

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME)
MULTIFAMILY DEVELOPMENT

CONTRACT # [REDACTED]

CFDA 14.239 HOME INVESTMENT PARTNERSHIPS PROGRAM

Awarding Federal Agency: U.S. Department of Housing and Urban Development

Federal Award Number: M-[REDACTED]-[REDACTED]-SG-48-0100

Federal Award Year: 20

Pass Through Entity: Texas Department of Housing and Community Affairs

HUD Entity Type: Select HUD Recipient Type

TDHCA Award Year: [REDACTED]

DUNS Number:

This HOME Program Multifamily Development Contract (the “**Contract**”) in connection with a HOME award is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, (the “**Department**”), [and] [REDACTED], **ENTITY TYPE** (the “**Development Owner**” or “**Borrower**”), OPTIONAL FOR WHEN CHDO IS NOT DEVELOPMENT OWNER [and] [REDACTED], a **ENTITY TYPE nonprofit corporation**, certified by the Department as a community development housing organization (the “**CHDO**”),] herein collectively referred to as “**Parties**”, OPTIONAL [joined and consented to by [REDACTED], **ENTITY TYPE**, as fee title owner (the “**Fee Title Owner**”),] dated to be effective on the Effective Date defined herein.

RECITALS

WHEREAS, the Development Owner agrees to administer a HOME **Multifamily Development** award in accordance with the HOME Investment Partnerships Program (the “**HOME Program**”) under the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 *et seq.*) (the “**Federal Act**”), its implementing federal regulations at 24 CFR Part 92 (the “**Federal HOME Regulations**”), the applicable federal notices issued by the United States Department of Housing and Urban Development (“**HUD**”), Tex. Gov’t Code Ann. Chapter 2306 (the “**State Act**”), its implementing state Uniform Multifamily Rules at Title 10, Chapter 10 of the Texas Administrative Code (the “**Uniform Multifamily Rules**”), compliance and general rules at Subchapter B of Title 10, Chapter 1 of the Texas Administrative Code, respectively, and the application package for HOME Program Application # [REDACTED] (the “**Application**”), as may be amended or modified from time to time;

WHEREAS, the Development Owner is or will be upon the Loan Closing Date, the [leasehold] owner [pursuant to a ground lease by and between Development Owner and Fee Title Owner,] of certain improvements (the “**Improvements**”) OPTIONAL [that [will consist] or [consist] of a [REDACTED] Unit

multifamily ■[OPTIONAL ■ elderly, general] rental housing development known as ■ (the "**Development**") situated on real property (the "**Land**") located in the City of ■, County of ■, State of Texas, more fully described in Exhibit A attached hereto and incorporated herein by reference. The Land and Improvements are hereinafter collectively referred to as the "**Property**";

WHEREAS, the Development Owner is considered to be a "developer" for the purposes of the HOME Program;

WHEREAS, the Development Owner is authorized to borrow the HOME Award Amount as defined herein from the Department to administer the HOME Multifamily Development Program under the SELECT SET-ASIDE HOME fund set-aside and perform the activities under this Contract;

WHEREAS, the Department is willing to make a leasehold loan to the Development Owner with the consent of Fee Title Owner in the amount of the HOME Award Amount (the "**Loan**");

WHEREAS, on _____[date], the Department committed to make the Loan in accordance with that certain preliminary award of loan terms and conditions (the "**Award Letter and Loan Term Sheet (including any and all amendments)**") attached as Exhibit B to this Contract and incorporated herein for all relevant purposes, which shall be used by Borrower for the ■[acquisition] of the Property ■ and/or [Rehabilitation] [construction] of the Development;

WHEREAS, as of the Effective Date of this Contract, all the necessary financing for the Development is secured, as evidenced by the Award Letter and Loan Term Sheet (including any and all amendments) and the "**Credit Underwriting Report and Amended/Revised Reports**" attached as Exhibit C to this Contract and incorporated herein for all relevant purposes, as said exhibits may be revised, updated or amended from time to time; therefore, this Contract, including the exhibits attached to the Contract as amended, constitutes a legally binding agreement and meets the requirements under the federal definition of "commitment" of funds to a specific local project, as defined in Paragraph (2) of 24 CFR §92.2

OPTIONAL [WHEREAS, the Development Owner is a _____ private nonprofit corporation that has an exemption ruling from the IRS under Sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code and has been certified by the Department as a community development housing organization (the "**CHDO**")]

OR

OPTIONAL FOR WHEN CHDO IS NOT DEVELOPMENT OWNER [WHEREAS, the Development is sponsored by _____, a _____ private nonprofit corporation, that has an exemption ruling from the IRS under Sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code and has been certified by the Department as a community development housing organization (the "**CHDO**").] AND [The Development Owner is a subsidiary of and wholly owned by the CHDO.] OR [The Development Owner is a limited partnership of which the CHDO is the sole general partner.] OR [The Development Owner is a limited partnership of which _____, a _____, its sole general partner, is wholly owned

by the CHDO.] OR [The Development Owner is a limited liability company of which _____, a _____, its sole managing member, is wholly owned by the CHDO;]

AND

OPTIONAL [WHEREAS, on _____[date], the CHDO and the Department entered into a HOME Program CHDO Operating Expense Contract effective _____ in the amount of \$_____ for the administrative expenses and operating cost for _____]; and

WHEREAS, pursuant to the Federal Act, State Act, the Federal HOME Regulations and the Uniform Multifamily Rules (Federal HOME Regulation and Uniform Multifamily Rules collectively referred to as “**HOME Regulations**”), as amended, Development Owner, as a condition to the Department making the Loan, must agree to comply with certain occupancy, rent and other restrictions under the Federal Act and the Federal HOME Regulations during the Federal Affordability Period (hereinafter defined) and with certain occupancy, rent and other restrictions under the State Act during the State Affordability Period (hereinafter defined), and the parties will enter into a Land Use Restriction Agreement [joined by the Fee Title Owner] (the “**LURA**”) to evidence Development Owner's agreement to comply with such restrictions.

NOW, THEREFORE, for and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Contract, and which may be more thoroughly defined (but which are not waived or abridged) in the loan closing documents, including, but not limited to, the Award Letter and Loan Term Sheet (including any and all amendments) attached as Exhibit B to this Contract, incorporated herein for all relevant purposes, the deed of trust, the LURA, promissory note, and construction loan agreement if applicable, collectively referred to as (“**Loan Documents**,”) as further defined in 5.16 of this Contract.

SECTION I. MULTIFAMILY DEVELOPMENT PROGRAM

Development Owner shall implement the Multifamily Development Program in accordance with the Federal Act, the HOME Regulations, the State Act, the Application and the applicable Texas statutes and rules utilizing _____ AND NO/100 UNITED STATES DOLLARS (U.S. \$ _____ .00) (the “**HOME Award Amount**”), in project funds for the [acquisition and new construction/ acquisition and Rehabilitation/ new construction/ Rehabilitation] of the Property. Any change which occurs after the final acceptance of the Application and subsequent award of HOME funds by the Department, and not agreed to by the Department in writing, may result in a reduction of the HOME Award Amount or the termination of this Contract.

