



State of Utah 2016-2017



Olene Walker Housing Loan Fund Program Guidance & Rules Part III Housing Trust Programs and Applications

HOUSING TRUST FUND PROGRAM AND APPLICATIONS TABLE OF CONTENTS

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1. PURPOSE

The National Housing Trust Fund (HTF) is an affordable housing production program that will complement existing Federal, state and local efforts to increase and preserve the supply of decent, safe, and sanitary affordable housing for extremely low-income and very low-income households, including homeless families.

The HTF was established under Title 1 of the Housing and Economic Recovery Act of 2008, Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (public Law 110-289).

2. PROGRAM REQUIREMENTS

The HTF funds will be distributed by formula. Grantees are required to use at least 80 percent of each annual grant for rental housing; up to 10 percent for homeownership housing; and up to 10 percent for the grantee's reasonable administrative and planning cost. HTF funds may be used for the production or preservation of affordable housing through the acquisition, new construction, reconstruction, and/or rehabilitation of non-luxury housing with suitable amenities. All HTF-assisted rental housing must meet a 30-year affordability period. All HTF-assisted homeownership housing must meet the minimum affordability period of 10, 20, or 30 years based on the amount of HTF investment in the unit.

3. ELIGIBLE ACTIVITIES AND FORMS OF ASSISTANCE (CFR Part 93, Subpart E)

- Development hard costs
- Financing costs
- Acquisition costs
- Related soft costs
- Operating cost assistance and operating cost assistance reserves
- Relocation costs
- Costs relating to payment of loans
- Construction undertaken before NHTF funds are committed to the project
- Equity investments
- Interest-bearing loans or advances
- Non-interest bearing loans or advances
- Interest subsidies
- Deferred payment loans
- Grants

4. PROHIBITED ACTIVITIES AND FEES

- Provide assistance to housing previously assisted with NHTF funds during the period of affordability
- Pay for property acquisition of property owned by the grantee
- Pay delinquent taxes, fees, or charges on properties to be assisted with NHTF funds
- Pay for political activities

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5. RESERVATION CYCLES

Funds are made available through an application process. Reservations of funds are issued during a scheduled funding cycle. The Board shall hold four cycles for approval of applications.

Applicants applying for funds must submit a completed application (EXHIBIT A), including all required support and supplementary documentation, to HCDD on or before the dates indicated below. All completed and on time applications will be competitively reviewed by staff who will present the application to the Board members with funding recommendations made by staff within the cycle received. Applications must be submitted in the following cycles before 6:00 P.M. (Mountain Time) on the dates specified below:

Quarter	Submission Deadline	Board Meeting Date*	Submit To
Fall 2016	Friday, September 9, 2016	Thursday, October 27, 2016	DWS-HCDD
Winter 2016/2017	Monday, October 3, 2016 (<u>consolidated tax credit/ OWHLF applications only</u>)	Thursday, January 26, 2017	UHC and DWS-HCDD <u>separately</u>
	Friday, December 9, 2016* (<u>non-tax credit OWHLF applications only</u>)	Thursday, January 26, 2017	DWS-HCDD <u>only</u>
Spring 2017	Friday, March 10, 2017	Thursday, April 27, 2017	DWS-HCDD
Summer 2017	Friday, June 23, 2017	Thursday, July 27, 2017	DWS-HCDD
Fall 2017	Friday, September 15, 2017	Thursday, October 26, 2017	DWS-HCDD

*All Board meeting dates are subject to change depending on member availability

A decision on each application will generally be made no later than the Board Meeting Date for each cycle. However, the Board reserves the right to delay the decision to accommodate scheduling and processing.

Effective for the January 2017 round, all Housing Trust Fund applications with supporting documentation to be considered beginning for the January 2017 OWHLF board meeting and following will need to be submitted to HCDD electronically – this can be done by providing HCDD with a CD/DVD containing digital files, a portable external “thumb” drive, emailing all documents to HCDD, or the use of the Internet dropbox.com service specifically set up for this purpose.

If the Board should find it necessary to modify the Reservation Cycle Submission Deadlines to dates other than those set forth above, it will make reasonable efforts to inform interested parties of that modification.

6. PROJECT SELECTION PROCESS

A. Introduction

HCD staff shall select applications for funding consideration and submission to the Board after the following review processes:

- Project Underwriting & Threshold Review (see section 6.B)
- Documentation Requirements (see section 6.C)
- Market Study & Project Reasonableness Review (see sections 6.I and 6.J)
- Calculation of NHTF Amount (see section 6.L)

B. Project Underwriting and Threshold Requirements

Financial feasibility is critical to the long-term affordability of the project. The staff will review the application to determine if it meets minimum feasibility threshold requirements before scoring. The application must satisfy the following criteria:

- Application with supporting exhibits must be complete, signed, and submitted along with a digital copy in Microsoft Excel 2007 or later formats:
 - For multifamily rental projects applying for low-income housing tax credits (“Housing Credits”) from Utah Housing Corporation (“UHC”) along with NHTF funds, please use the *2017 Federal Housing Credit Consolidated Application Form* available from UHC upon request.
 - For all other multifamily rental projects, please use the *2015-2016 Multifamily Affordable Housing Application* available upon request or at the OWHLF website.
 - Only 2015-2016 electronic applications with write protection intact will be accepted.
- Project must commit to an affordability period required by Section 92.746 of CFR Part 92 (Housing Trust Fund Program) as amended from time to time, or until the Promissory Note between Borrower and the State is paid in full, whichever is later.
- For acquisition/rehabilitation projects, all replacement reserve funds accumulated by the selling entity must be shown in the application “Sources and Uses” section.
- Project must provide evidence of site control (i.e. Real Estate Purchase Contract or equivalent).
- Applicant must provide, at the time of application, proof from the appropriate jurisdictional authority that the proposed project is permitted under the jurisdiction’s current zoning code.
- A current appraisal or update (not older than 12 months), shall be required to be submitted for all acquisition, rehabilitation, and new construction projects to HCDD staff for review prior to loan closing. Boards’ approval shall be conditional upon receipt of the appraisal.

