

**NATIONAL HOUSING TRUST FUND  
AGREEMENT**

BY AND BETWEEN

**ARKANSAS DEVELOPMENT FINANCE  
AUTHORITY**

AND

**[PROJECT OWNER]**

EXECUTION DATE: \_\_\_\_\_

# HOUSING TRUST FUND AGREEMENT

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## SECTION 1. Recitals

This **Housing Trust Fund Agreement** (the “**Agreement**”) is made and entered into as of the date represented by the date of the last signature of either party executing the Agreement (the “**Execution Date**”), by and between the Arkansas Development Finance Authority, a body corporate and politic of the State of Arkansas, P.O. Box 8023, Little Rock, Arkansas 72203 (“**ADFA**”), and [PROJECT OWNER], [ENTITY DESCRIPTION], having its principal office at [OWNER ADDRESS] (the “**Owner**”). **All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Exhibit A.**

**WHEREAS**, Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended and supplemented by Title I of the Housing and Economic Recovery Act of 2008, as amended (12 U.S.C. 4501 et seq.) (the “**Act**”) and regulations promulgated by the United States Department of Housing Development implementing the Act, which are found in the Code of Federal Regulations at Title 24, Part 93, provide funds to participating jurisdictions to increase the supply of decent, safe, sanitary, and affordable housing for extremely low and very low-income households (the “**HTF Program**”):

**WHEREAS**, ADFA is a grantee under the HTF Program and has adopted a Consolidated Plan to administer HTF Funds received from HUD to carry out housing activities eligible under the HTF Program; and

**WHEREAS**, in connection with its proposed development of a [NUMBER] (\_\_\_) unit multifamily housing project in [CITY], Arkansas, Owner has submitted its Application to ADFA for HTF Funds for [NUMBER] (\_\_\_) HTF Units described in Exhibit C; and

**WHEREAS**, in furtherance of the goals of the Act and the Consolidated Plan, ADFA has approved Owner’s Application for the HTF Investment described in Exhibit C; and

**WHEREAS**, the parties desire to enter into this Agreement and intend that it constitute a “written agreement” under the HTF Program and in particular as set forth 24 CFR § 93.404; and

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements and covenants set forth herein, ADFA and Owner do agree, for themselves and for their respective successors and assigns, as follows:

## SECTION 2. THE PROJECT

### 2.1 Project Description

The Project is an existing/new ( )-unit rental development located in [CITY], Arkansas at [PROJECT ADDRESS] and more particularly described in Exhibit B (the “Property”). The HTF unit breakdown consists of [type of housing/number of units/breakdown of how many units/bedroom size/DO NOT INCLUDE RENT OR INCOME RESTRICTION].

A summary of the Project, including unit breakdowns and unit and on-site amenities is attached as Exhibit C.

### 2.2 Term

The term of this Agreement shall begin on the Execution Date and shall expire upon completion of the Affordability Period.

**NOTICE: Owner’s failure to properly execute this Agreement within thirty (30) days of the signature of ADFA’s authorized signatory will result in the revocation and cancellation of this Agreement.**

The Affordability Period (as defined below) and the Declaration of Restrictive Covenants, as outlined in Section 4.2 below, shall continue irrespective of any pre-payment of the HTF Loan. Failure of the Project to meet all applicable HTF requirements for the entire Affordability Period will result in a requirement that all HTF Funds be repaid.

#### *2.2.1 Affordability Period*

As a [rehabilitation/new construction] project, The Affordability Period (the “Affordability Period”) during which Owner must maintain compliance with all applicable HTF rules shall begin with initial occupancy of the Project and shall run for **thirty (30) years** following the date on which the Project has met the requirements for Project Completion as defined in 24 CFR § 93.2 (“Project Completion”), which will require that construction be complete, all HTF Funds have been disbursed by ADFA and drawn from the United States Treasury, and required completion data has been entered in IDIS.

#### *2.2.2 Establishment of Project Completion and Affordability Period*

Upon entering all required information in HUD’s IDIS system, ADFA will notify Owner of the actual date of Project Completion and the exact date of the expiration of the Affordability Period, which shall be calculated based on the date of Project Completion. If necessary, Owner shall execute an amendment to this Agreement and/or the Declaration of Restrictive Covenants identifying the exact date of expiration of the Affordability Period.

### 2.3 Tasks and Schedule



To ensure that the Project progresses adequately toward completion, Owner must achieve the following benchmarks.

### ***2.3.1 Final Plans and Specifications***

On [FINAL PLANS SUBMISSION DATE], Owner provided the Final Plans. ADFA approved of the Final Plans on [FINAL PLANS APPROVAL DATE].

### ***2.3.2 Construction***

Per the requirements of 24 CFR § 93.2, Owner must begin construction no later than twelve (12) months from the Execution Date of this Agreement. However, unless otherwise extended by ADFA, Owner must begin construction on the Project no later than **STARTDATE**, and substantially complete construction within **eighteen (18) months** of that date. (See Exhibit D for Construction Schedule.)

### ***2.3.3 Cost Certification***

Within one hundred-eighty (180) days of completing construction, Owner must provide a cost certification outlining the final sources and uses of all funds as required by Section 2.4.3 below.

### ***2.3.4 Completion Report***

Prior to final draw of HTF Funds, Owner shall provide ADFA with an HTF Rental Completion Report and requested documents for closeout, including demographic data on the initial occupants of all HTF units to be recorded in HUD's IDIS system. Unless extended in writing by ADFA, if the Project is not completed in HUD's IDIS system within **twenty-four (24) months** of the Execution Date, ADFA may cancel its commitment of funding, and Owner shall repay any HTF funds previously advanced for the Project.

## **2.4 Project Budget**

### ***2.4.1 HTF Investment***

Conditioned upon the availability of HTF funds and Owner's compliance with the conditions set out herein, ADFA intends to provide up to [HTF FUNDS BUDGET AMOUNT] in HTF Funds to Owner toward eligible project costs. In no case will ADFA's funding of the Project be less than One Thousand and 00/100 Dollars (\$1,000) per HTF Unit or more than the maximum per-unit subsidy established by ADFA under 24 CFR § 93.300(a). As of the Execution Date of this Agreement, the maximum subsidy for 1-bedroom units is **One Hundred Sixty-Five Thousand and 00/100 Dollars (\$165,000.00)**; the maximum subsidy for 2-bedroom units is **One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00)**; the maximum subsidy for

3-bedroom units is **Two Hundred Thousand and 00/100 Dollars (\$200,000.00)**; and the maximum subsidy for 4-bedroom units is **Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00)**. The current NHTF funding cap is **One Million and 00/100 Dollars (\$1,000,000.00)** per project.

#### **2.4.2 [Reserved]**

#### **2.4.3 Project Budget**

Attached as **Exhibit E** is the project budget (the “**Project Budget**”). Owner agrees to promptly notify ADFA of any changes to the Project Budget, including but not limited to increases in Project costs, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of revenue or operating expenses. ADFA must approve changes to the Project Budget and reserves the right to reduce its HTF commitment, modify the number of HTF Units in the Project, or require Owner to contribute additional funds needed to complete the Project if the changes to the Project Budget are material and result in either the over-subsidization or under-funding of the Project based on ADFA’s underwriting analysis.

## SECTION 3. FORM OF FINANCING & DRAWS

### 3.1 Form and Terms of Assistance

#### 3.1.1 HTF Loan

ADFA will provide a construction and permanent loan to the Project through HTF funding (the “**HTF Loan**”). The HTF Loan will be evidenced by a promissory note in a form acceptable to ADFA (the “**Note**”). Absent any default, interest will accrue on the HTF Loan at an annual rate of **zero percent (0%)**, with equal amortizing payments of principal and interest as set forth in the Note, to be paid monthly commencing one year after the place-in-service date and continuing for a term of **[NUMBER OF YEARS]** years; provided that interest shall not begin to accrue on any HTF Loan funds advanced until one year after the placed-in-service date, when the first monthly payment of principal and interest under the Note is due.

#### 3.1.2 Security

The HTF Loan must be secured by a promissory note (the “**Note**”), a **second**-position mortgage in a form acceptable to ADFA (the “**Mortgage**”), the Declaration of Restrictive Covenants and other ancillary documents pertaining thereto. After construction is complete, the mortgage securing the HTF Loan must be in **second** lien position.

Together, this Agreement, the Mortgage, the Note, and the Declaration the Restrictive Covenants collectively shall constitute the “**Loan Documents**.”

#### 3.1.3 Lien Priority and Permitted Encumbrances

Other than those encumbrances, including regulatory agreements and/or liens securing debts against the Property, identified in **Exhibit F (“Permitted Encumbrances”)**, Owner will not otherwise encumber the Property without the prior approval of ADFA, which shall be in ADFA’s sole discretion. Upon notice of any further encumbrance filed against the Property, including but not limited to the filing of tax or mechanics liens, Owner shall immediately take steps to remove such encumbrances. Failure to remove, or file appropriate documentation contesting in good faith, any unapproved encumbrances within sixty (60) days will be a cause for default under this Agreement or the other Loan Documents.

Exhibit F also identifies the relative priority of both the Declaration of Restrictive Covenants described in Section 4.2 and the Mortgage and other security instruments securing the HTF Loan vis-à-vis the other Permitted Encumbrances.

