

**GRANT AGREEMENT**  
(Climate Friendly Homes Fund)

**THIS AGREEMENT** made as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between \_\_\_\_\_, a limited liability company organized and existing under the laws of the State of New York, having its principal office at c/o Whitehat Development, LLC, 493 6<sup>th</sup> Avenue, Troy, NY 12182 (“Recipient”) and **THE COMMUNITY PRESERVATION CORPORATION**, a New York not-for-profit corporation, having its principal office at 220 East 42<sup>nd</sup> Street, 16<sup>th</sup> Floor, New York, New York 10017, its successors and/or assigns (“CPC”).

**WHEREAS**, the Housing Trust Fund Corporation (“Corporation”) a public benefit corporation created and existing as a subsidiary of the New York State (the “State”) Housing Finance Agency created the Climate Friendly Homes Fund Program (“Program”), pursuant to which CPC has been selected to make grants to eligible multifamily building owners to improve the energy efficiency of its building and decrease such building’s greenhouse gas emissions; and

**WHEREAS**, Recipient is the owner of [describe building] (“Building”) located at [address] and more fully described on Schedule A here to (“Premises”); and

**WHEREAS**, Recipient has applied through the Program to receive funds for [the electrification of the Building’s heating and cooling systems, domestic hot water systems, ventilation systems, and improvement of the Building envelope] (“Electrification Measures”); and

**WHEREAS**, Recipient has undertaken an energy audit or an Integrated Physical Needs Assessment (“IPNA”) to identify Electrification Measures at the Building as more fully described in Schedule B attached hereto and made a part hereof (the “Work”); and

**WHEREAS**, CPC and/or its consultants have (i) approved the identified scope of work, (ii) approved a contractor to complete such Work and (iii) approved a budget for such Work; and

**WHEREAS**, Recipient and the State have completed the necessary review required under State Environmental Quality Review Act (SEQRA) at 6 NYCRR Part 617 and Section 14.09 of the Parks, Recreation, and Historic Preservation Law (Historic & Cultural Resources) and received the required notice to proceed from the Corporation related thereto; and

**WHEREAS**, simultaneously with the execution of this Agreement, Recipient has if applicable, obtained consent from any senior lenders holding mortgages on the Building; and

**WHEREAS**, CPC shall make available the amount of up to [\_\_\_\_\_] (the “Grant”) to perform the Work; and

**WHEREAS**, CPC agrees to make the Grant upon the terms, covenants, and conditions set forth herein, and Recipient agrees to accept the Grant and expressly covenants to comply with and perform all of the terms, covenants and conditions of this Agreement and all other documents or agreements executed in connection herewith; and

**WHEREAS**, the Grant shall be deemed fully repaid upon compliance by Recipient of the terms and conditions of this Agreement .

**NOW, THEREFORE**, CPC and Recipient agree as follows:

1. The Grant.

(a) The Grant consists entirely of funds from the Corporation made available through CPC pursuant to the Program. Recipient shall observe, perform and comply with, and this Agreement is subject to the requirements of the Program. The Grant is subject to (i) the conditions set forth in this Agreement and (ii) the availability of funding from the State.

[(b) Recipient acknowledges that each of the items below (the "Open Items") must be delivered and approved by CPC, in its sole discretion, prior to any advances being made pursuant to Section 4 hereof:

- (i) Final Scope of Work
- (ii) Final Specifications (and Plans, if applicable)
  - (iii) executed Construction Contracts and sub-contracts for the approved Scope of Work
  - (iv) insurance and licenses from Contractor
- (v) Final construction schedule
- (vi) Final budget showing all hard and soft costs, including contingency and funds to be funded from the Recipient
- (vii) any applicable Permits.

2. Terms of Grant.

(a) This Grant Agreement begins upon the date signed by the Recipient and ends **[EITHER five (5) years or ten (10)]** from the Completion Date (as hereinafter defined), as may be extended by CPC. Provided there shall have been no defaults hereunder, the Grant shall be deemed fully repaid on the **fifth [tenth]** anniversary of the Completion Date and Recipient shall thereafter have no further obligations with respect to this Agreement or the Grant.

(b) Commencing as of the date hereof and continuing during the **[EITHER five (5) year or ten (10)]** period ("Regulatory Period") following the Completion Date, the Building shall at all times be maintained in good operating order and condition, and all necessary repairs, renewals, replacements, additions and improvements shall, from time to time, be promptly made. Premises improvements made as a result of this Agreement shall be maintained in good working order and may not be removed from the Premises before the end of the term without prior notice to the Corporation.

(c) Upon the happening of an Event of Default (as hereinafter defined) of this Agreement, including, without limitation, a failure to complete the Work on or before the Completion Date (as hereinafter defined), the Recipient must return the Grant Assistance to CPC, for recapture by HTFC pursuant to this Agreement between Recipient and CPC, its successors and/or assigns. The amount to be recaptured shall be determined by reducing the original amount of Grant Assistance disbursed to the Recipient by **[INSERT EITHER: one tenth (1/10th) OR, for projects with either 15 units or less or loan/grant amounts of \$375,000 or less, INSERT one fifth (1/5th) and recalculate schedule]** for each year of the Regulatory Period the Recipient was in compliance hereunder. Repayment will be calculated in accordance with the following:

Months 0-12:	100% repayment due.
Months 13-24:	80% repayment due.
Months 25-36:	60% repayment due.
Months 37-48:	40% repayment due.
Months 49-60:	20% repayment due.
Months 60 and beyond:	0% repayment due.