SECTION II. CONTRACT PERIOD

Contract Period is the period beginning the Effective Date of this Contract as herein defined and terminating on the last day of the LURA Term as herein defined, as the same may from time to time be modified or extended (the “**Contract Period**”).

SECTION III. DEFINITIONS

Section 3.1. General.

Capitalized terms used in this Contract shall have, unless the context clearly requires otherwise, the meanings specified in this Section III of the Contract. Certain additional terms may be defined elsewhere in this Contract. If the definition and terms of this Contract conflict with the definition and terms of the Award Letter and Loan Term Sheet (including any and all amendments), then this Contract shall control unless it would make the Contract void by law. Any capitalized terms not specifically mentioned in this Section III of the Contract or any section, addendum or exhibit to this Contract shall have the meaning as defined in the Uniform Multifamily Rules, the State Act and the Federal HOME Regulations, as applicable.

- a. **"Adjusted Income"** means "adjusted income" as defined in 24 CFR §92.203.
- b. **"Annual Income" or "Annual Incomes"** means "annual income" as defined as defined at 24 CFR §92.203 which specifically requires the use of one of the following definitions: (1) annual income as defined at 24 CFR §5.609, which includes but is not limited to the list of income in HUD Handbook 4350, and specifically excludes those items listed in HUD's Updated List of Federally Mandated Exclusions from Income; or (2) adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 series for individual Federal annual income tax purposes..
- c. **"Area Median Income" or ("AMI")** means the median income, adjusted for family size, for the area where the Property is located, as such median income is established by HUD at least annually in accordance with the Federal Act, or as otherwise established by the Department.
- d. **"Construction Completion"** means that title transfer requirements and construction work have been performed as reflected by the Development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704) and the final drawdown of funds has been disbursed. In addition, for Developments not layered with Housing Tax Credits, Construction Completion means all modifications requested as a result of the Department's Final Construction Inspection were cleared as evidenced by receipt of the Closed Final Development Inspection Letter.
- e. **"De Minimis Amounts"** means any Hazardous Materials either (a) being transported on or from the Property or being stored for use by Development Owner or a tenant on the Property in connection with Development Owner's or such tenant's operations or tenancy, or (b) being used by Development Owner or a tenant on the Property, in either case in such quantities and in a manner that both (i) do not constitute a violation or threatened violation of any Environmental Laws and Regulations, Governmental Requirements or require any reporting or disclosure under

any Environmental Laws and Regulations or Governmental Requirements, and (ii) is consistent with customary business practice for such operations in the state where the Property is located.

- f. **"Department Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the Department or HUD for the purpose of monitoring and auditing the Property and the books and records of the Development Owner for compliance with this Contract, Section 2306.186 of the Texas Government Code, 10 TAC §10.404, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-1), Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*), The Fair Housing Act (42 U.S.C. §3601 *et seq.*), Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 11246) and its implementing regulations at 41 CFR Part 60, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794 *et seq.*), Subchapter B of Title 10, Chapter 1 of the Texas Administrative Code, Subchapter F of the Uniform Multifamily Rules, the HOME Regulations, the Multifamily Programs Procedures Manual, Section 3 of the Housing and Urban Development Act of 1968, those inspections and examinations allowed pursuant to Section 2306.231 of the State Act and any and all other Environmental Laws and Regulations and Governmental Requirements (as defined below).
- g. **"Displaced Persons"** means a person that moves from the Development or moves personal property from the Development, permanently, as a direct result of acquisition, Reconstruction, Rehabilitation or demolition of the Development or as otherwise provided in the HOME Regulations.
- h. **"Environmental Laws and Regulations"** means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended, Hazardous Materials Transportation Act (49 U.S.C.A. §1801 *et seq.*); Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 *et seq.*); the National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) ("NEPA"); Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.*) ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) ("Superfund" or "SARA"); Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 *et seq.*) ("RCRA"); the Toxic Substances Control Act, 15 U.S.C.A. §2601 *et seq.*; Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 *et seq.*); Clean Air Act (42 U.S.C.A. §7401 *et seq.*) ("CAA"); Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 *et seq.*) ("Clean Water Act" or "CWA"); and any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control, Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7), Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code), County Solid Waste Control Act. (Chapter 364 of the Texas Health & Safety Code), Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code) and Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code), and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

- i. **"Extremely Low Income Families"** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income in the area in which the Property is located, as determined by the Department in accordance with the State Act.
- j. **"Federal Affordability Period"** means the period commencing on the date the Development is completed as defined by Federal Act and ending on the date which is ■[OPTIONAL ■five/ten/fifteen/twenty ■[5/10/15/20] years from the date of Construction Completion in accordance with the Federal Act and Federal HOME Regulations.
- k. **"Governmental Authority"** means the United States of America, the State of Texas, the County of ■, Texas, and the City of ■, Texas, and any political subdivision of any of the foregoing, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Development Owner or the Property.
- l. **"Governmental Requirements"** means all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances under this Contract.
- m. **"Hazardous Substance"** or **"Hazardous Material"** means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in the CERCLA, 42 U.S.C. §9601 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 *et seq.*; the RCRA, as amended, 42 U.S.C. §6901 *et seq.*; or any similar applicable federal, state or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time, other than *De Minimis* amounts of any such substances.
- n. **"HOME Match-Eligible Unit"** means a Unit in the Development that is not assisted with HOME Program funds, but would qualify as eligible for match under 24 CFR Part 92 (a Unit occupied by families and individuals whose Annual Incomes do not exceed 80% of Area Median Income).
- o. **"HOME Regulations"** means the regulations promulgated pursuant to the Federal Act and State Act by HUD and the Department, respectively, or any respective successor, as finalized and amended from time to time, which govern the HOME Program. The Federal HOME Regulations (known as the HOME Investment Partnerships Program Final Rule) are set forth at Title 24 Part 92 of the Code of Federal Regulations and the Uniform Multifamily Rules are set forth at Title 10 Chapter 10 of the Texas Administrative Code.
- p. **"Low Income Families"** means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.
- q. [for Rehabilitation of property with current existing tenants]

"LURA Term" means the period commencing on the effective date of the LURA and ending on the date which is ■ (■) years from the effective date of the LURA.]

OR [for new construction]

"LURA Term" means the period commencing on the date the Development is completed as defined by the Federal Act and ending on the date which is ■ (■) years from the date of such Development completion.]

