

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

Notice of Promulgation of Rules Governing the

Inclusionary Housing Provisions of the New York City Zoning Resolution

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Commissioner of Housing Preservation and Development by §1802 (6)(c) and in accordance with the requirements of §1043 of the New York City Charter that the Department of Housing Preservation and Development hereby promulgates rules governing inclusionary housing under §23-90, inclusive of the New York City Zoning Resolution. Additions to the rules are underlined and proposed deletions are [bracketed].

A public hearing was held on November 23, 2010, at 100 Gold Street, 9th floor, Room 9Z-3, New York, New York 10038.

Section one. Title 28 of the Rules of the City of New York is amended by adding a new chapter 41 to read as follows.

CHAPTER 41

INCLUSIONARY HOUSING

§ 41-01 Definitions. As used in this chapter, the following terms shall have the following meanings. Capitalized terms not specifically defined in this chapter, shall have the meanings set forth in the Zoning Resolution.

Administering Agent Agreement. "Administering Agent Agreement" shall mean an agreement between HPD and an Administering Agent concerning the rights, responsibilities and compensation of such Administering Agent.

Administering Agent Reserve Account. "Administering Agent Reserve Account" shall mean an account that is separate from a Building's reserve accounts and is held as determined by HPD, and which shall be used, with HPD approval, to pay the Building's Administering Agent for services rendered in accordance with the Program.

Annual Household Income. "Annual Household Income" shall mean the total income as specified by HUD in 24 CFR 5.609, including all net income from Assets with a cash value in excess of \$5,000, to be received by the Household, from all sources for the twelve month period prior to the Income Qualification Date.

Application Deadline. "Application Deadline" shall mean the date by which HPD must receive an application to purchase a Homeownership Affordable Housing Unit.

Appreciation Index At Resale. "Appreciation Index At Resale" shall mean the quotient of the Appreciation Index on the Contract Date and the Appreciation Index on the previous Sale Date.

Asset. "Asset" shall mean property real or personal, tangible or intangible, which may produce financial gain.

Capital Reserve Account. "Capital Reserve Account" shall mean an account that is separate from a Building's capital reserve account(s) and held as determined by HPD and shall be used,

with HPD approval, to pay for all or part of a Homeownership Affordable Housing Unit's proportionate share of such Building's capital expenses.

Commissioner. "Commissioner" shall mean the Commissioner of HPD or his or her designee.

Common Expenses. "Common Expenses" shall mean and include for a Condominium Association, all expenses of operation thereof and all sums designated common expenses in accordance with Article 9-B, Section 339-e of the Real Property Law and for a Cooperative Corporation all expenses of operation thereof and all sums designated common expenses pursuant to the provisions of the by-laws and proprietary lease for such Cooperative Corporation.

Community Board. "Community Board" shall mean a local district advisory board created pursuant to Section 2800 of the New York City Charter that, in part, consults, assists and advises legislative bodies or borough presidents with respect to any matter relating to the welfare of the district and its residents.

Contract Date. "Contract Date" shall mean the date a contract to purchase a Homeownership Affordable Housing Unit is executed.

Council Member. "Council Member" shall mean an elected member of the New York City Council.

CPI. "CPI" shall mean the Consumer Price Index for all urban consumers, as defined by the United States Bureau of Labor Statistics, for the twelve months ended on June 30th.

DHCR. "DHCR" shall mean the Division of Housing and Community Renewal of the State of New York or any successor agency.

Family Member. "Family Member" shall have the meaning set forth by DHCR in 9 NYCRR § 2520.6.

First Time Homebuyer Preference. "First Time Homebuyer Preference" shall mean a priority to purchase a Homeownership Affordable Housing Unit which is provided to an Eligible Buyer who is purchasing a Dwelling Unit for the first time.

Flip Tax. "Flip Tax" shall mean 7% of net profits from the sale of a Homeownership Affordable Housing Unit.

HDC. "HDC" shall mean the New York City Housing Development Corporation.

HHF. "HHF" shall mean the Household Factor established by HPD, based on the family size adjustment percentages established by HUD.