**OR**

Months 0-12:	100% repayment due.
Months 13-24:	90% repayment due.
Months 25-36:	80% repayment due.
Months 37-48:	70% repayment due.
Months 49-60:	60% repayment due.
Months 61-72:	50% repayment due.
Months 72-84:	40% repayment due.
Months 85-96:	30% repayment due.
Months 97-108:	20% repayment due.
Months 109-120:	10% repayment due.
Months 120 and beyond:	0% repayment due.

- (d) Origination Fees to CPC. At the Closing, CPC shall earn an origination fee of 2% of the Grant, which amount may be funded from the proceeds of the Grant.
- (e) Benchmarking. Simultaneously with the execution of this Agreement, Recipient shall enter into a Benchmarking Agreement with CPC or another benchmarking provider acceptable to CPC, in form and content acceptable to CPC to allow CPC's third party benchmarking provider to track of post completion energy consumption and reporting on carbon reduction metrics. Additionally, Recipient agrees to provide CPC and the Corporation continuous reporting with respect to energy consumption and cost at the Project and carbon reduction metrics for at least three (3) years following the completion of the Work. Recipient further agrees to provide any additional information or data requested by CPC or the Corporation in connection with energy consumption at the Project or otherwise related to the Work, or the equipment installed as part of the Work, for the term of the Agreement including, without limitation, an annual inspection/service report for all equipment installed as part of the Work and confirmation that all such equipment is in good working order.
- (f) Reserves. At the closing of the Grant, CPC shall establish reserves for the following amounts and Recipient shall deposit with CPC at the closing and as required thereafter as set forth below. The Reserves will be held by CPC for the term of the Grant and shall be applied for costs incurred during the term as set forth below.
  - (i) Servicing Fee. At the closing of this Grant, Recipient shall pay to CPC a servicing fee in the amount equal to \$\_\_\_\_, which amount shall be a servicing fee earned by CPC upon the execution of this Agreement. **[OR for TEN YEAR LOANS, use:** At the Closing, Borrower shall pay an amount equal to \_\_\_\_\_, an shall pay such amount in annual installments on the

anniversary of the Closing Date for the term of the Agreement. Recipient agrees that such servicing fee is earned by CPC regardless of when such fee is paid to CPC.]

- (ii) Benchmarking. In connection with 2e. above, Borrower shall deposit \$[ ] with CPC to pay for the first three years of Benchmarking.
- (g) Maintenance and Servicing Agreements. After the completion of the Work, Recipient shall maintain all equipment installed in a manner consistent with optimum performance, save for normal wear and tear, and in conformance with all relevant codes regarding maintenance. **SELECT EITHER:** [Recipient shall provide to CPC, on an annual basis, in each case on the forms attached here to, (i) certifications regarding the maintenance of the equipment installed as part of the Work which forms must be completed and certified by a principal of the Recipient and (ii) certifications from 5% or five tenants (whichever is greater) confirming that the equipment installed as part of the Work has continuously provided the services and/or was promptly serviced and repaired, such equipment was meant to provide for the entirety of the year for which such certification is being made. **[OR** [Recipient shall enter into servicing agreements to ensure timely inspection and maintenance of the equipment installed under this Grant Agreement, and shall deposit with CPC \$\_\_\_\_\_ to cover the first three years of such servicing agreements.]

### 3. The Work.

- (a) Recipient shall complete the Work on or before the date set forth in Schedule B [(as may be amended by letter from CPC upon approval of the Open Items)] hereof (the "Completion Date"). Recipient or its contractor(s) or subcontractor(s) identified in Schedule B [(as may be amended by letter from CPC upon approval of the Open Items)] hereof shall furnish all work, labor, services, tools, equipment and materials required or necessary to complete the Work. Recipient shall incorporate performance requirements and liquidated damages into each procured contract or agreement.
- (b) The Work shall be completed in compliance with all requirements of all governmental authorities having jurisdiction, including, without limitation, The State Environmental Quality Review Act (SEQR) at 6 NYCRR 617; Section 14.09 of the Parks, Recreation, and Historic Preservation Law (Historic & Cultural Resources); Floodplain Management Criteria for State Projects at 6 NYCRR 502; NYS Agricultural and Markets Law Section 305(4) (Agricultural Districts); Coastal Zones at 19 NYCRR Part 600; Local Zoning Code/Special Use Permits; Lead Based Paint – EPA Renovation, Repair and Paint Rule or HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing; Asbestos Containing Materials at 12 NYCRR Part 56.
- (c) Recipient acknowledges that Recipient may not receive reimbursement for any Work completed prior to the date hereof.
- (d) Each contractor must be licensed with New York State and approved by CPC or must be either (i) a contractor selected from the NYSERDA Multifamily Building Solution Provider list or the New York State Clean Heat Approved Contractors List

provided by CPC or (ii) a contractor approved by the manufacturer of equipment being installed at the Premises. The Recipient shall ensure the Contractor complies with all applicable federal, New York State and local laws, including work training and licensing pertaining to asbestos – containing materials and lead- based paint for the Work. Contractors are to hold all necessary licensing and training to comply with all applicable federal, state, city and local requirements, including but not limited to, Lead Based Paint – EPA Renovation, Repair and Paint Rule or HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing and Asbestos Containing Materials at 12 NYCRR Part 56. Copies of Contractor licenses are to be provided to CPC.

