plan (RARAP);
- A PJ must provide relocation assistance to displaced lower-income persons; and
- A PJ must perform one-for-one replacement of lower-income dwellings demolished or converted to a use other than a lower-income dwelling unit. A lower-income dwelling unit is defined in [24 CFR 42.305](#) as a dwelling unit with a market rent (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing, as defined by HUD.

Section 104(d) implementing federal regulations can be found at [24 CFR part 42 Subpart C](#).

HOME-ARP Section 104(d) Waiver / One-for-One Replacement Housing.

For purposes of , the one-for-one replacement housing requirements of section 104(d)(2)(A)(i) and (ii) and (d)(3) (42 U.S.C. 5304(d)(2)(A)(i) and (ii) and 42 U.S.C. 5304(d)(3)) and [24 CFR 42.375](#), lower-income dwelling units shall not include single-room occupancy (SRO) units or residential hotel or motel units in jurisdictions where those units are considered dwelling units under state or local law. All other section 104(d) requirements, including but not limited to the requirement that the PJ have and follow a RARAP, remain in effect. (See [24 CFR 92.353\(e\)](#) and [24 CFR part 42, subpart C](#)).

3. **HOME Program Displacement, Relocation and Acquisition Regulations:** In addition to the URA and section 104(d) requirement described above, the HOME program’s Displacement, Relocation and Acquisition regulations at [24 CFR 92.353](#) also apply to projects funded with HOME-ARP funds. Some of these requirements differ from those

of the URA and section 104(d), including but not limited to the expanded temporary relocation protections at [24 CFR 92.353\(b\) and \(c\)](#); optional relocation assistance policies in [24 CFR 92.353\(d\)](#); and the right to return to a building or complex, if feasible, upon completion of a HOME project, in accordance with [24 CFR 92.353\(a\)](#). PJs must follow these program-specific requirements in HOME-ARP assisted projects.

PJs are encouraged to develop optional relocation policies to address individuals that may not be eligible for URA or section 104(d) assistance due to their length of occupancy in a unit, ineligibility of their dwelling unit, or other factors beyond their control. Such policies must be in writing, applied consistently, and must not violate any other federal law or regulation. Costs incurred to comply with [24 CFR 92.353](#), including optional relocation policies, are eligible HOME-ARP project costs under [24 CFR 92.206\(f\)](#).

4. Additional HOME-ARP Program Relocation Related Requirements: The following additional HOME-ARP program relocation requirements apply:

- a. *Acquisition and/or rehabilitation of hotels, motels and other non-residential property:* In states where hotels and motels are not considered dwelling units or residential property, the acquisition of non-residential property such as hotels and motels for the production of HOME-ARP NCS units or HOME-ARP rental housing will not make a person occupying those properties eligible for relocation assistance under the URA, section 104(d) or [24 CFR 92.353](#). HOME PJs may provide HOME-ARP assistance, as defined by this Notice, including the provision of HOME-ARP supportive services, HOME-ARP TBRA, the ability to stay in HOME-ARP NCS units, or the ability to rent a HOME-ARP rental unit, if the individuals or families can demonstrate that—
- i. they have been in continuous residence at the property for 30 or more calendar days, and
 - ii. they are a qualifying household, as defined by this Notice.

Any assistance provided pursuant to this section may be provided without regard to any preferences, project-specific waiting lists, or any other form of prioritization the PJ has developed pursuant to this Notice. For purposes of HOME-ARP, costs associated with activities under this provision of the Notice may be charged as either project delivery costs or relocation costs eligible under [24 CFR 92.206\(f\)](#).

- b. *Conversion of HOME-ARP NCS:* If HOME-ARP NCS units are occupied and converted to either permanent housing under CoC or permanent affordable housing as described in [Section VI.E.11](#) of this Notice, persons occupying the shelter would not normally be eligible for relocation assistance under the URA, section 104(d) or [24 CFR 92.353](#) because they are not displaced from a dwelling unit. However, since the individuals or families occupying such shelter units are already qualifying households under HOME-ARP, HOME PJs may immediately provide such occupants with HOME-ARP assistance, as defined by this Notice, including the provision of HOME-ARP supportive services, HOME-ARP TBRA, the ability to stay in other HOME-ARP

NCS units, or the ability to rent a HOME-ARP rental unit. Additionally, the PJ may provide the occupants with assistance for moving costs or advisory services, as appropriate, as HOME-ARP administrative costs or under the HOME-ARP supportive services activity in [Section VI.D](#) of this Notice. Any assistance provided pursuant to this section may be provided without regard to any preferences, project-specific waiting lists, or any other form of prioritization the PJ has developed pursuant to this Notice, as the persons occupying the NCS units were already determined to be qualifying households under the HOME-ARP.

5. **Persons Ineligible for HOME-ARP Assistance and Ineligible for URA, Section 104(d), or assistance pursuant to 24 CFR 92.353:** If a person is required to move as a direct result of a HOME-ARP project and is determined ineligible for HOME-ARP housing assistance under the preceding [Section VII.F.4](#) and also determined ineligible as a displaced person under the URA, section 104(d) or HOME program rules, the PJ may provide such persons advisory services as an eligible HOME-ARP administrative cost, as the PJ determines to be reasonable and necessary.

G. Section 3 Economic Opportunities for Low- and Very Low-Income Persons

Section 3 requirements established at [24 CFR Part 75](#) apply to HOME-ARP-assisted projects.

H. Conflicts of Interest

HOME-ARP is subject to the following conflicts of interest requirements:

1. **Conflicts of Interest:** PJs, State recipients, and subrecipients engaging in any of the activities defined this Notice shall be subject to the conflicts of interest provisions at [24 CFR 92.356](#), including but not limited to the conflicts of interest exception process defined in [24 CFR 92.356\(d\)-\(e\)](#). Owners and developers of HOME-ARP NCS and HOME-ARP rental housing shall be subject to [24 CFR 92.356\(f\)](#).
2. **Organizational Conflicts of Interest:** The provision of any type or amount of HOME-ARP TBRA or supportive services may not be conditioned on an individual's or family's acceptance or occupancy of a shelter or housing unit owned by the PJ; State recipients; the subrecipient; or a parent, affiliate, or subsidiary of the subrecipient. No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent, affiliate, or subsidiary of the subrecipient, administer financial assistance that includes rental payments, utility deposits, security deposits, or first and last month's rent provided pursuant to this Notice. All contractors of the PJ, State recipients, or subrecipient must comply with the same requirements that apply to subrecipients under this section.
3. **Written Standards of Conduct:** PJs, State recipients, and subrecipients must maintain written standards of conduct covering the conflicts of interest and organizational conflicts of interest requirements under this Notice and [2 CFR 200.318](#). The written standards of conduct must also provide for internal controls and procedures to require a fair and open selection process for awarding HOME-ARP funds pursuant to this Notice. These standards

must include provisions on if and how Continuum of Care board members may participate in and/or influence discussions or resulting decisions concerning the competition or selection of an award or other financial benefits made pursuant to the HOME-ARP Notice, including internal controls on when funds may be awarded to the organization that the member represents.

4. **Requesting Exceptions to Organizational Conflicts of Interest:** Any request for an exception to the organizational conflicts of interest provisions in this Notice shall be in writing and shall be considered by HUD only after the PJ or State recipient has provided the following:
 - a. A written disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - b. An opinion of the PJ's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

5. **Granting Exceptions to Organizational Conflicts of Interest:** HUD shall determine whether to grant an exception to the organizational conflicts of interest on a case-by-case basis when it determines that the exception will serve to further the purposes of HOME-ARP. HUD shall consider the following factors, as applicable, in determining whether to grant such an exception:
 - c. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available
 - d. Whether undue hardship will result to the PJ, State recipient, subrecipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict;
 - e. Whether conditioning approval on changes to the PJ, State recipient, or subrecipient's policies or procedures can adequately address the organizational conflict of interest; and
 - f. Any other factors relevant to HUD's determination, including the timing of the requested exception.

VIII. PROGRAM ADMINISTRATION

A. PJ Responsibilities

The PJ is responsible for managing the day-to-day operations of its HOME-ARP program, ensuring that HOME-ARP funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the PJ of this responsibility.

B. Written Agreement Requirements

Before disbursing any HOME-ARP funds to any entity, the PJ must enter into a written agreement with that entity pursuant to [24 CFR 92.504](#). Similarly, before disbursing any HOME

funds to a State recipient, subrecipient, or contractor which is administering all or a part of the HOME-ARP program on behalf of the PJ, the PJ must also enter into a written agreement with that entity that complies with [24 CFR 92.504](#) and the requirements described below. A written agreement cannot commit to providing HOME-ARP funds after the end of the HOME-ARP budget period.

The written agreement must require compliance with the requirements of this Notice. The content of the written agreement will vary depending upon the role the entity is asked to assume or the type of project undertaken.

This section details basic requirements by activity and the minimum provisions, in addition to those at [24 CFR 92.504](#) that must be included in a written agreement. The written agreement provisions in [24 CFR 92.504](#) that reference the requirements of [24 CFR 92.350](#), [24 CFR 92.351](#), and [24 CFR 92.359](#) are not waived and apply for all HOME-ARP written agreements.

1. **Rental Housing:** The PJ must execute a written agreement with the project owner/developer prior to the expenditure of HOME-ARP funds. The written agreement must comply with [24 CFR 92.504](#) and contain the following additional provisions:
 - a. *Use of HOME-ARP funds for Rental Housing:* The agreement between the owner/developer must describe the address of the project or legal description of the property if a street address has not been assigned to the property, the use of the HOME-ARP funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget, including any HOME-ARP funds used to capitalize an operating cost reserve for qualified HOME-ARP units. These items must be in sufficient detail to provide a sound basis for the PJ to effectively monitor performance under the agreement to achieve project completion and compliance with HOME-ARP requirements.
 - b. *Operating Cost Assistance:* If the PJ will provide HOME-ARP funds for operating cost assistance, the agreement must specify whether the PJ will provide assistance through periodic payments or capitalize the operating cost assistance reserve based on the operating deficit projected for the 15-year compliance period. If the PJ is providing ongoing assistance, the amount of assistance must be based on the actual operating deficit associated with the HOME-ARP units restricted for occupancy by qualifying households. The written agreement must specify the frequency of operating assistance payments made to the owner (e.g., monthly, quarterly, etc.) and state that the amount of assistance will be equal to the deficit demonstrated and/or incurred. The written agreement may only provide for HOME-ARP funds to be used for operating assistance payments during the budget period defined in [Section VIII.C.4](#) below. If operating cost assistance will be required beyond the budget period, the PJ should capitalize an operating reserve before the expiration of the budget period for HOME-ARP funds in accordance with [Section VI.B.23](#). If the PJ is capitalizing the operating reserve for the 15-year HOME-ARP compliance period, the amount of assistance must be based on the project's underwriting and the total anticipated operating deficit associated with the HOME-ARP units restricted for occupancy by qualifying households. The written

agreement must specify the amount of the capitalized reserve and the restrictions on its use during the minimum compliance period in [Section VI.B.18](#). Net operating income resulting from HOME-ARP operating cost assistance is not permitted and must be prohibited in the written agreement between the participating jurisdiction and the owner.

- c. *Sublease/Master Lease of HOME-ARP Units*: If the PJ will permit a project owner to execute a sublease or master lease with a nonprofit organization for HOME-ARP units restricted for occupancy by qualifying households, the agreement must specify the duration of the sublease or master lease, applicable rents, lease requirements and tenant protections.
- d. *On-going compliance*: The agreement must require rental housing assisted with HOME-ARP funds to comply with the on-going requirements of [Section VI.B](#) of this Notice or require repayment in accordance with [Section VI.B.22](#).
- e. *Property Standards*: The agreement must require the housing to meet the property standards required in [24 CFR 92.251](#) paragraphs (a) new construction, (b) rehabilitation projects, (c)(1) and (2) acquisition of standard housing and (f) on-going property condition standards.
- f. *Records and reports*: The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the PJ in meeting its recordkeeping and reporting requirements. The owner/developer of rental housing must annually provide the PJ with information on rents and occupancy of HOME-ARP assisted units to demonstrate compliance with this Notice. If the rental project has floating HOME-ARP units, the project owner/developer must provide the PJ with information regarding unit substitution and filling vacancies so that the project remains in compliance with the HOME-ARP occupancy requirements. The agreement must specify the reporting requirements, (including copies of financial statements) to enable the PJ to determine the financial condition and continued financial viability of the project.
- g. *Enforcement of the agreement*: The agreement must provide for a means for the PJ to enforce compliance with HOME-ARP requirements. This means of enforcement may include liens, deed restrictions, covenants running with the land, use restriction, or other mechanism approved by HUD under which the PJ has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.
- h. *Request for disbursement of funds*: The agreement must specify that the owner/developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The owner/developer may request capitalization of a project operating cost assistance reserve for the qualifying units once all necessary title transfer requirements and construction work have been performed. The amount of each request must be limited to eligible costs in the amount needed, as described in [Section VI.B.5.g](#).