HUD. "HUD" shall mean the United States Department of Housing and Urban Development or any successor agency.

Income Marketing Band. "Income Marketing Band" shall mean that, except as permitted in the Zoning Resolution, the Monthly Housing Costs of a particular Homeownership Affordable Housing Unit represents not less than 25% and not more than 35% of such Household's Annual Household Income.

Income Qualification Date. "Income Qualification Date" shall mean the date upon which the Administering Agent verifies that a potential Homeowner's Annual Household Income complies with the Eligible Buyer requirements for a particular Homeownership Affordable Housing Unit.

Internal Transfer Preference.

"Internal Transfer Preference" shall mean a priority to purchase a Homeownership Affordable Housing Unit which is provided to an Eligible Buyer who (i) already owns a Homeownership Affordable Housing Unit in the same Building or in the development containing such Building, and (ii) agrees to sell his or her existing Homeownership Affordable Housing Unit on or before the date upon which he or she acquires the new Homeownership Affordable Housing Unit.

Minimum Quality Standards. "Minimum Quality Standards" shall mean livability standards that are in compliance with 24 CFR 982.401 or any superseding regulations established by HUD.

Monthly Housing Costs. "Monthly Housing Costs" shall mean, for a Household, the sum of Monthly Fees, monthly utility allowances, Mortgage Payments and monthly property taxes, if applicable.

Operating Reserve Account. "Operating Reserve Account" shall mean an account that is separate from a Building's operating account(s) and is held as determined by HPD, and which shall be used, with HPD approval, to pay for all or part of a Homeownership Affordable Housing Unit's proportionate share of such Building's Common Expenses, in the form of Monthly Fees.

Partial Inclusionary Building. "Partial Inclusionary Building" shall mean a Building that consists of both Affordable Housing and Dwelling Units that are not restricted, in accordance

with the Program, to occupancy by Low Income Households, Moderate Income Households or Middle Income Households.

Prevailing Interest Rate. "Prevailing Interest Rate" shall mean the single family mortgage rate for a thirty-year fixed rate loan established by the Federal Home Loan Mortgage Association and the Federal National Mortgage Association that is quoted, for Sale or Resale, in the month that the Homeownership Affordable Housing Unit is marketed for Sale or Resale.

Program. "Program" shall mean the Zoning Resolution, Regulatory Agreement and this Chapter.

Rent Guidelines Board. "Rent Guidelines Board" shall mean the New York City Rent Guidelines Board established pursuant to Chapter 4 of Title 26 of the New York City Administrative Code.

Reserve Accounts. "Reserve Accounts" shall mean, for Generating Sites containing at least one Homeownership Affordable Housing Unit, an Operating Reserve Account, a Capital Reserve Account and an Administering Agent Reserve Account.

Successor. "Successor" shall mean a Family Member that inherits, by either intestate succession or testamentary disposition, a Homeownership Affordable Housing Unit.

Zoning Resolution. "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

§ 41-02 Administering Agents.

(a) General Provisions For Rental and Homeownership Affordable Housing.

(1) By the close of financing for the Generating Site, the owner of the Affordable Housing shall enter into an agreement with an Administering Agent, for such Administering Agent to perform the duties as specified in the Program. At no time during the term of the Regulatory Agreement shall the Affordable Housing be without an Administering Agent.

(2) All affidavits from the Administering Agent shall be submitted to HPD by March 31st of the year in which such affidavits are due.

(3) Administering Agents shall retain records that form the basis of any affidavit submitted to HPD for the duration of the homeowner's ownership of an Affordable Housing Unit, plus six (6) years after such homeowner no longer owns such Affordable Housing Unit.

(b) Administering Agent Selection Process For Rental and Homeownership Affordable Housing. Administering Agents for Affordable Housing will be selected by the owner and must be approved by HPD based on criteria including, but not limited to:

(1) Sponsor Review (i.e., a background investigation of the principals of the Administering Agent);

(2) Determination that the Administering Agent is a not-for-profit;

(3) Implementation by the Administering Agent of satisfactory procedures for relocating renters, when applicable; and

(4) Determination that the Administering Agent is not an owner, affiliate of owner or managing agent of the Generating Site, unless HPD determines that the Generating Site is participating in a federal, state or local program that has procedures for performing paragraphs one through three of this subdivision or the owner and any such managing agent or affiliate are not-for-profit entities with adequate safeguards to ensure that such entities comply with the Program.