- Project must demonstrate financial feasibility within the Board-established Safe Harbors **(EXHIBIT B)**. There may be some deviation with regards to Safe Harbors described in Exhibit B. However, the DCR, vacancy, minimum cash flow per unit and capital replacement reserve minimums are threshold items, but exceptions will be made for RD 515 and Section 8 HAP contract projects that have the opportunity for annual contract adjustments. All other applications below the minimums for these criteria will not be processed. See Exhibit B for further discussion.
- Projects applying for OWHLF assistance that are rehabilitation or acquisition/rehabilitation may receive additional scoring of 10 points only in cases of Substantial Rehabilitation of the property. Substantial Rehabilitation is defined as required repairs, replacements, and improvements that involve the replacement of three or more major building components and/or systems necessary to extend the useful life of the building(s) by at least twenty (20) years. Major building components and systems are defined as the following:
 - Heating, ventilation, air conditioning (HVAC) systems – replacement of all HVAC units with units of AFUE 90%/SEER 13 or greater efficiency, or upgrades to a central boiler/chiller system to higher efficiency;
 - Plumbing systems – replacement of at least 50% of all existing piping, connectors, and fixtures with new equipment and materials;
 - Electrical systems – replacement of at least 50% of all existing electrical service panels, wiring, light fixtures, switching and outlets, and other infrastructure such as conduit and connectors with new equipment and materials;
 - Roofing systems – replacement of at least 50% of all existing roof sheathing with new materials, and replacement of all roofing with new roofing surface materials; and,
 - Structural and seismic upgrades – installation of seismic upgrades as may be required by local building code.
- Estimates for determining the cost for substantial rehabilitation must include general requirements and fees for builder's overhead and profit as a proportionate amount of the actual direct construction costs as compared to total overall project costs. Direct construction costs do not include the cost of land, demolition, off-site improvements, non-dwelling facilities and administrative costs for project development activities.
- As all projects for OWHLF assistance are required to construct or rehabilitate to ENERGY STAR or minimum HERS standards as detailed below, any rebates and grants provided by utility companies such as Questar Gas and Rocky Mountain Power or other partners such as the HCDD Weatherization Assistance Program must be detailed in the closeout packet and the use of those funds explained. It is the intent of the NHTF/OWHLF Board that net rebates and grants be applied to reduce the balance of NHTF funds loaned or applied to the overall project.
- Project developers receiving NHTF funds may choose to achieve the new ENERGY STAR 3.0 level (for projects four stories or under) or a corresponding HERS level (without the additional EPA requirements). In some cases, developers will continue to meet ENERGY STAR 3.0 for their units because of requirements from other funding

sources or because of utility rebates. In other cases, developers can choose to achieve the less-costly HERS Index only. In all cases involving projects at four stories or under, HERS scores must be prepared by an independent RESNET-accredited Home Energy Rating Organization.

- ENERGY STAR helps to maintain long term affordability in spite of rising utility costs while contributing to overall health and safety in housing units. For these reasons, projects receiving OWHLF funds will be ENERGY STAR qualified unless all cost effective measures have been implemented (where the SRI is < 1.0 over a 15 year period) and a waiver granted by the Division of Housing and Community Development. Units including representative units for large multi-unit facilities shall be rated using an independent certified rater. If the project cash flow is not feasible due to incremental costs associated with ENERGY STAR compliance, the loan interest rate may be adjusted to accommodate project cash flow safe harbor requirements.
- In proposing rents and cash flow during the first year of occupancy following construction or rehabilitation, NHTF-funded units built and qualified as ENERGY STAR may use the ENERGY STAR for the utility allowance baseline. The baseline must be calculated by the independent certified ENERGY STAR rater using the REM 12.41 2007 software (or current version). For subsequent years, the cumulative average of actual consumption and current utility rates can be used as the baseline with up to a $\pm 10\%$ variance from the established baseline as special conditions warrant (dramatically warmer or calendar years, more occupants per unit, utility rate spikes, etc.). When units are ENERGY STAR, the differential utility allowances can be shifted to rent and cash flow. For joint applications for LIHTC and NHTF and under tax credit rules, applicants may need to work with the local housing authority to create an ENERGY STAR-based utility allowance.
- Projects requesting funds for acquisition and rehabilitation must consider costs per unit consistent with the Rehab Threshold ranges by age as shown on Exhibit B, except as otherwise approved by HCDD staff. (See Exhibit E for Capital Needs Assessment requirements).
- HCDD staff will inspect all rehabilitation projects upon application, after rehab work has begun, and before the final draw is issued to verify that work was performed according to that itemized in the application or subsequent documents.
- Rehabilitation projects will be required to meet current rehabilitation code.
- Rehabilitation projects that are designed as either RD projects or HUD rent subsidized projects are required to submit all operating statements with application.
- A comprehensive independent third party market study is required on all projects according to the procedures in Section I below. See exception for rehab projects in Market Study section.

- A plan for affirmative marketing of units must be included with the project application. **(EXHIBIT W)**
- Letters of interest are required from financial sources for all projects. The letters of interest should stipulate the amount, loan terms and the lender's acceptable Debt Coverage Ratio. Letters of interest are also required for grants.
- Applications are prioritized for funding when they represent compliance with Utah State Code 10-9a-408 and 17-27a-408 requirements for local "Moderate Housing Plans".
- For rehabilitation projects, agencies are expected to work with area Weatherization Assistance Program agencies to incorporate weatherization assistance into the project. For low-income tax credit housing ("LIHTC") projects, when weatherization assistance affects project eligible basis, the assistance can be granted after closing and should reduce the OWHLF share in the project.
- Developer must be in good standing with all other Federal and state agencies sponsoring housing programs, i.e., low-income housing tax credit ("LIHTC"), tax credit investor, HOME, HUD, USDA-RD, etc. In instances where NHTF and the developer and other legal entities are in litigation, any new proposals will be held for further consideration until resolution of the litigation occurs.

Local Government Support and OWHLF Application

Applicants for OWHLF funding should support the local community affordable housing plan. Therefore, the application shall include a letter from the relevant local jurisdiction which confirms that the proposed project meets the needs of certain populations identified in the local jurisdiction's affordable housing plan and that the project further supports the priorities and action items of the plan.

C. Documentation Requirements

The application must include all documentation supporting claims made. Documentation required to meet threshold requirements must be provided or the application will not be considered for funding. The OWHLF Documentation Checklist on page one of the application (**EXHIBIT A**) is provided to assist developers in properly documenting the Application. This page must accompany the application. Only updated information requested by staff or the Board, will be accepted after the application deadline.

D. Third-Party Documentation

- a. Zoning
- b. Site Control
- c. Environmental assessment (excluding required questionnaire)
- d. Property tax estimate
- e. Memorandum of Understanding with housing authority, etc.