- i. *Duration of the agreement*: The agreement must be in effect for at least the 15-year HOME-ARP minimum compliance period.
 - j. *On-site Inspections and Financial Oversight*: The PJ must comply with the on-site inspections and financial oversight requirements of [24 CFR 92.504\(d\)\(1\) and \(2\)](#). In addition, if the PJ will permit the capitalization of a project operating cost assistance reserve, the PJ must, no less than annually, oversee the administration of the operating cost assistance reserve account to verify that the account is appropriately sized and draws from the account are used to cover any deficits associated with units occupied by qualifying households.
 - k. *Tenant Selection*: The written agreement must contain provisions explaining the method of tenant selection to be used in accordance with the requirements of [Section IV.C](#) and [VI.B.20](#) of this Notice. This section must be in sufficient detail to determine which method of tenant selection is being used for the qualifying population (i.e., use of CE, use of CE with other referral methods, or project-specific waiting list), the method of tenant selection for low-income households (See [Section VI.B.20.b](#) and [24 CFR 92.253\(d\)](#)), and any required policies and procedures around the use of a CE or project-specific waiting list. This section must also be in sufficient detail to determine compliance with the PJ's preferences and/or method of prioritization, if any, as well as all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in [24 CFR 5.105\(a\)](#).
2. **TBRA (subrecipient or contractor)**: The requirements at [24 CFR 92.504](#), apply to the use of HOME-ARP funds for TBRA. The written agreement provisions in 24 CFR 92.504 that reference the requirements of [24 CFR 92.350](#), [24 CFR 92.351](#), and [24 CFR 92.359](#) are not waived and still apply for HOME-ARP written agreements. The written agreement must contain the following provisions:
- a. *Use of HOME ARP funds*: At a minimum, the written agreement must describe the amount and use of the HOME-ARP funds, the tasks to be performed, or services to be provided. HOME-ARP funds cannot be provided after the end of the HOME-ARP budget period.
 - b. *Records and reports*: The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the PJ in meeting its recordkeeping and reporting requirements.
 - c. *Duration of agreement and disbursement of funds*: The agreement must specify the duration of the agreement and state that disbursement of funds under the agreement may not be requested until the funds are needed.
 - d. *Compliance with HOME-ARP program requirements*: The written agreement must require compliance with HOME-ARP program requirements for the HOME-ARP TBRA activity as outlined in [Section VI.C](#) of this Notice.

- e. *Rental assistance contract*: There must be a rental assistance contract between the PJ and either the HOME-ARP sponsor, the HOME-ARP TBRA assisted household, or the property owner. The PJ must determine the terms of the rental assistance contract. The rental assistance contract continues until the lease is terminated. If the rental assistance is being provided through a HOME-ARP sponsor, the PJ must determine the term of the rental assistance contract between the PJ and HOME-ARP sponsor.

If HOME-ARP TBRA is provided in coordination with a HOME-ARP sponsor, the PJ must enter into a written agreement with the HOME-ARP sponsor if the HOME-ARP TBRA rental assistance contract is not with the HOME-ARP sponsor and the HOME-ARP sponsor will be receiving the HOME-ARP TBRA subsidy directly from the PJ. The written agreement must specify the requirements for the HOME-ARP sponsor receiving the TBRA subsidy on behalf of the HOME-ARP TBRA household and the HOME-ARP sponsor's obligation to use the HOME-ARP TBRA payment to pay rent for the unit to the property owner or management agent. If HOME-ARP TBRA is provided in coordination with a HOME-ARP sponsor, the sponsor must enter into a sublease with the HOME-ARP TBRA assisted household that must specify the duration of the sublease, applicable rents, lease requirements and tenant protections, all in accordance with the requirements of this Notice.

- f. *Tenant Selection*: The written agreement must require the owner to comply with the method of tenant selection determined by the PJ and applicable requirements of [Section IV.C](#) and [VI.C.1](#) of this Notice. The written agreement must include a description of the required method of tenant selection for the qualifying populations (i.e., use of CE, use of CE with other referral methods, project-specific waiting list), the method of tenant selection for low-income households (See [Section VI.B.20.b](#) and [24 CFR 92.253\(d\)](#)), and any required policies and procedures around the use of a CE or project-specific waiting list. This section of the written agreement must be in sufficient detail to determine compliance with the PJ's preferences and/or method of prioritization, if any, as well as all applicable fair housing, civil rights, and nondiscrimination requirements, including but not limited to those requirements listed in [24 CFR 5.105\(a\)](#).
3. **Supportive Services (subrecipient or contractor)**: The requirements at [24 CFR 92.504](#), apply to the use of HOME-ARP funds for supportive services. The provisions of the written agreement will depend on the role the entity is asked to assume. At a minimum, the written agreement must contain the following provisions:
- a. *Use of HOME funds*: The written agreement must describe the amount and uses of the HOME-ARP funds, the tasks to be performed, the services to be provided, and include a budget. The written agreement cannot agree to provide HOME-ARP funds after the end of the HOME-ARP budget period.
 - b. *Records and Reports*: The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the PJ in meeting its recordkeeping and reporting requirements as required under [Section VIII.F](#) of this Notice.

- c. *Duration of the agreement and Disbursement of Funds*: The agreement must specify the duration of the agreement, and state that disbursement of funds under the agreement may not be requested until the funds are needed.
 - d. *Compliance with HOME-ARP Program Requirements*: The written agreement must also require compliance with HOME-ARP program requirements for the HOME-ARP supportive services activity as described in [Section VI.D](#) of this Notice.
4. **HOME-ARP Non-Congregate Shelter (owner/developer)**: Written agreements must be executed between the PJ and the owner for all HOME-ARP NCS projects. A legally binding HOME-ARP NCS written agreement must include the date of the signature of each person signing the agreement. PJs are responsible for entering into written agreements before disbursing HOME-ARP funding. Contents of written agreements can vary based on specific needs of the PJ, the owner, and the project. Agreements for the acquisition, development, and rehabilitation of HOME-ARP NCS units must contain the following provisions:
- a. *Use of HOME-ARP funds*: The agreement between the PJ and owner must include the address of the project or legal description of the property if a street address has not been assigned to the property, the use of the HOME-ARP NCS funds and other funds for the project, including the tasks to be performed for the project, a schedule for completing the tasks and the project, and a complete budget. These items must be in sufficient detail to provide a sound basis for the PJ to effectively monitor performance under the agreement to achieve project completion and compliance with HOME-ARP requirements. The written agreement cannot agree to provide HOME-ARP funds after the end of the HOME-ARP budget period.
 - b. *Habitability and Property Standards*: The agreement must require the HOME-ARP NCS project to meet the habitability and property standards as described in [Section VI.E.7](#) of this Notice based on the type of project completed.
 - c. *Project Requirements*: The agreement must require the HOME-ARP NCS project to meet the project requirements as described in this Notice.
 - d. *Other program requirements*: The agreement must require the PJ and owner to carry out the project in compliance with the other Federal requirements of [24 CFR 92 subpart H](#) and [24 CFR 92.505](#).
 - e. *Records and reports*: The agreement must specify the particular records that must be maintained and the information or reports that must be submitted to assist the PJ in meeting its recordkeeping and reporting requirements.
 - f. *Restricted Use Period*: The agreement must require the project to meet the Restricted Use Period as described in [Section VI.E.9](#) of this Notice based on project type.
 - g. *Enforcement of the agreement*: The agreement must provide for a means for the PJ to enforce compliance with HOME-ARP requirements. This means of enforcement may include liens, deed restrictions, covenants running with the land, use restriction, or other

mechanism approved by HUD under which the PJ has the right to require specific performance. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

- h. *Plan of Conversion*: PJs that intend to allow conversion of HOME-ARP NCS projects to other permanent affordable housing as permitted in this Notice must describe conversion as a possible outcome of the HOME-ARP NCS project; specify the conditions under which conversion will be permitted; and require that the PJ approve the terms and conditions of any conversion before the conversion occurs.
- i. *Additional PJ Conditions and Requirements*: PJs may include additional program and project requirements as determined necessary.

5. **Non-Profit Operating and Capacity Building**: The requirements at [24 CFR 92.504\(c\)\(6\)](#), apply to the use of HOME-ARP funds for non-profit operating and capacity building assistance. The written agreement must describe the amounts and uses of HOME-ARP funds for operating expenses or capacity building. If the non-profit organization is not also receiving HOME-ARP funds to carry out a HOME-ARP project, the agreement must provide that the organization is expected to receive funds for a HOME-ARP project within 24 months of the date of receiving the funds for operating or capacity building expenses and must specify the terms and conditions upon which this expectation is based and the consequences of failure to receive funding for a project.

When a PJ provides both operating assistance and capacity building assistance to an organization, it must enter into either one written agreement for both types of assistance or separate written agreements for operating expense assistance and capacity building assistance. If a PJ chooses to enter into one written agreement, the PJ must separately identify the scope of assistance, eligible uses and costs, and a budget for each type of funds.

C. Grants Management

1. **HOME-ARP Grant Agreement**: HUD will make HOME-ARP funds available to the PJ pursuant to a HOME-ARP Grant Agreement, consistent with [Section VIII.C.2](#) below. Subject to the provisions of the grant agreement and requirements in this Notice, HUD will obligate HOME-ARP funds to the PJ upon execution of the agreement by both parties. In the grant agreement, the PJ agrees that funds invested in affordable housing under this Notice are repayable if the housing no longer meets the requirements of this Notice during the compliance period or the NCS no longer meets the requirements of this Notice during the restricted use period. The PJ also agrees to assume all responsibility for environmental review, decision making, and actions, as specified and required in regulation at [24 CFR 92.352](#) and [24 CFR Part 58](#). The PJ agrees to comply with [24 CFR 92.505](#) and applicable Uniform Administrative Requirements at [2 CFR part 200](#), as amended. The PJ agrees to comply with requirements established by the Office of Management and Budget (OMB) concerning the unique entity identifier and System for Award Management (SAM) requirements in [Appendix I](#) to 2 CFR part 200, as amended, and the Federal Funding Accountability and Transparency Act (FFATA) in [Appendix A](#) to 2 CFR part 170. The PJ

agrees to comply with the federal nondiscrimination and equal opportunity requirements at [24 CFR 92.350](#) and affirmative marketing requirements in [24 CFR 92.351](#) and the VAWA requirements set forth in [24 CFR 92.359](#). The HOME-ARP grant is obligated when the HUD Authorized Official signs the memorandum obligating HOME-ARP grants. The HOME-ARP Grant Agreement must be signed by the CPD Field Office Director and counter-signed by the PJ's authorized signatory. Once the CPD division in the local field office receives the fully executed HOME-ARP Grant Agreement, it will send the agreement to HUD's CFO Accounting Office for processing. As described in [Section VIII.C.2](#) of this Notice, funds will become available to the PJ in IDIS once HUD's CFO Accounting Office processes the grant.

2. **Access to Administrative Set-aside Funds:** Upon issuance of this Notice, HUD will obligate all HOME-ARP grants to PJs through the signing of the HOME-ARP obligating memorandum, after which each HOME-ARP Grant Agreement must be signed by both parties. After obligation, HUD will permit the PJ to use 5 percent of its award for eligible administrative and planning costs under [Section VI.A](#) of this Notice. **The PJ may not expend any funds for non-administrative and planning costs before the HOME-ARP allocation plan is accepted by HUD as described in [Section V.D.2 and 3](#) of this Notice.** HUD will make the remaining HOME-ARP grant funds available to the PJ once HUD accepts the HOME-ARP allocation plan. If the PJ does not submit a HOME-ARP allocation plan or if the PJ's plan is not accepted within a reasonable period of time, as determined by HUD, any costs incurred or HOME-ARP funds expended by the PJ will be considered ineligible costs and must be repaid with non-Federal funds in accordance with guidance from HUD.

3. **HOME-ARP Grant Number:** The PJ's HOME-ARP grant number is similar to its HOME grant number with the exception of the source type code. All HOME-ARP grants have the program identifier "M" and the source year of the grant "21." The different source type codes are identified in the table below.

Source Type Description	HOME Source Type Code	HOME-ARP Source Type Code
HOME Consortium	DC	DP
Metropolitan City	MC	MP
State	SG	SP
Insular Area	ST	IP
Urban County	UC	UP

The unique grantee identifier portion of the grant number will be the same for HOME-ARP grants as it is for HOME grants. See examples of HOME-ARP grant numbers with the different source type codes in the table below.

Participating Jurisdiction	HOME Grant Number	HOME-ARP Grant Number
Maryland	M21SG240100	M21SP240100
Baltimore	M21MC240200	M21MP240200

4. **Budget Period:** The budget period for HOME-ARP grants begins on the Federal Award Date, which is the date of the HUD Authorized Official’s signature specified on the HOME-ARP Grant Agreement. The budget period for HOME-ARP grants ends on September 30, 2030. The PJ may not expend any HOME-ARP funds after September 30, 2030. After September 30, 2030, any HOME-ARP funds remaining in the PJ’s HOME Investment Trust Fund Treasury account will be cancelled and not available for obligation or expenditure for any purpose (per [31 U.S.C. 1552](#)).
5. **Period of Performance:** The period of performance for HOME-ARP grants begins on the Federal Award Date, which is the date of the HUD Authorized Official’s signature specified on the HOME-ARP Grant Agreement. The period of performance for HOME-ARP grants ends on September 30, 2030.
6. **Audit:** Audits of the PJ, State recipients, and subrecipients must be conducted in accordance with [2 CFR part 200, subpart F](#).
7. **Closeout:** HOME-ARP funds will be closed out in accordance with [2 CFR part 200, subpart D](#). The PJ will use HUD’s data system to closeout HOME-ARP grants once all HOME-ARP funds have been expended, all HOME-ARP activities are completed in accordance with the requirements of this Notice, and the proper beneficiary data has been entered. In order to closeout its HOME-ARP grants, the PJ must not have any open CPD monitoring findings or audits related the HOME-ARP funds. HUD will provide closeout guidance and instructions at a later date.