(c) Renting or Selling Homeownership Affordable Housing.

- (1) Initial rental, re-rental and Sale of Affordable Housing must proceed in accordance with HPD's marketing guidelines.
- (2) The following procedures shall apply to the Resale of Homeownership Affordable Housing:
 - (i) Homeowner Notice of Intent to Sell. A Homeowner, using an HPD-approved notice of intent to sell form, shall notify the applicable Administering Agent of the intent to sell his and/or her Homeownership Affordable Housing Unit.
 - (ii) Administering Agent Notification to HPD of Homeowner's Intent to Sell a Homeownership Affordable Housing Unit. Within fourteen (14) business days from receipt of an HPD-approved notice of intent to sell form from a Homeowner, the Administering Agent must, using an HPD-approved form, give HPD information concerning:
 - (A) the date upon which the Administering Agent received the Homeowner's notice of intent to sell form;
 - (B) the address of the Homeownership Affordable Housing Unit and the Community Board(s) in which such unit is located;
 - (C) the unit size of the Homeownership Affordable Housing Unit (including square footage and number of rooms);
 - (D) the unit type—cooperative or condominium—of the Homeownership Affordable Housing Unit;
 - (E) the last Sale Date and the price at which the Homeownership Affordable Housing Unit was sold on such date;
 - (F) the estimated Monthly Housing Costs for the Homeownership Affordable Housing Unit;
 - (G) the Maximum Resale Price of the Homeownership Affordable Housing Unit;
 - (H) the Down Payment required to purchase the Homeownership Affordable Housing Unit;
 - (I) the Income Marketing Band for the Homeownership Affordable Housing Unit; and
 - (J) the Flip Tax applicable to the Homeownership Affordable Housing Unit.

(iii) Marketing of the Homeownership Affordable Housing Unit.

(A) Listing the Homeownership Affordable Housing Unit. Within fourteen (14) business days from its receipt of the notice of intent to sell from a Homeowner, the Administering Agent must list the availability of such Homeownership Affordable Housing Unit for sale on the Administering Agent's website and send a copy of such listing to the Community Board(s) in which the Homeownership Affordable Housing Unit is located and to the Council Member(s) that represent(s) the council district(s) in which the Homeownership Affordable Housing Unit is located.

Such listing must include:

(1) the address of the Homeownership Affordable Housing Unit and Community Board(s) in which such unit is located;

(2) the unit size of the Homeownership Affordable Housing Unit (including square footage and number of rooms);

(3) the unit type—cooperative or condominium—of the Homeownership Affordable Housing Unit;

(4) the last Sale Date and the price at which the Homeownership Affordable Housing Unit was sold on such date;

(5) the estimated Monthly Housing Costs for the Homeownership Affordable Housing Unit;

(6) the Maximum Resale Price of the Homeownership Affordable Housing Unit;

(7) the Down Payment required to purchase the Homeownership Affordable Housing Unit;

(8) the Income Marketing Band for the Homeownership Affordable Housing Unit;

(9) the Flip Tax applicable to the Homeownership Affordable Housing Unit;

(10) an HPD-approved application form for potential buyers, on which potential buyers are directed to return such application form with supporting documentation to HPD and potential buyers are informed that the Administering Agent is prohibited from charging an application fee;

and

(11) the Application Deadline.

(iv) The Lottery Process. HPD will create a list of potential buyers randomly-ordered from the applications received on or before the Application Deadline and will forward such list to the Administering Agent. The Administering Agent will select Eligible Buyers, beginning with the first name on the potential buyer list. The first potential buyer who meets the requirements of the Program will be offered an opportunity to: (A) at least two weeks prior to the closing date for the Homeownership Affordable Housing Unit, inspect the Homeownership Affordable Housing Unit, and (B) purchase the Homeownership Affordable Housing Unit.