E. Independent Comprehensive Market Study

This is required at the time of application on projects over 25 units. Projects with 25 or fewer units must provide a comprehensive study within 90 days of receiving any conditional approval for funding. Applicants must submit the market study summary sheet (**EXHIBIT D**) with the market study.

F. Capital Needs Assessment

All Rehabilitation projects are required to provide a comprehensive Capital Needs Assessment on the project as a threshold item (see **EXHIBIT E** for details). Projects are required to provide an independent third party verification of rents charged (before negotiations were entered into for the purchase of the project) in the form of actual checks, audited rent rolls etc., for at least two years, with a CPA review or other independent third party approved by staff as part of the application.

G. Special Needs Units Documentation

For projects that have applied for NHTF funds and have specific set-aside units for special needs populations listed in the application, a letter from the developer is required with each application explaining the developer's intention regarding special needs units that are consistent with letters received from the service provider(s). Service Provider Questionnaires (**EXHIBIT T**) for each special needs category specified in the application are required to accompany each application, one for a primary service provider and one for a secondary service provider. Also, the developer must indicate what steps will be taken to inform the service provider of a vacancy and what steps the project will take to keep the special needs units continuously occupied by the intended tenant population. Please see Part II "Multifamily Programs and Applications" Section 8 Subsection F for "Special Needs Set-Aside Compliance Policy" and Part V "Definitions" for specific information regarding special needs set-aside units.

H. Environmental Review

A HUD Environmental review is required for ALL projects funded in whole or part with NHTF (Federal) funds or state funding used as match for HOME funds. Project managers will be notified if their project is funded with NHTF funds. The HUD environmental review process must be completed prior to expenditure of any NHTF funding. Project managers should refer to **EXHIBIT N** for instructions, and should allow at least 60 days to complete this process.

I. Relocation Requirements

Any project awarded NHTF (Federal) funds or state funding used as match for NHTF funds involving acquisition, demolition, and/or rehabilitation of occupied existing housing and/or commercial development is subject to the Uniform Relocation Act of 1970 and/or Section 104(d) of the Housing and Community Development Act of 1974. Applicants must review and submit **EXHIBIT Y** as part of the NHTF application process.

J. Market Study

The Board is an allocator of federal. The comprehensive market study (the "Market Study") is to inform the developer of the need for affordable housing and the best configuration/ design of a project. Interested parties, such as lenders and investors should determine for themselves the feasibility and merits of the project.

Independent Market Studies are required at time of application on all projects over 25 units. Projects with 25 or fewer units must provide a Market Study before the earlier of 90 days after receiving any conditional approval for funding that is no more than twelve (12) months old. Without the statutory required Market Study, the conditional approval of funding is null and void. Shelters, group homes, and transitional housing that do not generate income are required to provide documentation of need for service to the special population.

Rehabilitation Projects may submit applications without a market study where proposed rents do not exceed current rent levels in the project and the project is no less than 75 percent occupied. An independent third party must certify the current rent and occupancy levels in the project. Applicant may provide current leases, deposit slips and rent rolls with the supporting bank statements for the most recent 12-month period in lieu of a third party certification.

For complete instructions on preparing the market study, see EXHIBIT D.

K. Project Reasonableness

Projects must be developed and operated within the OWHLF *Multifamily Standard Operating Safe Harbor Guidelines* (**EXHIBIT B**). Substantial deviations from standards should be accompanied by thorough and defensible explanations to prevent rejection of the application.

Staff and Board review of documents submitted in connection with the OWHLF allocation process is for its own purposes. Staff and Board makes no representations to the owner or anyone else as to the financial viability of any project.

L. Maximum Per-unit Development Subsidy Amount

The maximum per unit subsidy will be determined by calculating the difference of up 120% of HUD Fair Market Rent and the 30% Area Median Income maximum rent and then calculating a present value of that difference based on a 30-year amortization and the current market interest rate. Current market interest rate will be determined by OWHLF staff and reviewed by the OWHLF Board on a regular basis. Unit subsidy cannot exceed 75% of the total per unit development cost.

The Utah Preservation Model is provided as a tool to determine and calculate present value. The tool can be found at www.housing.utah.gov/housing/owhlf/programs.html.

Based on this evaluation, the staff shall underwrite for purposes of feasibility and will determine the amount of funds and the loan terms it will recommend for each application based on the pricing policy, loan terms, and loan products in **EXHIBIT G(a)**. A similar analysis will be completed at the approximate date of allocation of the funding amount.

Projects are subject to further evaluation to determine the amount of funds that may be requested. The staff is required to make these determinations at three specific times:

- Upon review of application.
- Upon approval of funding by the Board.
- Prior to loan closing.

During each project evaluation, the staff will consider, among other factors, the following:

- Sources of funds including debt terms, grants, all tax credit proceeds amounts, and payment schedules.
- Development and construction costs.
- Operational costs.
- Project cash flow.
- Scoring sheet evaluation.

Prior to funding, the applicant must certify to the staff the full extent of all federal, state and local subsidies, which apply (or which applicant expects to apply) to the project. The staff reserves the right to review and/or inspect any information provided by an applicant with respect to project costs or financing, and the applicant agrees to provide such information when requested. Through the competitive system, projects with excessively high intermediary costs will run the risk of not receiving funding. The staff will evaluate each proposed project's financial feasibility and viability by taking into consideration, without limitation:

- The proposed sources and uses of funds.
- The terms and conditions of the permanent financing package including debt, investor contributions, grants, etc.
- The Tax Credit purchase rate and net equity proceeds expected to be generated by the purchase of the credits.
- The reasonableness of the developmental and operational costs, including cash flow and
- Debt coverage ratios of the project.

The staff will utilize the Safe Harbor Schedule set forth in **EXHIBIT B** in the process of evaluating feasibility and determining funding needs. Projects that propose fiscal scenarios outside the staff's established Safe Harbors must provide reasonable explanation for such proposals and evidence of acceptance of such proposals by the project's lender and investor. The staff reserves the right, at its sole discretion, to reject the proposed scenario and underwrite the project using the established Safe Harbors.

Based on this evaluation, the staff shall underwrite for purposes of feasibility and will determine the amount of funds and the loan terms it will recommend for each application

based on the pricing policy, loan terms, and loan products (EXHIBIT G). A similar analysis will be completed at the approximate date of allocation of the funding amount.