D. Applicability of Uniform Administrative Requirements.

The requirements of [2 CFR part 200](#), as amended apply to PJs, State recipients, and subrecipients receiving HOME-ARP funds, except for the following provisions: [2 CFR 200.306](#), [200.307](#), [200.308](#) (not applicable to participating jurisdictions), [200.311](#) (except as provided in [24 CFR 92.257](#)), [200.312](#), [200.329](#), [200.333](#), and [200.334](#). The provisions of [2 CFR 200.305](#) apply as modified by [24 CFR 92.502\(c\)](#) and this Notice. If there is a conflict between definitions in [2 CFR part 200](#) and [24 CFR part 92](#), the definitions in [24 CFR part 92](#), govern. Moreover, if there is a conflict between the provisions of [2 CFR part 200](#) and the provisions of this Notice, the provisions of this Notice govern.

Where regulations in [24 CFR part 92](#) refer to specific regulations of [2 CFR part 200](#) that were or are renumbered or revised by amendments to [2 CFR part 200](#), the requirements that apply to the

use of HOME-ARP funds are the applicable requirements in [2 CFR part 200](#), as amended, notwithstanding the renumbered regulatory reference.

E. Financial Management

1. **The HOME Investment Trust Fund**: HUD will establish a HOME-ARP Investment Trust Fund Treasury account (Treasury account) for a PJ's HOME-ARP funds. The Treasury account includes all HOME-ARP funds allocated to the PJ by formula and any HOME-ARP funds repaid by the PJ.

The PJ must establish a HOME-ARP Investment Trust Fund local account (local account) as described in [24 CFR 92.500](#). The PJ may use either a separate local account or, a subsidiary account within its general fund (or other appropriate fund) as the local account. The PJ may not use the same local account for HOME-ARP that it uses for its HOME local account. The local account includes deposits of HOME-ARP funds disbursed from the Treasury account. The local account must be interest-bearing.

HUD will reduce or recapture any HOME-ARP funds that are in the Treasury account that are not expended (drawn down) by September 30, 2030. Due to end-of-year financial system closeouts that begin before this date and prevent electronic access to the payment system, requests to draw down the funds must be made at least 7 full business days before this date so that the funds still can be drawn from the Treasury account through IDIS.

2. **Program Income**: Program Income means gross income received by the PJ generated from the use of HOME-ARP funds during the grant period of performance. This includes, but is not limited to, principal and interest payments from a loan made with HOME-ARP funds, or other income or fees received from project owners in connection with HOME-ARP funds, and interest earned by the PJ on program income before its disposition.

Program income earned as a result of the use of HOME-ARP funds is HOME program income and must be used in accordance with the requirements of [24 CFR part 92](#). All program income must be recorded in IDIS. Program income must be deposited in the PJ's HOME-ARP local account (unless the PJ allows a State recipient or subrecipient to retain the program income for additional HOME projects pursuant to such terms and conditions in the written agreement and this Notice). The PJ must enter HOME-ARP program income retained by the State recipient or subrecipient as a HOME program income receipt in IDIS and subgrant the program income to the State recipient or subrecipient that retained the program income. The PJ is responsible to report on the use of its program income in IDIS, including program income it allowed a State recipient or subrecipient to retain.

3. **Repayments**: Any HOME-ARP funds used for costs that are not eligible under this Notice, funds invested in a project that is terminated before completion, either voluntarily or otherwise, or funds invested in HOME-ARP rental housing and NCS that does not meet the requirements in this Notice for the applicable period specified in this Notice must be repaid by the PJ to its Treasury account. If the funds are repaid after September 30, 2030, they will be recaptured by the U.S. Department of Treasury and the PJ will not be able to re-use the

funds for eligible HOME-ARP activities. HOME-ARP funds may not be repaid to the PJ's local account.

4. **Integrated Disbursement and Information System (IDIS)**: The PJ will use IDIS to administer its HOME-ARP funds. The PJ will request disbursements of HOME-ARP funds from its Treasury account and collect and report information on the use of HOME-ARP funds through IDIS. (For purposes of reporting in IDIS, a HOME-ARP project is an activity.) The PJ must report all program income in IDIS.

The requirements of [24 CFR 92.502\(c\)\(3\)](#) do not apply to HOME-ARP funds.

In accordance with this Notice, a HOME-ARP written agreement providing HOME-ARP funds to a project or the CHDO/nonprofit must be signed and dated by:

- a. the PJ and project owner for HOME-ARP rental and HOME-ARP NCS;
- b. the PJ and service provider for HOME-ARP supportive services;
- c. the PJ and landlord, tenant, and/or HOME-ARP sponsor, as applicable, for HOME-ARP TBRA; and,
- d. the PJ and CHDO/nonprofit organization for HOME-ARP Operating Expenses and Capacity Building Assistance.

This must occur before any HOME-ARP funds are disbursed. Federal funds cannot be drawn from the Treasury account in advance of the need to pay an eligible cost. Consequently, HOME-ARP funds cannot be drawn from the U.S. Treasury and placed in escrow or advanced in lump sums to State recipients, subrecipients, project owners, service providers, or landlords or tenants, except funds drawn down for a HOME-ARP rental project for an operating cost assistance reserve or reserve for replacement pursuant to [Section VI.B.5.g.](#) of this Notice or a HOME-ARP NCS project for a replacement reserve pursuant to [Section VI.E.](#)

Once funds are drawn from the PJ's Treasury account, they must be expended for an eligible HOME-ARP cost within 15 days. Any interest earned within the 15-day period may be retained by the PJ as HOME program income and recorded in IDIS as a program income receipt. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the PJ's Treasury account. Interest earned after 15 days belongs to the United States and must be remitted to the United States as provided in [2 CFR 200.305\(b\)\(9\)](#), except interest amounts up to \$500 per year may be retained for the PJ's administrative expenses.

Additional HOME-ARP funds may be committed to a project up to one year after project completion.

HUD will govern access to IDIS by other entities participating in the HOME program (e.g., State recipients). Only PJs and State recipients (if permitted by the State) may request disbursement.

F. Recordkeeping

Each PJ must establish and maintain sufficient records to enable HUD to determine whether the PJ has met the requirements of this Notice. At a minimum, the following records are needed:

1. Program Records:

- a. Records evidencing that all HOME-ARP funds used by a PJ for TBRA, supportive services, and acquisition and development of non-congregate shelter units benefit individuals and families in qualifying populations.
- b. Records evidencing that not less than 70 percent of affordable rental housing units acquired, rehabilitated, and/or constructed with HOME funds by a PJ are restricted for occupancy by households in the qualifying populations.
- c. Records documenting compliance with the 15 percent limitation on administrative and planning costs.
- d. Records documenting compliance with the 5 percent limitation on CHDO and non-profit operating and capacity building costs.
- e. The underwriting and subsidy layering guidelines adopted in accordance with [Section VI.B.10](#) of this Notice that support the PJ's HOME-ARP allocation plan certification.
- f. If existing debt is refinanced for multifamily rehabilitation projects, the HOME-ARP refinancing guidelines established in the HOME-ARP in the HOME-ARP Allocation Plan.
- g. If HOME-ARP funds are used for TBRA, records supporting the PJ's written selection policies and criteria; supporting documentation for preferences for specific categories of qualifying individuals; and records supporting the rent standard and minimum tenant contribution established in accordance with [Section VI.C.7 and 8](#) of this Notice.
- h. Confidentiality.
 - i. The PJ's written policies and procedures for maintaining confidentiality of qualifying households as individuals or families fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking in accordance with [Section VIII.H](#).
 - ii. The PJ's written policies and procedures for maintaining confidentiality in compliance with the VAWA protections contained in [24 CFR Part 5, Subpart L](#).

- 2. Project Records:** PJs are required to retain the following records for HOME-ARP-assisted projects, as specified by activity type.
- a. A full description of each project assisted with HOME-ARP funds, including the location (address of project), form of HOME-ARP assistance, and the units, families, or qualifying households assisted with HOME-ARP funds, subject to confidentiality requirements in this Notice.
 - b. The source and application of funds for each project, including supporting documentation in accordance with [2 CFR 200.302](#); and records to document the eligibility and permissibility of the project costs, including the documentation of the actual HOME-ARP-eligible development costs of each HOME-ARP-assisted unit as defined in this Notice.
 - c. Records (i.e., written agreements) demonstrating compliance with the written agreement requirements in [Section VIII.B](#) of this Notice.
 - d. Records (e.g., inspection reports) demonstrating that each HOME-ARP rental project meets the property standards in [Section VI.B.11](#) of this Notice at project completion and through the applicable minimum compliance period. In addition, during a HOME-ARP rental project's minimum compliance period, records demonstrating compliance with the property standards and financial oversight pursuant to [24 CFR 92.504\(d\)](#) and the operating cost assistance reserve management and oversight required by [Section VI.B.23](#) of this Notice.
 - e. Records (e.g., inspection reports) demonstrating that each unit occupied by a qualifying household receiving HOME-ARP TBRA, meets the housing quality standards of [Section VI.C.9](#) of this Notice at initial occupancy and throughout the household's term of assistance.
 - f. Records (e.g., inspection reports) demonstrating that each NCS project meets the property and habitability standards of [Section VI.E.7](#) of this Notice at project completion and throughout the applicable restricted use period.
 - g. Records demonstrating that each qualifying household is eligible for HOME-ARP assistance based on the requirements of the ARP and [Section IV](#) of this Notice.
 - h. Records demonstrating that each household qualifying as homeless, records that meet the requirements in [24 CFR 576.500\(b\)\(1\), \(2\), \(3\), or \(4\)](#), as applicable (except that youth aged 24 and under must not be required to provide third-party documentation to show they are homeless to receive any shelter, housing, or services for which ESG or CoC Program funds may be used to supplement the HOME-ARP assistance).
 - i. Records demonstrating that each household qualifying as "at risk of homelessness," records that meet the requirements in [24 CFR 576.500\(c\)\(1\) or \(2\)](#), as applicable, and include the following documentation of annual income:

- i. Income evaluation form containing the minimum requirements specified by HUD and completed by the recipient or subrecipient; and
 - ii. Source documents for the assets held by the household and income received over the most recent period for which representative data is available before the date of the evaluation (e.g., wage statement, unemployment compensation statement, public benefits statement, bank statement);
 - iii. To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the household received over the most recent period for which representative data is available; or
 - iv. To the extent that source documents and third-party verification are unobtainable, the written certification by the household of the amount of income the household received for the most recent period representative of the income that the household is reasonably expected to receive over the 3-month period following the evaluation.
- j. Records demonstrating compliance with the household income requirements in accordance with [Section VI.B.12](#) of this Notice for each HOME-ARP rental project.
- k. Records demonstrating that each HOME-ARP rental and NCS project meets the minimum compliance period or restricted use period described in [Sections VI.B.18](#) and [VI.E.9](#) respectively, of this Notice.
- l. Records demonstrating that for each HOME-ARP rental housing unit or for each household receiving HOME-ARP TBRA, compliance with the tenant protection requirements of [Sections VI.B.19](#) and [VI.C.2](#), respectively, of this Notice. For HOME-ARP TBRA or rental projects under a master lease, the PJ must retain records demonstrating that a master lease for housing leased by a HOME-ARP sponsor and each sublease between a qualifying household and HOME-ARP sponsor complies with the tenant and participant protections of [24 CFR 92.253](#) and this Notice. Records must be kept for each household.
- m. Records demonstrating compliance with the return of the HOME-ARP rental capitalized operating cost assistance reserve and/or the NCS replacement reserve at the end of the compliance or restricted use period in accordance with [Sections VI.B.24](#) and [VI.E.10](#) respectively, of this Notice.
- n. Records demonstrating that each HOME-ARP rental and each NCS project meets the underwriting and subsidy layering or due diligence requirements of [Section VI.B.10](#) or [VI.E.6](#) of this Notice.
- o. Records demonstrating that each HOME-ARP rental housing project meets the rent limitations of [Sections VI.B.13](#) and [VI.B.15](#) of this Notice for the 15-year minimum compliance period. Records must be kept for each household assisted.

- p. Records demonstrating that each multifamily HOME-ARP rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with [24 CFR 92.206\(b\)](#).
- q. Records demonstrating that a site and neighborhood standards review was conducted for each HOME-ARP rental housing project involving new construction under [Section VI.B](#) of this Notice to determine that the site meets the requirements of [24 CFR 983.57\(e\)\(2\) and \(e\)\(3\)](#), in accordance with [24 CFR 92.202](#).
- r. Records demonstrating that any conversion of HOME-ARP NCS complies with the requirements established by [Section VI.E](#) of this Notice, including that conversion of NCS only occurred after the end of the applicable minimum use period defined in [Section VI.E.11](#).
- s. For all HOME-ARP NCS projects the following documents must be maintained, as applicable:
 - i. Purchase contract, closing documents, settlement statement and title work for acquisitions.
 - ii. Appraisal or other estimation of value to justify acquisition expenditure.
 - iii. Architectural and engineering contracts and completed designs, plans, and specifications for rehabilitation and new construction activities.
 - iv. Invoices, pay requests, and proof of payment for all project expenditures.
 - v. Proof of insurance.
 - vi. Project and program audits.
- t. For all HOME-ARP Supportive Services projects pursuant to McKinney-Vento or Homelessness Prevention Supportive Services:
 - i. Records, where applicable, demonstrating compliance with the termination of assistance requirement as described in [Section VI.D.5](#) of this Notice.
 - ii. Records of all solicitations of and agreements with subrecipients and contractors, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable including any findings and corrective actions required.
 - iii. Records of all procurement contracts and documentation of compliance with the procurement requirements in [2 CFR part 200, subpart D](#), as revised by [Section VIII.D](#) of this Notice.
 - iv. Records evidencing the use of the written procedures required under [Section VI.D.2](#) and records evidencing compliance with [Section IV.C.2](#) of this Notice.

