

**These sample terms of reference are intended to be used as an illustrative example to potential applicants seeking OPIC financing for housing projects. The general financial terms contained in this illustrative example are only available to applicants and projects that satisfy OPIC's credit, legal, policy and other applicable criteria. The terms contained in this illustrative example are not conclusive or exhaustive and are subject to change.**

## **SAMPLE TERMS OF REFERENCE**

### **Employer Assisted/Lease Purchase Program**

**These draft terms of reference are for the purpose of discussion only. Extension of a credit facility by OPIC, on these or any other terms has not been approved by OPIC management. This draft indicative terms of reference is not a legally binding document, does not constitute a commitment, an offer, or an agreement by OPIC, and is subject to further review and change. Any representation to the contrary is void.**

1. Parties:

Borrower: X, a corporation organized and existing under the laws of host country (the "**Borrower**"), which is directly one hundred percent (100%) owned by the Sponsors (as defined below); and

Sponsors: (a) XX, a corporation organized and existing under the laws of host country, which owns X percent (X%) of the shares of the Borrower (the "**Foreign Sponsor**"); and (b) XXX, a corporation organized and existing under the laws of a state of United States, which owns at least twenty-five percent (25%) of the shares of the Borrower (the "**U.S. Sponsor**" and, together with the Foreign Sponsor, the "**Sponsors**").
2. Availability:

A loan or loans under the Credit Facility in the aggregate principal amount of up to \$TBD (the "**Loan**") may be drawn, from time to time, commencing on the date on which all conditions precedent to the first disbursement of the Loan (each, a "**Disbursement**") as set forth in the Loan Agreement are satisfied and ending on the earliest to occur of (a) the date the amount of the Credit Facility is drawn in full, (b) TBD, and (c) the date the commitment to make the Credit Facility available is terminated (the "**Commitment Period**"). In no event shall a Disbursement occur after the date that is eight (8) years from the date of this Commitment Letter (OPIC's statutory limit). Disbursements may be requested not more frequently than quarterly and in amounts of not less than

\$1,000,000. There may be no fewer than four (4) Disbursements.

3. Use of Proceeds: The proceeds of the Loan shall be applied to the financing of a lease-purchase program for approximately X homes to be constructed in the housing project at \_\_\_\_\_ (“**Approved Sites**”) ([describe in greater detail] the "**Project**"), as more fully described in all applicable Sponsor Disclosure Report(s) and the Application for Financing delivered to OPIC.
4. Financial Plan: The Project’s total cost is estimated to be US\$TBD, as set forth in the financial plan below. The Sponsors shall contribute as equity cash and/or assets satisfactory to OPIC, pursuant to an equity contribution agreement ("**the Equity Contribution Agreement**") in the amounts set forth below.

**Sources of Funding:**

<u>Senior Debt:</u>	<u>Amount in US\$</u>
<u>The OPIC Loan:</u>	\$
<u>Equity:</u>	
Sponsor Cash	
Homebuyer deposit	\$
Government down payment subsidy	\$
<u>Total Funding:</u>	\$

5. Amortization: Commencing on the earlier of (a) the first Payment Date (as defined in paragraph 6 below) that occurs X months after the date of the first Disbursement, and (b) receipt by the Trustee (as defined in paragraph 17 below) of the OPIC Government Subsidy Funds Amount (as defined in paragraph 14 below) and application of such Government Subsidy Funds Amount to prepay the Loan (the "**Grace Period**"), the Borrower shall accrue principal and interest on the Loan on a monthly “mortgage style” basis and repay such principal and interest in 180-240 equal monthly installments. Monthly installments of principal and interest shall be deducted from lease payments made by each homeowner to the Trustee pursuant to the terms of each Lease Purchase Contract (as defined in paragraph 15 below). The maturity date of each Disbursement shall be 15-20 years from the date of such Disbursement and shall in no event be later than TBD (the "**Loan Maturity Date**").

6. Interest:

For direct loans: Interest shall accrue monthly and shall be paid on the 15<sup>th</sup> of each month (each such date, a "**Payment Date**") in arrears, calculated at a fixed rate *per annum* for each Disbursement equal to the OPIC Cost of Funds for such Disbursement, plus "X" percent (X%) *per annum* (the "**Interest Rate**"). "**OPIC Cost of Funds**" means, with respect to a Disbursement, the *per annum*, fixed rate of interest determined in accordance with the monthly average "U.S. Treasury Constant Maturity Yields" for the previous calendar month as published in statistical release H.15 (519) of the Board of Governors of the Federal Reserve System, taking into account for purposes of such determination (x) the final maturity date specified for such Disbursement and (y) the following constant maturities: (i) the 5-year rate in the case of a final maturity date that is at least 1 year but less than 5 years after the date of such Disbursement; (ii) the 7-year rate in the case of a final maturity date that is at least 5 years but less than 7 years after the date of such Disbursement; (iii) the 10-year rate in the case of a final maturity date that is at least 7 years but less than 10 years after the date of such Disbursement; and (iv) the 20-year rate in the case of a final maturity date that is at least 10 years but not longer than 20 years after the date of such Disbursement.