#### 3.1.4 Title Insurance

Prior to the making of any advance under the HTF Loan by ADFA, Owner shall provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of Arkansas and acceptable to ADFA. The name of the insured shall be the Arkansas Development Finance Authority. The policy shall show

fee simple title or a valid leasehold interest to the Property in Owner, subject only to such exceptions as ADFA may approve, be in the full amount of the HTF Loan, contain a comprehensive coverage endorsement and such other endorsements as ADFA may require and shall insure that the Mortgage constitutes a valid **second**-position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to ADFA.

### ***3.1.5 Loan Closing***

Owner shall be responsible for all closing costs in connection with the HTF Loan including, but not limited to, title insurance, surveys, financing fees, recording fees, and attorney fees.

## **3.2 Draws**

ADFA's HTF Loan is intended as construction and permanent financing. Owner may request draws as needed from ADFA during the construction period as reimbursement for eligible costs in accordance with the terms set forth in this section.

Except for costs for design, engineering, or other professional services required to prepare plans, drawings, specifications, or work write-ups incurred not more than twenty-four (24) months prior to the execution of this Agreement, HTF Funds may not be disbursed for costs that were incurred prior to the execution of this Agreement. Costs incurred prior to this Agreement and contained with the Project Budget approved by ADFA may be paid with other sources of financing.

ADFA shall retain the right to review and approve all draws for the Project, regardless of whether the HTF Loan will be used to fund any given draw. For draws being funded by other construction or permanent funding sources, ADFA shall be provided with the draw not less than ten (10) days prior to any monthly inspection and provided with the opportunity to approve or object to the draw prior to payment by any funding source. While ADFA may object to any given draw by providing notice to Owner and/or other funding sources, this provision shall not limit another funding source's ability to release its funding in spite of objections by ADFA.

### ***3.2.1 Conditions of Construction Draws***

Proceeds of the HTF Loan will only be released to Owner for actually incurred HTF Program-eligible project costs. The obligation of ADFA to approve any draw or to make any disbursement of HTF Funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- a) Owner shall acknowledge and return ADFA's Award of National Housing Trust Fund Letter dated [REDACTED], (the "Award Letter") and shall have performed the conditions of funding required by the Award Letter including, but not limited to the requirement of a pre-construction conference and submission of the draw request forms described in the Award Letter.
- b) Owner shall have received ADFA's written Notice to Proceed prior to the initial draw.

- c) Owner shall not be in default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement or any of the Loan Documents.
- d) The Project shall not have been materially damaged by fire or other casualty.
- e) ADFA shall have received evidence satisfactory to ADFA that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- f) Owner shall have submitted at least ten (10) days prior to the date a disbursement is desired a completed draw request using ADFA's HTF Payment Request Form, and such other appropriate source documentation as may be required by ADFA including, without limitation, the following:
  - i) Current Contractor Tracking Form and lien waivers, which are to be dated no less than ten (10) days precedent to the date of the requested disbursement.
  - ii) Evidence satisfactory to ADFA that:
    - The Project and the contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction;
    - The required building permits and other permits have been obtained as required; and
    - No environmental impact statement is required or that such environmental impact statement has been properly filed and approved.
  - iii) Appropriate certifications of compliance in all respects with applicable labor standards and prevailing wage requirements.
  - iv) Such other supporting evidence as may be requested by ADFA or its agent to substantiate all payments that are to be made out of the relevant draw and/or to substantiate all payments then made with respect to the Project.
  - v) ADFA's inspector or designee shall issue a current, approved inspection report, or, for interim payments, shall certify that acceptable evidence has been obtained to verify satisfactory progress commensurate with the HTF Funds being requested.
  - vi) No determination shall have been made by ADFA that the undisbursed amount of the HTF Loan or other project sources is less than the amount needed to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

### ***3.2.2 Conditions of Final Disbursement***

In addition to the requirements set forth in Section 3.2.1, ADFA shall require the following prior to the final draw of HTF Funds, the request for which shall not be submitted before

completion of the Project, including all landscape requirements and offsite utilities and streets and corrections of defects in workmanship and/or materials:

- a) A certificate of occupancy, if applicable, or a final construction report approved by ADFA's construction inspector (who may be an employee of ADFA or an individual or firm contracted to perform that task) for the Project;
- b) Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HTF units;
- c) Evidence satisfactory to ADFA that the Project has been completed lien free and substantially in accordance with the Final Plans as defined in Section 2.3.1;
- d) Review and final settlement of the Cost Certification described in Section 3.2.5 below; and
- e) Such other supporting evidence as may be requested by ADFA or its agent to substantiate all payments that are to be made out of the final draw and/or to substantiate all payments then made with respect to the Project.

### ***3.2.3 Limitation on Draw Requests***

In all cases, Owner may not request a draw of HTF Funds until HTF Funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.

Notwithstanding anything herein to the contrary, no draws for materials stored will be made. It is specifically agreed that the propriety of disbursements for materials stored shall be determined in ADFA's sole discretion.

The parties covenant and agree that:

- a) In the event that ADFA discovers a misstatement in any affidavit, statement, or certificate furnished pursuant to this Agreement, it shall make no further disbursements until such misstatement has been corrected;
- b) ADFA assumes no liability to Owner for mechanic's lien claims;
- c) If, at any time during the course of construction, the total of the unpaid disclosed cost of construction, as indicated by the column totals on the general contractor's sworn statement, exceeds the amount of the undisbursed development sources, ADFA shall not be under obligation to make further disbursement under the terms of the Agreement until Owner has demonstrated to ADFA the availability of funds equal to the unpaid disclosed cost of construction;

- d) If, after the first draw, a further title search reveals a subsequently arising exception over which the title insurance company is unwilling to insure, ADFA shall discontinue disbursement until the exception has been disposed of to ADFA's satisfaction.

#### ***3.2.4 Advances Without Receipt of Draw Requisitions***

Notwithstanding anything herein to the contrary, ADFA shall have the irrevocable right at any time to apply HTF Funds that it agrees to advance hereunder to pay any and all project Soft Costs referenced in this Section 3.2 and any and all expenses incurred in connection with the enforcement of its remedies under Section 9.2 hereof, all without receipt of a draw requisition for HTF Funds from Owner.

#### ***3.2.5 Cost Certification***

Within one hundred and eighty (180) days of completion of construction, Owner must provide the Cost Certification prepared by an independent certified public accountant for ADFA review and approval. Should ADFA determine that the Cost Certification indicates HTF Funds were provided in an amount greater than was necessary or were used for ineligible costs, Owner shall promptly repay such funds. Additionally, ADFA must determine based on the Final Plans that the designation of HTF Units in Section 5.2 below remains in compliance with the requirements of 24 CFR § 93.200(c) and 24 CFR § 93.300, or Owner must agree to adjust the designation of HTF Units to bring the Project into compliance.

#### ***3.2.6 Draw of Developer Fee***

ADFA and Owner generally anticipate that the Developer Fee will be paid from non-HTF Program sources, including equity contributions related to the Project's LIHTC award. Notwithstanding which specific funding source will be disbursed toward the Developer Fee, draw of the Developer Fee will be limited as follows:

- a) A maximum of 20% of the projected, non-deferred Developer Fee as shown in the Project Budget upon i) closing of the HTF Loan and execution of all Loan Documents; ii) closing of the LIHTC equity investment and all construction financing for the Project; and iii) issuance of building permits and the start of construction on the Project;
- b) A maximum of 20% of said Developer Fee (bringing the total maximum draw to 40% of the projected, non-deferred Developer Fee) upon completion of construction; and
- c) The balance of the non-deferred Developer Fee upon i) ADFA's review and approval of the Cost Certification, including the return/repayment of any previously disbursed HTF Funds determined by ADFA repayable pursuant to Section 3.2.5 above; and ii) achievement of Stabilized Occupancy as defined in Section 4.7.2 below.

Nothing in this section is intended to limit the Investor or another funding source from imposing conditions upon the payment of the Developer Fee that are more restrictive than those imposed by ADFA.

### ***3.2.7 Contingency***

No contingency for hard or Soft Costs in the Project Budget may be disbursed, regardless of which funding source is providing the funds for the specific draw, unless ADFA has previously approved an amendment to the Project Budget and any associated change orders. The presence of any contingency will not limit Owner's obligations to complete the Project. Further, the construction contract between Owner and the general contractor may not include any construction contingency in the contract amount. ADFA must approve all change orders, including those related to the use of the construction contingency funds or to non-construction uses within the Project Budget.

Notwithstanding, construction change orders do not require ADFA approval but must be disclosed within the next draw request package if all the following requirements are met:

- a) The change order does not increase either the total contract price or line items for contractor profit, overhead, or general conditions;
- b) If moving funds between construction cost line items, the change order represents no more than 5% of the total contract amount;
- c) The change order does not extend the date of construction completion; and
- d) The change order is disclosed to ADFA within thirty (30) days, typically within the next construction period draw package.