- r. **"Monthly Adjusted Income"** means one-twelfth (1/12) of the Annual Adjusted Income.
- s. **"Persons with Special Needs"** means individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 U.S.C. §12701, *et seq.* and as provided in the consolidated plan required under the State Act and may include any households composed of one or more persons with alcohol and/or drug addictions, Colonia residents [as defined in the State Act], Persons with Disabilities [as defined in 24 CFR §92.], elderly, victims of domestic violence, persons with HIV/AIDS, homeless populations, migrant farm workers, and public housing residents.
- t. **"Project Documents"** means all tenant lists, applications, (whether accepted or rejected), leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, utility allowance documentation, income examinations and re-examinations relating to the Development and other documents otherwise required by the Department.
- u. **"Qualified Tenant(s)"** means a family or individual tenant of a Qualifying Unit who satisfies the requirements of Section VI of this Contract with respect to such Qualifying Unit.
- v. **"Qualifying Unit"** means a Unit designated as [floating][fixed] pursuant to 24 CFR §92.252(j) that (i) is rented to either a Low Income Family, a Very Low Income Family, or an Extremely Low Income Family, and (ii) is used in complying with the occupancy requirements of Section VI of this Contract. A Qualifying Unit may also be designated as a HOME Match-Eligible Unit for purposes of match contribution requirement under 24 CFR §92.219.
- w. **"Relocation Plan"** means a residential anti-displacement and relocation assistance plan as established by HUD and which (i) includes provisions consistent with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§4601-4655), implementing regulations at 49 CFR Part 24, and policy guidance in Real Estate Acquisition and Relocation Policy and Guidance (HUD Handbook 1378) and the TDHCA Relocation Handbook; and in some developments Section 104(d) of the Housing and Community Development Act of 1974, as amended, 24 CFR Part 42, and the HOME Regulations and Multifamily Programs Procedures Manual and (ii) is in form and substance consistent with requirements of the Department.

- x. **"State Affordability Period"** means the LURA Term as defined herein and as required by Department in accordance with the State Act which is an additional ■[OPTIONAL ■10 ■15 or ■20 ■25] years to the Federal Affordability Period <conform to any changes in definition of federal affordability>.
- y. **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities.
- z. **"Utility Allowance"** means a monthly allowance for utilities and services (excluding internet and telephone) to be paid by the tenant, which monthly allowance is provided by the local public housing authority or as determined by the Department annually and from time to time as required under the HOME Regulations.
- aa. **"Very Low Income Families"** means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income, or such other income limits as established by HUD in accordance with the Federal Act or as otherwise determined by the Department.

Section 3.2. Generic Terms.

Unless the context clearly indicates otherwise, where appropriate, the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Section III of the Contract and/or the terms otherwise used in this Contract their proper meanings.

SECTION IV. MATCH

Section 4.1 Amount of Match Funds Required

The amount of Match required under this Contract is \$_____ (the **"Amount of Match Funds Required"**). The actual amount of Match contributed may exceed the Amount of Match Funds Required.

Section 4.2 Eligible Match Funds

Unless otherwise waived by the HOME Rules as evidenced by the Amount of Match Funds Required under Section 4.1 of this Contract, Development Owner will identify and provide eligible Match funds in accordance with the requirements of CPD Notice 97.03 or its successors, Section 10.403(c)(4) of the Uniform Multifamily Rules, and the applicable Notice of Funding Availability (the **"NOFA"**).

Section 4.3 Evidence of Match

Development Owner must submit evidence of Match, if required, in conjunction with the requests for disbursement of funds. The Development Owner may request up to seventy-five percent (75%) of HOME Award Amount for an activity before providing evidence of Match. Thereafter, the Development Owner must provide evidence of Match, including the date Match is provided, prior to the final release of funds.

SECTION V. LOAN CLOSING AND LOAN DOCUMENTS

Section 5.1 Loan Terms

Unless otherwise provided herein, the Department will fund a Loan to Development Owner in accordance with Section 10.307 of the Uniform Multifamily Rules and the terms and conditions provided in the Award Letter and Loan Term Sheet (including any and all amendments) attached hereto as Exhibit B and incorporated herein for all relevant purposes, as may be amended. The Loan Terms may be amended in accordance and subject to the requirements under Section 10.405(c) of the Uniform Multifamily Rules. Capitalized terms used in this Section V of the Contract shall have, unless the context clearly requires otherwise, the meanings specified in the Award Letter and Loan Term Sheet (including any and all amendments).

Section 5.2 Loan Closing Date

The Loan must close no later than the “**Loan Closing Date**” as defined in the Award Letter and Loan Term Sheet (including any and all amendments) in Exhibit B of this Contract, but in no event later than **9** months from the Effective Date of this Contract pursuant to Section 10.403(a) of the Uniform Multifamily Rules and in accordance with the Award Letter and Loan Term Sheet (including any and all amendments), unless Department, in its sole discretion, chooses to extend the Loan Closing Date in writing. This Contract and all Department’s obligations hereunder shall expire if all conditions to the closing and initial funding, if applicable, are not satisfied by the Loan Closing Date.

Section 5.3 Due Diligence Due Date

Unless otherwise provided herein, Borrower shall deliver all of the information required by this Contract, including but not limited to the items listed under Section 5.14 of this Contract and in Section 10.403(a) of the Uniform Multifamily Rules, no later than the “**Due Diligence Due Date**” defined in the Award Letter and Loan Term Sheet (including any and all amendments) in Exhibit B and if the Department in its sole discretion determines that such information was inadequate or incomplete or has not been received by the Department by said date, the Department may terminate the Department's obligations under this Contract, unless Department, in its sole discretion, chooses to extend the Due Diligence Due Date in writing.

Section 5.4 Development Period

Construction must commence within twelve months of the Effective Date of this Contract in accordance with Section 8.1 of this Contract and must be completed by the end of the Development Period as may be extended, but in no event later than twenty-four (24) months of the Loan Closing Date. The Development Period shall be eighteen (**18**) months from the Loan Closing Date, unless extended, as said terms are defined in the Award Letter and Loan Term Sheet (including any and all amendments) and shall be further defined in the Loan Documents. The Department may approve, prior to the Loan Closing Date, extensions of the Development Period or loan conversion date of up to six (6) months based on the documentation that the extension is necessary to complete construction and that there is a good cause for the extension. Such extensions request will generally not be approved prior to Loan Closing Date. Extensions of more than six (6) months for Development Period or loan conversion date will require Board Approval as required by Section 10.405(c)(3) of the Uniform Multifamily Rules.

Section 5.5 LURA

The LURA is required by the Department, executed by Development Owner and recorded in the appropriate county office for property records, restricting the Property to certain occupancy and rent requirements for the LURA Term. During the Federal Affordability Period of the LURA, the Property will be subject to all federal laws and regulations regarding the HOME Program and its affordability requirements. During the State Affordability Period, following the Federal Affordability Period of the LURA, the Property will be subject only to applicable state affordability requirements. Among other restrictions, the LURA may require the Development Owner of the Property to continue to accept subsidies which may be offered by the federal government, prohibit the Development Owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the Property as affordable housing on a case-by-case basis. The LURA may be amended in accordance and subject to the requirements under Section 10.405(b) of the Uniform Multifamily Rules.