For investment guaranties ("**IGs**"): Interest shall be paid [semi-annually][quarterly] on [[\_\_\_\_\_] [15], [\_\_\_\_\_] [15],] [\_\_\_\_\_] [15], and [\_\_\_\_\_] [15] of each year (each such date, a "**Payment Date**") in arrears, calculated at a rate *per annum* for each Disbursement equal to the sum of the fixed or floating rate necessary to fund such Disbursement through OPIC's certificates of participation ("**OPIC Cost of Funds Rate**"), plus [\_\_\_\_] ([\_\_\_\_.\_\_\_\_])% *per annum* payable to OPIC (the "**OPIC Spread**" and, together with the OPIC Cost of Funds Rate, the "**Interest Rate**"). If the OPIC Cost of Funds Rate is a floating rate, OPIC shall have the right to fix the OPIC Cost of Funds Rate upon an event of default.

[Funding for IGs:

The Loan may be funded through the marketing of OPIC certificates of participation by placement agents satisfactory, and on terms and conditions, and pursuant to documentation (the "**Funding Documents**") satisfactory to each of OPIC, the Sponsor[s], and the Company. The Funding Documents will contain customary provisions that (a) protect the holders of OPIC's certificates of participation against increased costs or loss of yield resulting from prepayment of the Loan, changes in

reserve, tax, capital adequacy or other requirements of law and from the imposition of, or changes in, withholding or other taxes and (b) indemnify such holders for “breakage costs” incurred in connection with, among other things, prepayment of the Loan. OPIC will bear no liability in the event that any portion of the Credit Facility cannot be provided on terms and conditions satisfactory to each of OPIC, the Sponsor[s], and the Company.]

7. Default Rate: The Borrower shall pay to OPIC interest at the rate of two percent (2.0%) *per annum* over and above the Interest Rate in respect of any amount not paid when due under the Loan Agreement (as defined in paragraph 22 below).
8. Facility Fee: X percent (X%) of the total amount of the Credit Facility (the "**Facility Fee**"), which Facility Fee, less the portion of the retainer fee that was previously paid and has not been applied by OPIC to defray its out-of-pocket expenses, shall be paid to OPIC on the date the Loan Agreement is executed (the "**Closing Date**").
9. Commitment Fee: X percent (X%) *per annum* on the undisbursed and uncanceled amount of the Credit Facility (the "**Commitment Fee**"), which shall accrue from the date of the Commitment Letter to and including the earliest of (a) the date the Credit Facility is drawn in full; (b) the date the Commitment Letter is terminated; and (c) the date the Loan Agreement is terminated. The Commitment Fee shall be paid to OPIC in arrears on each Payment Date.
10. Cancellation Fee: The Borrower may cancel any portion of the Credit Facility (to the extent undisbursed) upon written notice and payment to OPIC of a cancellation fee equal to one half of one percent (0.50%) of the amount canceled (the "**Cancellation Fee**"). Any portion of the amount of the Credit Facility that for any reason expires or is terminated shall be deemed to have been canceled, and the Cancellation Fee shall apply.
11. Maintenance Fee: The Borrower shall pay to OPIC an annual maintenance fee (the "**Maintenance Fee**") of \$X on the first Payment Date following the first Disbursement and on each anniversary of such Payment Date, so long as the Loan remains outstanding.
12. Voluntary