## **SECTION 4. ONGOING OPERATIONAL AND PERFORMANCE REQUIREMENTS**

### **4.1 General**

Owner acknowledges that among the primary purposes of the HTF Investment in the Project is Owner's ongoing provision of affordable housing consistent with the HTF Program requirements and other federal requirements outlined in this Agreement. Further, as a governmental entity ADFA has an independent interest in ensuring the Property is properly maintained and remains an asset to the community. Owner acknowledges that the ongoing economic viability of the Project is a necessary precondition for Owner's ability to meet these requirements and public purposes. Consequently, ADFA's award of HTF funding to the Project is conditioned upon Owner's agreement to meet the operational, financial, administrative, and performance requirements of this section.

At all times during the term of this Agreement, Owner agrees to operate the Project in compliance with ADFA's Rental Management Handbook, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. Owner agrees to be bound by such updates, which may include, but not be limited to, insurance requirements, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, financial reporting requirements, use of updated form documents provided by ADFA, and the like.

### **4.2 Declaration of Restrictive Covenants**

Owner must record the Declaration of Restrictive Covenants, in form satisfactory to ADFA, that provides a means for enforcement of the affordability restrictions of 24 CFR § 93.302, related HTF Program requirements, and the ongoing operational and performance requirements. Excepting any applicable covenants or restrictions associated with the award of LIHTC, the Declaration of Restrictive Covenants must be senior to all other liens and/or security instruments identified in the Permitted Encumbrances, including any mortgages otherwise senior the Mortgage, and enforceable against all successors in interest to Owner.

### **4.3 Ownership Entity**

ADFA's willingness to provide the HTF funds as anticipated herein is contingent upon and made with specific reliance on the evaluation of the specific individuals and entities making up Owner (the "Ownership Entity").

Owner agrees that no sale or transfer of the Property itself, or general or limited partnership interests, member interests, managing member interest, or other interest in Owner will be made to a person or an entity that, at the time of transfer, has no interest in the Ownership Entity without first following ADFA's ownership transfer process and acquiring the prior written consent of ADFA.

If there is a proposed sale or transfer of general or limited partnership interests, member interests, managing member interest, or other interest in Owner that would be made to a person or an entity

that, at the time of transfer, has an interest in the Ownership Entity, Owner shall provide ADFA with at least thirty (30) days prior written notice of such transfer occurring.

#### **4.4 Insurance, Casualty, and Condemnation**

##### ***4.4.1 General***

During construction and throughout the term of this Agreement, Owner will maintain insurance as required and approved by ADFA, including property insurance which will be no less than replacement value for the Project. ADFA shall be named as a loss payee on such insurance.

In the event of loss, Owner shall give prompt notice by mail to the insurance carrier and ADFA, and ADFA may make proof of loss, if not made promptly by Owner. Subject to any senior Permitted Encumbrances recorded against the Property, ADFA is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Owner shall promptly furnish to ADFA a copy of any proof of loss given to the insurance carrier.

If the Project, or any part thereof, shall be damaged by fire or other insured hazard, subject to any senior Permitted Encumbrances recorded against the Property, the amounts paid by any insurance company shall be paid to ADFA, to the extent of the indebtedness on the HTF Loan then remaining unpaid, and, at the option of ADFA, all or any part of such amount may be applied in reduction of the indebtedness or released for the repairing or rebuilding of the Project. If in ADFA's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to ADFA as additional security for the payment of the indebtedness due under the HTF Loan. In event of foreclosure of this Project, all right, title and interest of Owner in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

##### ***4.4.2 Condemnation***

Subject to any senior Permitted Encumbrances, Owner hereby irrevocably assigns to ADFA any award or payment which becomes payable by reason of any taking of the Property, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

Owner will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment, and subject to the senior Permitted Encumbrances, will cause the same to be collected and paid over to ADFA, and Owner irrevocably authorizes and empowers ADFA, in the name of Owner or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for, and retain the same.

The proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by ADFA in the collection thereof, at the sole discretion of ADFA, be released to Owner, applied to restoration of the Project, or applied in reduction of the indebtedness due under the HTF Loan. If, in ADFA's determination, restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

#### ***4.4.3 Application of Proceeds in an Event of Default***

Subject to any senior Permitted Encumbrances, in the event of a default under this Agreement or any other Loan Document, ADFA may apply insurance and condemnation proceeds to the reduction of the indebtedness under the HTF Loan in any manner selected by ADFA but, unless otherwise agreed by ADFA in writing, no application of such proceeds to the HTF Loan, or to other obligations secured by the Loan Documents, or any of them, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the HTF Loan, or any such other obligations.

### **4.5 Property Management**

ADFA's willingness to make the HTF Loan as anticipated herein is also contingent upon and made with specific reliance on the evaluation of the planned property manager for the Project. Initially, and throughout the term of this Agreement, ADFA must approve of any property management company, or another similar agent, employed or engaged by Owner. Prior to any new property management company being engaged to manage the Property, ADFA's property management change process must be followed and ADFA's prior written approval acquired. ADFA's approval of a specific property management company or agent may be withdrawn at any time, and upon notice of same Owner will identify and contract with a property manager otherwise acceptable to ADFA.

Initially, ADFA has approved {property management company name} as the property manager for the Project.

### **4.6 [Reserved]**

### **4.7 Reserves and Other Accounts**

Owner must establish and shall maintain a Replacement Reserve Account and an Operating Reserve Account (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section for the Term of this Agreement. All accounts required by this section shall be held in interest-bearing segregated accounts. All accounts are to be held in banks or credit unions fully licensed to do business in the State of Arkansas and in accounts insured to the maximum limit of either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA). Any interest earned on the Reserve Accounts shall remain within the Reserve Accounts.

#### ***4.7.1 Replacement Reserve Account***

Owner shall fund a Replacement Reserve Account as required by ADFA. Owner shall use the Replacement Reserve Account only for eligible capital costs at the Project as defined from time to time by ADFA. Following completion of construction, Owner shall make monthly deposits to the Replacement Reserve Account at no less than an annualized rate of Two Hundred Fifty and 00/100 Dollars (\$250.00) per unit per year. Thereafter, the minimum annual deposit shall be increased each year by 3%. Draws from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.

ADFA shall have the right to conduct physical inspections of the Project at any time during the Term of this Agreement. Based on ADFA's physical inspections, ADFA may periodically require Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by ADFA. Alternatively, ADFA may conduct a capital needs assessment using its own staff or contractors. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve Account, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project. ADFA, at its discretion, may authorize paying the cost of a capital needs assessment from the Replacement Reserve Account if operating funds are not otherwise available.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the term of this Agreement, Owner shall, at ADFA's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding.

#### ***4.7.2 Operating Reserve Account***

Prior to the final draw of the HTF Loan and not later than the completion of construction, Owner shall fund and maintain an Operating Reserve Account in the amount described in the approved Project Budget. After Stabilized Occupancy (as defined below), the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose. Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees.

**“Stabilized Occupancy”** shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- a) Initial occupancy of all HTF Units;
- b) Physical occupancy of no less than 93% of all units;
- c) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and

- d) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments).

#### ***4.7.3 Escrow for Property Taxes and Insurance***

In general, ADFA will allow any senior lender approved by ADFA to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in its sole discretion, ADFA reserves the right, upon issuance of notice to Owner, to require Owner to establish and make monthly payments toward a reserve account held by ADFA for tax and insurance payments.

#### ***4.7.4 Term of Reserve Account(s)***

All required Reserve Accounts must be maintained for the full term of this Agreement or while ADFA's HTF Loan is outstanding, whichever is longer.

#### ***4.7.5 ADFA Approval and Access***

Any withdrawal or transfer from the Reserve Accounts may require the written approval of ADFA, by and through its designee. ADFA's approval or request for additional information to substantiate the need for the withdrawal or transfer shall be provided within ten (10) business days of its receipt of a request for such action. Owner must establish the Reserve Accounts which may require the signature of both ADFA and Owner for all withdrawals and transfers. Further, Owner shall authorize the financial institutions in which Reserve Accounts are held to provide ADFA, when requested, verified statements reflecting account balances and transactions.

#### ***4.7.6 Operating Receipts and Expense Account***

Owner shall establish and maintain an Operating Receipts and Expense Account to be reviewed by ADFA periodically. All rents and other receipts of the Project shall be deposited in such account in the name of Owner and the Project. Owner shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as "**Operating Receipts**," forthwith deposit the same in the Operating Receipts and Expense Account. Thereafter on a monthly basis, Owner shall pay, or cause to be paid, all expenses in a timely manner out of Operating Receipts of the Project, in the order and priority as set forth below unless otherwise directed by ADFA, at its sole option, in writing:

- a) All of the amortized principal, interest, and mortgage insurance premium, if any, required to be paid under the Note and Mortgage to ADFA or secured financing instruments associated with other Permitted Encumbrances (see **Exhibit F**); and
- b) All amounts required to be deposited in any Replacement Reserve Account required by this Agreement; and

- c) All of the real estate tax and insurance premium escrow payments required of Owner under the HTF Loan or other Permitted Encumbrances; and
- d) The fee of the Project's property manager as set forth in the management agreement submitted to ADFA prior to the execution of this Agreement (the "Management Agreement") between Owner and any ADFA-approved property management agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses (as defined below); and
- e) All remaining current expenses of the Project (which specifically exclude the loan principal, interest, and annual fee payments), including but not limited to, taxes other than those for which an escrow payment is required, maintenance, utilities, water and sewage, management, administration, legal, audit, and all other reasonable and customary expenses associated with the day-to-day operations of affordable rental housing, unless other funds for payment are set aside or deferment of payment has been approved by ADFA, which along with items b) through d) above shall be deemed to be the "**Operating Expenses**" of the project.