Section 5.6 Title Insurance

Borrower must provide the Department with an Interim Construction Binder or Mortgagee's Policy of title insurance, as applicable, for the Property, (from a title insurer acceptable to the Department) issued on standard forms promulgated by the Texas Department of Insurance, in the amount of the Loan, showing Department to be in a lien position consistent with the terms of the Contract. At closing, the Borrower must be prepared to provide the Department with the Binder/Mortgagee Policy with only such exceptions to title on Schedule B as are acceptable to Department. The Department shall require the standard "survey deletion," deletion of the "Arbitration Clause" and an Environmental Endorsement. The title insurance requirements specified above shall be provided through a title insurance company acceptable to the Department in their sole discretion.

Section 5.7 Insurance

- a. Borrower must obtain and maintain (or cause to be obtained and maintained) during the entire Loan Term, property and casualty insurance in an amount sufficient to protect Department's interest in the Property, issued on a replacement cost basis and insuring the full replacement cost of the Property. This insurance is to be furnished through a company of Borrower's choice with a rating of at least "A-" by Standard & Poor Insurance Solvency Review and/or at least "A, XI" by Best's Insurance Guide with the Texas Department of Housing and Community Affairs listed as a mortgagee and not as a co-insured. If the Department, in its sole discretion deems the Property to be at risk for special hazards, the Department may require additional coverage for flood, windstorm or earth movement. Borrower must also obtain and maintain (or cause to be obtained and maintained) public liability insurance in the minimum amount of \$1,000,000, or such other amount as the Department may from time to time require by giving notice to Borrower, with the Texas Department of Housing and Community Affairs listed as an additional insured. Borrower must also obtain and maintain (or cause to be obtained and maintained by its general contractor) during any and all times improvements on the Property are under construction, public liability insurance (including worker's compensation insurance), with the Texas Department of Housing and Community Affairs listed as an additional insured, and carry builder's risk property insurance in non-reporting ("completed value") form on a

replacement cost basis (in lieu of carrying commercial property insurance during the construction period) endorsed to be payable to the Texas Department of Housing and Community Affairs listed as a mortgagee and loss payee. Evidence of insurance shall be provided annually to the Department.

- b. Borrower must obtain flood insurance pursuant to Section 9.7 of this Contract if Property is located in a FEMA designated 100-year flood plain.
- c. Furthermore, if the Property is zoned for a legal but nonconforming use, Borrower must also obtain and maintain "ordinance and law" insurance coverage for the (i) loss of Improvements because of forced removal based on zoning violations; (ii) related demolition costs; and (iii) increased costs of repair or construction which is attributable to enforcement of zoning requirements. This additional insurance coverage may be obtained by endorsement to existing property insurance policies.
- d. The Development Owner shall provide the Department with certificates of insurance evidencing the Development Owner's current and effective insurance coverage. The Development Owner agrees to notify the Department promptly upon receipt of notification of the termination, cancellation, expiration, or modification of any required insurance coverage or policy endorsements. The Development Owner agrees to suspend the performance of all work performed under this Contract until the Development Owner satisfies the required coverage requirements, obtains the required policy endorsements and delivers to Department certificates of insurance evidencing that such coverage and policy endorsements are current and effective, and receives notification from Department that the performance of work under this Contract may recommence, which shall be delivered promptly following the Department's receipt of foregoing items.

Section 5.8 Taxes, Insurance, and Escrow

All ad valorem taxes and all special or improvement assessments, if any, which are due and payable and affect the Property must be paid in full at or prior to closing. **[IF APPLICABLE: If not already required to do so by the first lien lender,]** Developer Owner must create a reserve for the payment of all insurance premiums, taxes, and assessments against the Property by depositing (and providing Department written evidence annually, or more frequently if requested by the Department, of such deposits in a form satisfactory to Department) in an account with Department as an additional signatory authority on said account in a federally insured bank or savings and loan approved by Department, for the Loan Term concurrent with the payment of principal and interest, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Property, or any part thereof, plus taxes and assessments next due on the Property, or any part thereof, as estimated by Department, less all sums deposited therefore, divided by the number of months to elapse before one month prior to the date when such premiums, taxes and assessments will become delinquent. All such funds so deposited may not be mingled with the general funds of Development Owner and shall be applied by Development Owner toward the payment of such taxes, assessments, charges and premiums when statements therefore are presented to Development Owner. Evidence of payment of taxes and insurance is to be provided annually to Department.

Section 5.9 Survey

Borrower agrees to provide the Department, at Borrower's expense, a current survey of the Property, showing any improvements as built and otherwise satisfactory to Department. The survey must be a class 1A urban survey and/or a Class 1A "As-built" survey and must be accompanied by a description of the Property and a surveyor's certificate, both of which must be satisfactory to Department, Department's counsel, and the title company. The survey must be sufficient to allow the title company to amend the title policy survey exception to provide for "shortages in area only." The survey must also show whether any portion of the Property is located within a designated 100 year flood plain. The survey must show no encroachments. The survey must also be certified to the Department, the Borrower, and the title company.

Section 5.10 Appraisal

If required by the Department, Development Owner agrees to provide the Department, at Development Owner's expense, a full appraisal of the fair market value of the Property or proposed Property prepared by a State of Texas certified appraiser. The form and content of the appraisal must be in accordance with 10 TAC §10.304 and must be acceptable to the Department. The appraisal must indicate a fair market value of the Property to be at least that of the total combined indebtedness on the Property. If the appraised market value of the Property is less than stipulated above, the Department reserves the right to re-evaluate the terms and conditions of this Contract, and may exercise its right to terminate the Contract. Development Owner shall pay the cost of such appraisal in any event.

Section 5.11 Attorney's Opinion

A written opinion of Borrower's attorney shall be dated as of the Loan Closing Date, stating:

- a. If Borrower is a corporation, that Borrower is duly organized, validly existing and in good standing under the laws of the state of their incorporation, and has the power and authority to transact business in the state of Texas and that there are no provisions in the documents creating or controlling any of them which prohibit the execution and delivery of the Loan Documents;
- b. Borrower is not in violation of its respective charters or bylaws (if a corporation) nor in default in any material respect in the performance of any obligation, agreement or condition contained in any bond, debenture, promissory note or any other evidence of indebtedness to which such Borrower is a party;
- c. That the execution and delivery of the Loan Documents, and the performance by Borrower hereunder, have been duly authorized by all necessary action, and do not and will not require any consent or approval (except those which have been supplied) and do not and will not violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower (including, but not limited to applicable usury laws);

- d. That the execution, delivery and performance of and under the Loan Documents and the consummation of the transactions contemplated therein will not conflict with or constitute a breach of any of the terms of, or a default under, creating or controlling Borrower and will not cause a material breach of any agreement, indebtedness indenture or other instrument to which Borrower is a party;
- e. That the Loan Documents constitute valid, legal and binding obligations of Borrower, enforceable in accordance with their terms (subject to applicable bankruptcy, insolvency or other laws affecting enforceability or creditors' rights generally);
- f. That there are no actions, suits or proceedings, including environmental actions, pending or, to such attorney's knowledge, threatened against Borrower which, if adversely decided, would have a material adverse effect upon Borrower;
- g. The Property is not subject to any state or federal environmental liens; and,
- h. That Borrower is not knowingly in default with respect to any requirement of a governmental agency.