- Prepayment: The Loan may be prepaid after the Commitment Period without penalty. The minimum partial prepayment shall be the outstanding balance of any single Disbursement. Partial prepayments shall be applied in accordance with terms to be agreed by the OPIC and the Sponsor. Amounts repaid cannot be reborrowed. Voluntary prepayments under the IG Funding program will be subject to a make-whole provision.
13. Mandatory Prepayment: To the extent that any Lease Purchase Contract is prepaid, the amount prepaid shall be applied directly to prepay the Loan to the extent of OPIC's share of the amount financed, unless the Borrower delivers to the Trustee another Lease Purchase Contract of equal or greater value. Upon any such prepayment, OPIC shall direct the Trustee to release OPIC's lien on the related house and land.
14. Government Subsidy Funds: All government subsidy funds received subsequent to the execution of the Lease Purchase Contracts defined below (collectively, "**Government Subsidy Funds**") shall be paid by the Government of host country to the Trustee and be applied by the Trustee to the prepayment of the Loan.
15. Lease Purchase Contract: The Trustee and each homeowner shall enter into a US Dollar or Local Currency-denominated contract for the lease-purchase of a house in the Approved Sites (each, a "**Lease Purchase Contract**"), the payments under which (may) be adjustable annually according to the changes in minimum wage. Lease Purchase Contracts and properties covered thereby shall comply with appropriate government rules for its low-income housing subsidy program.
16. Debt Service Reserve Account: The Borrower shall establish and fund a debt service reserve account (the "**Debt Service Reserve Account**") consisting initially of two-month initial deposits made by homebuyers (or such other reserve amounts as OPIC may require.) The Borrower shall fund and maintain, at all times after completion and sale of all houses, an amount equal to \$TBD in the Debt Service Reserve Account. The Debt Service Reserve Account shall be established in dollars and be held by the Trustee in an account with a bank acceptable to OPIC in the U.S. for the benefit of OPIC in the event of default or cash flow shortfall.

Certain triggers for augmenting the Debt Service Reserve Account balance in the event of high delinquency levels or other events of default will be set forth in the Loan Agreement.

17. Trustee:

A bank acceptable to OPIC (the "**Trustee**") shall hold all monies and collateral for the benefit of OPIC and the Borrower in accordance with the terms of a trust agreement among the Trustee, OPIC and the Borrower, in form and substance acceptable to OPIC (the "**Trust Agreement**"). The Trustee shall also maintain necessary local currency and dollar bank accounts to minimize exchange risk and ensure distribution of funds according to the schedule set forth in paragraph 18 below. Furthermore, the Trustee may be required to certify the satisfactory completion of housing units in accordance with the Government low-income housing program, the satisfactory completion of homebuyer credit requirements, receipt of initial deposits, and approval of application for Government Subsidy Funds prior to each Disbursement. The Trustee shall also ensure that each homeowner maintains required life and property damage insurance policies.

18. Application of Funds:

All regular monthly lease payments made under Lease Purchase Contracts as well as all subsidy payments made by the Foreign Sponsor shall be paid directly to the Trustee and be distributed by the Trustee as follows:

*first*, to the Trustee for its fees;

*second*, to insurance premium and property maintenance fee accounts;

*third*, amounts due to OPIC for debt service shall be converted to dollars and deposited in the Payment Account in preparation for remittance to OPIC; and

*fourth*, to the Borrower's operating account, unless an event of default under the Loan Agreement has occurred.

To the extent that any Lease Purchase Contract has been prepaid in full, the amount of such prepayment shall be distributed by the Trustee between the Borrower and OPIC according to their respective interests and may be subject to make-whole provisions under the Financing Documents.

19. Insurance:

All homebuyers shall maintain property and life insurance policies in form and with insurance companies satisfactory to OPIC. OPIC shall be named as a loss payee.

20. Program Administration:

OPIC will require, at its sole discretion, the engagement of a consulting and monitoring firm in order to oversee the reporting and administration of the lease purchase portfolio during the term of the Loan. These fees will be deducted from the cash flows associated with the lease contracts, or paid directly by the Borrower on a quarterly basis to OPIC.

21. Homebuyer Credit Qualifications:

Underwriting and credit approval criteria and loan management procedures must be in writing and approved by OPIC (“**Guidelines**”). The Lease Purchase Guidelines will reflect the requirements of the Financing Documents, and credit scoring procedures that incorporate an assessment of currency risks.

22. Documentation:

The terms and conditions of the Loan shall be set forth in a definitive loan agreement between OPIC and the Borrower (the "**Loan Agreement**") providing the terms set forth herein and other terms and conditions customarily required by OPIC, including:

(a) delivery of additional documents, instruments, and approvals (such documents, instruments, and approvals, collectively with the Loan Agreement, the security documents, the Equity Contribution Agreement, the "**Financing Documents**");

(b) conditions precedent to each Disbursement; tax gross-up; representations and warranties;