#### *4.7.7 [Reserved]*

#### *4.7.8 Occupant Security Deposits*

Owner shall segregate or cause to be segregated all occupant security deposits, to be held in a separate deposit account (hereinafter referred to as the "**Security Deposit Account**").

#### **4.8 [Reserved]**

## **SECTION 5. HTF PROGRAM REQUIREMENTS**

### **5.1 Affordability Period Requirements**

The Project must comply with all requirements of 24 CFR § 93.302 and 24 CFR § 93.303 for the duration of the Project's Affordability Period. The Project must also maintain compliance with the physical standards of 24 CFR § 93.301 and be operated consistent with applicable tenant protection, affirmative marketing, and fair housing requirements of Subpart H of 24 CFR Part 93.

### **5.2 Designation of HTF Units**

The Designation of HTF Units shall be as set forth in Exhibit C.

#### ***5.2.1 Income Restrictions***

At all times, all extremely low income HTF Units ("ELI-HTF Units") must be rented exclusively to tenants with household incomes at or below the ELI-HTF limits published annually by HUD. In general, HUD calculates the ELI-HTF limit to be the greater of 30% AMI or the federal poverty line as adjusted for household size.

HUD releases updated HTF Program income charts annually, for which ADFA will provide notification and access. The most current income chart must be used when determining eligibility for a prospective tenant or determining the income at recertification for in-place tenants.

The Project must determine tenant income qualification utilizing the definition of annual income defined in 24 CFR 5.609 (often referred to as the "Section 8" definition Annual income of the family must be calculated by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible, and all other requirements per 24 CFR § 203 must be followed. Prior to signing a lease with any tenant, Owner must obtain and examine at least two (2) months of source documents evidencing annual income for the family at move-in and annually thereafter.

The HTF income limits and the Section 8 income limits (upon which the LIHTC program relies) are released annually by HUD on independent schedules. To the extent that HTF income limits are published and made effective later than the Section 8 limits, Owner acknowledges that the qualifying incomes for HTF Units will not be changed until updated HTF income limits are published. When income limits applicable to HTF Program and LIHTC conflict, the more restrictive (i.e., lower) income limit will apply.

#### ***5.2.2 Rent Restrictions***

The gross rent for each ELI-HTF unit may not exceed the current ELI-HTF rent, as adjusted for unit size and published annually by HUD, regardless of whether there is project-based rental subsidy, and where the very-low income tenant pays as a contribution toward rent not more than 30% of the household's adjusted income, then the maximum rent (i.e., tenant



contribution plus project-based rental subsidy) is the rent allowable under the federal or state project-based rental subsidy program.

The HTF rent limit is a gross rent limit. The total of rent paid to Owner (inclusive of any subsidy) plus the allowance for tenant-paid utilities may not exceed the applicable ELI-HTF rent.

In the event other financing sources, including but not limited to the LIHTC program, allow a higher rent, the HTF rent limits shall continue to apply to any units designated as HTF Units.

### ***5.2.3 Re-certifying Incomes***

Owner shall re-certify the income of in-place tenants on an annual basis with source documentation. All in-place tenants shall be recertified using at least two (2) months of source documentation.

### ***5.2.4 Treatment of Over-Income Tenants***

The regulations at 24 CFR § 93.302(f) provide that “HTF Units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with 24 CFR § 93.302 until the noncompliance is corrected.”

***As of the date of this Agreement, HUD has not issued guidance specifying the actions an owner must take to correct such temporary noncompliance. Owner agrees that, upon notice by ADFA following issuance of such guidance by HUD, it will be bound by those requirements as if they were included in this Agreement as of its execution.***

### ***5.2.5 ADFA Approval of Rent, Utility Allowances, and Fees***

Pursuant to the requirements of 24 CFR § 93.302(c), ADFA must approve the rents and utility allowances applied to the Project on an annual basis. Owner may not increase the rents of HTF Units without prior approval of ADFA.

If other fees are charged, Owner shall provide a fee schedule, consistent with the requirements of Section 5.3.2 below, for review and approval by ADFA on an annual basis. Any mandatory tenant fees not otherwise approved by ADFA shall be considered rent and are subject to the gross rent limits outlined herein.

## **5.3 Project Requirements**

Owner must operate the Project in compliance with all applicable state and local landlord-tenant laws and the requirements of 24 CFR 93 Subpart G.



### ***5.3.1 Lease***

Owner must have a written lease with each tenant of a HTF Unit, in a form acceptable to ADFA. If directed by ADFA, Owner shall include any required HTF lease addenda, as may be updated from time to time, on all HTF Program leases. The lease must, at a minimum, provide all HTF Program tenants with at least thirty (30) days written notice prior to (i) increasing the rent, or (ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Owner cannot terminate or refuse to renew the lease of any tenant for other than good cause. Good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered now or in the future to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, State, or local laws.

The lease may not include any provisions prohibited by 24 CFR § 93.303(b).

### ***5.3.2 Prohibition on Certain Fees to Tenants***

Owner shall not charge tenants fees to cover operating costs of the Project or administrative costs related to complying with the HTF Program. Specifically, Owner may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owner may charge fees approved by ADFA for the following:

- a) Reasonable application fees to prospective tenants;
- b) Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by ADFA to be customary for rental housing projects in the neighborhood and not excessive; and
- d) Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, provided such services are voluntary and fees are charged only for services provided.

### ***5.3.3 No Mandatory Services***

Owner must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their initial lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

### ***5.3.4 Tenant Selection Plan***

Owner must develop a tenant selection plan meeting the requirements of 24 CFR § 93.303(d). The tenant selection plan will be subject to review and approval by ADFA both prior to initial occupancy of the HTF Units and during the term of this Agreement.

Owner cannot refuse to lease to a holder of a Section 8 Housing Choice Voucher (as set forth in 24 CFR § 982), or a prospective tenant receiving similar assistance under another similar federal, state, or local program solely because of the tenant or prospective tenant's participation in such program.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

### **5.3.5 Target Population**

*{Use only one of the following paragraphs as appropriate, and modify as necessary to reflect project specifics.}*

The Project has been designated for general occupancy. Occupancy will not be limited to, nor preference in tenant selection given to, any particular segment of the extremely low-income population. All otherwise eligible applicants may occupy the HTF Units in the Project.

*(OR for senior but otherwise general projects)*

The Project has been designated for occupancy only by tenants who are aged 55/62 or older. Other than the age limits herein, occupancy will not be limited to nor preference in tenant selection given to any particular segment of the extremely low-income population. All otherwise eligible applicants may occupy the HTF Units in the Project.

*(OR for exclusively special needs projects)*

Consistent with findings in the State's Consolidated Plan and as approved by ADFA, the Project has been designated for occupancy only by otherwise eligible tenants who are {describe special populations, e.g. homeless households, disabled households, victims of domestic violence, etc.}.

*(OR for projects with preferences for special needs tenants)*

Consistent with findings in the State's Consolidated Plan and as approved by ADFA, the Project's tenant selection plan will provide priority to otherwise eligible tenants who are {describe special populations, e.g. homeless households, disabled households, victims of domestic violence, etc.}. By providing a priority in tenant selection, such tenants may be offered available units ahead of potential tenants who are otherwise eligible but are not members of this target population.

### ***5.3.6 Leasing of Accessible Units***

Notwithstanding the provisions of Section 5.3.5 above, for units designed to be physically accessible or accessible to tenants with sensory impairments, Owner may provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit. Only if no existing tenants or waiting list applicants require an accessible unit may such unit be offered to the next otherwise qualified applicant not requiring an accessible unit.

### ***5.3.7 Conditions for Faith-Based Organizations***

Faith-based organizations are eligible to participate in the HTF Program on the same basis as any other organization but must comply with the requirements of 24 CFR 5.109. Among other requirements, Owner may not require participation in inherently religious activities such as worship, religious instruction, or proselytization, and must offer any such activities separately from the HTF Units. Owner shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

## SECTION 6. PROPERTY STANDARDS

### 6.1 Property Standards

The Project must be constructed and maintained in compliance with the requirements of 24 CFR § 93.301.

#### *6.1.1 Environmental Provisions*

The award of HTF to the Project requires compliance with the environmental provisions of 24 CFR 93.301(f). Completion of the required review is the responsibility of ADFA but requires the participation of the Owner. Owner further agrees to notify ADFA immediately of any additional information pertaining to the Project's compliance with these requirements. Disclosure of material information will include but not be limited to:

- a) Any latent defects, unforeseen construction or rehabilitation activities, or other actions that may affect any features of the Project or Property determined material to its listing in or eligibility for listing in the National Register of Historic Places;
- b) In the event that ground-disturbing work uncovers significant archeological materials, such as stone arrowheads, ceramics, or early building foundations, or if work uncovers human burials or human remains, bones, artifacts, foundations, or other indications of past human occupation, ground-disturbing work will immediately be stopped within a 300 foot radius and the materials protected. The Owner shall contact ADFA and the State Historic Preservation Office ("SHPO") as soon as possible, and the SHPO must be given an opportunity to provide input before construction/rehabilitation resumes. Owner acknowledges that either the SHPO or ADFA may be required to consult with any affected tribes and/or descendant communities and comply with the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-3013).
- c) Any changes in the scope of work which would put the Project in a special flood hazard area (including a 100-year floodplain) or a wetland (defined in 24 CFR 93.301(f)(1)(vii)(B) for new construction and 24 CFR 93.301(f)(2)(vii) for rehabilitation).