Section 5.12 Attorney's Fees

Borrower shall be responsible for paying Department's attorney's fees incurred in connection with the negotiation, document preparation, and closing of the Loan to the extent allowable under the Department's governing statutes. In the event that the Loan does not close, Borrower's acceptance of this Contract as indicated below constitutes Borrower's agreement to pay Department's attorney's fees incurred in connection with the Loan to the extent allowed by law.

Section 5.13 Closing Costs

Borrower shall be responsible for all closing costs, including but not limited to appraisal fees, environmental assessment fees, survey fees, premiums for title insurance, escrow fees, recording fees and other similar costs and expenses incurred in connection with the closing of this Loan. In the event that the Loan does not close, Borrower's acceptance of this Contract, as indicated below, constitutes Borrower's agreement to pay all costs actually incurred by Department in connection with the Loan.

Section 5.14 Due-diligence

The following additional items and information shall be delivered to and approved by the Department prior to the Due Diligence Due Date, but in no event later than the Loan Closing Date and initial funding if applicable:

- a. Name, address, and contact information for inspecting architect or inspection contractor, engineer, Borrower's attorney and surveyor;
- b. Any construction, architect's and/or engineer's contracts that have been entered into;

- c. Plans and specifications;
- d. Current, final certified plat or ALTA survey acceptable to Department for closing and funding the Loan;
- e. The execution by Borrower of the “Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements” attached as Addendum A to this Contract.
- f. Review, receipt, and acceptance of proof of appropriate zoning or letter of compliance for Consistency Plan, as applicable.
- g. Receipt, review and acceptance of final commitments and documentation of sufficient financing to rehabilitate and operate the Development.
- h. Confirmation of DUNS number registration in SAM.gov, the TX Payee ID Form, Housing Contract System Access Form, Direct Deposit Authorization Form, and any additional forms required by the Department at the time of federal commitment.

Section 5.15 Additional Information

The Department reserves the right to require additional and/or updated information (such as financial statements, copies of organizational and authorizing documents, name(s) and resume(s) of consultant(s), etc.) prior to closing. Failure to provide such additional and/or updated information shall constitute a breach of Borrower's obligations and shall entitle Department to terminate this Contract.

Section 5.16 Loan Documents

Borrower's [and, if applicable, Fee Title Owner's] execution and delivery of the promissory note, deed of trust, LURA, construction loan agreement if applicable, and all other documents evidencing, securing, or executed in connection with the Loan in form and substance acceptable to the Department and as further defined in Section 10.403(b) of the Uniform Multifamily Rules (collectively, the “**Loan Documents**”). The Loan Documents shall expand and fully set forth the terms and conditions of the Loan. Borrower's counsel will be provided with unexecuted Loan Documents at least ten (10) days before Department provides Loan Documents to a title company. Borrower's counsel will be provided with final closing documents simultaneously with the title company. The Loan Documents must be executed on or before the Loan Closing Date in accordance with the terms herein. Within three (3) days of review of the fully executed Loan Documents, Borrower's counsel will provide the Attorney Opinion Letter as described in Section 5.11 of this Contract. In any case, should there be any contradictions in terms between the Award Letter and Loan Term Sheet (including any and all amendments), and the finalized Loan Documents, the terms within the executed Loan Documents will supersede the Award Letter and Loan Term Sheet (including any and all amendments).

Section 5.17 Non-Recourse or Recourse

The Department's underwriting guidelines have determined the type of recourse the Department shall have against Borrower for payment and performance of all obligations, covenants, and agreements of Borrower under the Loan. Pursuant to said guidelines, the Loan will be [recourse and the Department shall have full recourse against Borrower for payment and performance of all of the obligations, covenants and agreements of Borrower under the Loan] [non-recourse, and notwithstanding anything herein to the contrary, Department shall have no recourse against Borrower for payment and performance of all of the obligations, covenants and agreements of Borrower under the Loan and the documents securing the Loan. If default occurs in the timely and proper payment of any portion of such indebtedness or in the timely performance of any of such obligations, agreement or covenants, any judicial proceedings brought by Department against Borrower shall be limited to the protection and preservation of the Property, the preservation, enforcement and foreclosure of the liens, mortgages, assignments, rights and security interests securing the payment of the Loan, and enforcement and collection of obligations, covenants and indebtedness for which Borrower remains liable. If there is a foreclosure of any such liens, mortgages, assignments, rights, and security interests securing the payment of this Loan, by power of sale or otherwise, no judgment for any deficiency upon such indebtedness shall be sought or obtained by Department against Borrower. Notwithstanding the foregoing provisions of this paragraph, the Department shall have full recourse against Borrower for: (a) fraud or misrepresentation by Borrower in connection with the transactions herein contemplated; (b) failure to pay taxes, assessments, charges for labor or materials, or other charges that can create liens on any portion of the Property; (c) the misapplication of (i) proceeds of insurance covering any portion of the Property, or (ii) proceeds of the sale or condemnation of any portion of the Property, or (iii) rentals received by or on behalf of Borrower subsequent to the date on which Department gives written notice of the posting of foreclosure notices; (d) failure to prevent waste to the Property unless Department is compensated therefore by insurance proceeds collected by Borrower; (e) failure to return to Department of all unearned advance rentals and security deposits paid by tenants of the Property and not refunded to or forfeited by such tenants; (f) failure to return or reimburse for, all personal property taken from the Property by or on behalf of Borrower; (g) all court costs and for all reasonable attorneys' fees incurred by Department provided for in any instrument governing, securing or pertaining to the payment of the promissory note; and (h) failure to comply with any indemnification provision or covenants pertaining to environmental matters contained in the deed of trust or any other security documents. Notwithstanding the foregoing provisions of this paragraph, Borrower shall become liable for ensuring that the affordability of the Property, with respect to the HOME Unit restrictions, shall remain in place for the entire LURA Term or Contract Period, whichever is longer. In the event that the affordability will not be maintained during the Federal Affordability Period, through an event of foreclosure, Development Owner may be required to repay the outstanding balance to the Department.] Nothing herein shall serve to waive, modify, supersede, abridge, suspend, or otherwise limit Borrower's obligation to cause the Property to be operated in compliance with HUD requirements for the entirety of the Federal Affordability Period regardless of the status of the Loan, including any situation in which it has been prepaid or discharged.

Section 5.18 Prepayment Provisions

The Loan may be prepaid in whole or in part at any time without penalty. Prepayment of Loan does not release Borrower from conditions and limitations placed on the Property under the LURA.

Section 5.19 Due on Sale Clause

Borrower may not sell, transfer, or convey the Property in whole or in part without Department's prior written consent, or Department, at its option, may declare all outstanding sums immediately due and payable.