(v) Closings. Homeowners shall enter into a performance or enforcement mortgage agreement with HPD and shall agree to all Program restrictions concerning the ownership and Sale or Resale of the Homeownership Affordable Housing Unit.

(vi) Homeownership Education. The Administering Agent must either provide HPD approved classes for homebuyers concerning the responsibilities attending Homeownership or direct potential buyers to HPD-approved providers of such classes.

§ 41-03 Calculating the Maximum Resale Price for Homeownership Affordable Housing Units.

(a) The Maximum Resale Price for a Homeownership Affordable Housing Unit is the lesser of the Appreciated Price or Appreciation Cap.

(b) Except as otherwise provided in Section 23-962(f)(3) of the Zoning Resolution, the Appreciated Price is calculated by multiplying the Resale price of a Homeownership Affordable Housing Unit on the previous Sale Date by the Appreciation Index At Resale.

(c) Only full calendar years from the previous Sale Date will be considered in calculating the Appreciated Price of a Homeownership Affordable Housing Unit. Notwithstanding the foregoing, if a Homeowner submits a notice of intent to sell form to the Administering Agent on a date that is no more than three (3) months prior to the anniversary of the previous Sale Date, a full calendar year may be utilized in calculating the Appreciation Index At Resale for such Affordable Housing Unit's Appreciated Price.

§ 41-04 First Time Homebuyer Requirement. To qualify as a first time homebuyer, no member of the qualifying Household shall have owned any interest in a home, including any interest in a Cooperative Corporation or a residential condominium unit, for the five (5) year period immediately prior to the Application Deadline.

§ 41-05 First Time Homebuyer Education Requirement. Prior to qualification as an Eligible Buyer, each applicant for a Homeownership Affordable Housing Unit shall attend a first-time homebuyer course given by a provider that is approved by HPD, and must provide evidence of completion of such course to the Administering Agent. Approved providers of first-time homebuyer courses are listed on HPD's web site.

§ 41-06 Marketing Preferences. In addition to the preference categories stated in HPD's marketing guidelines, Homeownership Affordable Housing Units shall be marketed in accordance with the Internal Transfer Preference and the First Time Homebuyer Preference. The Internal Transfer Preference shall (i) take priority over the First Time Homebuyer Preference, and (ii) only be made available for the purpose of replacing an existing Homeowner's Homeownership Affordable Housing Unit, and not for the purpose of acquiring an

additional Homeownership Affordable Housing Unit, whether for occupancy by the Eligible Buyer, his or her Household members, non-resident Family Members, or any other person.

§ 41-07 Primary Residence Requirement.

(a) Owners of Homeownership Affordable Housing Units must occupy such Homeownership Affordable Housing Units as their primary residences, as determined by the Administering Agent, in accordance with DHCR's criteria for primary residence occupancy for rental units in Rent Stabilization.

(b) The Administering Agent will mail an owner occupancy letter to each Homeowner on an annual basis and such Homeowner shall annually certify under penalty of perjury the Homeowner's use of such Homeownership Affordable Housing Unit as his or her primary residence by signing and returning to the Administering Agent, within ten (10) business days from receipt, a notarized copy of such owner occupancy letter, with any supporting documentation.

(c) HPD may conduct audits of Homeownership Affordable Housing Units to ensure that all such units are being used as the primary residences of their respective Homeowners.

§ 41-08 Subletting. Notwithstanding the provisions of Section 23-962 of the Zoning Resolution, in a Generating Site that is a Partial Inclusionary Building, the Administering Agent may approve a Homeowner's request to sublet only if such subletting meets the subletting requirements in effect for all units at such Generating Site.

§ 41-09 Title Changes.