Applicants for HTF funds are prohibited from undertaking or committing or expending any funds (including non-federal funds) to undertake any physical or choice-limiting actions on the Project site prior to an environmental determination and/or clearance. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used for such actions.

As of the date of this Agreement, the required environmental reviews have been completed, and ADFA is permitted to draw funds.

Owner certifies that it has not taken any choice-limited actions subsequent to its application for HTF financing and prior to notification by ADFA's of HUD's approval of the release of funds under NEPA. Owner further certifies that it has no new knowledge or information that would call into question the determination of the Project's environmental status and that it will immediately disclose to ADFA any new information related to the environmental condition or status of the Project that becomes available. If such new information is deemed material by ADFA, Owner shall stop work until a revised environmental determination can be made.

## **6.2 Construction Codes**

The Project must be constructed in compliance with all applicable State and local zoning, land use, and building code requirements. The Project's Final Plans must clearly list all building codes applicable to the Project, including without limitations, electrical, mechanical, plumbing, and fire codes.

In the absence of State or local building codes, construction must meet the requirements of the International Residential Code (as referred to in 24 CFR § 251) or the International Building Code (as referred to in 24 CFR § 251), as applicable.

## **6.3 Required Project Amenities and Features**

As ADFA's decision to award funding for the Project was influenced, in part, by Owner's proposal to include various features and amenities in the construction of the Project. The Project must be constructed to include all features and amenities promised within Owner's application for HTF funding and further delineated in **Exhibit C**.

## **6.4 Additional Construction Requirements**

- a) The Project must also be constructed in compliance with the accessibility requirements of 24 CFR § 8, which implements Section 504 of the Rehabilitation Act of 1973. Additionally, if the Project is a "covered multifamily dwelling" as defined in 24 CFR § 100.201 (implementing the Fair Housing Act), the Project must also meet the design and construction requirements of 24 CFR § 100.205 regarding, among other things, accessibility to the building and common areas. In particular, Owner must ensure that the construction of the units in the Project will satisfy requirements for both physically accessible units and those accessible for tenants with sensory (i.e., hearing or visual) impairments. The required number of physically accessible units and sensory accessible units for tenants with physical and sensory impairment are set forth in Exhibit C. The applicable standard for these units is the Uniform Federal Accessibility Standards ("UFAS").
- b) Buildings of four or more units must comply with Fair Housing accessibility requirements.
- c) Owner must prohibit the use of lead-based paint in construction of the Project and comply with all other applicable requirements of 24 CFR 35 (aka the Lead Safe Housing Rule).

- d) Owner must require the exclusive use of lead-free pipes, solder, and flux in all of the Project's potable water systems.
- e) Owner will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project.
- f) All buildings of five (5) or more residential units in the Project must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100.
- g) Rehabilitation of buildings and units must follow an approved rehabilitation plan and scope of work designed to meet or exceed ADFA's current Rehabilitation Standards and must adequately address all items identified in any ADFA-required capital needs assessment.
- h) All buildings and units shall be designed and constructed to be energy efficient, at a minimum, by meeting:
  - For single-family homes and low-rise multifamily structures up to three (3) stories, the 2009 International Energy Conservation Code (IECC), with an energy audit performed by a certified energy rater, and a HERS score or equivalent of 70 or below; or
  - For multi-family structures of four (4) or more stories, the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) standard 90.1-2007 (ASHRAE 90.1-2007).
- i) All sites must be tested for radon in accordance with ANSI-AARST MAMF-2010, Section III (or similar section in the most recent addition) in order to satisfy 24 CFR 50.3(i)(1), and all buildings must be constructed to be radon resistant in accordance with ASTM E1465-08a.
- j) All buildings must be built to ADFA's minimum design standards.

## **6.5 Ongoing Maintenance of the Project**

Owner must maintain the Project in compliance with all applicable state and local codes and ordinances throughout the term of this Agreement.

Owner shall certify in its HTF Annual Owners Certification to ADFA that the project has remained compliant with all state and local codes and ordinances and has documentation of the property condition standards, where those standards can be found, and the name and contact information for the person and department responsible for enforcement of those standards.

Additionally, Owner must maintain the Project in compliance with Uniform Physical Condition Standards (UPCS). In the event of conflicting requirements between state and local codes and UPCS on any given inspectable item or building component, the stricter standard will apply. ADFA reserves the right to periodically update the inspection protocol and standards to comply with current federal, state, or local requirements.

In addition to any other oversight by ADFA, Owner must annually certify to ADFA that the Property meets all applicable property standards and is suitable for occupancy. ADFA will provide the required annual certification report with a due date for submission.

## **SECTION 7. OTHER FEDERAL REQUIREMENTS**

### **7.1 Other Federal Requirements**

Owner agrees to develop and operate the Project in full compliance with all other applicable federal requirements of 24 CFR Part 93, Subpart H and 24 CFR Part 5, Subpart A. This includes, but is not limited to, compliance with the drug-free workplace requirements of 2 CFR § 2429.

### **7.2 Equal Opportunity and Fair Housing Requirements**

Except for specific exceptions allowing elderly designated projects to apply age restrictions, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HTF Funds. In addition, Owner shall develop, operate, and maintain the Project in accordance with the following:

- a) The requirements of the Fair Housing Act and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR Part 146;
- c) The requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- d) The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting owners (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
- e) The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60;
- f) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Owner must make efforts to encourage the use of minority and women's business enterprises in connection with HTF Program. Owner will cooperate with ADFA in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without



limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services; and

- g) Nondiscrimination: All solicitations or advertisements for employees, placed by or on the behalf of Owner, shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, familial status, national origin, or age.

### **7.3 [Reserved]**

### **7.4 Displacement, Relocation, and Acquisition**

As applicable, Owner will take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Additionally, Owner will assure compliance with appropriate relocation and real property acquisition requirements as provided in 24 CFR § 93.352.

### **7.5 Labor Standards**

Federal labor standards, i.e. Davis Bacon and Related Acts, are not applicable to HTF unless other sources of a project's financing trigger compliance.

### **7.6 Section 3**

*{Section 3 applies if the project is receiving \$200,000 or more in aggregate HUD funding, e.g. HTF/HOME; if not applicable can either reserve the section or say that it "does not apply" to the project below.}*

The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u and 24 CFR Part 75) **apply** to the Project. As such, Owner is a "recipient" of Section 3 covered assistance and subject to the responsibilities of 24 CFR Part 75 including, inter alia, notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause set forth in 24 CFR Part 75 (provided as **Exhibit G**) in all solicitations and contracts. If required by ADFA, Owner, in coordination with the general contractor, shall submit a plan outlining efforts and goals for complying with Section 3. Owner shall further report on its hiring and contracting activity by submitting form HUD-60002 or other such form as required by ADFA not later than ninety (90) days following completion of construction.

### **7.7 Use of Contractors and Subcontractors**

Owner will ensure and maintain records demonstrating that none of the contractors or subcontractors involved in the development of the Project are suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts. Owner will further ensure that its

contractors include parallel provisions in their subcontracts and maintain records showing that subcontractors are not suspended, debarred, or otherwise prohibited from participating in federally assisted contracts.

Owner shall, at a minimum, search at [www.sam.gov](http://www.sam.gov) to verify that each contractor and subcontractor is not listed as an excluded party.

## 7.8 Conflict of Interest

No officer, employee, agent, or consultant of Owner or immediate family members thereof (known as covered persons) may occupy a HTF Units in the Project. However, this provision does not apply to an employee or agent of Owner who occupies a housing unit in the Project as a project manager or maintenance worker.

Notwithstanding, ADFA may approve a waiver to allow a covered person to occupy a unit in the Project based on a written request from Owner if, in ADFA's sole discretion, a waiver would be appropriate under the provisions of 24 CFR § 93.353(f)(2).

While the conflict of interest provisions in 24 CFR § 93.356 do not technically apply to Owner's procurement of goods and services associated with the development or operation of the Project, Owner agrees to notify ADFA in writing and seek ADFA's approval prior to entering into any contract with an entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by Owner, any controlling entities of Owner or any of the underlying individual owners of the controlling entities. ADFA will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in ADFA's sole discretion.

*{Use this paragraph if there are IOI relationships involved, potentially including others like the general contractor; otherwise delete}*

Notwithstanding, ADFA initially acknowledges and approves Owner's use of **(property management company name)** as the property manager for the Project.

## 7.9 Certification Regarding Lobbying

In accordance with the requirements of 24 CFR part 87, Owner certifies, to the best of its knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, Owner shall complete and submit Standard Form-LLL, “Disclosure of Lobbying Activities,” in accordance with its instructions;
- c) Owner shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such lower-tier parties shall certify and disclose accordingly; and
- d) Owner acknowledges that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than Ten Thousand Dollars (\$10,000) and not more than One Hundred Thousand Dollars (\$100,000) for each such failure.