- (e) Recipient acknowledges that for buildings that are 50 years or older, all work must be in compliance with Office Parks, Recreation and Historic Preservation CFHF Designation Agreement under 9 NYCRR Park 428.12.
- (f) Before the making of the first disbursement hereunder, Recipient shall file, or cause to be filed, plans and specifications with all governmental authorities having jurisdiction and shall obtain and submit to CPC all necessary approvals of said plans and specifications and all necessary building permits from said authorities. No changes or amendments to said plans and specifications shall be made without the prior written approval of CPC and, to the extent required by any law, rule or regulation thereof, by said authorities.
- (g) Without the prior written consent of CPC, Recipient shall not permit any material amendments or modifications of the plans and specifications set forth on Schedule B-1 [(as may be amended by letter from CPC upon approval of the Open Items)]. If any amendment or modification will increase the cost of the Work, unless and to the extent that CPC agrees in its reasonable discretion that such increase in cost may be paid out of funds available under the “contingency” line item of the budget set forth in Schedule B, Recipient shall deposit with CPC, promptly upon Borrower’s receipt of a written request from CPC, an amount equal to any increase in cost resulting from such amendment or modification; such funds shall be disbursed by Lender, in accordance with this Agreement. No construction contract or subcontract providing for the completion of the Work, or any part thereof, or any modification thereof, shall be made without the prior written consent of CPC.
- (h) Tenant Matters.
  - a. If the Premises is subject to oversight by the NYS Office of Rent Administration (“ORA”), Recipient must receive approval from ORA prior to making any changes to tenant paid utilities.
  - b. During the term of the Grant Agreement, Recipient must ensure that heat and hot water are provided as required by applicable law.
  - c. Prior to the commencement of Construction, and at all times while the Work is on-going, Recipient must create a tenant complaint process acceptable to CPC and the State, in each case in their sole discretion, which allows

tenants to provide notice to Recipient in the event of any service disruptions during Construction.

4. Procedures for Funding the Grant.

- (a) Requisition. Recipient or Contractor must submit a requisition to CPC in order to receive funds under the Grant for the Work. The requisition must be in the form attached as Schedule C hereof, must be submitted to the address shown on the form and shall be accompanied by such conditional lien waivers and other documents as may reasonably be required by CPC. The requisition must include evidence of approval by the consulting engineer approved for the Work by CPC, set forth in Schedule B, as well as evidence satisfactory to CPC that all items listed in or appended to any prior requisition have previously been paid by Recipient or Contractor to subcontractors and materialmen having provided labor, materials and services in connection with the work for which Recipient or Contractor is seeking reimbursement. CPC, or its agents and/or contractors engaged for such purposes, will inspect the Work at least once a month and sign the requisition to evidence that the work covered by the requisition was satisfactorily completed. The amount of each request must be limited to the amount needed. Requisitions may not be submitted more frequently than once a month.
  
- (b) CPC Approval and Conditions for Disbursements. Upon receipt of the requisition, CPC will approve the requisition upon confirmation that (i) Recipient and/or its contractors or subcontractors conducted an inspection of the portion of the Work covered by the requisition to evidence that the work was satisfactorily completed in accordance with the CPC-approved plans and specifications, if any, as described in Schedule B-1 (ii) all work for which the disbursement is requested is done in a good and workmanlike manner and approved by CPC, (iii) all items listed in or appended to any requisition have previously been paid by Recipient to all subcontractors and materialmen having provided labor, materials and services in connection with the work for which Recipient is seeking reimbursement, and (iv) Recipient had obtained all necessary approvals from governmental authorities.
  
- (c) Disbursement of Grant.
  - (i) The reimbursement portion of the Grant for the reimbursement of fifty percent (50%) of the cost of any required energy audit, property condition assessment, or IPNA shall be disbursed to the Recipient simultaneously with the closing of the Grant.
  
  - (ii) If CPC approves a requisition and if all other terms of this Agreement and the construction contract have been met (including, without limitation, if the requisition is for the final disbursement, the conditions contained in Section 5 below), CPC will pay the amount shown on the requisition and approved by CPC either to Recipient and/or its contractors and subcontractors by wire pursuant to wiring instructions provided to CPC. At CPC's election, payment may be made by a check payable to the Contractor. Notwithstanding when requisitions are made, CPC will not make disbursements more frequently than once a month.