A Homeowner may (i) transfer title to a Homeownership Affordable Housing Unit upon Resale, or (ii) with the prior written approval of the Administering Agent, modify title to a Homeownership Affordable Housing Unit in order to add or delete a person from title due to marriage, domestic partnership, divorce, death or succession, provided that such Homeowner does not receive anything of value in connection with such modification of title, or (iii) with the prior written approval of the Administering Agent, modify title to a Homeownership Affordable Housing Unit for any other purpose approved in writing by HPD, provided that such Homeowner does not receive anything of value in connection with such modification of title. Before approving any title modifications, the Administering Agent must receive a written notarized notification from the Homeowner of his or her intent to modify title, along with documentation supporting any such proposed modification and an affirmation that no consideration in connection with such proposed modification has been or will be received.

§ 41-10 Successors.

(a) A Successor who qualifies as an Eligible Buyer may own a Homeownership Affordable Housing Unit in accordance with the requirements of the Program.

(b) If a Successor either: (1) qualifies as an Eligible Buyer but does not want to own the Homeownership Affordable Housing Unit, or (2) does not qualify as an Eligible Buyer, the Homeownership Affordable Housing Unit must be sold to another Eligible Buyer and the net proceeds from such sale shall be given to such Successor.

(c) The Administering Agent shall determine whether a Successor is an Eligible Buyer.

(d) Within three (3) months of inheriting a Homeownership Affordable Housing Unit, the Successor who wants to qualify as an Eligible Buyer must provide the Administering Agent with

a valid death certificate, a valid will, if any, and other such proof of succession and the Successor's Annual Household Income.

(e) If a Successor is not determined on a date on or before two years from a Homeowner's death, the Homeownership Affordable Housing Unit shall be sold to an Eligible Buyer and the proceeds deposited in the estate of the deceased Homeowner.

(f) A Successor need not have occupied the Homeownership Affordable Housing Unit with the Homeowner. Notwithstanding the foregoing, a person who had been occupying the Homeownership Affordable Housing Unit with the Homeowner and who claims to be a Successor may remain in occupancy in the Homeownership Affordable Housing Unit, so long as all obligations, including Monthly Fees, are current, for a period that ends on the earlier to occur of: (1) a date that is two years from the death of the Homeowner, or (2) the date upon which a Successor is determined.

(g) Once a Successor has qualified as an Eligible Buyer, the Successor shall, under the Administering Agent's supervision, assume the Homeowner's interest in and obligations towards the Homeownership Affordable Housing Unit under the terms of the legal documents pertaining to such unit that were executed at the previous Sale Date. All loan documents must also be amended, at the Successor's expense, to reflect any changes to the title documents for the Homeownership Affordable Housing Unit.

§ 41-11 Refinancing.

(a) Homeowners may refinance existing Mortgages, subject to the following limitations:

(1) the value of the new loan must not exceed ninety percent (90%) of the Maximum Resale Price, calculated as of the date that a Homeowner notifies the Administering Agent of an intent to refinance;

(2) the new loan must be at a fixed interest rate;

(3) the new loan must be from an approved institutional lender; and

(4) the Administering Agent must approve such refinancing.

(b) If a proposed new loan will increase the amount of Mortgage Payments, the Administering Agent shall require the Homeowner to show that the Monthly Housing Costs are affordable to such Homeowner in accordance with the Program.

(c) A Homeowner that seeks to refinance an existing Mortgage must first submit an HPD-approved notice of intent to refinance form to the Administering Agent for approval.

(d) Within seven (7) business days from receipt of a notice of intent to refinance form, the Administering Agent must notify the Homeowner of the Maximum Resale Price and the permissible Mortgage, which is ninety percent (90%) of the Maximum Resale Price, as calculated pursuant to paragraph one of subdivision a of this section.

(e) Before the Homeowner accepts any refinancing product, such Homeowner must obtain the Administering Agent's approval of the refinancing product. The Administering Agent will review the refinancing product after a Homeowner has submitted, to the Administering Agent, a request for approval of the refinancing product form, along with information concerning the term of the refinancing product, the applicable interest rate and the lender.

(f) Within five (5) business days of receipt of a request for approval of a refinancing product form, the Administering Agent must approve or disapprove the proposed refinancing product.