Section 5.20 Purchase Options, Rights of First Refusal, Preemptive Rights to Purchase

Funds under this Loan are subject to lender's preemptive rights to purchase the Property to preserve affordability in accordance with 24 CFR §§92.503 and 92.252.

SECTION VI. USE, OCCUPANCY AND RENT OF THE PROPERTY

Section 6.1 Occupancy Requirements

Pursuant to 24 CFR §92.252(j), Qualifying Units and HOME Match-Eligible Units must be designated as ["floating"] ["fixed"] Units, and must be set aside for income eligible individuals and families as set forth below and pursuant to the LURA:

- a. Initial Occupancy Requirements. Notwithstanding anything herein or in the LURA to the contrary, at the time of occupancy of the Development or the time funds are invested pursuant to the HOME Program in connection with the Development, whichever is later, but in no event later than six (6) months from Construction Completion, unless extended, Development Owner must set aside ■ ["floating"] ["fixed"] Units ("Qualifying Units") of the ■ Units that comply with the following occupancy requirements:

at least ■ ["floating"] ["fixed"] Units of the ■ Qualifying Units ■ [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Low Income Families whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income;

at least ■ ["floating"] ["fixed"] Units of the ■ Qualifying Units ■ [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Low Income Families whose Annual Incomes do not exceed sixty percent (60%) of the Area Median Income;

at least ■ ["floating"] ["fixed"] Units of the ■ Qualifying Units ■ [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Very Low Income Families;

The remaining ■ ["floating"] ["fixed"] Units of the ■ Qualifying Units [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program must be occupied by Extremely Low Income Families; and

■[OPTIONAL FOR REHAB]Anything to the contrary in the foregoing notwithstanding, Development Owner will not terminate the occupancy of any tenant in occupancy on the effective date of the LURA that is not a Qualified Tenant for purposes of meeting the initial occupancy requirements of this Section 6.1(a) of the Contract. In the event that Development Owner is unable to comply with the initial occupancy requirements of this Section 6.1(a) of the Contract because of the occupancy as of the effective date of the LURA of any Units by tenants who are not Extremely Low Income Families, Very Low Income Families or Low Income Families, or who have not been determined to be a Qualified Tenant, Development Owner will be in compliance with this Section 6.1 of the Contract if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Extremely Low Income Families, Very Low Income Families or Low Income Families, as the case may be, until the low income occupancy requirements of this Section 6.1 of the Contract are met.]

- b. Long Term Occupancy Requirements. Subject to LURA and subsection (a) of this Section 6.1 of the Contract, during the Contract Period or LURA Term, whichever period is longer, beginning no later than six (6) [this can be amended to **eighteen (18)** months upon execution of Amendment to LURA] months from Construction Completion, Development Owner will make available for occupancy to:

Low Income Families whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income not less than ■ **[floating][fixed]** Units of the Qualifying Units;

Low Income Families whose Annual Incomes do not exceed sixty percent (60%) of the Area Median Income not less than ■ **[floating][fixed]** Units of the Qualifying Units;

Very Low Income Families whose Annual Incomes do not exceed fifty percent (50%) of the Area Median Income not less than ■ **[floating][fixed]** Units of the Qualifying Units;

Very Low Income Families whose Annual Incomes do not exceed forty percent (40%) of the Area Median Income not less than ■ **[floating][fixed]** Units of the Qualifying Units;
and

Extremely Low Income Families whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income the remaining ■ **[floating][fixed]** Units of the Qualifying Units.

- c. Unit Mix. Subject to subsections (a) and (b) of this Section 6.1 of the Contract, during the Contract Period or the LURA Term, whichever period is longer, Development Owner will make all Qualifying Units available for occupancy with the following Unit mix:

■ **[floating][fixed]** Units of the Qualifying Units with 1 bedroom, 1 bath and Net Rentable Area (NRA) of ____ sq ft,

■ At least [floating][fixed] Units of the Qualifying Units with 1 bedroom, 1 bath and Net Rentable Area (NRA) of ____ sq ft, and meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671*

■ [floating][fixed] Units of the Qualifying Units with 2 bedrooms, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft,

At least [floating][fixed] Units of the Qualifying Units with 2 bedroom, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft, and meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671*

■ [floating][fixed] Units of the Qualifying Units with 3 bedrooms, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft,

At least [floating][fixed] Units of the Qualifying Units with 3 bedroom, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft, and meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671*

■ [floating][fixed] Units of the Qualifying Units with 4 bedrooms, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft, and

At least [floating][fixed] Units of the Qualifying Units with 4 bedroom, ____ bath(s) and Net Rentable Area (NRA) of ____ sq ft, and meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671*.

- d. HOME Match-Eligible Units. Notwithstanding anything herein or in the LURA to the contrary, Development Owner must set aside ■ [floating][fixed] Units to comply with the matching contribution requirements under 24 CFR 92.219 ("HOME Match-Eligible Units") as follows:

all ■ HOME Match-Eligible Units must be occupied by individuals and families whose Annual Incomes do not exceed eighty percent (80%) of the Area Median Income;

■ [floating][fixed] Units of the Qualifying Units must be designated and treated as HOME Match-Eligible Units; and

in addition to the ■ Qualifying Units treated as HOME Match-Eligible Units, ■ additional [floating][fixed] Units must be designated and treated as HOME Match-Eligible Units.]

- e. Concentration of Low-Income Families. Development Owner shall use its best efforts to distribute [floating][fixed] Units reserved for Low Income Families, Very Low Income Families and Extremely Low Income Families among Unit sizes in proportion to the distribution of Unit sizes in the Property and to avoid concentration of Low Income Families, Very Low Income Families and Extremely Low Income Families in any area or areas of the Property.
- f. Elderly Development. If the Development is an elderly development as defined by HUD, throughout the LURA Term or Contract Period, whichever period is longer, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be a Property which:
- (i) as determined by the Secretary of HUD, is specifically designed and operated to assist elderly persons as defined in and provided under any State or Federal program;
 - (ii) is intended for, and solely occupied by persons 62 years of age or older; or
 - (iii) is intended and operated for occupancy by at least one person 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one person who is 55 years of age or older; and adheres to policies and procedures which demonstrate an intent by Development Owner and manager to provide housing for persons 55 years of age or older.
- g. FOR PERSONS WITH DISABILITIES SET ASIDE ONLY [Special Needs, All Qualifying Units shall be made available for occupancy by Persons with Special Needs that are: (1) victims of domestic violence; (2) families of a person with HIV/AIDS; (3) migrant farm workers; (4) Persons with Disabilities as defined in 24 CFR §92.2; (5) persons with alcohol or other drug addiction; or (6) homeless.]
- h. Extension of Initial Occupancy Period. Requests to the Department from the Development Owner to extend the six (6) month initial occupancy period must be accompanied by marketing information and a marketing plan which may be submitted by the Department to HUD for final approval.
- i. Marketing. Marketing information and a marketing plan for any HOME-assisted Unit not occupied by an eligible tenant within 6 months of Construction Completion may be requested by the Department and furnished to HUD as required under 24 CFR §92.252.
- j. Repayment of HOME Funds. HOME-assisted Units constructed on the Property must be fully rented to eligible tenants within eighteen (18) months after Construction Completion with initial occupancy of eligible tenants occurring within six (6) months of Construction Completion, unless extended. HOME funds may be required to be repaid on a per-Unit basis if the HOME-assisted Units are not rented to eligible tenants within eighteen (18) months after Construction Completion.