M. Affirmative Marketing Plan

In furtherance of the State of Utah commitment to nondiscrimination and equal opportunity in Housing, NHTF-assisted project owners and contractors administering NHTF programs for the state of Utah are required to establish procedures for affirmatively marketing their housing units and for affirmatively marketing loan or housing opportunities under any of the State Housing sponsored programs (see **EXHIBIT W** for details).

N. Competitive Bidding Process:

To maximize the impact of the NHTF in creating the greatest number of high quality and durable housing units, applicants receiving NHTF funding must demonstrate that construction costs are competitive. This competitiveness must be demonstrated by either conducting an open bidding process or by confirming cost competitiveness through an industry-accepted cost estimating standard software program such as Bid4Build or RS Means.

3. PROJECT SCOPE OF WORK

As an integral part of the HCDD contract, the project's Scope of Work will include specific project details (name of legal project owner, name of project, unit configuration and project physical address), the OWHLF/NHTF Board funding approval date, the source(s) and amount(s) of funds, the number of NHTF-assisted units, the number and type of special needs set-aside units, the number and type of handicap accessible units, terms (interest rate, length of loan and/or of amortization period, and type of loan) of the NHTF loan, and specific project quality and design commitments as listed by the applicant in the approved application (see **EXHIBIT X** for an example).

4. ACCESSIBLE UNITS

Type "A" Fully Accessible ADA Units for Long Term Mobility-Impaired Tenants

Applications that specify one or more ADA set-aside units for Long Term Mobility-Impaired

Tenants are required to certify that those units are:

- Fully accessible Type A units;
- (Constructed as specified in) Accessible and Usable Buildings and Facilities Standard of the ICC/ANSI A117.11998 (International Code Council/American National Standards Institute), commonly known as the "Ansi Standard" which is referenced in both the 1997 UBC and 2003 IBC, which has been adopted by the State of Utah.

Certified using the Architect's Certification (**EXHIBIT S** (a) signed by a licensed architect and the General Contractor's Certification, or **EXHIBIT S** (b) signed by the Project's General Contractor to be submitted with the Final Cost Certification). .

- Filled with qualified households according to Section 5.B of the Compliance Monitoring Plan which also explains coordinating with referring entities to fill vacant ADA Units for Long Term Mobility-Impaired tenants.

- In corresponding ratio to the general mix of unit types in the project where there is more than 1 unit set aside as ADA, i.e., if there is an equal number of two and three bedroom units in the building, one 2 bedroom ADA unit and one 3 bedroom ADA unit should be set aside.

In addition to the above-specified units, all multifamily residential buildings are required to follow the 1997 Uniform Building Code and the 2003 International Building Code, which are inclusive of the Fair Housing Act. The seven basic guidelines are provided in **EXHIBIT U**. For exceptions, see IBC 1107.5.4. Also see HUD's *Fair Housing Act Design Manual*, which can be found in its entirety at the following website: www.huduser.org/publications/destech/fairhousing.html.

This manual also explains the Type A, or fully accessible unit requirements.

5. PROJECT FEES

The Board will consider, at staff's recommendation, Project Fees, including, but not limited to:

- Developer overhead and profit.
- Contractor overhead, profit and general requirements.
- Development consulting fees.
- Administration and/or Management fees
- Incentive Fees
- Realtor fees

All fees must be reasonable with respect to the low-income housing objectives while sufficient to attract quality projects to the NHTF. Any fees approved by the Board must comply with HUD Regulations.

- All related-party fees will be disclosed (using **EXHIBIT F-2**) during the application process and verified at the final cost certification
- If fees increase between application and final certification, the amount of the NHTF loan will be reduced and the developer will repay the difference.

The Required Documentation for Closeout and Final Draw (**EXHIBIT H**) of each project requires that the project owner's CPA complete an audit and evaluation of all fee and overhead contracts whether with related or unrelated parties. The project developer must make full disclosure and allow the CPA access to all developer contracts in connection with preparation of the Final Cost Certification.

6. APPROVAL OF FUNDING REQUEST

After each application has been processed and the funding amount has been determined, staff will present projects to the Board at its regularly scheduled meetings. The Board shall hear comments from applicants as required to best inform the full board on the project financial structure and general parameters.

A copy of the approved Board recommendation, with all conditional requirements imposed by the Board and staff shall become a permanent record in the applicant's file. This recommendation will then be presented to the Board at the regularly scheduled quarterly meetings. The Board will approve, deny, or delay the application. A copy of the completed project Conditional Project Commitment Agreement shall be provided at the conclusion of the meeting and the Board Chair and the applicant will sign it at that time. It is this document that shall become the basis for the terms as outlined in the Loan Documents to be prepared by HCDD staff. No allowances or exceptions to the motion as originally approved by the Board shall be allowed. An applicant may request a change in the terms as outlined in the original motion of the board by reapplying to HCDD, with all updated, applicable financial information included, in subsequent funding rounds. If funds for a housing activity are committed but none have been disbursed within twelve (12) months of initial commitment, those funds are subject to de-obligation and re-allocation by HCDD.

7. APPEALS PROCESS

During the scoring process, the applicant will receive notification of any discrepancies between NHTF'S score determined during the project review/underwriting process and the score submitted by the applicant as calculated on their original application submitted to NHTF. A reasonable period of time will be provided for the applicant to defend its submitted score using solely the information originally provided in its Application.

8. PROJECT STATUS REPORTING AND CONSTRUCTION MONITORING

All projects receiving funding approval will be required to provide status reports in a frequency and format prescribed by the HCDD staff.

Information requested will be project specific and may include such items as: zoning approvals, firm debt and/or equity financing commitments, changes in debt and/or equity financing commitments or agreements, reports on construction progress, site control, and an update of cost for analysis.

Staff will conduct project monitoring at four stages: 1) pre-allocation, 2) 20% construction; 3) 50% construction, and 4) a final construction inspection prior to final project closeout. At any of the construction inspections, if it is noted that construction items specified in the original application and/or the contractual Scope of Work have not been completed or performed as represented in the original application, the developer will be given thirty (30) days to make corrections before any additional funding draws can be executed. Failure to complete the project as represented in the application and

Scope of Work will result in the developer's ineligibility for further NHTF funds until the corrections have been completed. HCD has the authority, based on the information obtained in the status reports, during construction inspections, or on recommendation from the staff to extend the period of funding or to rescind the approval and require the project to reapply under the then-current project conditions.

A Project Development Schedule (**EXHIBIT J**) must be completed and delivered to staff on or before April 1, and September 1, of each year the project is under development.