#### **7.10 Affirmative Marketing**

Owner must adopt and implement affirmative marketing procedures for the Project consistent with the requirements of 24 CFR § 93.351. Owner must submit an Affirmative Fair Housing Marketing Plan (“**AFHMP**”), using form HUD-935.2A, or on another such form as ADFA may reasonably require, for ADFA review prior to marketing and leasing the HTF Units.

ADFA reserves the right to require Owner to update the Project’s AFHMP from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

#### **7.11 VAWA Compliance**

Owner agrees to comply with the provisions of the Violence Against Women Act of 1994, as amended and reauthorized (34 USC 12491.) (“**VAWA**”) as applied by 24 CFR § 93.356 and, as applicable, 24 CFR Part 5, Subpart L. Owner further acknowledges that, despite its name, VAWA provisions apply without regard to an individual’s sex, gender identity, or sexual orientation.

##### ***7.11.1 Core VAWA Protections***

Unless included in the limitations on VAWA protections delineated in 24 CFR § 5.2005(d), the following VAWA protections will apply to all applicants for or tenants of HTF Units:

- a) No individual may be denied admission or evicted on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or continued occupancy.

- b) Further, no individual may be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if:
  - i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and
  - ii) The tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
- c) In no case may an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking be construed as:
  - i) A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
  - ii) Good cause for terminating the tenancy or occupancy rights of the victim or threatened victim of such incident.

#### ***7.11.2 VAWA Notice***

Owner must provide an ADFA-approved or specified VAWA notice and certification form to:

- a) Any tenant admitted to an HTF-assisted unit at the point the tenant is admitted to the unit;
- b) Any prospective tenant for an HTF-assisted unit whose application for occupancy is being denied based on Owner's tenant selection policies or criteria as part of the written notification of denial otherwise required by 24 CFR § 93.303; and
- c) Any existing tenant of a HTF-assisted unit whose lease is being terminated, or for whom Owner is refusing to renew the lease, at the point the tenant is being provided with notice of termination or non-renewal.

#### ***7.11.3 Lease Bifurcation***

Owner may seek to evict, remove, or otherwise terminate a household member from a HTF-assisted unit on the basis of such member's criminal activity relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual, as defined in 24 CFR 5.2003, or other individual. Such action may be taken without regard to whether the individual being removed is a signatory to the lease. In any such case, however, if necessary to avoid evicting, removing, or otherwise penalizing any victim of such activity who is also a lawful occupant of the HTF-assisted unit, Owner must bifurcate the lease to allow continued occupancy by remaining members of the household.

#### ***7.11.4 Emergency Transfer Plan***

Owner must comply with the terms of ADFA's VAWA Emergency Transfer Plan, as may be updated from time to time, which among other items will:

- a) Allow for an internal emergency transfer to another available and safe unit in the development by any tenant or other lawful resident of a HTF-assisted unit who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. In such cases, the transferring tenant(s) may transfer to the new unit without having to undergo an application process and will, in all other respects, be treated as an in-place tenant.
- b) In cases where an immediately available and safe unit is not available for internal transfer, require Owner to notify ADFA of the tenant's request for an external emergency transfer, to cooperate and assist in providing information to the tenant about other units potentially available in ADFA's portfolio of HTF Units, and waive any early termination or other similar fee(s) for tenants requiring an emergency transfer that results in the breaking of the lease.

#### ***7.11.5 Documentation***

Owner may request that an individual seeking protection under the VAWA provisions provide documentation demonstrating that he/she is a victim of domestic violence, dating violence, sexual assault, or stalking. Owner's seeking such documentation must accept any of the following:

- a) A signed tenant certification, using HUD Form 5382 or such subsequent form document HUD may publish pursuant to 24 CFR 5.2005;
- b) A document signed by the tenant 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 the tenant has 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;
- c) A record of a Federal, state, tribal, territorial, or local law enforcement agency, court, or administrative agency; or
- d) Further, Owner may choose to accept other reasonable documentation from the individual seeking VAWA protections.

Nothing in this section shall be construed to require Owner to document an individual's status as a victim. Instead, Owner may extend the VAWA protections broadly to any person requesting VAWA protections based on a presumption of their status without requiring documentation of their victimization.

#### ***7.11.6 Confidentiality***

Any information submitted to Owner under these VAWA provisions, including but not limited to an individual's request for VAWA protections or the fact that an individual is a

victim of domestic violence, dating violence, sexual assault, or stalking, is confidential information and shall be maintained in strict confidence.

## **SECTION 8. REPORTING**

### **8.1 General Requirements**

Owner agrees to provide reports to ADFA and to maintain records documenting compliance with this Agreement, the Loan Documents and regulatory agreements, the HTF Program, and all other applicable federal, State, and local laws and regulations. Owner also agrees to provide ADFA, HUD, HUD's Office of Inspector General, and the Comptroller General of the United States as the head of the Government Accountability Office ("GAO"), or their representatives access to the Project and its records for the purpose of monitoring Owner's compliance with applicable requirements.

### **8.2 Reports**

Owner shall submit periodic reports to ADFA—and three of these reports (the Pre-Construction Report, Monthly Construction Report, and Monthly Occupancy Report) shall be submitted to ADFA via the ADFA Programs Portal, in such form as administered by ADFA (the "Portal"). Once one of the aforementioned three reports is submitted to ADFA via the Portal, Owner shall notify the designated ADFA reviewer via email that the report has been submitted. ADFA reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to HTF regulations, or address findings related to noncompliance regarding the Project.

Initially, ADFA may require reports as follows:

- a) Prior to the commencement of construction, Owner will be required to submit a Quarterly Pre-Construction Reports through the Portal not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15<sup>th</sup> of the month following the end of the prior quarter (e.g., by April 15<sup>th</sup> reports on the first quarter are due);
- b) During the construction period, Owner will be required to (1) submit a Monthly Construction Report through the Portal on the construction progress, (2) submit invoices being paid, and (3) provide evidence of appropriate lien waivers to ADFA regardless of whether Owner is requesting a draw from ADFA during that month;
- c) Upon completion of construction and prior to reaching Stabilized Occupancy (as defined in Section 4.72), Owner will be required to submit a Monthly Occupancy Report through the Portal on the progress toward leasing units. The report will also provide monthly income/expense reports and any marketing changes completed for the reporting month;
- d) Following the completion of construction, Owner shall provide an Annual Certification Report showing that (1) the Property complies with the HTF Program regulatory requirements, (2) Owner has maintained the Property with all applicable State and local codes and ordinances, and (3) the Property is suitable for occupancy. The HTF Annual Owners Certification will be required throughout the Affordability Period ;

- e) Owner shall submit annual required documents and forms that verify compliance with regulatory requirements and any administrative changes to the Project. The documentation and forms will validate the HTF Annual Owners Certification, and changes to the Project will be recorded. ADFA will provide a complete list of the required documents and forms;
- f) Additionally, Owner shall submit copies of its statement of cash flows and, pursuant to 24 CFR 93.406(b), its annual project audit, prepared by an independent certified public accountant, within one hundred-eighty (180) days of the end of its fiscal year. Such information shall include copies of bank account statements and proof of current insurance and payment of property taxes due; and
- g) Owner shall submit an updated Affirmative Fair Housing Marketing Plan not less than every five (5) years from the date of ADFA's initial approval.

### **8.3 Recordkeeping and Inspections**

Owner shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of ADFA, HUD, GAO, or their designees may examine any records or information accumulated pursuant to this Agreement. During the Affordability Period, ADFA will conduct on-site inspections to verify compliance with 24 CFR Part 93, Subparts G and H as required by 24 CFR § 93.404. All confidential information shall be treated as such by all aforementioned ADFA, HUD, or GAO representatives or designees.

Owner shall maintain administrative and financial records as required by 24 CFR 93.407, applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

- a) Property description and location;
- b) Records regarding project requirements that apply for the duration of the period of affordability (all of 24 CFR 93 Subpart G);
- c) Documentation that the amount of investment in each housing unit is in compliance with the maximum subsidy limits established by ADFA under 24 CFR 93.300(a);
- d) Information about contractors, vendors, and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally binding contracts and agreements, invoices and payment records, and related correspondence (see 24 CFR Part 24 and 2 CFR 2424);
- e) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
- f) Project records in accordance with 24 CFR § 93.407(a)(2) that demonstrate that each HTF-assisted tenant and each housing unit leased meets the requirements of the HTF Program;



- g) Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR § 93.407 that includes the following requirements to the extent applicable to the funded activity:
- i) Documentation of efforts to affirmatively further fair housing;
  - ii) Records documenting compliance with federal law regarding displacement, relocation and property acquisition in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601 et seq.), and amendments thereto;
  - iii) *Reserved*
  - iv) Records concerning lead-based paint set out in 24 CFR Part 35;
  - v) Records supporting requests for waivers of the conflict of interest prohibition set out in 24 CFR § 93.353;
  - vi) Records demonstrating compliance with environmental provisions under 24 CFR § 93.301(f);
  - vii) Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR § 93.356 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests; and
  - viii) Records related to any decision to terminate or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

#### **8.4 Records Retention**

Owner shall retain all applicable administrative and project records and records pertinent to other federal requirements as follows:

- a) General project records pertaining to the development of the Project must be retained for not less than five (5) years beyond the date of Project Completion. These include, but are not limited to, construction contracts and associated documents, invoices and payment records, records documenting compliance with applicable labor standards, and the like.
- b) Records relating to ongoing operations of the Project must be maintained for not less than the most recent five-year period. Such records must be maintained until five (5) years beyond the end of the Affordability Period.
- c) This Agreement and all Loan Documents must be retained for not less than five (5) years beyond the end of the Affordability Period.
- d) Notwithstanding the above, if there are litigations, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.