- v. Records of all leases, subleases, and financial assistance agreements for the provision of rental payments, documentation of payments made by the PJ to owners, HOME-ARP sponsor, or qualifying households for the provision of financial assistance for rental payments, and supporting documentation for these payments, including dates of occupancy by qualifying individuals and families.
- vi. Records that document the monthly allowance for utilities (excluding telephone) used to determine compliance with the rent restriction.
- vii. Records of the types of services provided under the PJ's program and the amounts spent on these services.
- viii. Records demonstrating subrecipient compliance with the recordkeeping requirements in [Section VIII.F](#) of this Notice.
- u. For all HOME-ARP Housing Counseling Services projects as defined in [24 CFR part 5](#), each participating housing counseling agency must maintain a recordkeeping and reporting system in accordance with [24 CFR 214.315](#) and [24 CFR 214.317](#). The system must permit HUD to easily access all information needed for a performance review.
- v. For all HOME-ARP-assisted nonprofit operating expense and capacity building assistance activities:
 - i. Records concerning the use of funds for nonprofit operating expense and capacity building assistance must be maintained to enable HUD to determine whether the PJ has met the requirements of [Section VI.F](#) of this Notice.
 - ii. Written agreements between the PJ and the nonprofit organization providing nonprofit operating expense assistance or capacity building assistance must be retained for five years after the agreement terminates.

3. Financial records:

- a. Records, in accordance with [2 CFR 200.302](#), identifying the source and application of HOME-ARP funds. Identification must include, as applicable, the Assistance Listing program title and number (formerly Catalogue of Federal Domestic Assistance), Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
- b. Records concerning the HOME-ARP Investment Trust Fund Treasury account and local account required to be established and maintained by this Notice, including deposits, disbursements, balances, supporting documentation and any other information required by IDIS.
- c. Records identifying the source and application of program income and repayments.
- d. Records demonstrating adequate budget control and other records required by [2 CFR 200.302](#), including evidence of periodic account reconciliations.

4. Program administration records:

- a. Records demonstrating compliance with the written agreements required by [Section VIII.B](#) of this Notice.
- b. Records demonstrating compliance with the applicable uniform administrative requirements required by [Section VIII.D](#) of this Notice.
- c. Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

5. Records concerning other Federal requirements:

- a. Equal opportunity and fair housing records.
 - i. Data on the extent to which each racial and ethnic group, and single-headed households by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME-ARP funds.
 - ii. Documentation that the PJ submitted a certification that it will affirmatively further fair housing consistent with HUD's Interim Final Rule entitled Restoring Affirmatively Furthering Fair Housing Definitions and Certifications (86 FR 30779, June 10, 2021) (codified at 24 CFR 5.151 and 5.152;), [available at https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications](https://www.federalregister.gov/documents/2021/06/10/2021-12114/restoring-affirmatively-furthering-fair-housing-definitions-and-certifications).
 - iii. Records demonstrating compliance with the nondiscrimination and equal opportunity requirements of [24 CFR 92, Subpart H](#).
- b. Affirmative marketing and MBE/WBE records.
 - i. Records demonstrating compliance with the affirmative marketing procedures and requirements of [24 CFR 92.351](#) and this Notice.
 - ii. Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME-ARP funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.
- c. Records demonstrating compliance with the environmental review requirements of [24 CFR 92.352](#), [24 CFR part 58](#), and this Notice including flood insurance requirements.

- d. Records demonstrating compliance with the requirements of [24 CFR 92.353](#) and the provisions of [Section VII.F](#) of this Notice regarding displacement, relocation, and real property acquisition, including but not limited to:
 - i. project occupancy lists identifying the name and address of all persons occupying the real property on the date described in [24 CFR 92.353\(c\)\(2\)\(i\)\(A\)](#), moving into the property on or after the date described in [24 CFR 92.353\(c\)\(2\)\(i\)\(A\)](#), and occupying the property upon completion of the project;
 - ii. lists of all individuals or families occupying hotels and motels and other nonresidential properties acquired, rehabilitated, and/or demolished and newly constructed to become HOME-ARP NCS or HOME-ARP rental housing that qualify for assistance under this Notice as members of a qualifying population, as well as records indicating whether such persons were assisted by the HOME-ARP program by the PJ following the closure of the nonresidential properties because of HOME-ARP activities
 - iii. lists of all individuals or families occupying HOME-ARP NCS that were converted during the required use period that qualify for assistance under this Notice, as well as records indicating whether moving costs or advisory services were provided as part of HOME-ARP administrative costs or under the HOME-ARP supportive services activity in [Section VI.D](#) of this Notice, and records indicating whether such persons were assisted by the HOME-ARP program by the PJ following the conversion of the HOME-ARP NCS units.
 - iv. Documentation that the PJ has and followed a RARAP in accordance with [24 CFR 92.353](#) and [24 CFR 42.325](#).
- e. Records demonstrating compliance with the labor requirements of [24 CFR 92.354](#), including contract provisions and payroll records.
- f. Records demonstrating compliance with the lead-based paint requirements of [24 CFR part 35](#), subparts A, B, J, K, M and R, as applicable.
- g. Records supporting compliance with conflict of interest requirements in [24 CFR 92.356](#), as revised by [Section VII.H](#) of this Notice, as well as documentation of any exceptions granted by HUD or a state PJ, as applicable, to the conflict of interest provisions in [24 CFR 92.356](#), as revised by [Section VII.H](#) of this Notice.
- h. Records demonstrating compliance with debarment and suspension requirements in [2 CFR part 2424](#).
- i. Records concerning intergovernmental review, as required by [24 CFR 92.357](#).
- j. Records of emergency transfers requested under [24 CFR 5.2005\(e\)](#) and [24 CFR 92.359](#) pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests.

- k. Documentation of actions undertaken to meet the requirements of [24 CFR part 75](#) which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).
6. **State Recipients and Subrecipients:** A PJ that distributes HOME-ARP funds to State recipients or subrecipients must require the State recipients or subrecipients to keep the records required by paragraphs 1. program records, 2. project records, 3. financial records, 4. program administration records, and 5. records concerning other federal requirements of [Section VIII.F](#) of this Notice, and such other records as the PJ determines to be necessary to enable the PJ to carry out its responsibilities under this Notice. The PJ need not duplicate the records kept by the State recipients or subrecipients. The PJ must keep records concerning its annual review of the performance and compliance of each State recipient and subrecipient as required under [24 CFR 92.504\(a\)](#).
7. **Period of record retention:** All records pertaining to HOME-ARP funds must be retained for five years, except as provided below.
- a. For HOME-ARP rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.
 - b. For HOME-ARP TBRA projects, records must be retained for five years after the period of rental assistance terminates.
 - c. Written agreements must be retained for five years after the agreement terminates.
 - d. Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with [24 CFR 92.353](#).
 - e. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
8. **Access to records:** The PJ must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws and any other applicable grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.

The PJ, subrecipient, contractor, or owner may create a program participant identifier code or number that can be used on a file and maintained internally, in such a way that the number itself does not inadvertently identify the program participant, (i.e., no use of initials, date of birth, or other pieces of information that might suggest the identity of the program participant). The “key” or “cypher” for the program participant identifier code would itself be confidential and would not leave the provider. In the circumstance of HUD programs, the

Unique Personal Identification Number which is generated within the comparable database could be used with auditors to identify records of services to distinct individuals, subject to the below requirement.

HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers, or other records of the PJ, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts. If a provider of services or operator of an NCS is subject to state or local laws or other federal grant programs that require that HUD not be given access to records detailing PII of victims, then auditors or evaluators may be given access to representative files without any sharing of individual identifying information.

G. Reporting and Performance Reports.

The PJ must submit reports in a format and at such time as prescribed by HUD. In addition, HUD and Office of the Inspector General (OIG) staff must be given access, upon reasonable notice, to all information related to the selection, award, and use of HOME-ARP funds.

Each PJ must enter the required HOME-ARP data elements timely in IDIS.

1. For HOME-ARP rental activities under [Section VI.B](#) of this Notice, the PJ must enter complete project completion information when it completes the activity in IDIS, except the assisted units can be marked vacant until they are occupied by eligible households.
2. For HOME-ARP NCS activities under [Section VI.E](#) of this Notice, the PJ must enter complete project completion information when it completes the activity in IDIS. In addition, the PJ must report the disposition of any HOME-ARP-assisted NCS activity that is converted to another eligible use at the time of conversion.
3. For HOME-ARP TBRA activities under [Section VI.C](#) of this Notice, the PJ must report beneficiary information in IDIS at the time assistance is provided.
4. For HOME-ARP Supportive Services activities under [Section VI.D](#) of this Notice, the PJ must report in IDIS quarterly, by the 30th day after the end of each calendar quarter, on the number of homeless and not homeless households assisted with supportive services and housing counseling, including the race and ethnicity, household size, and household type of the households assisted.

HUD will issue guidance about reporting on HOME-ARP activities in the PJ's consolidated annual performance and evaluation report (CAPER) required under [24 CFR 91.520](#), at a later date.

H. Confidentiality Requirements

1. All entities assisted by HOME-ARP funds must develop, implement, and maintain written procedures to require that –

- a. All records containing personally identifying information of any individual or family who applies for and/or receives HOME-ARP assistance will be kept secure and confidential;
 - b. The address or location of any NCS or HOME-ARP rental housing exclusively for individuals fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as necessary where making the address or location public does not identify occupancy of the NCS or HOME-ARP rental housing, when necessary to record use restrictions or restrictive covenants in accordance with [Section VI.B](#) or [VI.E](#), or with written authorization of the person or entity responsible for the operation of the NCS or HOME-ARP rental housing; and
 - c. The address or location of any program participant that is a fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be made public, except as provided under a privacy policy of the PJ consistent with state and local laws and any other grant conditions from other federal grant programs regarding privacy and obligations of confidentiality.
2. Documenting status of a qualifying population that is fleeing or attempting to flee domestic violence, dating violence, stalking, sexual assault, or human trafficking:
- a. If an individual or family qualifies because the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking then acceptable evidence includes an oral or written statement by the qualifying individual or head of household seeking assistance that they are fleeing that situation. An oral statement may be documented by either –
 - i. a written certification by the individual or head of household; or
 - ii. a written certification by a victim service provider, intake worker, social worker, legal assistance provider, health-care provider, law enforcement agency, legal assistance provider, pastoral counselor, or an intake worker in any other organization from whom the individual or family sought assistance.

The written documentation need only include the minimum amount of information indicating that the individual or family is fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or human trafficking and need not include any additional details about the conditions that prompted the individual or family to seek assistance.

IX. PERFORMANCE REVIEWS

HUD will review the performance of each PJ in carrying out its responsibilities for the use of HOME-ARP funds and its compliance with the requirements of this Notice. Such reviews may take the form of remote or on-site monitoring, review of IDIS data or reports, assessment of documents requested from the PJ, subrecipient, or other entity carrying out HOME-ARP activities, and inquiries resulting from external audit reports, media reports, citizen complaints,

or other sources of relevant information. HUD may also review a PJ's timely use of HOME-ARP funds for eligible activities, including the progress of expenditures for individual projects or activities, the requirement to place a project in service in accordance with requirements in this Notice, and compliance of HOME-ARP rental housing and NCS with the 4-year deadline for completing projects.

If HUD preliminarily determines that a PJ has not met a requirement of this Notice or an applicable requirement of the HOME regulations at [24 CFR Part 92](#), HUD will communicate its determination in writing and provide the PJ with the opportunity to demonstrate, based on substantial facts, documentation, and data, that it has done so. HUD may extend any time period it provided to the PJ to demonstrate its compliance if upon request of the PJ, HUD determines that it is infeasible for the PJ to provide a full response within the prescribed period.

If the PJ fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or [24 CFR 92.552](#).

A. Corrective and Remedial Actions

Corrective or remedial actions for a performance deficiency (e.g., failure to meet a provision of this Notice or an applicable provision of [24 CFR Part 92](#)) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence. HUD may impose corrective or remedial actions including but not limited to the following:

1. HUD may instruct the PJ to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:
 - a. Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
 - b. Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
 - c. Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME-ARP funds for the activities;
 - d. Reprogramming HOME-ARP funds that have not yet been expended from affected activities to other eligible activities;
 - e. Reimbursing its HOME-ARP grant in any amount not used in accordance with the requirements of this Notice;
 - f. Suspending disbursement of HOME-ARP funds for affected activities; and
 - g. Establishing procedures to ensure compliance with HOME-ARP requirements.

2. HUD may also:

- a. Change the method of payment from an advance to a reimbursement basis and may require supporting documentation to be submitted for HUD review for each payment request before payment is made;
- b. Determine the PJ to be high risk and impose special conditions or restrictions on the use of HOME-ARP funds in accordance with [2 CFR 200.208](#); and
- c. Take other remedies that may be legally available, including remedies under [2 CFR 200.339](#) and [200.340](#).