9. COMPLIANCE MONITORING PLAN

This Compliance Monitoring Plan (the "Plan") sets forth the procedures that HCDD shall follow, and those procedures that an owner of an NHTF project shall be required to follow, to satisfy the requirements and regulations applicable to Federal HOME and state funds. As a condition to the allocation of NHTF funds, owners are required to enter into a binding agreement to comply with the terms and conditions of this Plan. This Plan is part of the OWHLF's annual Program Guidance & Rules for the State of Utah.

A. Record Keeping Requirements

A Project Owner is required to keep separate records for each qualified low-income building in the project that show for each year in the compliance period as per CFR Part 93.407

:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit) ;
2. The rent charged on each residential unit in the building (including any utility allowances);
3. The number of residential units that are low-income units and the number that are NHTF assisted units (state, county, city, or consortium) ;
4. The number and ages of occupants in each low-income and NHTF unit;
5. The status of all low-income and NHTF units needs to be tracked on the Compliance Report (See **EXHIBIT V**). The information on this report that is collected includes move-in/move-out dates, household size, gross income, AMI, recertification date, and other rent related information. Please see the instructions for filling out this form immediately following the exhibit;
6. For purposes of the plan, tenant income is calculated in a manner consistent with the determination of annual income under Section 8 of the United States Housing Act of 1937 ("Section 8 of the Housing Act"), and not in accordance with the determination of gross income for federal income tax liability. As required by the Final NHTF Rule,

income determinations should be based on the anticipated income for the next twelve months.

B. Record Retention Requirements

An owner is required to retain the records described in Section A in accordance with CFR 24 Part 93.407. These requirements establish retention requirements as follows:

1. All Records pertaining to each fiscal year of NHTF and Low-income funds must be retained for the most recent five-year period, except as provided in section 2 below.
2. Records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the affordability period terminates.

C. Certification Requirements

1. An owner is required to file with HCD at least annually, the Compliance Occupancy Report (**EXHIBIT V**), for the preceding 12-month period. In filing the information contained within, the owner certifies that the information is true and correct and that the supporting information has been collected and retained.
2. Each NHTF-assisted project is required to submit financial statements for each year of operations following the cost certification and with the final annual audit occurring the last year of the affordability period. Recipient will submit to the grantee a cost certification performed by a certified public accountant for each project assisted with HTF funds.
3. The owner for each low income or NHTF assisted unit in the project must obtain the annual income certification. This information must be obtained for each tenant eighteen years of age and older prior to occupancy of any low-income unit and annually thereafter. Certifications shall be kept in each individual tenant file along with other tenant information including but not limited to income verification, lease documentation, and inspections.

D. Review and Inspection Requirements

An owner shall permit, and HCDD shall have the right to perform, an on-site property or file inspection of any NHTF project, at least through the end of the compliance period and thereafter for such period determined by HCDD not to exceed the extended use period of the buildings in the project. HCDD will review the information required to be submitted on an annual basis. Verification of information may be required and reviewed at the HCDD staff discretion. HCDD will inspect NHTF projects in accordance with 24 CFR Part 92.745. These sections require property inspection based on the following timeline:

12 months after project completion and at least once every 3 years thereafter during the period of affordability.

The property owner must certify to the grantee that each building in the project is suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances and requirements, and the ongoing property standards established by the grantee to meet the requirements of 92.745.

E. Frequency and Form of Certification

The certification and review requirements shall be made as described in section C and D through the compliance period. The certifications and reviews may be completed more frequently than on a twelve-month basis, provided that each twelve-month period is subject to certification. The staff monitors projects for compliance. Staff may report noncompliance to the division administration, the Board, HUD, and the Attorney General's Office.

F. Special Needs Set-Aside Compliance Policy

Applicant agrees to set aside and continually rent and properly equip unit(s) to the special needs that was agreed upon in the project Application (for funding from the NHTF), the final NHTF loan contract, and recorded Deed Restriction. Failure to fill the special needs set-aside units with the targeted population constitutes a violation of these agreements and may be considered a compliance issue, at the discretion of HCDD monitoring staff. If violation remains unresolved in a timely manner, project owners may jeopardize their future funding opportunities through the NHTF. Exceptions may be permitted only after meeting Housing and Community Development Division (HCDD) requirements in attempting to rent to this population and demonstrating that no tenants with special needs are available to fill the particular units (see requirements for meeting this exception below).

All NHTF applicants that receive NHTF funding must register their property and the number of special needs set-aside units in that property with The Utah Affordable Housing Database (UAHD), managed by HCDD. Owners/managers of properties with set-aside units are required to establish working relationships with primary and secondary community service providers (CSP) so that the referral process for special needs tenants will be more successful. The use of the UAHD website does not preclude utilizing current community service providers or the Utah Housing Corporation Set-aside Tracker.

1. Non-Accessible Unit Special Needs (See Accessible Units Below)

Non-accessible special needs units include, but are not limited to, those intended for people with Chronic Mental Illness (CMI), Developmentally Disabled (DD), Domestic Violence (DV), Elderly (ELD), Homeless (HOM),

Transitional housing (TRANS) and Housing Opportunities for People with AIDS (HOPWA).

- a. Owners/managers have four weeks to fill a set-aside unit that becomes available with the targeted population. This time period may begin up to, but not earlier than, four weeks before the existing tenant intends to vacate the unit.
 - i. The manager must contact the primary CSP to obtain a referral as soon as they know the special needs unit will become vacant.
 - ii. Should this provider fail to refer a qualified tenant(s) by the end of one week after contact, the manager should then contact the secondary CSP.
 - iii. In the event that a qualified tenant is not referred to occupy the set-aside unit, and after 30 days total from initial notification of vacancy, owner/manager may then lease the unit to a non special needs tenant.
 - iv. If the manager chooses to lease to a non special needs tenant that tenant must agree to be moved to a similar unit if the need for a special needs unit arises and there is a comparable unit available. A sample agreement will be made available to the manager upon request.
- b. Special requirements for **Transitional Housing (TRANS) units**: For transitional housing units, tenants are encouraged to transition to independent living within two years (24 months from initial occupancy, depending on the housing guidelines of the transitional units.