(c) covenants (i) prohibiting the Borrower from taking any actions to prevent its employees from lawfully exercising their right of association and their right to organize and bargain collectively, obligating the Borrower to observe applicable laws relating to a minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and prohibiting the Borrower from using forced labor; and (ii)

obligating the Borrower to require its Project contractors to comply with the foregoing worker rights requirements with respect to employees in [Project country] of such contractors and their subcontractors in the Project; *provided, however*, that neither the Borrower nor any such contractor shall be responsible for non-compliance with such worker rights requirements resulting from the actions of a government [There may be supplemental workers rights requirements];

(d) covenants obligating the Borrower to (i) [construct and] operate the Project in compliance with the environmental, health and safety standards set forth in the applicable World Bank Guidelines, host country laws and regulations, OPIC's environmental policies and other terms and conditions as may be set forth in the Loan Agreement, and (ii) maintain all required permits and approvals relating to environmental, health, or safety matters [There may be supplemental environmental requirements];

(e) covenants obligating the Borrower to comply with Corrupt Practices Laws (as defined in the commitment letter) and implement internal management and accounting practices and controls adequate to ensure compliance with such Corrupt Practices Laws;

(f) other covenants regarding maintenance of insurance on the Project with the coverages and in the amounts satisfactory to OPIC; maintenance of financial ratios; restrictions on the payment of dividends, the transfer of shares, the incurrence of other indebtedness, the incurrence of liens and the making of other investments; subordination of other indebtedness; and reporting requirements;

(g) covenants requiring Guidelines to be in place; and certification by an authorized officer of the Borrower on an annual basis that the Borrower is in compliance with the Guidelines;

(h) events of default including, without limitation, (i) the Borrower's failure to cure discrepancies in the collateral package or to repurchase ineligible loans; (ii) removal of the Trustee without OPIC's prior consent; (iii) sale or transfer of Lease Purchase Contracts without OPIC's prior consent; (iv) nonpayment, cross-default, misrepresentation, covenant, approvals, obligation and agreements defaults; (v)



expropriation, political violence, bankruptcy, judgment defaults; (vi) the U.S. Sponsor's failure to maintain U.S. ownership or the Sponsors' failure to maintain management control; (vii) material adverse change; (viii) credit support requirements; and (ix) conditions for project completion;

(i) payment for or reimbursement of all expenses (including fees and expenses for outside legal counsel and consultants) incurred by or on behalf of OPIC in connection with the negotiation, execution, and implementation of the Financing Documents and the documents, instruments, and approvals required to be delivered thereunder; any amendment or waiver related to any of the foregoing; and any costs, fees, and expenses incurred by or imposed on OPIC in connection with the enforcement of its rights under any Financing Document;

(j) indemnity by the Borrower of all Indemnified Persons (as defined in the commitment letter) from and against and reimbursement of such Indemnified Persons for (a) any and all Losses (as defined in the commitment letter) in any way relating to or arising out of or in connection with the Project, the Financing Documents, the Credit Facility or the use or intended use of the proceeds thereof to which an Indemnified Person may become subject; and (b) any and all claims, litigation, investigations, or proceedings relating to any Loss regardless of whether any Indemnified Person is a party thereto, and any and all costs and expenses incurred by an Indemnified Person in defending, analyzing, settling, or resolving a Loss; and

(k) New York governing law; and such other terms and conditions as are mutually agreed to between the parties.

The Financing Documents shall be satisfactory to OPIC in form and substance.

23. Conditions Precedent to First Disbursement:

The Loan Agreement shall include the following conditions precedent to first Disbursement:

(a) Execution and delivery of definitive financing documentation in form and substance satisfactory to OPIC;

(b) Receipt of required year-end audited financial statements and interim unaudited financial statements for the Borrower

and/or Sponsor, acceptable to OPIC and providing evidence of sufficient funds to make the equity contribution;

(c) Execution of the Trust Agreement and establishment and funding of all required bank accounts;

(d) OPIC review and approval of any contracts between the Borrower and the Construction Contractor with respect to each housing development, including land sale contracts;

(e) All governmental and other third-party consents in connection with the Project shall have been obtained and shall be in full force and effect;

(f) OPIC shall have received legal opinions customary for transactions of this type;

(g) OPIC receipt and approval of the Guidelines;

(h) OPIC review and approval of any employer agreements with the Borrower (or the homebuyers) to provide automatic wage deduction, down payment grants or other support, and procedures for implementation of the transfer of payments to the Trustee;

(i) Evidence of all equity contributions made to the Borrower by the Sponsor as required in the financial plan; and

(j) Other conditions to be determined during the legal documentation process.

