**MEMORANDUM**

**TO:** Borrower

**FROM:** Alabama Housing Finance Authority

**RE:** Deposit Account Control Agreement

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In order to close your HOME loan with AHFA, one of the documents that must be executed is a deposit account control agreement. The purpose of the deposit account control agreement is to perfect AHFA’s security interest in the deposit accounts that will serve as the Lease Up/Operating Deficit Reserve and the Capital Replacement Reserve required under Section [31] of the HOME Written Agreement. The parties to the deposit account control agreement are the owner of the Project (the “Owner”), AHFA and the depository bank at which the reserve accounts will be held (the “Depository Bank”). The deposit account control agreement is formatted as a letter from the Owner to the Depository Bank. AHFA will sign the deposit account control agreement at the loan closing, but only if it has already been executed by the Owner and the Depository Bank.

This memorandum provides instructions on completing the deposit account control agreement. AHFA’s form of the deposit account control agreement is attached for your use. It is also available on AHFA’s website at www.ahfa.com. Before signing and delivering the deposit account control agreement to the bank, please do the following:

1. Replace the blank lines at the center of the top of the first page with the full legal name of the Owner and its correct physical address.
2. Replace the date at the top of the first page with the date the letter is signed by the Owner and sent to the Depository Bank.
3. Replace the blank lines before the salutation with the correct legal name, address and an individual contact for the Depository Bank.

1. In the first full paragraph, fill in the blanks for (a) your HOME loan amount and (b) the account numbers for the deposit accounts that will serve as the Lease Up/Operating Deficit Reserve and the Capital Replacement Reserve.
2. The blank lines below the closing (“Very truly yours”) should be replaced with the full legal name of the Owner and its correct and complete signature block, including the name and title (President, Treasurer, etc.) of the person executing on the behalf of the Owner. This signature block must be executed before the letter is sent to the Depository Bank.
3. On the last page below “ACCEPTED and AGREED”, please insert the name of the Depository Bank and a complete signature block for execution by one of its offers.

When these steps are complete, please send the deposit account control agreement to the Depository Bank and request that it be executed, together with the signature cards, when the referenced accounts are opened.

When you have obtained originals of the deposit account control agreement and the signature cards duly executed by the Owner and the Depository Bank, please deliver these original to [Name of AHFA Staff Person] at AHFA’s address. These documents must be properly completed in order to close your HOME loan. If you have any questions or are unsure about how to complete the deposit control agreement, please contact the assigned AHFA Multifamily Closer at (334) 244-9200. As indicated above, AHFA will sign the deposit account control agreement and signature cards at the HOME loan closing only if they have been properly completed and have already been executed by the Owner and the Depository Bank.

(Owner Name & Address)

|  |
| --- |
|  |
|  |
|  |
|  |

(Date)

|  |
| --- |
|  |

(Depository Bank Name & Address)

|  |  |
| --- | --- |
|  | |
| Attention |  |
|  | |
|  | |
|  | |

Re: Account Control Agreement

|  |  |
| --- | --- |
| Project # |  |

Ladies and Gentlemen:

In connection with a $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ loan to us by the Alabama Housing Finance Authority, a public corporation and instrumentality of the State of Alabama, acting solely in its capacity as administrator of the State of Alabama's HOME Partnerships Investment Program (together with its successors and assigns as their interest may appear, the “Lender”), which is a party with us in signing this letter below, we are asking you to enter into this agreement concerning our accounts with you, numbered as set forth below (whether one or more, the “Accounts”):

1. Account No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Replacement Reserve Account**”)
2. Account No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Operating Deficit Reserve Account**”)

In order to secure our obligations to the Lender with respect to the above-referenced loan, we have entered into security arrangements with the Lender in which we have assigned and granted to the Lender a first priority security interest in, lien upon and control over, the Accounts, any cash balances from time to time credited to the Accounts and any and all proceeds of any thereof, whether now or hereafter existing or arising (collectively, the "Account Collateral").

This letter represents our agreement with you that **upon your receipt of a written notice (mailed to the bank address listed on page two) from the Lender that we have defaulted in any of our obligations to it, you will comply with the Lender’s instructions directing disposition of the Account Collateral, including, but not limited to, permitting the Lender to withdraw all or any portion of the Account Collateral from any one or more of the Accounts for any purpose (to be withdrawn by the Lender as set out in the written notice to you), to close the Accounts or to give you other instructions as to the withdrawal or disposition of any Account Collateral from time to time credited to the Account Collateral, or to take any other action relating to any one or more of the Accounts or any of the Account Collateral, without our consent or signature, even if such instructions are contrary to any instructions or demands that we may give to you.** You may rely upon such written notice received from the Lender and shall have no duty to inquire or determine whether our obligations to the Lender are, in fact, in default or whether the Lender is entitled, under any separate agreement between us and the Lender, to give any such instructions. We further agree to be responsible for your customary charges and to indemnify you from and to hold you harmless against any loss, cost or expense that you may sustain or incur in acting upon instructions from the Lender that you believe in good faith to be instructions from the Lender.