2. Type "A" Fully Accessible Units for Long-Term Mobility-Impaired Tenants (ADA units)

- a. These units must be fully functional for tenants who have a long-term mobility impairment needing an accessible unit.
- b. When one of these units becomes vacant, offer the unit:
 - i. First, to a current occupant of the project requiring the ADA features;
 - ii. Second, to an eligible qualified applicant on the waiting list (if any) requiring the ADA features. Note that this is the only instance where skipping applicants on the waiting list is allowed.
 - iii. Third, to your primary and secondary CSPs for referrals of ADA tenants.
 - iv. If possible, include the wheelchair logo in all advertisements for better recognition and response from your public audience.

3. Evidence of Due Diligence

During scheduled inspections, HCDD may ask to see the rental history of special needs units which may include written documentation showing steps taken to find a qualified applicant including communications with primary and secondary CSPs.

HCDD will consider other options on a case-by-case basis to assist project owners in their commitment to fill their set-aside units with the targeted special needs population. Project owners and site managers should work proactively with the referring organization(s) to ensure that their set-aside units are filled with tenants from the targeted population(s). This would include establishing a waiting list of pre-screened families or individuals that are waiting for a housing opportunity.

10. FINANCIAL SUBSIDY REVIEW

Staff shall conduct “subsidy layering” reviews on projects that directly or indirectly receive financial assistance from the U.S. Department of Agriculture Rural Development Service ("RD") or the U.S. Department of Housing and Urban Development ("HUD") inclusive of HOME, CDBG, or HOPWA assistance, (the “Subsidy Layering Review”). These Subsidy Layering Reviews shall be conducted in accordance with guidelines established by RD and HUD with respect to the review of any financial assistance provided by or through these agencies to the project and shall include, without limitation, a review of: (a) the amount of equity capital contributed to a project by investors, (b) the project costs including all fees, and, (c) the contractor's profit, syndication costs and rates. In the course of conducting the review, the staff may disclose or provide a copy of the application to RD or HUD for their review and comments and shall take any other action deemed necessary to satisfy its obligations under the respective review requirements. HCDD staff may accept a review completed by Utah Housing Corporation.

Contingency amounts: All contingency amounts listed in the application must be accounted for within the final cost certification. If all contingency funds are not used, leftover contingency funds must be used to reduce the OWHLF loan.

11. COMMON APPLICATION AND SHARING OF INFORMATION WITH OTHER FINANCIAL SOURCES

Application information may be shared with other financially interested parties, including, but not limited to: participating lenders, IRS, Utah Housing Corporation (UHC), investors and others as determined by the staff in evaluating and tracking the progress of the project.

The staff complies with the provisions of GRAMA and Freedom of Information Acts.

12. SIGNAGE

The project owner must include Olene Walker Housing Loan Fund's name and logo on project signage during construction and press releases/interviews as the allocator of Loan Fund monies as applicable.

13. UTAH AFFORDABLE HOUSING DATABASE

Projects receiving OWHLF funds are required to be listed and maintained by the developer and/or property management company on the Utah Affordable Housing Database. Information listed should include units available for rent and units with special characteristics and set-aside agreements as previously described in sections F1 and F2.

14. AFFORDABLE HOUSING PLAN REQUIREMENTS

Per Utah State Code, 10-9a-408 and 17-2-7a-408 requires each city to complete a “Moderate Income Housing Plan” and perform a subsequent biennial review and report. OWHLF shall provide additional scoring consideration for applications representing projects in those cities and counties that have a required housing plan and report that is deemed acceptable by HCDD and has been completed according to state code within the previous 24 months.

Acceptability is determined by the qualitative rating tool developed by HCDD staff. Quality is rated based upon how current the plan/report is, populations targeted in the plan, how well the plan projects need and plans to meet the need. The acceptability threshold is 3.5.

15. ACQUISITION AND/OR REHABILITATION OF USDA RURAL DEVELOPMENT 515 PROPERTIES

In order for the Olene Walker Housing Loan Fund to make a decision as to the overall feasibility of a proposed Acquisition and Rehabilitation of a USDA RD 515 project, the following guidelines are established based on a nationwide survey.

According to the USDA Rural Development 515 program guidelines:

1. If a project **IS** eligible to be sold as a market project, the value of the project for purposes of the Olene Walker Housing Loan Fund will be determined by the Income to Value approach.
FMV=NOI (subject)
Ro (market cap rate)
2. If a project is **NOT** eligible to be sold as a market project, the sales price is restricted to the subordinated USDA RD 515 loan amount plus \$4,000 - \$7,000 per unit, depending upon the age and condition of the project.

16. FUND LEVERAGING

To optimize the leveraging of OWHLF monies, applicants are encouraged to consider other funding partnerships including interest bearing loans from financial institutions, bonds, and loans from other public agencies. In the analysis of funding partnership options, OWHLF staff can define creative loan options including delayed loan payments, etc. The Board has the discretion to consider and approve loan options, including deferred payments, but reserves the right to

reconsider and rescind a deferred payment approved based on staff recommendation, and/or additional/supplemental information received regarding the Project.

17. MULTIFAMILY LOAN RESTRUCTURING POLICY

The Board gives OWHLF staff the authority to evaluate and approve or deny requests for deferrals of interest and principal loan payments for up to two (2) years. During the two-year deferral period for interest-bearing loans, interest will continue to accrue. All decisions will be made in consultation with the Division Director. The director of the Housing and Community Development Division will review and execute all contract amendments.

A request for change of any specific OWHLF loan terms (interest rate, amortization period, number of set-aside units, etc.) will be evaluated by OWHLF staff, but the Board must approve any recommended changes to previously-approved OWHLF loan terms.

1. The evaluation process for both loan payment deferral and change in existing loan terms will be based on the following processes and documentation requirements:
A written explanation for any request.
2. Current fiscal-year-to-date financial statements, including a balance sheet, detailed income statement, and cash flow statement in accordance with Generally Accepted Accounting Principles (GAAP).
3. As part of the annual OWHLF compliance reporting process, every OWHLF-assisted project is required to submit financials for each year of operations. Independently-audited financials are preferred, but unaudited/certified is acceptable if project received less than \$300,000 in OWHLF funds. If any previous- or current-year required financials are missing, they must be provided to OWHLF staff prior to review of the request.
4. Current project rent roll, showing unit Area Median Income percentage levels as applicable, along with copy of current utility allowance (if applicable) being used.
5. Confirmation letters from all other funding sources concerning current status and involvement of loan restructure, including:
 - Impacts on the capital structure; and
 - Contact of other lenders who have loans in the project to request their involvement.
6. Detailed explanation of current market conditions affecting the project such as:
 - Updated market study; or
 - Third-party confirmation; or
 - Project-marketing modification.
7. OWHLF staff will conduct an on-site visit of the property (this requirement may be satisfied as part of the multifamily compliance monitoring process if property has received a compliance review/inspection within six (6) months of the request).
Some of the issues that the OWHLF Board may need to consider before decisions are final:
 1. The effect of the original loan conditions imposed on the project.