24. Some conditions precedent to Disbursement: The Loan Agreement shall include the following conditions precedent to Disbursement:

(a) no condition shall exist that, in OPIC's sole judgment, has had or could have a material adverse effect on (i) the business, operations, property, condition (financial or otherwise) or prospects of the Company, the Sponsor[s], or the Project, (ii) the ability of the Company or any Sponsor to carry out the Project or to perform its respective obligations under the Financing Documents, or (iii) the condition or value of any security;

(b) OPIC shall have completed to its satisfaction its due diligence investigation of the Project and matters relating

thereto and to the Credit Facility (including environmental issues), and the results of such investigation shall be satisfactory to OPIC; and

(c) Confirmation to OPIC's satisfaction that the Lease Purchase Contracts financed by any previous Disbursements comply with the Guidelines.

25. Reports to OPIC:

At its cost, the Borrower shall furnish to OPIC such reports as are set forth in the Loan Agreement, including with limitation, the following:

(a) Within forty-five (45) days after the end of each fiscal quarter (including the fourth fiscal quarter) of each fiscal year, its unaudited financial statements and a comparison of such financial statements certified by the chief financial officer of the Borrower as being complete and correct, together with such officer's certificate (i) that his or her review has not disclosed the existence of any Default (as such term is defined in the Loan Agreement) or Event of Default (as such term is defined in the Loan Agreement), or, if any such Default or Event of Default then exists, specifying the nature and period of existence thereof and what action the Borrower has taken or proposes to take with respect thereto, and (ii) demonstrating in reasonable detail the Borrower's compliance with the ratios set forth in the Loan Agreement;

(b) Within ninety (90) days after the end of each fiscal year, its financial statements audited in accordance with U.S. GAAP or IFRS, together with a certificate by the independent accountants reporting thereon (i) describing briefly the scope of their examination (which shall include a review of the relevant terms of the Loan Agreement) and certifying whether their examination has disclosed the existence of any Default or Event of Default and, if so, specifying the nature and period of existence thereof, and (ii) demonstrating in reasonable detail the Borrower's compliance with the ratios set forth in the Loan Agreement;

(c) Within forty-five (45) days after the end of each fiscal quarter, a report, certified by an authorized officer, setting forth in reasonable detail the progress of the Project, including (i) current year and annual projected (through the Loan Maturity Date) Lease Purchase Contracts, (ii) principal and interest payments and prepayments, and (iii) aggregate default, late payment, and loss reserve data, and (iv) such other information

with respect to the Project as OPIC may reasonably request from time to time.

(d) The following reports: (i) monthly Cash Flow Reports (defined below) on each monthly payment date and (ii) quarterly Delinquent Mortgage Loan Reports on each Quarterly Payment Date. "**Cash Flow Report**" means a report prepared by the Borrower concerning each Lease Purchase Contract included into the OPIC collateral package broken down by reference to the relevant Disbursement, setting forth the following information for that Lease Purchase Contract in detailed and summary format: the loan number, homeowner's name(s), origination date, original balance, current balance, next due date, last payment date, scheduled principal and interest payment, and actual principal and interest paid (including prepayments). "**Delinquent Loan Report**" means a report produced by the Borrower which lists all Lease Purchase Contracts in the OPIC collateral package that are past due more than one (1) day, broken down into categories of (a) ten (10) days or less, (b) thirty (30) days or less, (c) sixty (60) days or less, and (d) more than sixty (60) days, including all relevant information on the collection efforts of the Borrower with respect to the delinquent contracts listed in such report (such as initiation of court proceedings, enforcement of leases, collection proceeds, etc.).

26. Security:

The obligations of the Borrower shall be secured by collateral satisfactory to OPIC, pursuant to documentation in form and substance satisfactory to OPIC, including a valid, first priority, perfected (or otherwise enforceable against all persons to the fullest extent possible in each relevant jurisdiction) mortgage or security interest in the land and houses at the Project Sites, the Lease Purchase Contracts and the cash flow associated with such Lease Purchase Contracts; a pledge of all of the Borrower's stock; the Debt Service Reserve Account, and assignment of insurances and insurance proceeds.

27. Dividends:

No dividends may be paid to the Sponsors during a period of time to be determined by OPIC. Subsequently, dividends may be paid to the Sponsors in an amount not to exceed a to-be-determined percentage of net profit, with pro-rata payment to OPIC for any additional distributions requested, so long as the Borrower is not in default and is in compliance with all financial ratio requirements.

The terms and conditions of the Credit Facility are not limited to those set forth herein. Matters that are not covered by the provisions hereof are subject to the approval and agreement of the parties.

## Installment Sales Structure – Employer Assisted Housing