## **8.5 Inspections**

Owner will provide ADFA, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds. ADFA will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, ADFA will inspect the Project annually or on another schedule it determines to ensure that the Project is being maintained in compliance with all appropriate property standards.

## **8.6 [Reserved]**

## **SECTION 9. ENFORCEMENT AND TERMINATION**

### **9.1 Default**

The events or circumstances set forth below shall constitute an event of default by Owner hereunder. ADFA may give written notice of default to Owner, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to ADFA, be designated by Owner as its legal business address:

- a) Failure to comply with the terms and conditions hereof;
- b) Failure to comply with HTF Program regulations, fair housing laws, and other federal requirements related to the Project, or any applicable State or local law, regulation, ordinance, or requirement;
- c) A default by Owner under any other of the Loan Documents;
- d) Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Owner in the execution or performance of this Agreement or in its application for participation in the HTF Program;
- e) Owner's dissolution or other termination of existence; merger or consolidation with any other entity; change in control of the Project or Owner, or any of its partners, shareholders, members, or owners without ADFA's prior written consent as required herein; insolvency; forfeiture of right to do business in the State of Arkansas or business failure; abandonment of the Project for more than thirty (30) days; appointment of a receiver of any part of Owner's property; the calling of any meetings of, or the assignment for the benefit of, creditors of Owner; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against Owner which are not dismissed within sixty (60) days;
- f) Except any judgment or lien resulting from liability that is fully payable from the proceeds of an insurance policy maintained by Owner, Owner allows any judgement or lien against the Property to remain for more than sixty (60) days after the entry of such judgment or lien without being paid, stayed on appeal, discharged, bonded, or dismissed within sixty (60) days;
- g) A sale, transfer, or further encumbrance of all or part of the Project without ADFA's prior written consent; and
- h) Any default under any documents evidencing other financing for the Project, whether junior or senior to HTF Loan or in effect as of the date of this Agreement or at any future point, including but not limited to the Permitted Encumbrances. This may include, but is not limited to, the failure to maintain any reserve account required by another lender.

### **9.2 Remedies**

In the event of default by Owner hereunder, which if capable of being cured, is not cured within thirty (30) days of the mailing of written notice by ADFA as described in Section 9.1 (unless such cure is not practicable within thirty (30) days and Owner, to ADFA's satisfaction, has commenced and is diligently, pursuing a cure within the thirty (30) days in which case ADFA may extend the cure period by up to sixty (60) days), ADFA may seek any combination of the following remedies:

- a) Withhold any further payments to be made under this Agreement until such time as Owner's breach has been cured in accordance with the terms and conditions of any cure period provided by ADFA (but ADFA may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
- b) Apply to any appropriate court, state or federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
- c) Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of Owner, as the attorney-in-fact of Owner (which authority is coupled with an interest and is irrevocable by Owner), to complete or cause to be completed the Project, at the cost and expense of Owner;
- d) Require the use of or change in professional property management;
- e) Require the replacement of Owner's general partner(s) or managing member(s) or equivalent, as applicable, in which case not less than sixty (60) days' notice of such intent to replace Owner's general partner(s) or managing member(s) will be provided to Owner. In general, the investor member/limited partner shall have the right to nominate the replacement general partner or managing member subject to ADFA's approval rights under Section 4.3 above;
- f) Pursue the appointment of a receiver to collect rents and profits or to take possession of the Project;
- g) Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all other sums payable thereunder and the same shall thereupon be immediately due and payable without presentment or other demand, protest or notice of protest, notice of dishonor, or any other notice of any kind, all of which are hereby expressly waived;
- h) Apply sanctions set forth in 24 CFR Part 93, if determined by ADFA to be applicable;
- i) Apply to any appropriate court, state or federal, for such other relief as may be appropriate and allowed by law, since the injury to ADFA arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and
- j) Terminate this Agreement by giving written notice to Owner of such termination and specifying the effective date of such termination. If the Agreement is terminated by ADFA as

provided herein, Owner shall have no claim of payment or claim of benefit for any incomplete activities undertaken under this Agreement.

Any delay by ADFA in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as the occasion therefore arises.

### **9.3 Termination for Convenience**

In addition to the termination provision in Section 9.2(j), this Agreement may be terminated by ADFA upon thirty (30) days written notice. In the event of termination under this section, Owner shall have no claim of payment or claim of benefit for any incomplete project activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses.

## SECTION 10. INDEMNIFICATION

Owner hereby agrees to reimburse, indemnify, and save and hold ADFA and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost, or deficiency, including but not limited to any repayment obligation to HUD incurred by ADFA under 24 CFR § 93.403(b) or 24 CFR § 93.452, reasonable attorney's fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to ADFA or its successor in interest, on demand, the full amount of any sum which ADFA or its successor has paid or becomes obligated to pay on account of:

- a) Any misrepresentation, omission, or the breach of any representation or warranty of Owner under this Agreement or any other Loan Document;
- b) Any failure of Owner to fully perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by Owner, or, after an assumption, by a subsequent Owner, pursuant to this Agreement or any other Loan Document;
- c) Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by Owner, or, after an assumption, Owner's successors to the Property or Project; or
- d) The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by Owner or any of their past or present affiliates on the Property which occurs prior to possession passing from Owner pursuant to a deed received upon completion of a foreclosure or upon acceptance of a deed in lieu of foreclosure.

The provisions of this Section 10 shall survive the termination of this HTF Agreement, the other Loan Documents, the payment of ADFA loan, and the liabilities and the exercise of any right or remedy under this Agreement or any other Loan Document.

**SECTION 11. [RESERVED]**

## SECTION 12. NOTICES

Except in the case of notice of default under this Agreement, notices due to Owner hereunder will be deemed delivered four (4) business days after being placed in the United States mail, postage pre-paid, addressed to Owner as follows:

OWNERNAME  
OWNERADDRESS  
CITY, STATE ZIP

Notices due to Owner may also be transmitted through electronic means and deemed delivered upon the sending of such transmittal.

Notices due to ADFA shall be in writing and must be personally delivered or placed in the United States mail. Notices to ADFA delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of an ADFA representative. Notices to ADFA should be addressed as follows:

Arkansas Development Finance Authority  
P.O. Box 8023  
Little Rock, AR 72203  
Attn: Federal Housing Program Manager

Notices due to ADFA may also be transmitted through electronic means and deemed delivered upon the sending of such transmittal.

### 12.1 Investor Notice and Opportunity to Cure

ADFA will accept from the Investor a cure of any default under this Agreement or the Loan Documents on the same terms as such cure would be permitted and accepted by Owner. In the event of default, ADFA will endeavor to provide a courtesy notice of such default to the Investor, as applicable. However, in no case will the failure of ADFA to provide or of the Investor to receive such a notice be grounds to challenge, delay, or otherwise infringe any enforcement action taken by ADFA, including but not limited to foreclosure.

Any notice provided to the Investor hereunder will be placed in the United States mail, postage prepaid, addressed to the Investor as follows:

INVESTORNAME  
INVESTORADDRESS  
CITY, STATE ZIP  
Attn: CONTACT

The Investor may update its address or contact by providing notice to ADFA, but any such updated address or contact information shall only be effective upon written acknowledgement of the change by ADFA.



## **SECTION 13. MISCELLANEOUS PROVISIONS**

### **13.1 Assignment**

This Agreement is binding on ADFA and Owner, and their respective successors and assigns. Owner shall not assign or transfer its interest in this Agreement without the written consent of ADFA.

### **13.2 Interpretation**

This Agreement shall not be merged with any subsequent agreement between ADFA and Owner, including, but not limited to, ADFA's Loan Documents or regulatory agreements related to the Project. Any question or dispute regarding the interpretation of the terms of this Agreement shall be decided by ADFA. ADFA's decision shall be final and binding. In the event of a conflict between this Agreement, the Loan Documents, and/or the regulatory agreements, ADFA reserves the right to resolve the conflict and determine which provision will take precedence. In general, the more restrictive provision will apply.

### **13.3 Applicable Law**

This Agreement shall be construed and interpreted in accordance with Arkansas law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of Arkansas shall have jurisdiction and that the proper forum for such action shall be Little Rock, Arkansas.

### **13.4 Entire Agreement**

This Agreement, together with the exhibits hereto and proposal and application for participation in the HTF Program submitted by Owner, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

### **13.5 Amendments**

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

#### ***13.5.1 Automatic Amendments***

Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HTF-assisted projects through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HTF Program requirements pertaining to this Agreement or the Project, Owner agrees to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements, whether or not the new or modified requirements are stated in the Agreement or in subsequent amendments. If ADFA determines that such new

or modified requirements should be included in the Agreement by way of an amendment, Owner further agrees to execute any such amendment. ADFA reserves the right to implement additional policies as needed.

### **13.6 Headings and Pronouns**

The headings of the paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa.