- (iii) All sums disbursed, paid or expended pursuant to this Agreement shall be deemed disbursements of the Grant. CPC shall have no obligation to make any disbursement on the Grant after the Completion Date, except pursuant to any written extension granted by CPC in its sole discretion. A receipt or wire confirmation for any disbursement shall be binding on Recipient. At its option CPC may make any or all disbursements directly to any contractor or subcontractor against requisitions for payment under its contract or subcontract and the execution of this Agreement by Recipient shall, and does, constitute an irrevocable direction and authorization to so disburse the funds.
- (iv) CPC may require five (5) days' written notice of request for any disbursement. All disbursements shall either be made by wire transfer or at the office of CPC or at such other place as it shall designate.
- (v) Notwithstanding the above, CPC may make disbursements if CPC believes it advisable to do so, and all such disbursements shall be deemed to be made pursuant to this Agreement and not in modification hereof, but the making of any such disbursement shall not be deemed an approval or acceptance by CPC of the Work done prior thereto or a waiver of any right or condition.
- (vi) Recipient shall furnish to CPC insurance policies, with premiums prepaid, in companies, forms and amounts, satisfactory to CPC: (i) insuring the Premises against loss or damage by fire, with the usual extended coverage endorsement, and such other hazards as may reasonably be required by CPC; (ii) Builders Risk/ Special Form Property policy providing fire, vandalism, malicious mischief, collapse, and extended coverage on a replacement cost basis for a value equal to the rebuilding value of the premises basis; and (iii) general liability coverage in an amount not less than \$1,000,000 per occurrence . If required by CPC, Recipient shall procure flood insurance, earthquake, workers compensation and auto liability. In addition, any contractor must provide general liability coverage in an amount not less than \$1,000,000 per occurrence, (ii) automobile insurance and (iii) workers compensation insurance. Such policies shall specifically name the State, the Corporation and CPC, including their officials and employees as additional insured as their interests may appear and provide that property losses thereunder shall be payable to the State, the Corporation, and CPC as their interest may appear as Loss payee. Recipient shall keep such policies in force for so long as any part of the Grant remains unpaid. If Recipient fails to furnish or keep in force such policies, the Corporation or CPC may procure the same at the expense of Recipient. All certificates shall be with a New York State licensed carrier of insurance.
- (vii) Prior to completion of fifty percent (50%) of the Work, CPC may withhold from any advance five percent (5%) of the amount of such advance, which amount shall be released to the Recipient upon completion of all punch list

work and all close out documents, final lien waivers and other conditions for final Payment, have been received.

(viii) Recipient shall pay for certain soft costs (including the funding of the Reserves at the closing) as set forth on Schedule B. Recipient agrees that any costs required to be paid by Recipient shall be deposited with CPC at the closing.

(d) Recipient Representations Upon Disbursement. The submission by Recipient of a requisition shall constitute (i) Recipient's representation and warranty that the information set forth in the requisition is true and correct and omits no material fact necessary to make the same not misleading, and (ii) Recipient's representation and warranty to CPC that each and every item of cost which was made the basis of the prior disbursement and which had not then been paid has since been paid in full.

5. Completion of Work; Final Advance. The Work shall be deemed completed when CPC has determined that the Work has been completed in accordance with the construction contract(s) and the plans and specifications, if any, described in Schedule B and Schedule B-1, and when CPC has determined that (a) Recipient shall have furnished to CPC all necessary final certificates, licenses, consents and other approvals of the various governmental authorities having jurisdiction, (c) all necessary certificates, licenses, consents and other approvals of governmental authorities acting in and for the locality in which the Premises are situated have been issued with respect to the Work, and (d) CPC's construction consultant has issued a certificate of completion.

In order for the final advance to be made, (a) the Work shall have been completed in accordance with the construction contract and the plans and specifications, if any, and each item included within the Work is in operating order for its intended purpose, all as determined by CPC; (b) all work has been completed for the dismissal and removal of record of all violations against the Premises; and (c) the conditions contained in the above Paragraph have been complied with.

6. Recipient Representations. Recipient represents and warrants to CPC that:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and is qualified to do business and is in good standing in New York State with full power and authority to consummate the transactions contemplated hereby;

(b) Recipient is the owner in fee simple of the Premises or leasehold interest approved by CPC;

(b) All work, if any, heretofore performed on the Premises has been performed in accordance with construction contracts approved in writing by CPC and no violation of any requirement of any government authority having jurisdiction exists with respect thereto;

(c) Any and all financial statements heretofore delivered to CPC are true and correct in all respects, have been prepared in accordance with generally accepted accounting practice and fairly present the respective financial conditions of the subjects thereof



as of the respective dates thereof, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof;