2. HCDD-OWHLF will be required to pay back Federal NHTF funds if the project fails and NHTF funds were used.

3. Were the loan funds used for state match requirements?

DRAFT

National Housing Trust Fund (NHTF)

Repayment Terms:

1. Interest and Rates.

(a) Interest (sometimes referred to as "Fixed Interest") shall accrue on the unpaid Principal Amount from the date hereof at the fixed interest rate of zero percent (0%) per annum. Interest shall accrue daily on the outstanding principal balance until paid, regardless of maturity or judgment, and shall be calculated on the basis of a 360-day year simple interest basis by applying the ratio of the annual interest rate over a year of 360 days (365/360), multiplied by the outstanding principal balance, multiplied by the actual number of days the principal is outstanding.

(b) In addition to Fixed Interest described above, Borrower shall pay to Lender as "Bonus Interest" an amount equal to the "Applicable Percentage" (as hereinafter defined) multiplied by the "Net Proceeds" (as hereinafter defined) received from every financing (other than the original Loan (as hereinafter defined) obtained to develop the Project (hereinafter defined), refinancing, transfer, conveyance, sale or exchange of or secured by all or any portion of or any interest in the Project (hereinafter collectively referred to as a "Transfer"), prior to the "Permanent Loan Maturity Date". Any such Transfer will be conditioned upon Borrower receiving the prior written approval of Lender, which approval may not be unreasonably withheld.

(c) Notwithstanding anything to the contrary contained in this Promissory Note, if an Event of Default occurs, interest at eight percent (8%) per annum shall thereafter accrue on the unpaid Principal Amount and upon any Bonus Interest (as defined herein) which shall become due and is not timely paid after such Event of Default.

2. Loan Payments.

(a) Bonus Interest will be paid in accordance with the following procedures:

(i) Simultaneously with the receipt of Net Proceeds resulting from any Transfer, the total amount of Bonus Interest shall be computed and paid to Lender.

(ii) If no sale, exchange or other disposition of the entire Project occurs prior to the Permanent Loan Maturity Date (whether that date results from acceleration not cured as authorized by statute or as provided by agreement or

otherwise), Borrower shall pay to Lender, Bonus Interest based upon the fair market value of the Project, or the portion thereof that has not been sold or disposed of, as of that date, determined as follows: from the fair market value figure shall be deducted an amount equal to reasonable out-of-pocket expenses that would have been incurred as part of an actual sale of the Project or the remaining portion of the Project; next, any outstanding principal balance of any loan

EXHIBIT G(a) (continued)

(iii) secured by the Project, plus any current and payable interest accrued thereon since the last regularly scheduled interest payment date for such loan, which Lender has previously agreed will have priority to this Loan will be deducted; next, an amount equal to "Borrower's Equity" (as hereinafter defined) less any amount previously received by Borrower from the proceeds of transfers in reimbursement or payment of Borrower's Equity will be deducted; and the Applicable Percentage of the remainder will be paid to Lender as Bonus Interest together with (i) the amount of any accrued and unpaid interest and other charges due under the terms of this Promissory Note; and (ii) the amount of the unpaid Principal Amount. Notwithstanding the foregoing, no portion of Borrower's Equity shall be payable to Borrower until the Principal Amount and accrued Fixed Interest is paid in full. In the event that this Promissory Note is accelerated and the Project is sold through foreclosure of the Deed of Trust or exercise of the power of sale exercised in the Deed of Trust, there shall become due and payable to Lender upon such acceleration Bonus Interest calculated in the manner provided in this Paragraph (and not based upon the price bid or paid at such foreclosure sale) and such Bonus Interest shall be due and payable to Lender prior to any payment or return of Borrower's Equity or other payment to Borrower. If Borrower and Lender are unable to properly agree upon the fair market value of the Project or the remaining portion of the Project, or the fair market value of the property received in an exchange, either determination will be resolved by an appraisal by an MAI appraiser mutually acceptable to the Borrower and Lender.

3. Prepayment. The undersigned shall have the right to prepay any amount of the Fixed Interest or Principal Amount without penalty; provided Borrower shall give Lender written notice of its intent to prepay not later than ten (10) days prior to intended prepayment date.

4. Definitions. For purposes of this Promissory Note certain terms are defined as follows:

(a) Applicable Percentage. "Applicable Percentage" shall mean on the date that

any Bonus Interest is payable, a fraction (expressed as a percentage to the nearest tenth of a percent), the numerator of which is the original Principal Amount of this Promissory Note, and the denominator of which is the sum of the original Principal Amount of this Promissory Note and the Borrower's Equity.

(b) Borrower's Equity. "Borrower's Equity" shall mean the sum of all (i) capital contributions made to Borrower by its Members, including but not limited to contributions made by any and all investors, excluding tax credit investors; and (ii) the sum of all development fees which are deferred and payable only in the event of a Transfer.

(c) Net Proceeds. "Net Proceeds" from a Transfer, shall mean the entire consideration paid for or received as a result of the Transfer, less only the following amounts

EXHIBIT G(a) (continued)

which shall be paid in the priority listed: (a) all direct, out-of-pocket expenses attributable to the Transfer transaction; provided that no expense paid to an affiliated company of Borrower or its Manager in excess of amounts which would be reasonably comparable for similar services shall be included within such allowable expenses; (b) any amounts then due or required to be paid as a result of the Transfer under any loan to which Lender has previously agreed will have priority to this Loan; (c) any amounts due Borrower's tax credit investor; and (d) an amount to Borrower equal to "Borrower's Equity" (as defined herein below) less any amount previously received by Borrower from the proceeds of a Transfer in reimbursement or payment of Borrower's Equity; provided, however, no portion of Borrower's Equity shall be paid to Borrower until the outstanding Principal Amount of this Promissory Note, Fixed Interest thereon, and accrued but unpaid Bonus Interest is fully paid. The remaining proceeds shall constitute "Net Proceeds" and the "Applicable Percentage" of that amount will be paid to Lender as Bonus Interest. Simultaneous with the payment of such Additional Interest and in the event of a sale, exchange or other disposition of the entire Project, the total outstanding Principal Amount and all other accrued but unpaid interest shall be due and payable. The foregoing allocation of proceeds will apply to one of several Transfers on a cumulative basis.