Section 6.2 Accessibility

- a. Pursuant to 24 CFR §§92.251(a)(2)(i) and (b)(1)(iv), Development Owner must ensure that the Property will meet or exceed the accessibility requirements under (1) 24 C.F.R Part 8, which implements Section 504; (2) the Fair Housing Act Design Manual, (3) Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189), as implemented by the Department of Justice regulations at 28 CFR Parts 35 and 36, (4) the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100; and (5) the Department's Accessibility rules in 10 TAC §10.101(b)(8) and Subchapter B of Title 10, Chapter 1 of the Texas Administrative Code, as may be amended from time to time.
- b. If the Development includes the new construction, Rehabilitation, or Reconstruction of multifamily Units (4 or more Units per building), the Development Owner will ensure that at least five percent (5%) of all dwelling Units will be designed and built to be accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with the 2010 Standards under the Americans with Disabilities Act with the exceptions listed "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671* meets this requirement. In addition, at least two percent (2%) of all dwelling Units will be designed and built to be accessible for persons with hearing or vision impairments. Out of the total overall percentage of the total dwelling Units that are required to be accessible, at least five percent (5%) of the Qualifying Units must be designed and built to be accessible for persons with mobility impairments and at least two percent (2%) of Qualifying Units must be designed and built to be accessible for persons with hearing or vision impairments.
- c. In addition, if the development includes the new construction, Rehabilitation, or Reconstruction of single family Units (1 to 3 Units per building), the Development Owner will ensure that every Unit meets or exceeds the accessibility requirements of Section 2306.514 of the Texas Government Code, as it may be amended is adaptable and otherwise compliant with the 2010 Standards under the Americans with Disabilities Act with the exceptions listed "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" *Federal Register 79 FR 29671* meets this requirement. In addition, at least two percent (2%) of all dwelling Units will be designed and built to be accessible for persons with hearing or vision impairments.
- d. Additionally, if the development involves new construction (excluding new construction of non-residential buildings) where some Units are two-stories or single family design and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom one bath, two bedroom one bath, two bedroom two bath, three bedroom two bath) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level.

Section 6.3 Use of the Property

During the Contract Period or LURA Term, whichever period is longer, Development Owner will maintain the Property as rental housing and will rent or hold available for rental each Unit on a continuous basis in order to meet the occupancy requirements of this Contract.

Section 6.4 Common Areas

During the LURA Term or Contract Period, whichever period is longer, Development Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

Section 6.5 Rent Limitations for Low-Income Families

The maximum monthly rent charged by Development Owner for Qualifying Units occupied by Low Income Families other than Very Low Income Families and Extremely Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(a), as may be amended or modified from time to time, as effective when announced by HUD or in writing to the Development Owner. In general, the tenant's portion of rent, plus an allowance for utilities, plus rental assistance payments cannot exceed the High HOME rent limits. All Qualifying Units occupied by Low Income Families may be rented at the High HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time.

Section 6.6 Rent Limitations for Very and Extremely Low-Income Families

The maximum monthly rent charged by Development Owner for Qualifying Units occupied by Very Low and Extremely Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(b) as may be amended or modified from time to time. In general, the tenant's portion of rent, plus an allowance for utilities, plus rental assistance payments, cannot exceed the Low HOME rent limits. All Qualifying Units occupied by Very Low Income Families must be rented at the Low HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time. All Qualifying Units occupied by Extremely Low Income Families must be rented at a gross rent limit that does not exceed thirty percent (30%) of the income limitation imputed using one (1) person for Units with no separate bedrooms and 1.5 persons per bedroom of all other Units pursuant to Section 42(g)(2)(A) and (B) of the Internal Revenue Code, where the combined tenant paid portion of the rent and applicable utility allowance does not exceed said limit. All Qualifying Units set aside for Extremely Low Income Families must also satisfy 24 CFR §92.252.

Section 6.7. Income Determination

- a. The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit or HOME Match-Eligible Unit complies with the requirements for Extremely Low Income Families or Very Low Income Families or Low Income Families shall be made by Development Owner prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter, such determinations, other than for a HOME Match-Eligible Unit, shall be made by Development Owner at least annually.

- b. If the Annual Income of a tenant which previously was classified as Very Low Income or Extremely Low Income Families shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed 80% of Area Median Income (the applicable income limit for Low Income Families), the Unit shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit, and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided Development Owner shall hold the next available Unit available for occupancy by Very Low Income Families or as otherwise may be necessary to comply with the occupancy requirements of Section 6.1 of this Contract.
- c. If the Annual Income of a tenant which previously was classified as Extremely Low Income Families, Very Low Income Families or Low Income Families shall be determined upon reexamination to exceed 80% of Area Median Income (the applicable income limit for Low Income Families), the Unit occupied by such family or individual shall continue to be counted as occupied by a Qualified Tenant during such family's or individual's continuing occupancy of such Unit and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided (A) such family or individual pays as rent thirty percent (30%) of such family's or individual's Monthly Adjusted Income, as recertified, except that tenants of HOME-assisted Units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. §42) (“**Section 42**”) must pay rent governed by Section 42; and (B) Development Owner shall hold the next available Unit available for occupancy by Extremely Low Income Families, Low Income Families or Very Low Income Families, whichever is necessary to comply with the occupancy requirements of Section 6.1 of this Contract.
- d. If the initial determination made in Section 6.7(a) of this Contract results in such family or individual exceeding the applicable income limit, such family or individual shall not be considered a Qualified Tenant.
- e. Development Owner shall be responsible for determination of the Annual Income and family composition of Qualified Tenants at initial occupancy of a Unit, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, based on information collected, verified and certified by Development Owner, in accordance with procedures set forth in 10 TAC §10.611 and the HOME Regulations or as otherwise required by the Department..
- f. As a condition of admission to occupancy of a Qualifying Unit, Development Owner shall require the household head and other such household members as it designates to execute a Department approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Development Owner and to the Department such information as Development Owner or Department determines to be necessary. Development Owner shall also require the household to submit directly documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from

another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Contract.