- (d) To Recipient's knowledge, the representations, certifications, statements, data and information set forth in or annexed to other written instruments executed by or on behalf of Recipient and submitted to CPC or its partners in connection with the Grant are true, complete and correct;
- (e) To the knowledge of Recipient there are no actions, suits or proceedings pending, or threatened, against or affecting it, at law or in equity, or before or by any governmental authority having jurisdiction of the Work and to Recipient's knowledge it is not in default with respect to any judgment, decision, order, writ, injunction, decree or demand of any court or any such governmental authority;
- (f) The consummation of the transactions hereby contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, loan or credit agreement, corporate charter, by-law, limited partnership agreement or other instrument to which Recipient is a party or by which it may be bound or affected;
- (g) There is no default on the part of Recipient under this Agreement and no event has occurred and is continuing which with notice or the passage of time or both would constitute a default under any of such instruments;
- (h) The Agreement and all other documents executed in connection therewith by Recipient are the legal, valid and binding obligations of Recipient, enforceable against Recipient in accordance with their respective terms;
- (k) Each request by Recipient for a disbursement hereunder (i) shall constitute an affirmation that the foregoing representations and warranties remain true and correct as of the date of such request and, unless CPC is notified to the contrary prior to the disbursement of the requested disbursement, will be so on the date of such disbursement, and (ii) shall constitute Recipient's representation and warranty that the information set forth in each such request is true and correct and omits no material fact necessary to make the same not misleading; and
- (l) If Recipient is a cooperative housing corporation or association, it qualifies as a cooperative housing corporation under Section 216 of the Internal Revenue Code and shall at all times maintain its status as a "cooperative housing corporation" as such term is defined in Section 216(b) of the Internal Revenue Code of 1986, as amended, or any successor statute thereto.

7. Events of Default. Each of the following events shall constitute an event of default ("Event of Default") hereunder:

- (a) Recipient violates or defaults in the performance of any term, covenant or condition of this Agreement;

- (b) The Work is, in the judgment of CPC, materially damaged or destroyed by fire or otherwise and in the sole judgment of CPC insurance proceeds are insufficient to cover the entire cost of repair or restoration of the Work;
- (c) The Work is not completed in accordance with the provisions of Section 5 above on or before the Completion Date;
- (d) The Work is at any time discontinued or not carried on with reasonable diligence in the judgment of CPC;
- (e) Without the prior written notice to CPC and the Corporation, the Recipient: (i) sells, conveys or otherwise transfers or disposes of the Premises, the Building or a majority of the direct or indirect interests of the Recipient or the Premises, (ii) refinances any existing mortgages on the Premises, or (iii) any material alteration of any premises improvements included in the Work that are funded by this grant are altered without prior written consent by the Corporation.
- (f) The Recipient abandons the Premises or otherwise lets the Premises or the Work fall into disrepair or be demolished or materially altered or moved during the term of the Agreement;
- (g) Recipient fails to pay any taxes, water or sewer charges levied upon the Premises; when due;
- (h) Recipient shall:
  - (i) (A) admit in writing its inability to pay its debts generally as they become due; (B) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (C) make a general assignment for the benefit of creditors; (D) consent to, or acquiesce in the appointment of a receiver, liquidator or trustee of itself; (E) file a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the federal bankruptcy laws or any other applicable law; or
  - (ii) (A) a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver, liquidator or trustee of Recipient; or (B) a petition shall be filed against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the federal bankruptcy laws or any other applicable law, or (C) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of Recipient; or
  - (i) Recipient, without CPC's prior written consent, executes any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in or used in the operation of the Work or the appurtenances thereto, or files or has filed against it a financing statement publishing notice of such security instrument, or any of such materials, fixtures or articles is not purchased so that the ownership thereof will vest unconditionally in Recipient, free from encumbrances, on delivery at the Premises or Recipient does not produce to CPC upon demand the contracts, bills of sale, statements, receipts

vouchers or agreements, or any of them, under which Recipient claims title to such materials, fixtures and articles;

- (j) Recipient does not accept the Grant or any disbursement thereon within thirty (30) days after the same shall be made payable;
- (k) If any representation or warranty of Recipient made herein, or in any certificate, report, financial statement or other instrument furnished in connection with the Grant, shall at any time be false or misleading;
- (l) Recipient fails to observe, perform and comply with the provisions of any law, statute or regulations applicable to Recipient or the Premises;

If Recipient violates or fails to observe or perform any of the terms, covenants or conditions contained herein after thirty (30) days written notice given by CPC with an opportunity to cure, CPC shall not have any obligation to make the Grant or any further disbursement hereunder, and may pursue any and all remedies provided for hereunder. Nevertheless, CPC may make disbursements after an Event of Default shall occur without thereby waiving any of its rights under this Agreement without any obligation to make further disbursements.

Upon declaring a default, at its discretion, pursue any remedies available at law or in equity for any breach of this Agreement.