B. Sanctions

The requirements at [24 CFR 92.552](#) apply to HOME-ARP funds, except that the provision at [24 CFR 92.552\(a\)\(2\)\(iv\)](#) related to failure to comply with matching contribution requirements shall not apply.

X. FINDING OF NO SIGNIFICANT IMPACT

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at [24 CFR part 50](#), which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at: https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps.

PROMISSORY NOTE

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Buildings A+B

\$3,102,082.00

October _____, 2024

For value received, Hillside Park Buildings A&B Housing Partners Limited Partnership, an Oregon limited partnership ("Borrower"), promises to pay to the order of Clackamas County ("Lender"), the sum of **THREE MILLION, ONE HUNDRED TWO THOUSAND, EIGHTY TWO and No/100 DOLLARS (\$3,102,082.00)**, or so much thereof as may be advanced, together with interest thereon at the rate of **zero percent (0.0 %) per annum per year, compounded annually**. The loan is evidenced by this Promissory Note the ("Note"), a Loan Agreement, a Trust Deed, and a Declaration of Land Use Restrictive Covenants (together, the "Loan Documents"). Unless otherwise defined herein, capitalized terms used herein have the meaning assigned to them in the Loan Agreement.

This Note is subject to the terms of the Loan Agreement and the following terms and conditions. To the extent there may be a conflict between the terms of this Note and the Loan Agreement, the terms of the Loan Agreement shall control:

1. **Payment of Obligation.** Lender makes this loan for the development and construction of Hillside Park Phase 1 Buildings A&B (the "Project"), under Title II, Section 216 and 217 of the National Affordable Housing Act of 1990, and 24 CFR Part 92 (the "HOME" program).
 - a. The loan shall bear interest at a rate of **zero percent (0.0 %) per annum per year, compounded annually**.
 - b. The term of the loan is 55 years.
 - c. The Maturity Date is 55 years from the date on this Note shown above.
 - d. The loan shall be repaid in full upon the earlier of the Maturity Date, the sale, assignment or other transfer of title to the Property on which the Project will be constructed without Lender's consent, if required under the Loan Documents, or the date Borrower is otherwise in default under any of the Loan Documents (subject to any applicable cure period) including, but not limited to, failure to record the Trust Deed or Declaration of Restrictive Covenants within 30 days of execution and delivery of the Loan Documents, or failure to comply with any term or condition of the Loan Documents, including but not limited to the affordability requirements in the Declaration of Land Use Restrictive Covenants.
 - e. Payments shall be made at such place as Lender may designate in writing.
 - f. The outstanding principal balance of the loan shall be repaid upon occurrence of the events described in Section 1(d), above. Payments of principal shall not be required prior to the occurrence of the events described in Section 1(d), above.
2. **Lender's Rights and Remedies on Default.** Upon the occurrence of any event or events of default, and after the expiration of all applicable notice, grace and cure periods, Lender may exercise any one or more of the rights and remedies on default described in the Trust Deed or the Loan Agreement, which are incorporated by reference in this Note.
3. **Governing Law.** This Note shall be governed by and construed in accordance with the laws of Oregon without giving effect to the conflict of law provisions thereof.
4. **Security.** This Note shall be secured by a Trust Deed from Borrower, as grantor, to Lender as beneficiary.
5. **Non-Recourse.** Notwithstanding anything to the contrary contained herein, Borrower, its assigns and their respective members, partners, officers, directors, employees, agents and contractors shall have no personal liability for payment of the indebtedness evidenced hereby or performance of the covenants set forth in this Note, in the Deed of Trust or in the Loan Agreement, and the sole recourse of the holder of this Note shall be confined to the exercise of its rights under the Deed of Trust, provided that nothing shall diminish Borrower's

liability for damages or deficiencies resulting from theft, waste, fraud, material misrepresentation and misuse of rents.

6. **Authority.** If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by order of its board of directors.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Promissory Note as of the date first set forth above.

BORROWER:

Hillside Park Buildings A&B
Housing Partners Limited Partnership, an Oregon
limited partnership
44 Montgomery, 13th Floor
San Francisco, CA 94104

By: Related/Hillside Park Buildings A&B
Development Co., LLC,
a California limited liability company
Title: General Partner

By: _____
Name: Ann Silverberg
Title: President

AFTER RECORDING RETURN TO:
Clackamas County
Housing and Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

STATUTORY NOTICE:
The name and address of the entity holding a lien or other interest created by this instrument are set forth below, and the tax account number of the property subject to the lien or in which the interest is created is: Clackamas County Community Development Division

Legal Description – EXHIBIT "A" Attached

TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING CLACKAMAS COUNTY HOME PROGRAM

Name of Project: Hillside Park Phase 1 Buildings A+B

THIS TRUST DEED, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (this "Trust Deed") is made as of October _____, 2024 by **Hillside Park Buildings A&B Housing Partners Limited Partnership**, an Oregon limited partnership ("**Grantor**" or "**Borrower**"), having its offices at c/o Related NW, 208 SW First Avenue, Suite 240, Portland, OR 97204, Attn: Ryan Hood, to Fidelity National Title Company of Oregon ("**Trustee**" or "**Title Company**"), for the benefit of Clackamas County, a political subdivision of the State of Oregon, through its Housing and Community Development Division, having its office at 2051 Kaen Road, Oregon City, OR 97045 ("**Beneficiary**" or "**County**").

County has made a **zero percent (0.0%) interest deferred payment** loan to Borrower in the sum of **THREE MILLION, ONE HUNDRED TWO THOUSAND, EIGHTY TWO and No/100 DOLLARS (\$3,102,082.00)**, under Title II of the National Affordable Housing Act of 1990, as amended, 42 U.S.C. 12701 et seq., and 24 CFR Part 92 (the "HOME" program). The loan is evidenced by this Trust Deed, a Promissory Note, a Loan Agreement and a Declaration of Land Use Restrictive Covenants, as they may be amended or supplemented from time to time, together referred to as the "**Loan Documents**." Capitalized terms have the meanings set forth in the Loan Agreement, except as otherwise defined in this Trust Deed. The purpose(s) of the loan are set forth in the Loan Agreement entered into between the parties.

The loan is due and payable in full at the earliest of: (i) the Maturity Date which is exactly **fifty five (55) years from the executed date of this Trust Deed**, (ii) except as otherwise provided in the Loan Agreement, the date the Trust Property, defined below, is sold, (iii) title to the Trust Property is transferred in violation of the Loan Documents, or (iv) the date County declares the loan due and payable in accordance with the Loan Documents as a result of a default by the Borrower with respect to its obligations under the Loan Documents (defined in Article 5.01 below). The Initial HUD required Period of Affordability shall be 15 years without regard to the term of the loan or the transfer of ownership. The extended period of affordability begins at the end of the Initial Period of Affordability and continues for an additional 40 years or until such time as the loan is deemed paid in full. The total Period of Affordability for both the Initial and Extended Periods of Affordability totals 55 years.

As a condition to the making of the loan to Borrower, Borrower has agreed to sign, deliver and record or cause to be recorded this Trust Deed. This Trust Deed secures an obligation incurred for the construction of an improvement on land, and is a "construction mortgage" under ORS 79.0334(8).

For good consideration, receipt and sufficiency of which are acknowledged, and for the purpose of securing the Obligations described in Section 1.01 below, Borrower irrevocably grants, bargains, sells, conveys, assigns, and transfers to Title Company, in trust for the benefit and security of the County, with power of sale and right of entry and possession, all of Borrower's leasehold right, title, and interest in and to the real property located in Clackamas County, Oregon, described as:

See **EXHIBIT A** attached hereto and incorporated herein,

together with all the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in any way now or hereafter appertaining thereto, and the rents, issues and profits thereof, together with all rights, titles and interests of Borrower, now owned or hereafter acquired, in and to any and all buildings and other improvements of every nature now or hereafter located on the Property and all fixtures now or hereafter attached to or used in connection with the Property and all appurtenances and additions to and substitutions and replacements of them (the "Improvements"). All of the above is sometimes referred to below as either the "Property" or the "Trust Property."

PROVIDED ALWAYS, that if all the Obligations (as defined in Section 1.01 below) shall be paid, performed, and satisfied in full, then the lien and estate granted by this Trust Deed shall be re-conveyed.

BORROWER COVENANTS AND AGREES AS FOLLOWS:

ARTICLE I

Particular Covenants and Warranties of Borrower

1.01 Obligations Secured. This Trust Deed secures the prompt payment of all indebtedness and other monetary obligations, including but not limited to principal and interest, and the prompt performance of all covenants and obligations of Borrower, under this Trust Deed and the other Loan Documents, whether such payment and performance is now due or becomes due in the future (the "Obligations").

1.02 Property. Borrower warrants that it holds good and merchantable leasehold title to the Property, free and clear of all liens, encumbrances, reservations, restrictions, easements, and adverse claims except those specifically listed as exceptions to title in Borrower's owner's policy of title insurance, title policy number _____. Borrower covenants that it shall forever defend County's rights under this Trust Deed against the adverse claims and demands of all persons. Borrower will maintain and preserve the lien of this Trust Deed until the obligations secured hereby have been paid in full.

1.03 [Reserved]

1.04 Further Assurances; Filing; Refiling; Etc.

- 1) Borrower shall sign, acknowledge, and deliver, from time to time, such further instruments as County may require to accomplish the purposes of this Trust Deed.
- 2) Borrower, immediately upon the signing and delivery of this Trust Deed, and thereafter from time to time, shall cause this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and each instrument of further assurance, to be recorded and re-recorded in such manner and in such places as may be required by any present or future law in order to perfect, and continue perfected, the lien and estate of this Trust Deed.
- 3) Borrower shall pay all filing and recording fees, and all expenses incident to the signing, filing, recording, and acknowledgment of this Trust Deed; any security agreement, mortgage, or deed of trust supplemental hereto and any instrument of further assurance; and all federal, state, county, and municipal taxes, assessments and charges arising out of or in connection with the signing, delivery, filing, and recording of this Trust Deed, any supplemental security agreement, mortgage, or deed of trust and any instrument of further assurance.

1.05 Compliance with Laws. Borrower represents, warrants, and covenants that:

- 1) The Property has been or will be developed, and all improvements, if any, have been or will be constructed and maintained, in full compliance with all applicable laws, statutes, ordinances, regulations, and codes of all federal, state, and local governments, including the HOME requirements to the extent applicable including, but not limited to, the U.S. Department of Housing and Urban Development HOME-American Rescue Plan Program Notice CPD-21-10 (collectively "Laws"), and all covenants, conditions, easements, and restrictions affecting the Trust Property (collectively "Covenants"); and
- 2) Borrower and its operations upon the Trust Property currently comply, and will comply in all material respects with all applicable Laws and Covenants.

1.06 Definitions; Environmental Covenants; Warranties and Compliance

- 1) For purposes of this section, "Environmental Law" means any federal, state, or local law, statute, ordinance, or regulation pertaining to Hazardous Substances, health, industrial hygiene, or environmental conditions, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 USC §9601-9675, and the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended, 42 USC §6901-6992.
- 2) For the purposes of this section, "Hazardous Substance" means any material, substance, or waste that is or becomes regulated or that is or becomes classified as hazardous, dangerous, or toxic under Environmental Law.
- 3) Borrower will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Property or the Property's groundwater, or transport to or from the Property, any Hazardous Substance and will not permit any other person to do so, except for such Hazardous Substances that may be used in the ordinary course of Borrower's business and in compliance with all Environmental Laws, including but not limited to those relating to licensure, notice, and record keeping.
- 4) Borrower will keep and maintain the Property in compliance with, and shall not cause or permit all or any portion of the Property, including groundwater, to be in violation of any Environmental Law.
- 5) Borrower shall give prompt written notice to County of:
 - (a) Any proceeding, inquiry, or notice by or from any governmental authority with respect to any alleged violation of any Environmental Law or the presence of any Hazardous Substance on the Property or the migration of any Hazardous Substance from or to other premises;
 - (b) All known claims made or threatened by any person against Borrower or with respect to the Property or Improvements relating to any loss or injury resulting from any Hazardous Substance or the violation of any Environmental Law;
 - (c) The existence of any Hazardous Substance on or about all or any portion of the Property in violation of Environmental Law; or
 - (d) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could in Borrower's judgment cause any restrictions on the ownership, occupancy, transferability, or use of the Property under any Environmental Law.