You acknowledge that Lender may include specific instructions to stop payment on the Accounts within its written notice to you of our default. You agree that in the event that Lender delivers a written notice containing stop payment instructions, you must stop payment on the Accounts within a commercially reasonable period of time, not to exceed the period of time customary for implementing written stop payment orders on consumer accounts.

Without limiting the foregoing, in order to ensure that the Lender’s perfected security interests in the Accounts are protected and maintained, we acknowledge and agree that no Funds in the Accounts shall be utilized to purchase any certificate of deposit (whether one or more, the “CD”) without the Lender’s prior written consent. If the Lender consents to the purchase of a CD, you agree, upon request from us or from the Lender, to deliver promptly to the Lender, at the address set forth below (or such other address as the Lender may specify in writing), a physical certificate evidencing the CD, duly assigned to the Lender. You further agree that you shall not cash the CD unless (a) the original physical certificate signed by the Lender is presented at your desk, and (b) the proceeds are deposited in the same Account from which the CD was purchased.

The parties hereto authorize the Lender to file any UCC Financing Statements and take any other steps that it may deem necessary to perfect its interest in the Accounts, any proceeds thereof and any CD(s) related thereto.

In addition, you agree not to do any of the following without the Lender's prior written consent: (1) exercise any right of recoupment or set-off against the Account Collateral or (2) assert any security interest or other lien that you may at any time have against or in any of the Account Collateral on account of any credit or other obligation owed to you by us or any other person. You may, however, from time to time debit the Accounts for any of your customary charges in maintaining the Accounts (and not for any other account maintained by us with you) or for reimbursement for the reversal of any provisional credits granted by you to the Accounts (and not for any other account maintained by us with you), to the extent, in each case, that we have not separately paid or reimbursed you therefor (collectively, the "Customary Charges").

By executing this letter below, you represent, warrant and agreed with the Lender as follows:

1. The account agreements between you and us relating to the establishment and general operation of the Accounts are governed by Alabama law (your jurisdiction for purposes of this letter agreement) and that you will not change the governing law of such agreements.
2. You will not enter, into any agreement with any other person by which you are obligated to comply with instructions from such other person as to the disposition of funds from the Accounts or other dealings with any of the Account Collateral.
3. You will charge the Accounts only for charges and fees directly related to the Accounts (and not for any other account maintained by us with you), and except for Customary Charges, you subordinate your rights of setoff with respect to the Accounts to the Lender's security interest in the Accounts.
4. You waive your right to exercise said rights of setoff unless and until Lender releases its security interest in the Accounts.
5. You also covenant with the Lender that any items or funds received by you for our Account will be credited to the Accounts.

Kindly furnish to the Lender, at its address indicated below, copies of all customary deposit account statements and other information relating to the Accounts that you send to us.

This agreement shall control over any conflicting agreement between you and us. This agreement shall be governed by the internal law of Alabama and shall be construed as a sealed instrument under such law. This agreement shall be deemed to provide any consent, amendment, acknowledgment or other permission that you may require from us or from the Lender to do and perform any term or condition hereunder. This agreement may be modified or supplemented through such additional agreements as are necessary to protect and preserve Lender’s first priority security interest in, lien upon and control over the Accounts granted pursuant to security arrangements between the Lender and us.

If you agree to and accept the foregoing, please so indicate by executing and returning to us the enclosed duplicate of this letter.

Very truly yours,

(Owner Name)

|  |
| --- |
|  |

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| Printed Name: |  |
| Title: |  |

|  |  |
| --- | --- |
| Date: |  |

ALABAMA HOUSING FINANCE AUTHORITY

By:

Robert Strickland, its Executive Director

7460 Halcyon Pointe Drive

Suite 200

Montgomery, AL 36117

**ACCEPTED and AGREED as of date set forth above:**

**[LEGAL NAME OF DEPOSITORY BANK]**

By:

|  |  |
| --- | --- |
| Name: |  |
| Title: |  |

|  |  |
| --- | --- |
| Date: |  |