(g) Prior to execution, all loan documents for the refinancing of a Homeownership Affordable Housing Unit must be reviewed by the Administering Agent for compliance with the above requirements. The Administering Agent shall review and make a determination as to whether such loan documents comply with the requirements of this section within ten (10) business days of receipt of such loan documents, and the Administering Agent shall inform the Homeowner and HPD of such determination within fourteen (14) business days of receipt of the loan documents. All loans must be subordinated to all Program requirements.

§ 41-12 Minimum Quality Standards.

(a) Each Homeowner shall be obligated to maintain each Homeownership Affordable Housing Unit in accordance with Minimum Quality Standards and, to the extent required by law, the New York City Building Code and the New York City Housing Maintenance Code. Prior to any Resale, HPD or its designee shall inspect the Homeownership Affordable Housing Unit and shall:

(1) offer the Homeowner an opportunity before the Sale Date, to remedy any condition that violates such Minimum Quality Standards, or

(2) require retention of a portion of the Resale proceeds equal to the repair cost estimates established by HPD for remedying such condition(s).

(b) The Administering Agent shall ensure that a Homeownership Affordable Housing Unit meets the Minimum Quality Standards prior to its occupancy by any new Homeowner.

§ 41-13 Monthly Fees and Special Assessments.

(a) Prior to Initial Occupancy, HPD must approve the Monthly Fees charged to Homeowners.

The total amount of increases in Monthly Fees charged to a Homeownership Affordable Housing Unit over a twelve month period, shall be the lesser of:

(1) the increase in Monthly Fees required to cover Common Expenses for such twelve month period; and

(2) a percentage increase in Monthly Fees equal to the percentage increase in rents approved by the Rent Guidelines Board for two (2) year rent stabilized leases, for such twelve month period.

(b) The combined cost of Monthly Fees and special assessments charged to a Homeownership Affordable Housing Unit in any given twelve month period shall not exceed thirty-five percent (35%) of the Homeowner's Annual Income.

(c) In Partial Inclusionary Buildings, increases in Monthly Fees and/or the levy of special assessments may be charged to Homeownership Affordable Housing Units only if increases in Monthly Fees and/or the levy of special assessments are simultaneously charged to all other Dwelling Units in the Building, for the same purposes as such Monthly Fees and special assessments are charged to such Homeownership Affordable Housing Units.

§ 41-14 Reserve Accounts for Homeownership Generating Sites.

(a) General. Each Homeownership Generating Site must have Reserve Accounts. Reserve Accounts will be held as blocked reserves at HDC unless HPD permits such accounts to be held in accordance with requirements of another City, State, or Federal housing program.

(b) Funding Reserve Accounts.

(1) Operating Reserve Accounts for Homeownership Generating Sites must be funded by the date of issuance of the Completion Notice in an amount equal to at least six (6) months of projected operating costs for the Homeownership Affordable Housing Units.

(2) Capital Reserve Accounts for Homeownership Generating Sites must be funded by the date of issuance of the Completion Notice in the amount of two dollars and twenty-five cents (\$2.25) per square foot of Homeownership Affordable Housing.

(3) Administering Agent Reserve Accounts for Homeownership Generating Sites must be funded by the date of the Completion Notice in the following manner:

(i) An initial payment by the developer of the Affordable Housing as specified in the Regulatory Agreement;

(ii) A surcharge, to be applied as part of the applicable Monthly Fees for Homeownership Affordable Housing Units; and

(iii) A Flip Tax imposed upon the seller of a Homeownership Affordable Housing Unit at Resale.

(c) Using Reserve Funds.

(1) Operating Reserve Accounts.

(i) In Partial Inclusionary Buildings, when permitted increases to Monthly Fees charged to Homeownership Affordable Housing Units do not cover their proportionate share of the Homeownership Generating Site's operating costs, requests for drawdowns from the Operating Reserve Account may be made to HPD to cover the documented increases in the following costs if they are part of Common Expenses: fuel, electricity, water, sewer, Building staff salaries and taxes.