- 6) Borrower shall promptly provide to County copies of all reports, documents, and notices provided to or received from any agency administering any Environmental Laws. County shall have the right to join and participate, in its own name if it so elects, in any legal proceeding or action initiated with respect to the Property or Improvements in connection with any Environmental Law and have its reasonable attorney fees in connection with such an action paid by Borrower, if County determines that such participation is reasonably necessary to protect its interest in the Trust Property.
- 7) If, at any time, County has reason to believe that any release, discharge, or disposal of any Hazardous Substance affecting the Property or Improvements in violation of Environmental Law has occurred or is threatened, or if County has reason to believe that a violation of an Environmental Law has occurred or may occur with respect to the Property or Improvements, County may require Borrower to obtain or may itself obtain, at Borrower's expense, an environmental assessment of such condition or threatened condition by a qualified environmental consultant. Borrower shall promptly provide to County a complete copy of any environmental assessment obtained by Borrower.
- 8) In the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under any applicable Environmental Law, any judicial order, or by any governmental agency or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance on, under, or about all or any portion of the Property, or the contamination (whether presently existing or occurring after the date of this Trust Deed) of the buildings, facilities, soil, groundwater, surface water, air, or other elements on or under any other property as a result of Hazardous Substances emanating from the Property, Borrower shall, within 30 days after written demand by County for Borrower's performance under this provision (or such shorter period of time as may be required under any applicable law, regulation, order, or agreement), commence and thereafter diligently prosecute to completion, all such Remedial Work. All costs and expenses of such Remedial Work shall be paid by Borrower including, without limitation, County's reasonable professional fees and costs incurred in connection with monitoring or review of the legal aspects of such Remedial Work. In the event Borrower shall fail to timely commence, or cause to be commenced, such Remedial Work, County may, but shall not be required to, cause such Remedial Work to be performed. In that event, all costs and expenses incurred in connection with the Remedial Work shall become part of the Obligations secured by this Trust Deed and shall bear interest at a rate of 8.0% per annum compounded annually until paid.
- 9) Borrower shall hold County, its elected officials, directors, officers, employees, agents, successors, and assigns, harmless from, indemnify them for, and defend them against any and all losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to any violation of any Environmental Law, any breach of Borrower's warranties in this Section 1.06, or the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under, or about the Property, including without limitation the costs of any required repair, cleanup, containment, or detoxification of the Property, the preparation and implementation of any closure, remedial or other required plans, reasonable attorney fees and costs (including but not limited to those incurred in any proceeding and in any review or appeal), fees, penalties, and fines; provided however that, notwithstanding the foregoing, Borrower shall have no obligation to indemnify or provide any contribution to any person or party for, from or against any losses, damages, liens, costs, expenses, and liabilities directly or indirectly arising out of or attributable to the negligence or willful misconduct of such person or party.
- 10) To the best of Borrower's knowledge, Borrower represents and warrants to County that:
 - (a) Neither the Property nor Borrower is in violation of any Environmental Law or subject to any existing, pending, or threatened investigation by any governmental authority under any Environmental Law.
 - (b) Borrower has not and is not required by any Environmental Law to obtain any permit or license other than those it has obtained, or will timely obtain, to construct or use the Improvements.
 - (c) To the best of Borrower's knowledge, except as disclosed in environmental reports made available to County, no Hazardous Substance has ever been used, generated, manufactured, produced, stored, released, discharged, or disposed of on, under, or about the Property in violation of any Environmental Law.
- 11) All representations, warranties, and covenants in this Section 1.06 shall survive the satisfaction of the Obligations, the re-conveyance of the Trust Property, or the foreclosure of this Trust Deed by any means.

1.07 Maintenance and Improvements. From and after the Project Completion Date, Borrower will protect, preserve and maintain, at Borrower's expense, all Improvements in good order and repair (ordinary wear and tear excepted) and will not permit or cause any waste of the Property, and, to the extent required under Section 15 of the Loan Agreement, will complete or restore promptly and in a good and workmanlike manner, all repairs necessary to the Land and Improvements that may be constructed, damaged or destroyed. Borrower will not conduct or permit any nuisance to be maintained on the Property. From and after the Project Completion Date, Borrower shall not permit all or any part of the Improvements to be removed, demolished, or materially altered without County's prior written consent which consent shall not be unreasonably conditioned, withheld or delayed; provided, however, that Borrower may remove, demolish, or materially alter such Improvements in the usual conduct of Borrower's business, if the removal or material alteration does not materially detract from the operation of the Borrower's business and if all Improvements that are demolished or removed are promptly replaced with Improvements of like or greater value and quality if such Improvements are necessary or beneficial to the operations of the Property. Borrower shall maintain every portion of the Property and Improvements in good repair, working order, and condition, ordinary wear and tear excepted, so that it continues to meet the property standards set forth in 24 CFR 92.251, and, solely to the extent required under Section 15 of the Loan Agreement, shall at County's election and Borrower's cost, restore, replace, or rebuild all or any part of the Improvements now or hereafter damaged or destroyed by any casualty (whether or not insured against or insurable) or affected by any Condemnation (as defined in Section 2.01 below) pursuant to Sections 1.14 and 2.01, as applicable. Borrower shall not commit, permit, or suffer any waste, strip, or deterioration of the Trust Property, reasonable wear and tear accepted.

1.08 Liens; Other Financing. Subject to subparagraph 1.09(2), Borrower shall pay when due all claims for labor, materials, or supplies that if unpaid might become a lien on all or any portion of the Trust Property. Subject to subparagraph 1.09(2), Borrower shall not create, or suffer, or permit to be created, any mortgage, deed of trust, lien, security interest, charge, or encumbrance upon the Trust Property prior to, on a parity with, or subordinate to the lien of this Trust Deed, except for (i) Existing Title Exceptions, (ii) any lien, security interest, charge, or encumbrance permitted under any loan documents evidencing debt senior to the loan, subleases to subtenants, and trade payables in the ordinary course of business, and (iii) any encumbrance that does not constitute a "Transfer" as defined in the Loan Agreement (collectively, "Permitted Liens").

1.09 Impositions

- 1) Borrower shall pay or cause to be paid, when due and before any fine, penalty, interest, or cost attaches, all taxes, assessments, fees, levies, and all other governmental and nongovernmental charges assessed or levied against any part of the Trust Property (the "Impositions"); provided, however, that if such Imposition may be paid in installments, Borrower may pay the same in installments, together with accrued interest on the unpaid balance, as the same become due, before any fine, penalty, or cost attaches.
- 2) Borrower may, at its expense and with notice to County, contest by appropriate legal, administrative, or other proceedings conducted in good faith and with due diligence, the amount, validity, or application of any Imposition or lien on the Trust Property or any claim of any laborer, material man, supplier, or vendor or lien, and may withhold payment of the same pending completion of such proceedings if permitted by law, provided that (a) such proceedings shall suspend collection from the Trust Property; (b) no part of or interest in the Trust Property will be sold, forfeited, or lost if Borrower pays the amount or satisfies the condition being contested, and Borrower would have the opportunity to do so in the event of Borrower's failure to prevail in the contest; (c) neither County nor Title Company shall, by virtue of such permitted contest, be exposed to any risk of liability for which Borrower has not furnished additional security as provided in clause (d) below; and (d) Borrower shall have furnished to County cash, corporate surety bond, or other additional security in the amount determined by County with respect of the claim being contested or the loss or damage that may result from Borrower's failure to prevail in such contest in an amount sufficient to discharge the Imposition and all interest, costs, attorney fees, and other charges that may accrue in connection with the Imposition. Borrower shall promptly satisfy any final, non-appealable judgment.
- 3) Borrower shall furnish to County, promptly upon request, satisfactory evidence of the payment of all Impositions. County is authorized to request and receive from the responsible governmental and non-governmental personnel written statements with respect to the accrual and payment of all Impositions.

1.10 Books and Records; Inspection of the Property. Borrower shall keep complete and accurate records and books of account with respect to the Trust Property and its operation in accordance with generally accepted accounting principles consistently applied, and in accordance with the record-keeping requirements of the Loan Agreement. Borrower shall permit County, the Secretary of HUD and the Comptroller General of the United States of America, and their respective authorized and properly identified representatives to enter and inspect the Property and the Improvements, and to examine and make copies or extracts of the records and books of account of the Borrower with respect to the Property and the Improvements, at reasonable times during normal business with prior notice of not less than 48 hours, subject to all safety and security policies uniformly employed at the Property and rights of tenants in lawful possession.

1.11 Limitations of Use. Borrower shall not initiate, join in, or consent to any rezoning of the Property or any change in any Covenant or other public or private restrictions to the extent such change would prevent the Property and the Improvements from being used as contemplated by the Loan Agreement and Declaration of Land Use Restrictive Covenants without the prior written consent of County.

1.12 Insurance

- 1) Property and Other Insurance. Borrower shall obtain and maintain in full force and effect during the term of this Trust Deed:
 - (a) Causes of Loss – Special Form property insurance together with endorsements for replacement cost, inflation adjustment, malicious mischief, and sprinkler damage coverages, all in amounts not less than the full replacement cost of all Improvements, without reduction for co-insurance;
 - (b) Commercial general liability insurance, including liabilities assumed under contract, with limits, coverages, and risks insured acceptable to County, and in no event less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage; and
 - (c) Unless County otherwise agrees in writing, rent loss or business interruption insurance in an amount no less than the total annual rents provided for in all leases for the Trust Property.
- 2) Insurance Companies and Policies. Insurer must be authorized to do business in Oregon. All insurance shall be written by a company or companies reasonably acceptable to County with a rating of A VIII or better as provided in Best's Rating Guide; shall contain a long form mortgagee clause in favor of County with loss proceeds under any policy payable to County, subject to the terms of this Trust Deed and the rights of any prior ground lease or superior mortgagee or trust deed beneficiary or as provided in Section 6.10 below; shall require 30 days' prior written notice to County of cancellation or reduction in coverage; shall contain waivers of subrogation and endorsements that no act or negligence of Borrower or any occupant, and no occupancy or use of the Property for purposes more hazardous than permitted by the terms of the policy will affect the validity or enforceability of such insurance as against County; shall be in full force and effect on the date of this Trust Deed; and shall be accompanied by proof of premiums paid for the current policy year. County shall be named as additional insured on all liability policies. Borrower shall forward to County, upon request, certificates evidencing the coverages required under this Trust Deed and copies of all policies.

- 3) Blanket Policy. If a blanket policy is issued, a certified copy of such policy shall be furnished together with a certificate indicating that the Trust Property and County are insured under such policy in the proper designated amount.
- 4) Insurance Proceeds. All proceeds from any insurance on the Trust Property shall be used in accordance with the provisions of Section 1.14.

1.13 Assignments of Policies upon Foreclosure. Subject to the rights of any prior ground lessor or superior mortgagee or trust deed beneficiary, in the event of foreclosure of the lien of this Trust Deed or other transfer of title, or assignment of the Trust Property in whole or in part, all right, title, and interest of Borrower in and to all policies of insurance procured under Section 1.12 shall inure to the benefit of and pass to the successors in interest of Borrower or the purchaser or grantee of all or any part of the Trust Property.

1.14 Casualty/Loss Restoration

- 1) After the occurrence of any casualty to the Property, whether or not required to be insured against as provided in this Trust Deed, Borrower shall give prompt written notice of the casualty to County, specifically describing the nature and cause of such casualty and the extent of the damage or destruction to the Trust Property. County may make proof of loss to the applicable insurer if it is not made promptly and to County's satisfaction by Borrower.
- 2) Subject to the rights of the ground lessor and any superior mortgagees, Borrower assigns to County all insurance proceeds that Borrower may be entitled to receive with respect to any casualty. All insurance proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed beyond any applicable notice and cure periods, County shall permit such amounts of the insurance proceeds to be used by Borrower for repair or restoration of the Improvements (subject to disbursement procedures established by County) if Borrower can demonstrate, to County's satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Subject to the rights of the ground lessor and any superior mortgagees, any excess insurance proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

1.15 Actions to Protect Trust Property; Reserves

- 1) If Borrower shall fail to obtain the insurance required by Section 1.12, make the payments required by Section 1.09 (other than payments that Borrower is contesting in accordance with Section 1.09(2)), or perform or observe any of its other covenants or agreements under this Trust Deed, County may, without obligation to do so, obtain or pay the same or take other action that it deems appropriate to remedy such failure; provided that County shall first give notice to Borrower of such failure and a reasonable opportunity of not less than 30 days to cure such failure. All sums, including reasonable attorney fees, so expended or expended to maintain the lien or estate of this Trust Deed or its priority, or to protect or enforce any of County's rights, or to recover any indebtedness secured by this Trust Deed, shall be a lien on the Trust Property, shall be secured by this Trust Deed, and shall be paid by Borrower upon demand, together with interest at the rate provided in the Note. No payment or other action by County under this section shall impair any other right or remedy available to County or constitute a waiver of any default.
- 2) If Borrower fails to promptly perform any of its obligations under Section 1.09 or 1.12 of this Trust Deed, County may require Borrower thereafter to pay in an escrow maintained with an independent, third party escrow agent reasonably acceptable to County reserves for payment of such obligations. In that event, Borrower shall pay into such escrow each month a sum estimated by County to be sufficient to produce, at least 20 days before due, an amount equal to the Impositions and/or insurance premiums. If the sums so paid are insufficient to satisfy any Imposition or insurance premium when due, Borrower shall pay any deficiency upon demand.

1.16 Insurance Warning. Unless Borrower provides County with evidence of the insurance coverage required by the Loan Documents, County may purchase insurance at Borrower's expense to protect County's interest.

This insurance may, but need not, also protect Borrower's interest. If the Trust Property becomes damaged, the coverage County purchases may not pay any claim Borrower makes or any claim made against Borrower. Borrower may later cancel this coverage by providing evidence that Borrower has obtained property coverage elsewhere.

Borrower is responsible for the cost of any insurance purchased by County. The cost of this insurance may be added to Borrower's loan balance. If the cost is added to Borrower's loan balance, the interest rate of 8.0% per annum compounded annually will apply to this added amount. The effective date of coverage may be the date Borrower's prior coverage lapsed or the date Borrower failed to provide proof of coverage.

The coverage County purchases may be considerably more expensive than insurance Borrower can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

1.17 Estoppel Certificates. Borrower, within fifteen days of the request by the County, shall furnish Title Company and County a written statement, duly acknowledged, of the amount of the Obligations secured by this Trust Deed and whether any offsets or defenses exist against such Obligations.