- 8. Work Inspections. Recipient shall permit CPC, the State, the Corporation, and each of their officers, employees, agents or inspectors to enter in or upon the area on the Premises where the Work is being performed (the "Work Area"), inspect the Work Area and/or the Work at all reasonable hours and examine all materials, finished Work, Work in progress, detailed plans, shop drawings and specifications located at the Premises, and Recipient will furnish to the Corporation and/or CPC, upon request by and at no cost to the Corporation and/or CPC, copies of such plans, drawings and specifications.
- 9. Trust Fund. Recipient shall receive, hold in trust and first apply the Grant for the purpose of paying the cost of the Work and shall obtain prior written consent from the State and/or CPC before using any part of the Grant for any other purpose.
- 10. Contractors Not Beneficiaries. Notwithstanding any contrary or inconsistent provision contained herein, CPC shall not be liable hereunder for payment of Recipient's contractor(s) or subcontractor(s), which shall not be, nor be deemed to be, a beneficiary(ies) of this Agreement. Such contractor(s) and subcontractor(s) shall look exclusively to Recipient for payment.
- 11. Other Remedies of CPC. Upon the occurrence of an Event of Default, whether or not CPC shall have instituted any action for the enforcement of this Agreement, and subject to the final paragraph of Section 7 above, CPC may, in addition to any other remedies which CPC may have hereunder and in CPC's sole and absolute discretion, (a) complete the Work with such changes as CPC may deem appropriate and employ watchmen to protect the Work Area, all at the risk, cost and expense of Recipient, consent to such entry being hereby given by Recipient, (b) at any time discontinue the Work or change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set

forth herein or otherwise, (c) assume any construction contract made by Recipient in any way relating to the Work and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Recipient, whether or not previously incorporated into the Work, and (d) in connection with any portion of the Work undertaken by CPC pursuant to the provisions of this Section: (i) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the Work; (ii) pay, settle or compromise all bills or claims which may become liens against the Work Area, the Premises and/or the Work, or which have been or may be incurred in any manner in connection with completing the Work; and (iii) take or refrain from taking such action hereunder as CPC may from time to time determine. Any sums paid or incurred by CPC to complete the Work shall be deemed disbursements hereunder. For the purpose of exercising the rights granted by this section, Recipient hereby irrevocably constitutes and appoints CPC and the Corporation each and severally its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts described in this Section 13 in the name and on behalf of Recipient. This power of attorney cannot be revoked.

12. No Brokers. Recipient represents that it has not dealt with any broker in connection with this Agreement or the Grant and shall defend, indemnify, and hold harmless the State and CPC, as provided in Section 25 below, from any claims by any person or entity for fees or commissions in connection therewith. This obligation shall survive termination of the Agreement.
13. No Discrimination. Recipient shall comply with the non-discrimination provisions set forth in herein and as proscribed by New York State law. In addition, Recipient and any contractor or subcontractor engaged in connection with the Work will not discriminate against any employees or applicants for employment because of actual or perceived race, color, religion, religious practice, sex, sexual orientation, gender, disability, national origin, alienage, citizenship status, partnership status, political beliefs or affiliations or age with respect to hiring or any of the terms and conditions of employment, including, but not limited to, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Recipient and any such contractor or subcontractor will take affirmative action to assure that the above requirements are met.
14. Records and Examination. For the term of the Grant:
  - (a) Recipient or its agents shall keep and maintain full and accurate books and records regarding the Work and shall permit CPC, the Corporation and their officers, employees, agents, or inspectors to review, examine and audit such books and records at all reasonable hours. Recipient shall submit to CPC or the Corporation such reports and information as CPC or the Corporation may require under the Law. Said books and records shall be retained by Recipient for six (6) years after the Grant is fully repaid.
  - (b) Upon ten (10) days' written notice from CPC or the Corporation, Recipient, including any of its members, officers, directors, employees or agents, shall submit under oath, to an oral examination by authorized representative(s) of the Corporation concerning any or all matters relating to the Work or this Agreement and shall produce for examination, review and/or audit by CPC and/the Corporation all or such books and records, including, without limitation, journals, ledgers, accounts,

check books, canceled vouchers, contracts, correspondence, stock book and minute book, as such notice may specify. Such notice shall specify the time and place of examination.

15. Due Execution of Agreement. Recipient hereby represents and warrants that its board of directors has by proper action, which has not been revoked or modified, duly authorized the execution of this Agreement by the undersigned officer(s) and, if required by the certificate of incorporation of Recipient, that the shareholders have voted or consented in full compliance with the requirements thereof to authorize the execution of this Agreement.
16. Availability of Funds. CPC shall not in any event be liable hereunder in excess of the amount of monies available and specifically appropriated for the Grant.
17. Termination. CPC may terminate this Agreement if any grand jury impaneled by any federal or state court files an indictment with such court charging Recipient or any of the principals thereof with having committed a felony in connection with the Work or any other matter. Such termination shall be on ten (10) days prior notice to Recipient, without CPC hereby incurring any liability under this Agreement or otherwise. In the event of such termination, the obligation of Recipient shall extend to the aggregate amount actually disbursed.
18. Investigation Clause.
  - (a) The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York ("State") or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
  - (b) If:
    1. any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any public benefit corporation organized under the laws of the State of New York; or
    2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony governing the

award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the State, or any political subdivision thereof or any local development corporation within the City, then;

The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

- (c) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 19(g) without the State incurring any penalty or damages for delay or otherwise.
- (d) The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:
  - 1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the State; and/or
  - 2. The cancellation or termination of any and all existing State contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the State incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the State.
- (e) The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Sections 19(e)(1) and 19(e)(2). He or she may also consider, if relevant and appropriate, the criteria established in Sections 19(e)(3) and 19(e)(4) in addition to any other information which may be relevant and appropriate:
  - 1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
  - 2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose

testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the State.
  4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 19(d), above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 19(b) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- (f)
1. The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
  2. The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
  3. The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the State or otherwise transacts business with the State.
  4. The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- (g)
- In addition to and notwithstanding any other provision of this agreement, the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the State any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the State or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this contract.