(ii) In Generating Sites that consist entirely of Affordable Housing, when permitted increases to Monthly Fees charged to Homeownership Affordable Housing Units do not cover their

proportionate share of the Homeownership Generating Site's Common Expenses, funds from the Operating Reserve Account may be used to cover operating deficits.

(2) Capital Reserve Accounts.

(i) In Partial Inclusionary Buildings, funds from the Capital Reserve Account may be used, with HPD approval, to pay for all or part of the Homeownership Affordable Housing Units' proportionate share of the Generating Site's Building-wide special assessments for the repair or replacement of Capital Elements.

(ii) In Generating Sites that consist entirely of Affordable Housing, funds from the Capital Reserve Account may be used, with HPD approval, to pay for all or part of the repairs or replacements of Capital Elements in the Generating Site.

(iii) In addition, HPD may approve the use of funds from the Capital Reserve Account to pay for repairs to Homeownership Affordable Housing Units.

(3) Administering Agent Reserve Accounts. HPD will use Administering Agent Reserve Accounts to pay Administering Agents for services rendered in accordance with the Program and the Administering Agent Agreement.

(d) Drawdown Process for Reserve Accounts.

(1) Operating and Capital Reserve Accounts. With the authorization of the Condominium Association or the board of the Cooperative Corporation, the Administering Agent will submit to HPD a request for a drawdown, with supporting information. If HPD approves the request, HPD will submit the request to HDC for a drawdown from the appropriate Reserve Accounts.

(2) Administering Agent Reserve Account. In order to receive funds from the Administering Agent Reserve Account, a Homeownership Generating Site must submit payment requests to HPD, along with proof of Administering Agent services rendered. If the payment request is satisfactory to HPD, HPD will request a drawdown from the Administering Agent Reserve Account for payment to the Administering Agent.

§ 41-15 Measuring Affordable Floor Area.

(a) In order to determine the amount of Floor Area of an Affordable Housing Unit in a Generating Site, the square footage within the inside face of the walls enclosing such Affordable Housing Unit, (which is all floor surfaces within the Affordable Housing Unit, including closets, and the partitions that separate rooms that are within the same Affordable Housing Unit), shall be measured. Such measurement must exclude (i) the thickness of exterior walls, (ii) the thickness of partitions separating such Affordable Housing Unit from any other Dwelling Units, Rooming Units or other spaces, and (iii) the portions of such Affordable Housing Unit that do not qualify as Floor Area.

(b) Floor Area of a Dwelling Unit or Rooming Unit in a Generating Site that is not an Affordable Housing Unit, other than any Superintendent's Unit, must be measured in the same manner.

§ 41-16 Housing Standards.

(a) Except where the layout is altered, HPD may exempt Preservation Affordable Housing and Substantial Rehabilitation Affordable Housing from the requirement that such Affordable Housing be free of Housing Maintenance Code A and B non-hazardous violations.

(b) Upon Resale, Homeownership Affordable Housing Units must have the same number and size of rooms as existed at Sale.

(c) In order to qualify as Substantial Rehabilitation Affordable Housing, the scope of work for a Generating Site must include items that will cost at least one hundred thousand dollars (\$100,000) per Dwelling Unit in 2010 dollars adjusted annually in accordance with the change in

CPI. Such costs must be approved by HPD. HPD also must approve the scope of work for the Generating Site, which must include, but is not limited to, the following items, where such items constitute at least 75% of the scope of work:

- (1) Beam Replacement (to the extent required by HPD)
- (2) New Sub flooring
- (3) New Partition Framing
- (4) New Sheetrock walls and settings
- (5) New windows
- (6) New finish flooring, roofing and insulation
- (7) New kitchen cabinets
- (8) New baths with ceramic tile finishes
- (9) New interior and exterior doors
- (10) New finish carpentry
- (11) New plumbing
- (12) New heating systems
- (13) New electrical systems
- (14) New elevators or elevator modernization (where applicable)
- (15) Masonry repairs (to the extent required by HPD)
- (16) New fire escapes (to the extent required by HPD)

§ 41-17 Commencement Date for New Construction Homeownership Affordable Housing.