1.18 Financial Information. Borrower shall furnish to County within (i) 90 days after the end of each of Borrower's fiscal years a complete copy of Borrower's internally-prepared financial statement for such year, and (ii) 180 days after the of each of Borrower's fiscal years a copy of Borrower's annual audited or certified public accountant reviewed financial statements (including balance sheet, income statement, and statement of changes in financial position). Borrower shall

promptly furnish to County any and all such other financial information related to Borrower as County shall reasonably request from time to time.

ARTICLE II Condemnation

2.01 Condemnation

- 1) Should any part of or interest in the Trust Property be taken or damaged by reason of any public improvement, eminent domain, condemnation proceeding, or in any similar manner (a "Condemnation"), or should Borrower receive any notice or other information regarding such action, Borrower shall give immediate notice of such action to County.
- 2) Subject to the rights of the ground lessor and any superior mortgagee or trust deed beneficiary as provided in Section 6.10 below, County shall be entitled to all compensation, awards, and other payments or relief ("Condemnation Proceeds") up to the full amount of the Obligations, and shall be entitled, at its option, to commence, appear in, and prosecute any Condemnation proceeding in its own or Borrower's name and make any compromise or settlement in connection with such Condemnation. In the event the Trust Property is taken in its entirety by condemnation, all Obligations secured by this Trust Deed, at County's election, shall become immediately due and collectible.
- 3) All condemnation proceeds shall be held by County as collateral to secure performance of the Obligations secured by this Trust Deed. Provided that Borrower is not in default under this Trust Deed, County shall permit such amounts of the condemnation proceeds to be used by Borrower for repair or restoration of the Improvements (subject to reasonable disbursement procedures established by County) if Borrower can demonstrate, to County's reasonable satisfaction, that subsequent to such repair or restoration, the Trust Property shall have a value of not less than 100% of the then-outstanding balance of the indebtedness secured by this Trust Deed. Any excess condemnation proceeds shall be applied by County toward payment of all or part of the indebtedness secured by this Trust Deed in such order as County may determine.

ARTICLE III Assignment of Leases, Rents, Issues, and Profits

3.01 Assignment. Borrower assigns and transfers to County (1) other than the Ground Lease, all leases, subleases, licenses, rental contracts, and other agreements, whether now existing or hereafter arising, and relating to the occupancy or use of all or any portion of the Trust Property, including all modifications, extensions, and renewals thereof (the "Leases"), and (2) all of Borrower's right, title, and interest in and to all rents, revenues, issues, profits, income, proceeds, and benefits derived from the Trust Property and the lease, rental, or license of all or any portion thereof, including but not limited to lease and security deposits (collectively, the "Rents"). Borrower certifies that the Rents have not been currently assigned to any third party other than the beneficiaries under any mortgages or trust deeds identified on **EXHIBIT B**. This assignment is intended by Borrower and County to create a present and unconditional assignment to County subject only to the license set forth in Section 3.04 below.

3.02 Rights of County. Subject to the provisions of Section 3.04 below giving Borrower a revocable, limited license, County shall have the right, power, and authority to:

- 1) Notify any and all tenants, renters, licensees, and other obligors under any of the Leases that the same have been assigned to County and that, subject to the rights of the applicable beneficiary under any superior mortgage or trust deed specifically permitted under **EXHIBIT B**, all Rents are to be paid directly to County, whether or not County shall have foreclosed or commenced foreclosure proceedings against the Trust Property, and whether or not County has taken possession of the Trust Property;
- 2) Discount, settle, compromise, release, or extend the time for payment of, any amounts owing under any of the Leases and any Rents, in whole or in part, on terms acceptable to County;
- 3) Collect and enforce payment of Rents and all provisions of the Leases, and to prosecute any action or proceeding, in the name of Borrower or County, with respect to any and all Leases and Rents; and
- 4) Exercise any and all other rights and remedies of the lessor in connection with any of the Leases and Rents.

3.03 Application of Receipts. County shall have the right, power, and authority to use and apply any Rents received under this Trust Deed (1) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this assignment or the rights of County, and in collecting any Rents, including reasonable internal personnel costs; and (2) for the operation and maintenance of the Trust Property and the payment of all costs and expenses in connection therewith, including but not limited to the payment of utilities, taxes, assessments, governmental charges, and insurance. After the payment of all such costs and expenses and after County shall have set up such reserves as it shall deem necessary in its sole discretion for the proper management of the Trust Property, County shall apply all remaining Rents collected and received by it to the reduction of the Obligations in such order as County shall determine. The exercise or failure by County to exercise any of the rights or powers granted in this assignment shall not constitute a waiver of default by Borrower under this Trust Deed, the Note, or any of the other Loan Documents.

3.04 License. County grants to Borrower a revocable license to collect and receive the Rents. Such license may be revoked by County, without further notice to Borrower, other than the notice required by Article 5.01, only if Borrower defaults under Article III or any other term of the Loan Documents and such default continues beyond any applicable notice, grace or cure period. Unless and until a license is revoked, Borrower agrees to apply the proceeds of Rents to ownership obligations, taxes, assessments, governmental charges, insurance premiums, and other obligations associated with the Trust Property, and to maintenance of the Trust Property, before using Rent proceeds for any other purpose.

Borrower agrees:

- 1) To observe and perform all of its obligations as lessor under Leases;

- 2) To use commercially reasonable efforts, in Borrower's reasonable business judgment, to enforce, or secure the performance of, every obligation required of lessees and other parties under the Leases;
- 3) To appear in and defend any action or proceeding arising out of, or connected with, the Leases or Rents, at Borrower's sole expense; and
- 4) To obtain County's prior written approval of the form and content of all future Leases, which approval shall not be unreasonably withheld, conditioned or delayed.

Upon request of County, Borrower agrees:

- 1) To collect Rents no earlier than 30 days in advance of the day when they are due, and
- 2) Not to accept any payments under the Leases other than Rent, except for bona fide security deposits up to an amount equivalent to two months' rent.

3.05 Limitation of County's Obligations. Notwithstanding the assignment provided for in this Article III, County shall not be obligated to perform or discharge, and County does not undertake to perform or discharge, any obligation or liability with respect to the Leases or the Rents. This assignment shall not operate to place responsibility for the control, care, maintenance, or repair of the Trust Property upon County, or to make County responsible for any condition of the Property. County shall be accountable to Borrower only for the sums actually collected and received by County pursuant to this assignment. Borrower shall hold County fully harmless from, indemnify County for, and defend County against any and all claims, demands, liabilities, losses, damages, and expenses, including reasonable attorney fees, arising out of any of the Leases, with respect to any of the Rents, or in connection with any claim that may be asserted against County on account of this assignment or any obligation or undertaking alleged to arise therefrom, other than such claims resulting from the negligence or willful misconduct of County.

3.06 Termination. The assignment provided for in this Article III shall continue in full force and effect until all the Obligations have been fully paid and satisfied. At such time, this assignment and the authority and powers herein granted by Borrower to County shall cease and terminate.

3.07 Attorney-in-Fact. Borrower irrevocably constitutes and appoints County as its true and lawful attorney-in-fact, with power of substitution, to undertake and sign any and all of the rights, powers, and authorities described in this Article III with the same force and effect as if undertaken or performed by Borrower; provided, however, that County shall not exercise such power unless and until Borrower defaults under the Loan Documents and such default continues beyond any applicable notice and/or grace period.

ARTICLE IV

Security Agreement and Fixture Filing

4.01 Security. To secure the Obligations, Borrower grants to County a security interest in the following: (1) the Trust Property to the extent the same is not encumbered by this Trust Deed, subordinate only to Permitted Liens and any other lien previously approved by the County; (2) [Reserved]; (3) all personal property of Borrower that is now or will be placed on or in the Trust Property or Improvements; (4) all personal property of Borrower that is derived from or used in connection with the use, occupancy, or enjoyment of the Trust Property; (5) all property of Borrower defined in the Uniform Commercial Code as adopted in the state of Oregon, as accounts, equipment, fixtures, and general intangibles, to the extent the same are used at, or arise in connection with the ownership, maintenance, or operation of, the Trust Property; (6) all of Borrower's right, title, and interest in and to all causes of action, claims, security deposits, advance rental payments, utility deposits, refunds of fees or deposits paid to any governmental authority, refunds of taxes, and refunds of insurance premiums relating to the Trust Property; and (7) all present and future attachments, accessions, amendments, replacements, additions, products, and proceeds of every nature of the foregoing. This Trust Deed shall constitute a security agreement and "fixture filing" under the Uniform Commercial Code Secured Transactions statutes of the State of Oregon. The mailing address of Borrower and the address of County from which information may be obtained are set forth in the introductory paragraph of this Trust Deed.

ARTICLE V

Events of Default; Remedies

5.01 Events of Default. Subject to any applicable notice and opportunity to cure period provided in the Loan Documents, each of the following shall constitute an event of default under the Loan Documents:

- 1) Nonpayment. Failure to pay any amount due under the Loan Documents, before the due date.
- 2) Failure of Borrower to comply with the Affordability Requirements at any time during the Period of Affordability.
- 3) Breach of Other Covenants. Material failure to perform or abide by any other condition of the Loan Documents.
- 4) Misinformation. Falsity when made in any material respect of any representation, warranty, or information furnished in the Loan Documents or in the application for HOME funds.
- 5) Other Default. The occurrence of any other event of default under the Loan Documents after the expiration of all applicable notice, grace and cure periods.
- 6) Cross-Defaults. Borrower's default, after expiration of any applicable notice and cure periods, under any other documents related to the Project if another party to such document has initiated proceedings for foreclosure or termination of the Ground Lease (as hereinafter defined) as a result of such default by Borrower, including but not limited to the documents which evidence the Other Financing Sources and, if applicable, any lease Borrower may have entered into with respect to the Property, as set forth in Article VI, below.
- 7) Bankruptcy. The occurrence of any of the following with respect to Borrower or any guarantor of the Obligations: (a) appointment of a receiver, liquidator, or Title Company for any such party or any of its properties; (b) adjudication as a bankrupt or insolvent; (c) filing of any petition by or against any such party under any state or federal bankruptcy, reorganization, moratorium or insolvency law; (d) institution of any proceeding for dissolution or liquidation; (e) Borrower's admission of its inability to pay debts when due; (f) any general assignment for the

benefit of creditors; or (g) abandonment of the Trust Property. Provided, however, that in the event of any involuntary bankruptcy or similar proceeding filed against Borrower that would otherwise constitute an event of default, no such event of default shall be deemed to have occurred unless and until such proceeding remains undismissed or unstayed for a period of sixty (60) days.

- 8) **Transfer; Due-on-Sale.** Any sale, conveyance, contract for conveyance, transfer, assignment, encumbrance, pledge, or grant of a security interest in all or any part of the Property, or any interest therein, either voluntarily, involuntarily, or by the operation of law (a "Transfer"), without County's prior written consent, to the extent required under applicable Loan Documents, shall constitute an event of default. Provided, however, that a transfer of a partnership interest permitted under the Loan Documents shall not constitute an event of default.

Notwithstanding anything herein, or in the Loan Documents, to the contrary, the Owner shall be permitted to refinance one or more loan(s) secured by a senior mortgage or trust deed ("Senior Loan") at its maturity on commercially reasonable terms in an amount equal to or less than the then-outstanding principal balance of the Senior Loan plus any costs incurred in connection therewith (the "Refinanced Loan"). The consent of the County is not required for the Refinanced Loan or the transfer of Owner's interest in the Mortgaged Premises as security for the Refinanced Loan, and County further agrees that (i) the Refinanced Loan shall not constitute a default under this Trust Deed or the Note or any other documents evidencing and/or securing the Note, or accelerate the maturity date thereof, and (ii) the Refinanced Loan shall be automatically senior in priority to this Trust Deed and County shall execute, deliver and record such further instruments as Owner may request to evidence such subordination.

Upon the occurrence of any of the above events, County will provide Borrower thirty (30) days' written notice of the default with an opportunity to cure, with such additional time (not to exceed sixty (60) additional days) as may be reasonably necessary so long as Borrower has commenced and is diligently pursuing a cure.

5.02 Remedies in Case of Default. If an Event of Default shall occur, and subject to any applicable notice and opportunity to cure period provided for in the Loan Documents, County may exercise any one or more of the following rights and remedies, in addition to any other remedies that may be available by law, in equity, or otherwise:

- 1) **Extend Period of Affordability.** If Borrower fails to provide the required rents, fails to rent to eligible tenants, or fails to maintain the units according to applicable Property Standards, County may extend the Period of Affordability for the period during which such failure existed.
- 2) **Acceleration.** County may declare all or any portion of the Obligations immediately due and payable.
- 3) **Receiver.** County may have a receiver appointed for the Trust Property. County shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Trust Property exceeds the amount of the indebtedness secured by this Trust Deed. Employment by Title Company or County shall not disqualify a person from serving as receiver. Borrower consents to the appointment of a receiver at County's option (if such appointment is in accordance with this Section 5.02) and waives any and all defenses to such an appointment.
- 4) **Possession.** County may, either through a receiver or as lender-in-possession, enter and take possession of all or any part of the Trust Property and use, operate, manage, and control it as County shall deem appropriate in its sole discretion. Upon request after an Event of Default, Borrower shall peacefully relinquish exclusive possession and control of the Trust Property to County or any receiver appointed under this Trust Deed.
- 5) **Rents.** County may revoke Borrower's right to collect the Rents and may, either itself or through a receiver, collect the same. County shall not be deemed to be in possession of the Property solely by reason of exercise of the rights contained in this subsection (5). If Rents are collected by County under this subsection, Borrower irrevocably appoints County as Borrower's attorney-in-fact, with power of substitution, to endorse instruments received in payment thereof in the name of Borrower and to negotiate such instruments and collect their proceeds. After payment of all Obligations, any remaining amounts shall be paid to Borrower and this power shall terminate.
- 6) **Power of Sale.** County may direct Title Company, and Title Company shall be empowered, to foreclose the Property by advertisement and sale under applicable law.
- 7) **Foreclosure.** County may judicially foreclose this Trust Deed and obtain a judgment foreclosing Borrower's interest in all or any part of the Property. In any judicial foreclosure, County will be entitled to obtain a deficiency judgment for any amount by which the amount of Obligations secured hereby exceed the sale proceeds.
- 8) **Fixtures and Personal Property.** With respect to any Improvements and other personal property subject to a security interest in favor of County, County may exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code.
- 9) **Other Remedies.** County will have any other right or remedy provided in this Trust Deed, the Note, the Loan Documents, or any other instrument delivered by Borrower in connection therewith, or available at law, in equity, or otherwise in such order and manner as it may select.
- 10) **Abandonment.** County may abandon all or any portion of the Trust Property by written notice to Borrower.