19. Miscellaneous Provisions.

- (a) Parties Bound. This Agreement shall be binding upon and inure to the benefit of Recipient and CPC and their respective heirs, personal representatives, successors and permitted assigns.
- (b) Waivers, Extensions and Releases. CPC may, at any time and from time to time, waive any one or more of the conditions contained herein or release portions of the

Premises from the provisions of this Agreement if permitted by law, but any such waiver, extension or release shall be deemed to be made in pursuance and not in modification hereof and any such waiver in any instance or under any particular circumstance shall not be deemed or implied to be a waiver of such condition in any other instance or under any other circumstance.

- (c) Modifications. This Agreement may not be changed or terminated orally but only by agreement in writing and signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.
- (d) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.
- (e) Entire Agreement. This Agreement contains the entire agreement and understanding of the parties hereto and alone fully and completely expresses their agreement. Any and all prior discussions, statements, representations and understandings, whether oral or written, relating in any respect to the subject matter of this Agreement are merged herein.
- (f) Gender. All personal pronouns used herein whether of the masculine, feminine or neuter gender shall include all other genders; words in the singular shall include the plural and vice versa.
- (g) Signs. If required by CPC or the Corporation, Recipient shall place at any construction site a sign, which shall have been provided by the Corporation, identifying the participation of the Governor of the State of New York and the Corporation in the financing of the Premises, which sign shall be of a size and in a location so as to be visible from outside the construction site, as approved by the Corporation.
- (h) Premises Release. Recipient hereby agrees to permit the Corporation to publish photographs of the Premises for promotional or public relation purposes.

20. Choice of Law and Consent to Jurisdiction and Venue.

- (a) This Agreement shall be deemed to be executed in the State of New York, regardless of the domicile of Recipient, and shall be governed by and construed in accordance with the laws of the State of New York.
- (b) Any and all claims asserted by or against the CPC arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, Recipient agrees:
  - (i) If CPC initiates any action against Recipient in New York State Court, service of process may be made on Recipient either in person, wherever Recipient may be found, or by registered mail addressed to Recipient at its address as set forth in this Agreement, or to such other address as Recipient may provide to CPC in writing; and



- (ii) With respect to any action between the Corporation or CPC and Recipient in New York State Court, Recipient expressly waives and relinquishes any rights it might otherwise have to move to dismiss on grounds of forum non conveniens.
  - (iv) If Recipient commences any action against the Corporation or CPC in a court located other than in the State of New York, upon request of CPC, Recipient shall either consent to a transfer of the action to a court of competent jurisdiction located in the State of New York or, if the court where the action is initially brought will not or cannot transfer the action, Recipient shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.
- 21. No Claims Against Officers, Agents, or Employees. No claim whatsoever shall be made by Recipient, its successors or assigns against any officer, agent, or employee of the State, Corporation or CPC for, or on account of, any thing done or omitted to be done in connection with this Agreement.
- 22. Fees and Charges. Recipient shall pay any and all fees and charges incurred, whether before or after the making of this Agreement, in the procuring, making and servicing of the Grant and in the enforcement of this Agreement, including, without limitation, fees and expenses relating to examination of title, inspections, and the fees for architectural and engineering services.
- 23. Assignments. CPC may assign this Agreement to the Corporation any other person, firm or corporation without any notice to the Recipient, provided that all of the provisions hereof shall continue in force and effect and, in the event of such assignment, any disbursements made by any assignee shall be deemed in compliance by CPC herewith and made in pursuance and not in modification hereof. Recipient shall not assign this Agreement or the monies to be disbursed hereunder or convey, assign, pledge, encumber or mortgage the Premises or any part thereof without the prior written consent of CPC. Upon completion of the Work, CPC intends to assign this Agreement to the Corporation, except, notwithstanding such assignment, CPC shall continue to service grant provided under the Agreement.
- 24. Insufficiency of Grant. CPC shall not be required to make any disbursement if the undisbursed proceeds of the Grant shall, in CPC's sole judgment, be less than the amount necessary to pay for the completion of the Work to be funded hereunder. Recipient shall furnish to CPC, upon request, from time to time, satisfactory assurances from its contractor(s) or subcontractor(s) that the undisbursed proceeds of the Grant together with Recipient's contribution remain sufficient to pay for completion of the Work.
- 25. Indemnification.
  - a. To the fullest extent permitted by law, Recipient shall indemnify, defend, and hold the State, the Corporation, CPC, and their employees, and officials (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of Recipient) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of Recipient and its contractor(s) under this Agreement and/or

Recipient's or its contractor(s) failure to comply with any of the provisions of this Agreement or of the Law. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section 25 by way of cross-claim, third-party claim, declaratory action or otherwise. Recipient expressly agrees that the indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