The transferee in any partial Transfer of the Project that may be consented to by Lender shall take title to its interest subject to the terms of the Security Instruments unless the portion of the Project subject to the Transfer is released from the lien of the Security Instruments.

In the event the Transfer is in exchange for other property, the "entire consideration" resulting from the Transfer, for purposes of determining Net Proceeds, will be the fair market value at the time of the Transfer of the property received plus any "Boot" received by Borrower, less any "Boot" payable by Borrower. If any consideration received by Borrower is in a form other than cash, the Additional Interest due hereunder will, nevertheless, be payable to Lender in cash.

Any proceeds of a Transfer that are received by Lender before commencement of or during the appraisal process which proceeds relate to the Transfer or Permanent Loan Maturity Date triggering the appraisal, will be deposited in a joint escrow account until such time as the appraisal is issued in accordance with the above. These proceeds will be invested during the appraisal process as mutually directed and any additional amounts earned will be added to and become a part of the entire consideration received from such Transfer.

EXHIBIT G(a) (continued)

National Housing Trust Fund (NHTF) Summary Terms

Loan Terms: The following terms outline the repayment terms for NHT Funds awarded to a project to reduce the rent to 30% AMI. It is intended that these funds will be secured by a Subordinate Deed of Trust. A Deed Restriction will also be recorded against the property for a minimum of 30 years.

These terms have been established to meet the requirements of HUD and will be reviewed on a regular basis by the OWHLF Board.

Loan Amount: The Maximum amount awarded to any project will be determined by OWHLF Board.

Units: Minimum and maximum units funded in a project will be determined by the OWHLF Board.

Interest Rate: The interest rate will be zero (0%) unless the loan is in default, in which case the interest rate will increase to eight (8%).

Payments: Principal and interest payments are not required prior to maturity of the loan unless the property is sold, refinanced or transferred in whole or in part. At the earlier of the sale, refinance, transfer or loan maturity, Bonus Interest will be paid in accordance with the following procedures:

- a. Simultaneously with the receipt of Net Proceeds resulting from any transfer, the total amount of Bonus Interest will be computed and paid to the lender.
- b. If no sale, exchange or other disposition of the entire Project occurs prior to the Permanent Loan Maturity Date, Borrower shall pay to Lender, Bonus Interest based upon the fair market value of the Project, or the portion thereof that has not been sold or disposed of, as of that date, determined as follows:
 - from the fair market value figure shall be deducted an amount equal to reasonable out-of-pocket expenses that would have been incurred as part of an actual sale of the Project or the remaining portion of the Project;
 - next, any outstanding principal balance of any loan secured by the Project, plus any current and payable interest accrued thereon since the last regularly scheduled interest payment date for such loan, which Lender has previously agreed will have priority to this Loan will be deducted;
 - next, an amount equal to "Borrower's Equity" (as hereinafter defined) less any amount previously received by Borrower from the proceeds of transfers in reimbursement or payment of Borrower's Equity will be deducted;

EXHIBIT G(a) (continued)

- and the Applicable Percentage of the remainder will be paid to Lender as Bonus Interest together with
 - (i) the amount of any accrued and unpaid interest and other charges due under the terms of this Promissory Note; and
 - (ii) the amount of the unpaid Principal Amount.

Notwithstanding the foregoing, no portion of Borrower's Equity shall be payable to Borrower until the Principal Amount and accrued Fixed Interest is paid in full. In the event that this Promissory Note is accelerated and the Project is sold through foreclosure of the Deed of

Trust or exercise of the power of sale exercised in the Deed of Trust, there shall become due and payable to Lender upon such acceleration Bonus Interest calculated in the manner provided in this Paragraph (and not based upon the price bid or paid at such foreclosure sale) and such Bonus Interest shall be due and payable to Lender prior to any payment or return of Borrower's Equity or other payment to Borrower. If Borrower and Lender are unable to properly agree upon the fair market value of the Project or the remaining portion of the Project, or the fair market value of the property received in an exchange, either determination will be resolved by an appraisal by an MAI appraiser mutually acceptable to the Borrower and Lender.

Prepayment: The loan can be prepaid at any time.

Definitions: For purposes of this Promissory Note certain terms are defined as follows:

(d) Applicable Percentage. "Applicable Percentage" shall mean on the date that any Bonus Interest is payable, a fraction (expressed as a percentage to the nearest tenth of a percent), the numerator of which is the original Principal Amount of this Promissory Note, and the denominator of which is the sum of the original Principal Amount of this Promissory Note and the Borrower's Equity.

(e) Borrower's Equity. "Borrower's Equity" shall mean the sum of all (i) capital contributions made to Borrower by its Members, including but not limited to contributions made by any and all investors, excluding tax credit investors; and (ii) the sum of all development fees which are deferred and payable only in the event of a Transfer.

(f) Net Proceeds. "Net Proceeds" from a Transfer, shall mean the entire consideration paid for or received as a result of the Transfer, less only the following amounts which shall be paid in the priority listed:

- all direct, out-of-pocket expenses attributable to the Transfer transaction; provided that no expense paid to an affiliated company of Borrower or its Manager in excess of amounts

EXHIBIT G(a) (continued)

- which would be reasonably comparable for similar services shall be included within such allowable expenses;
- any amounts then due or required to be paid as a result of the Transfer under any loan to which Lender has

- previously agreed will have priority to this Loan;
- any amounts due Borrower's tax credit investor; and
 - an amount to Borrower equal to "Borrower's Equity" (as defined herein below)
 - less any amount previously received by Borrower from the proceeds of a Transfer in reimbursement or payment of Borrower's Equity;
 - provided, however, no portion of Borrower's Equity shall be paid to Borrower until the outstanding Principal Amount of this Promissory Note, Fixed Interest thereon, and accrued but unpaid Bonus Interest is fully paid.

The remaining proceeds shall constitute "Net Proceeds" and the "Applicable Percentage" of that amount will be paid to Lender as Bonus Interest. Simultaneous with the payment of such Bonus Interest and in the event of a sale, exchange or other disposition of the entire Project, the total outstanding Principal Amount and all other accrued but unpaid interest shall be due and payable. The foregoing allocation of proceeds will apply to one of several Transfers on a cumulative basis.