5.03 Sale. In any sale under this Trust Deed or pursuant to any judgment, the Trust Property, to the extent permitted by law, may be sold as an entirety or in one or more parcels and in such order as County may elect, without regard to the right of Borrower, any person claiming under Borrower, or any guarantor or surety to the marshalling of assets. The purchaser at any such sale shall take title to the Trust Property or the part thereof so sold, free and clear of the estate of Borrower, the purchaser being discharged from all liability to see to the application of the purchase money. Any person, including County, its elected officials, officers, agents, and employees, may purchase at any such sale. County and each of its officers are irrevocably appointed Borrower's attorney-in-fact, with power of substitution, to make all appropriate transfers and deliveries of the Trust Property or any portions thereof so sold and, for that purpose, County and its officers may sign all appropriate instruments of transfer. Nevertheless, Borrower shall ratify and confirm, or cause to be ratified

and confirmed, any such sale or sales by executing and delivering, or by causing to be signed and delivered, to County or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of County, for such purpose.

5.04 Cumulative Remedies. All remedies under this Trust Deed are cumulative and not exclusive. Any election to pursue one remedy shall not preclude the exercise of any other remedy. A waiver of a breach of a provision of this Trust Deed will not constitute a waiver of or prejudice the right otherwise to demand strict compliance with that provision or any other provision. An election by Beneficiary to pursue any remedy will not exclude pursuit of any other remedy, and all remedies of Beneficiary under this Trust Deed are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower will not affect Beneficiary's right to declare a default and exercise its remedies under this Trust Deed.

5.05 Receiver or Trustee-in-Possession. Upon taking possession of all or any part of the Trust Property, Title Company, County, or a receiver may:

- 1) **Management.** Use, operate, manage, control, and conduct business with the Trust Property and make expenditures for such purposes and for such maintenance and improvements as are deemed reasonably necessary.
- 2) **Rents and Revenues.** Collect all rents, revenues, income, issues, and profits from the Trust Property and apply such sums to the reasonable expenses of use, operation, management, maintenance, and improvements.
- 3) **Construction.** At its option, complete any construction in progress on the Property, and in that connection pay bills, borrow funds, employ contractors, and make any changes in plans and specifications as it deems appropriate.
- 4) **Additional Indebtedness.** If the revenues produced by the Trust Property are insufficient to pay expenses, County, Title Company, or the receiver may borrow or advance such sums upon such terms as it deems reasonably necessary for the purposes stated in this section. All advances shall bear interest, unless otherwise provided, at the rate set forth in the Note, and repayment of such sums shall be secured by this Trust Deed.

5.06 Application of Proceeds. All proceeds realized from the exercise of the rights and remedies under this Section 5 shall be applied as follows:

- 1) **Costs and Expenses.** To pay all costs of exercising such rights and remedies, including the costs of maintaining and preserving the Trust Property, the costs and expenses of any receiver or lender-in-possession, the costs of any sale, and the costs and expenses provided for in Section 6.07 below.
- 2) **Indebtedness.** To pay all Obligations, in such order as County shall determine in its sole discretion.
- 3) **Surplus.** The surplus, if any, remaining after satisfaction of all the Obligations shall be paid to the clerk of the court in the case of a judicial foreclosure proceeding, otherwise to the person or persons legally entitled to the surplus.

5.07 Deficiency. No sale or other disposition of all or any part of the Trust Property pursuant to this Article 5 shall be deemed to relieve Borrower of any of the Obligations, except to the extent that the proceeds are applied to the payment of such Obligations.

5.08 Waiver of Stay, Extension, Moratorium, and Valuation Laws. To the fullest extent permitted by law, Borrower waives the benefit of any existing or future stay, extension, or moratorium law that may affect observance or performance of the provisions of this Trust Deed and any existing or future law providing for the valuation or appraisal of the Trust Property prior to any sale.

ARTICLE VI Lease Provisions

The following provisions shall apply in the event Borrower's interest in the Property arises from a leasehold interest and this Trust Deed encumbers Borrower's interest as lessee in such leasehold interest.

6.01 Lease Representations and Warranties. Borrower represents and warrants the following:

- 1) Borrower is the lessee under a certain ground lease agreement ("Ground Lease") executed by and between Borrower and the Housing Authority of Clackamas County ("HACC"), for the term of 99 years, executed on or before the effective date of this Trust Deed.
- 2) The Ground Lease is in full force and effect and unmodified.
- 3) Borrower has and will continue to comply with all of the terms, provisions, covenants and conditions of the Ground Lease.
- 4) There is no existing default under the Ground Lease.
- 5) The Ground Lease, or a memorandum thereof, will, on or promptly following the effective date of this Trust Deed, be recorded in the real property records of Clackamas County providing notice of the Ground Lease and Borrower's interest therein.
- 6) The Ground Lease specifically permits encumbering Borrower's leasehold interest, and HACC has provided written approval for Borrower to issue this Trust Deed encumbering Borrower's leasehold interest

6.02 Right to Cure Default Under Lease. In the event that any default shall occur under the Lease, County shall have the right (but without the obligation to do so) to expend such funds or take such actions as are necessary to cure such default, all without notice to Borrower, and any monies so advanced or any costs so incurred by County incident thereto shall be immediately due and payable by Borrower to County without notice or demand and shall be secured by the lien of this Deed of Trust.

6.03 Change or Modification of Lease. Borrower shall not sell, assign, modify, amend, or supplement the terms, covenants and provisions of the Lease without the prior written consent of County.

6.04 Fee Title. Grantor covenants and agrees that so long as any of the indebtedness secured by this Deed of Trust remains unpaid, the leasehold estate created by said Lease shall not merge in or with the fee title or in or with any other estate or interest in the real property, but always be complete, separate and distinct notwithstanding the occurrence of any event or events by which said leasehold estate may be or become vested in or owned by the same person, firm or corporation which shall own or in whom said fee title is vested. Grantor further covenants and agrees that in case they or any future owner of the leasehold title shall acquire the fee title, or any other estate, title or interest in the premises covered by the Lease, this Deed of Trust shall attach to, cover, and become a lien upon such other estate so acquired by Grantor or any future owner of the leasehold title and shall be considered as mortgaged, assigned, and conveyed to Beneficiary and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged.

ARTICLE VII General Provisions

7.01 Time is of the Essence. Time is of the essence with respect to all covenants and obligations of Borrower under this Trust Deed.

7.02 Re-conveyance by Title Company. At any time upon the request of County, payment of Title Company's fees, if any, and presentation of this Trust Deed, without affecting liability of any persons for the payment of the Obligations, Title Company may re-convey, without warranty, all or any part of the Trust Property. The grantee in any re-conveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any facts shall be conclusive proof of the truthfulness thereof.

7.03 Notice. Except as otherwise provided in this Trust Deed, all notices pertaining to this Trust Deed shall be in writing and may be delivered by overnight delivery via a nationally recognized courier or by mail, mailed by first class, registered, or certified mail, return-receipt requested, postage prepaid, and addressed to the appropriate party at its address set forth at the outset of this Trust Deed. Any party may change its address for such notices from time to time by notice to the other parties. Notices given by mail in accordance with this paragraph shall be deemed to have been given upon the date of mailing. With respect to any notice sent to Borrower, copies of such notice shall be sent concurrently to:

Hillside Park Buildings A&B Housing Partners Limited Partnership c/o Related/Hillside Park Buildings A&B Development Co., LLC Attn: Ann Silverberg
44 Montgomery, 13th Floor
San Francisco, CA 94104
Email: asilverberg@related.com

Bocarsly Emden Cowan Esmail & Arndt LLP 633 West Fifth Street, 64th Floor
Los Angeles, CA 90071
Attention: Daryll Kidd and Nicole Deddens
Email: dkidd@bocarsly.com; ndeddens@bocarsly.com

Stoel Rives LLP
600 University Street, Suite 3600 Seattle, WA 98101
Attention: Kate Mathews
Email: kate.mathews@stoel.com

7.04 Substitute Trustee. In the event of dissolution or resignation of Title Company, County may substitute one or more trustees to sign the trust created, and the new trustee(s) shall succeed to all the powers and duties of the prior trustee(s).

7.05 Trust Deed Binding on Successors and Assigns. This Trust Deed shall be binding upon and inure to the benefit of the successors and assigns of Borrower, Title Company, and County. If the Trust Property or any portion thereof shall at any time be vested in any person other than Borrower, County shall have the right to deal with such successor regarding this Trust Deed, the Trust Property, and the Obligations in such manner as County deems appropriate in its sole discretion, without notice to or approval by Borrower and without impairing Borrower's liability for the Obligations.

7.06 Indemnity. Borrower shall hold County and Title Company and their respective elected officials, directors, officers, employees and agents, harmless from and indemnify them for any and all claims, demands, damages, liabilities, and expenses, arising out of or in connection with Title Company's or County's interest under this Trust Deed, except Borrower shall not be liable for acts performed by County or Title Company in violation of applicable law or resulting solely from the negligence or willful misconduct of County or Title Company.

7.07 No Attorney Fees. In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Trust Deed, each party shall be responsible for its own attorneys' fees and expenses.

7.08 Applicable Law. The Trust Deed and the validity, interpretation, performance, and enforcement of the Trust Deed shall be governed by the laws of the state of Oregon without giving effect to the conflict of law provisions thereof.

7.09 Captions. The captions to the sections and paragraphs of this Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing, or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Trust Deed.

7.10 Reserved.

7.11 Person Defined. As used in this Trust Deed, the word person shall mean any natural person, partnership, trust, corporation, or other legal entity of any nature.

7.12 Severability. If any provision of this Trust Deed shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Trust Deed, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Trust Deed.

7.13 Entire Agreement. This Trust Deed and the other Loan Documents contain the entire agreement of the parties with respect to the Trust Property. No prior agreement, statement, or promise made by any party to this Trust Deed that is not contained therein shall be binding or valid.

7.14 Commercial Property. Borrower covenants and warrants that the Property and Improvements are used by Borrower exclusively for business and commercial purposes. Borrower also covenants and warrants that the Property and Improvements are not now, and at no time in the future will be, occupied as the principal residence of Borrower, Borrower's spouse, or Borrower's minor or dependent child.

7.15 Standard for Discretion. In the event this Trust Deed is silent on the standard for any consent, approval, determination, or similar discretionary action, the standard shall be sole and unfettered discretion as opposed to any standard of good faith, fairness, or reasonableness.

7.16 ORS 93.040 Warning. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Trust Deed and in any Exhibits attached hereto.

Borrower:

**HILLSIDE PARK BUILDINGS A&B
HOUSING PARTNERS LIMITED PARTNERSHIP,**
an Oregon limited partnership

By: Related/Hillside Park Buildings A&B Development Co., LLC,
a California limited liability company,
its General Partner

By: _____
Name: Ann Silverberg
Title: President

STATE OF CALIFORNIA

COUNTY OF

On _____, 2024, before me, _____, Notary Public, personally appeared Ann Silverberg, as President of Related/Hillside Park Buildings A&B Development Co., LLC, a California limited liability company, the General Partner of Hillside Park Buildings A&B Housing Partners Limited Partnership, an Oregon limited partnership, on behalf of such partnership, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature

My Commission expires: _____

**EXHIBIT A
LEGAL DESCRIPTION**

PROPERTY DESCRIPTION – HILLSIDE PARK PHASE I

Parcel 1, PARTITION PLAT 2024-031, in the City of Milwaukie, County of Clackamas and State of Oregon, recorded June 14, 2024 as Document No. 2024-020995.

EXHIBIT B

Superior Mortgages

1. Leasehold Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing by Borrower in favor of Fidelity National Title Company of Oregon, as trustee, for the benefit of Citibank, N.A., dated as of the date hereof.
2. Line of Credit Leasehold Deed of Trust, Security Agreement, Fixture Filing and Assignment of Leases and Rents by Borrower in favor of Fidelity National Title, as trustee, for the benefit of the Housing Authority of Clackamas County, dated as of the date hereof.
3. Line of Credit Trust Deed, Security Agreement, Fixture Filing And Assignment Of Leases And Rents by Borrower in favor of Housing Authority of Clackamas County, as trustee, for the benefit of the State of Oregon, acting by and through its Housing and Community Services Department, dated as of the date hereof.