"Commencement Date" shall mean for a Generating Site that is New Construction Homeownership Affordable Housing, the date upon which (a) written contracts to purchase at least fifty percent (50%) of the Homeownership Affordable Housing Units in such Generating Site have been signed with separate Households of Eligible Buyers, and (b) a bona fide Eligible Buyer who is not purchasing a Homeownership Affordable Housing Unit as an accommodation

to the Generating Site has closed on the purchase of such Homeownership Affordable Housing Unit.

§ 41-18 Rent-up Date for New Construction Rental Affordable Housing. "Rent-up Date" shall mean when at least ten percent (10%) of the New Construction rental Affordable Housing Units have been leased to tenants in accordance with the Program.

§ 41-19 Grandfathered Tenants in Homeownership Affordable Housing. A rental Building that qualifies for Preservation Homeownership Affordable Housing or Substantial Rehabilitation Homeownership Affordable Housing may convert to Homeownership Affordable Housing. Upon conversion to Homeownership Affordable Housing, tenants in legal occupancy in such a Building who do not wish to purchase a Homeownership Affordable Housing Unit will be treated the same as Grandfathered Tenants in rental Affordable Housing. Such Grandfathered Tenants will also retain the right to purchase their Dwelling Unit. When a Grandfathered Tenant chooses to vacate a Homeownership Affordable Housing Unit, such unit must be sold to an Eligible Buyer.

§41-20 Renters In New Construction Homeownership Affordable Housing.

New Construction Homeownership Affordable Housing Units that are not purchased by Eligible Buyers may be rented in accordance with the rental provisions of the Program on or after the date of issuance of a Completion Notice for New Construction Affordable Housing containing such unit. In addition, for Households that meet the requirements of Section 23-962(f)(1) of the Zoning Resolution, New Construction Homeownership Affordable Housing Units may be rented in accordance with the rental provisions of the Program on or after either (a) the date of issuance of a Completion Notice for New

Construction Affordable Housing containing such unit, or (b) the date that such New Construction Homeownership Affordable Housing Unit is issued a temporary or permanent certificate of occupancy.

§ 41-21 Distribution of Affordable Housing Units. Where there are insufficient rental and Homeownership New Construction Affordable Housing Units to distribute on not less than sixty-five (65%) of the Residential Stories, as specified Section 23-96 (b)(1) of the Zoning Resolution, New Construction Affordable Housing Units shall be distributed on as many Residential Stories as possible.

§ 41-22 HPD approval. Wherever the Zoning Resolution states that HPD's approval is required, such approval must be in writing and signed by the Commissioner.

Statement of basis and purpose. Section 23-90 (Inclusionary Housing), of the New York City Zoning Resolution ("Section 23-90") was enacted to provide floor area compensation to developers in return for the creation or preservation of permanently affordable income rental housing. Section 23-90 was amended, effective July 29, 2009 (the "2009 Amendments"), to provide an option to develop, in return for such floor area compensation, permanently affordable homeownership housing for low, moderate and/or middle income purchasers. The 2009 Amendments set the income eligibility requirements for purchasers of homeownership units as well as the cost and financing parameters for the purchase of such homeownership units. The 2009 Amendments also simplified the floor area compensation ratios for R10 districts and conformed the inclusionary housing provisions for R10 districts to inclusionary housing for other districts in Section 23-90 by: (1) permitting housing created or preserved therein to be financed with a range of public financing programs; (2) permitting debt and other liens on such housing after initial occupancy and (3) basing eligibility for the preservation option on the average rents in the entire building rather than each individual unit's rent. Finally, the 2009 Amendments contained modifications that reflect current practices concerning the administration of inclusionary housing created pursuant to Section 23-90.

The 2009 Amendments also provided that inclusionary housing created pursuant to Section 23-90 comply with such additional criteria as may be specified by HPD in guidelines. The proposed rules reflect such additional criteria including, but not limited to, the role of administering agents in conducting the sale and resale of homeownership units; the eligibility requirements for purchasers of homeownership units and the creation and use of reserves for homeownership units.

Commissioner Rafael E. Cestero
December 23, 2010