- b. Recipient shall be solely responsible for and shall indemnify the Indemnities against any and all claims and judgments for damages for any infringement of copyright and patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the Work, including all costs and expenses which the Indemnities shall or may incur or be obligated to pay by reason thereof.
  - c. Indemnification under this Section 25 shall operate whether or not Recipient has placed and maintained the insurance required pursuant to Section 4(c)(v) and the requirements of this Section 25 shall survive the expiration or other termination of this Agreement.
  - d. Recipient waives all rights against the Indemnities for any damages or losses for which either is covered under any insurance required under Section 4(c)(v) (whether or not such insurance is actually procured) or any other insurance applicable to the operations of the Recipient and/or its contractors in the performance of this Agreement.
  - e. The provisions of this Section 25 shall not be deemed to create any new right of action in favor of third parties against the Recipient, CPC, the Corporation or the State.
26. Permission of Owners of Premises. Recipient hereby represents and warrants that it has obtained the written permission of all owners of the Premises upon where the Work Area is situated for Recipient to enter upon the Work Area and perform the Work.
27. Assignment of Insurance Proceeds. Recipient shall assign to CPC any and all insurance proceeds or other reimbursement received by Recipient relating to the Work on the Premises, unless otherwise previously assigned to an existing mortgage lender.
28. Condemnation. To the Recipients knowledge, no Condemnation or other proceeding has been commenced or, is contemplated, threatened or pending with respect to all or part of the Premises or for the relocation of roadways providing access to the Premises. In the event that Recipient is notified of any Condemnation actions commencing Recipient shall immediately provide notice to CPC. In the event any Condemnation

award is granted to the Recipient, Recipient agrees to repay any amounts received under this Agreement in full. "Condemnation" shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Premises, whether direct or indirect.

29. Rent Increases. The cost of the Work funded by the Grant will not be factored into any rent increases to which it might otherwise be entitled to under Title 26 or any other provision of the Administrative Code of the City of New York or the Tenant Protection Regulations of the Emergency Tenant Protection Act of 1974 for Work funded by the Grant.
30. Schedules. Schedules A, B, B-1 and C, D and the Corporation's General Terms and Conditions.

**IN WITNESS WHEREOF**, CPC and Recipient have executed this Agreement as of the day and year first above written.

**THE COMMUNITY PRESERVATION CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK     )  
   ) ss.:  
 COUNTY OF NEW YORK    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

STATE OF NEW YORK     )  
   ) ss.:  
 COUNTY OF NEW YORK    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2024 before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
 Notary Public

**SCHEDULE A**

## **SCHEDULE B**

The following terms, definitions, and items shall apply to the project being funded by the Work:

A. **The Work.**

1. Plans and Specifications, if any, in Schedule B-1.

B. **Construction Contract(s):**

C. **Plans and Specifications:** See Schedule B-1 hereof, if applicable.

D. **General Contractor:**

E. **Completion Date:**

F. **Lender's Engineer:** To be designated by CPC

G. **Budget:**

**SCHEDULE B-1**

**Plans and Specifications or  
Description of Work**







**SCHEDULE C**

**Form of Requisition**

**[following page(s)]**

**Form of Requisition**

**REQUEST FOR ADVANCE OF GRANT FUNDS**

**TO:** \_\_\_\_\_, CPC

**DATE:** \_\_\_\_\_

**FROM:**

**RE:**

Pursuant to the Grant Agreement for the below referenced Project between \_\_\_\_\_ (“Owner”) and The Community Preservation Corporation (“CPC”), you are hereby requested to advance the amounts indicated below and pay or transfer such amount as indicated below. Attached hereto is the approval of the construction monitor designated by you to monitor construction of the Project. Also attached hereto is the following: (i) a summary of cost categories, an original AIA Document G702 (Application for Certificate of Payment) signed and notarized by Contractor and certified by CPC’s Construction Monitor, and AIA Document G703 (continuation sheet) that corresponds to the trade payment breakdown/schedule of values, in form and content acceptable to CPC; (ii) a list of any proposed or approved change orders and a copy of each change order executed since the last draw request; (iii) certification by Contractor that the Work for which advances are requested is as required, the draw request represents actual expenditures, the Premises is free of any and all vendor and contractor liens, and sufficient records are maintained that documents the expenditures and accounts payable supporting the draw request; and (iv) conditional lien waiver on a form approved by CPC.

**Project Name and Address:**

	<u>New</u>	<u>Previous</u>	<u>Total To Date</u>
<b>Advance Amount:</b>	\$ _____	\$ _____	\$ _____

**Payee:**  
\_\_\_\_ Contractor  
\_\_\_\_ Owner  
\_\_\_\_ Other

**Tax ID# of Payee:** \_\_\_\_\_

**Payment Method:**  
\_\_\_\_ **Check**  
\_\_\_\_ **Wire (See attached wiring instructions)**

**Check Instructions:** \_\_\_\_\_ To Be Picked Up - Call \_\_\_\_\_ When Ready  
(if applicable)  
\_\_\_\_ Mail To: \_\_\_\_\_

**CONTRACTOR:**

**OWNER:**

**By:** \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:

**Schedule D**  
**State Terms and Conditions**  
**(following pages)**