### **13.7 Severability**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

### **13.8 Counterparts**

This Agreement may be executed in two (2) or more counterparts, each of which shall be considered an original, and shall be binding when fully executed by both parties.

### **13.9 Authority**

Except as otherwise provided herein, at any time during the term of this Agreement, whenever any approval or notice by ADFA is required under this Agreement, or whenever any action by ADFA is required or permitted, the Federal Housing Program Manager its successor or its authorized delegate, shall have the power and right to approve, give notice or act on behalf of ADFA, as the case may be.

**SECTION 14.**

Owner representative initial here: \_\_\_\_\_

Owner certifies that its duly authorized representative has read and reviewed this HTF Agreement in its entirety; acknowledges its responsibility for implementation of the Agreement; assumes full responsibility for compliance therewith; indemnifies and holds ADFA harmless with respect to noncompliance; and agrees that the representations contained in this section shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement in duplicate on the date or dates set opposite the signatures of their duly authorized representatives, respectively and the later of such dates shall constitute the Execution Date as defined in this Agreement.

**ARKANSAS DEVELOPMENT FINANCE  
AUTHORITY**

**DATE OF EXECUTION:**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**PROJECT OWNER**

**DATE OF EXECUTION:**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**ITS:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

## EXHIBIT A: DEFINITIONS

“*Act*” means section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended and supplemented by Title I of the Housing and Economic Recovery Act of 2008, as amended (12 U.S.C. 4501 et seq.).

“*ADFA*” means the Arkansas Development Finance Authority, a body corporate and politic of the State of Arkansas.

“*Affordability Period*” has the meaning as set forth in Section 2.2.1.

“*Agreement*” means the National Housing Trust Fund Agreement by and between ADFA and Owner relating to the Project.

“*Application*” means the ADFA Multifamily Housing Application and other information provided by Owner to ADFA upon which ADFA has approved the use of HTF Funds for the Project.

“*Consolidated Plan*” means the current Consolidated Plan adopted by ADFA pursuant to 24 CFR § 91.1 et seq. to carry out housing activities eligible under the HTF Program.

“*Cost Certification*” has the meaning as set forth in 2.3.3.

“*Declaration of Restrictive Covenants*” means the Declaration of Restrictive Covenants to be filed of record with the Circuit Clerk and Recorder of [COUNTY], Arkansas, whereby Owner has declared the Property is subject to the requirements of the Act and the regulations promulgated thereunder at 24 CFR Part 93.

“*Developer Fee*” has the meaning as set forth in Section 3.2.6.

“*HTF*” or “*HTF Program*” means the program authorized by the Act as implemented by regulations promulgated by HUD at 24 CFR Part 93.

“*HTF-ELI Units*” means HTF Units occupied by extremely low income tenants as described in 24 CFR § 92.302 (b).

“*HTF Funds*” mean the HTF funds administered by ADFA as a grantee under the HTF Program which have been allocated to the Project.

“*HTF Investment*” means the allocation by ADFA to Owner of HTF Funds for use in the Project in an amount not to exceed \$ [REDACTED].

“*HTF Loan*” has the meaning as set forth in Section 3.1.1.

“*HTF Units*” mean the Project rental units assisted by the HTF Program which have been designated in the Agreement as fixed or floating.

“*HTF-VLI Units*” means HTF Units occupied by very low income tenants as described in 24 CFR § 92.302 (b).

“*HUD*” means the United States Department of Housing and Urban Development.

“*Investor*” has the meaning set forth in Section 12.1.

“*Loan Documents*” means the Agreement, the Note, the Mortgage, the Declaration of Restrictive Covenants, and ancillary documents pertaining thereto.

“*Management Agreement*” has the meaning as set forth in Section 4.7.6.

“*Note*” has the meaning as set forth in Section 3.1.1.

“*Operating Expenses*” has the meaning as set forth in Section 4.7.6.

“*Operating Receipts*” has the meaning as set forth in Section 4.7.6.

“*Owner*” means [REDACTED].

“*Ownership Entity*” has the meaning as set forth in Section 4.3.

“*Permitted Encumbrances*” shall include all items listed on Exhibit F to the Agreement.

“*Portal*” shall mean the ADFA Programs Portal as discussed in Section 8.2 of the Agreement.

“*Professional*” means an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional

“*Project*” means the [REDACTED] unit multifamily housing project described in Section 2.1 of the Agreement.

“*Project Completion*” shall have the meaning as set forth in 24 CFR § 93.2.

“*Property*” means the property upon which the Project is located described in Exhibit B to the Agreement.

“*Reserve Accounts*” shall mean the accounts as set forth in Section 4.7 of the Agreement.

“*Security Deposit Account*” shall mean the accounts as set forth in Section 4.7 of the Agreement.

“*Soft costs*” shall have the meaning ascribed to “related soft costs” as set forth in 24 CFR § 93.201(d).

“*Stabilized Occupancy*” shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- (a) Initial occupancy of all HTF units;
- (b) Physical occupancy of no less than 93% of all units;
- (c) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and

(d) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.15 (inclusive of all amortizing debt payments).

“*State*” means the State of Arkansas.

## **EXHIBIT B: LEGAL DESCRIPTION**



**EXHIBIT C: HTF INVESTMENT SUMMARY**

**Section A – Project Overview**

**Project Name:** PROJECTNAME

**Address:** PROJECTADDRESS, CITY, Arkansas ZIPCODE

**Owner:** OWNERSHIPENTITY

**HTF Investment:** Up to \$HTFAMOUNT

**Total Buildings:**

**Total Low Income Buildings:**

**Total Units:**

**Total Tax Credit (LIHTC) Units:**

	HTF	Low-HOME	High-HOME	LIHTC-Only	Manager	Market	Subtotal
1 – Bed							
2 – Bed							
3 – Bed							
4 – Bed							
Subtotal							Total: XXX

**Targeting:**

Project is for  elderly occupancy by tenants 55/62 or  family occupancy (i.e. not age restricted) Units are additionally  preferred or  set-aside exclusively for describe special population targeting.

**Fixed/Floating:** HTF Units are  Floating or  Fixed.

If Fixed, HTF units are: IDENTIFYHTFUNITS (EG #301, #534, etc.)

**Accessibility:**

Physically Accessible Units: X Units – IDENTIFYUNITS (EG #207 (2-Bedroom), #101 (3-bedroom))

Sensory Accessible Units: X Units – IDENTIFYUNITS (EG #207 (2-Bedroom), #101 (3-bedroom))

**Employee Units:**

Manager Units: X Units IDENTIFYUNITS

Maintenance Units : X Units IDENTIFYUNITS

Security Units : X Units IDENTIFYUNITS

**Initial HTF Rent Limits:**

Following the completion of construction and lease-up, Owner must seek ADFA’s approval of rents annually. HTF rents may increase or decrease in a given year. The HTF rents in effect as of the date of this Agreement are as follows:

	Utility Allowance	HTF-ELI		
		Gross Limit	Contract Rent Limit	Underwritten Rent
1-Bed				
2-Bed				
3-Bed				
4-Bed				

**Section B – Compliance /Development Factors**

*{This section is intended to highlight “special features” of the development that raise particular monitoring issues or may merit more careful oversight.}*

The Project, as planned, includes the following elements which may require specialized compliance with cross-cutting federal requirements and/or additional care in the construction process:

- Land assembly and subdivision
- Extension/installation of off-site infrastructure
- Relocation of existing/prior tenants
- Demolition of existing structures
- Environmental conditions
- Remediation of Lead Base Paint hazards
- Using:  Interim Controls or

Abatement

**Section C – Additional Features, Amenities, and Requirements**

The Project was funded, in part, on the basis of Owner’s agreement to provide various features, amenities, or services beyond those explicitly required by the HTF regulations at 24 CFR 93. Owner therefore agrees to the following requirements as a condition of receiving HTF funds and agrees that failure to provide or maintain such features, amenities, or services or other failures to comply with such conditions will be a violation of the Agreement:

*{Insert special conditions... e.g. construction buildings to 5-Star Energy Start standard; provide after-school programming and a computer lab for the duration of the agreement; etc.}*

- a) Requirement 1
- b) Requirement 2, etc...

## **EXHIBIT D: CONSTRUCTION SCHEDULE**

## **EXHIBIT E: PROJECT BUDGET**

## EXHIBIT F: PERMITTED ENCUMBERANCES

Owner acknowledges and agrees to the following order of priority as related to the anticipated liens, covenants, and other encumbrances upon the Project:

1. Existing encumbrances (e.g. easements and restrictions) of record as identified in Schedule [ ] of the title insurance policy issued by [TITLE COMPANY] to ADFA, effective as of the date of the mortgage related to the HTF Loan is recorded;
2. The Land Use Restriction Agreement in favor of ADFA related to the award of Low-Income Housing Tax Credits under Section 42 of the Internal Revenue Code;
3. The HTF Declaration of Restrictive Covenants in favor of ADFA by Owner;
4. The anticipated mortgage (and related security documents), in favor of the [SENIOR LENDER];
5. The mortgage (and related security documents) related to the HTF Loan; and
6. List any other subordinate loans, etc.

## **EXHIBIT G: SECTION 3 CLAUSE (SEE 24 CFR PART 75)**

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under Section 3, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.

Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to

the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).