- g. Development Owner shall not be deemed to be in violation of this Section 6.7 of the Contract if, in determining Annual Income and family composition of a Qualified Tenant, (i) Development Owner has relied in good faith upon information which is supplied to Development Owner by the tenant, (ii) Development Owner has no reason to believe such information is false, and (iii) Development Owner shall have complied with all requirements of the Department with respect to verification of household income and family composition.
- h. ■[OPTIONAL FOR REHAB] Anything to the contrary in the foregoing notwithstanding, Development Owner will not terminate the occupancy of any Low Income Families in occupancy on the effective date hereof that are not a Qualified Tenant for purposes of meeting the requirements of Section 6.1 of this Contract. In the event that Development Owner is unable to comply with the occupancy requirements of Section 6.1 of this Contract because of the occupancy as of the effective date hereof of any Units by tenants who are not Extremely Low Income Families, Very Low Income Families or Low Income Families, or who have not been determined to be a Qualified Tenant, Development Owner will be in compliance with this Section 6.7 of the Contract if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Extremely Low Income Families, Very Low Income Families or Low Income Families as the case may be, in accordance with the requirements of Subsection (b) of this Section 6.7 of the Contract until the low income occupancy requirements of Section 6.1 of this Contract are met.

Section 6.8. Lease Provisions

- a. All tenant leases entered into with Qualified Tenants or tenants of a HOME Match-Eligible Unit during the LURA Term or Contract Period, whichever period is longer, shall be in writing and contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and in connection therewith, agrees to execute an Income Certification form prescribed by the Department, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Development Owner or the Department, and that his or her failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof. All tenant leases entered into with Qualified Tenants or tenants of a HOME Match-Eligible Unit during the Federal Affordability Period shall also contain provisions which are consistent with 10 TAC §10.613, the HOME Regulations and, Multifamily Programs Procedures Manual, including, without limitation, the rent restrictions provided herein and allowing for necessary increases in rent pursuant to Sections 6.7(c) and (d) of this Contract. All tenant leases entered into with Qualified Tenants or tenants of a HOME Match-Eligible Unit during the Federal Affordability Period shall not contain provisions prohibited by Section 92.253 of the Federal HOME Regulations. In addition, all tenant leases entered into with Qualified

Tenants during the Federal Affordability Period shall be supplemented and amended by an addendum to lease in a form prescribed by the Department.

- b. Lease terms must be for one year unless mutually agreed upon by the Development Owner and the tenant. Development Owner may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable federal state or local law; for completion of the tenancy period for transitional housing or for other good cause. To terminate or refuse to renew tenancy, Development Owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination.

Section 6.9. Fair Lease and Grievance Procedure; Tenant Participation

Development Owners shall maintain and abide by the fair lease and grievance procedure approved by the Department and shall have any changes in said procedures approved by the Department prior to the effective date of said changes. Development Owner agrees to maintain and abide by a program of tenant participation in management decisions as set forth in the HOME Regulations.

Section 6.10. Certification by Development Owner

During the Contract Period, Development Owner shall, at least annually, or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms, and provisions of this Contract and a report on the financial condition of the Development. The certification will also include statistical data relating to Persons with Special Needs, race, ethnicity, income and fair housing opportunities and other information requested by the Department including reports required by Subchapter F of Title 10, Chapter 10 of the Texas Administrative Code and Title 10, Chapter 1, Subchapter B of the Texas Administrative Code.

SECTION VII. REPRESENTATION AND WARRANTIES

Section 7.1 Department's Representations

- a. It is expressly understood and agreed by the Parties hereto that Department's obligations hereunder are contingent upon the full and satisfactory performance by Development Owner of the activities herein described and the actual receipt by Department of adequate federal funds to meet Department's liabilities under this Contract. If adequate funds are not available to make payments under this Contract, Department shall notify Development Owner in writing within a reasonable time after such fact is determined. In that event, this Contract shall terminate and neither Party shall have any further rights or obligations hereunder;
- b. Funds provided under this Contract may not be used for payment of prohibited activities and costs and Department shall not be obligated to pay Development Owner for any prohibited costs incurred by Development Owner, as set forth in 24 CFR §§92.205-92.214 and any future rulings or determinations of HUD;

- c. Department shall not be obligated to pay to Development Owner for any costs incurred by Development Owner or for any performances rendered by Development Owner which are not strictly in accordance with the terms of the Contract, including the terms of this Contract and the exhibits attached hereto and incorporated herein for all relevant purposes; and
- d. With the exception of authorized pre-award costs referenced below, the Department shall not be obligated to pay for costs incurred or performances rendered by Development Owner before the Effective Date of this Contract or after the Development Period and shall further not be obligated to pay for any costs incurred within the Development Period and not billed to Department within sixty (60) days after the Development Period unless otherwise agreed in writing. Department authorized pre-award costs for predevelopment costs, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be paid if incurred not more than 24 months before the Effective Date of this Contract if the costs are in accordance with 24 CFR §92.212 and at the sole discretion of the Department.

Section 7.2 Development Owner's Representations

- a. Department is relying on the accuracy of all information, representations and documents submitted by Development Owner in connection with its Application in issuing this a commitment of funds under this Contract. By execution and acceptance of this Contract, Development Owner agrees to perform all activities in accordance with the provisions herein including the certifications provided herein and attached hereto as exhibits, all such exhibits incorporated herein for all relevant purposes, the assurances, certifications, and all other statements made by Development Owner in its Application. Development Owner represents and warrants to Department that there has been no material adverse change to Development Owner's financial status or any change in Development Owner's organizational structure, including the makeup of Development Owner's board of directors, if any. DEPARTMENT MAY TERMINATE THIS CONTRACT IF ANY INFORMATION RELATIVE TO THIS TRANSACTION HAS BEEN OR IS MISREPRESENTED BY DEVELOPMENT OWNER. Department may also terminate this Contract if there is any adverse change with respect to Development Owner's representations in the Application or with respect to the Property. If Development Owner or Department is unable or unwilling to comply with any law, state or federal, or any governmental regulations which affect this transaction, then this Contract shall terminate. The Department, in its sole discretion, may terminate this Contract for any failure of the Development Owner to comply with any terms within this Contract.
- b. Development Owner represents and warrants Department that Development Owner possesses the legal authority to enter into this Contract, to receive funds authorized by this Contract, and to perform the services Development Owner has obligated itself to perform under this Contract.
- c. Development Owner does hereby represent and warrant that the person(s) signing and executing this Contract on behalf of Development Owner is duly authorized by Development Owner to execute this Contract on behalf of Development Owner and to validly and legally bind Development Owner to all the terms, performances, and provisions of this Contract.

- d. Development Owner does hereby represent and warrant that neither the Development Owner nor any of its principals are presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction of the HOME Program by any federal department or agency.
- e. Development Owner shall not employ, award contracts to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD on the Exclusions Extract on SAM.gov and/or the Department. In addition, Department shall have the right to suspend or terminate this Contract if Development Owner is debarred, suspended, proposed for debarment, or is otherwise ineligible from participating in the HOME Program by HUD or the Department. Development Owner acknowledges and agrees that this Section 7.2 of the Contract specifically includes, but is not limited to, consultants hired by Development Owner to assist Development Owner in any aspect relative to the activities of this Contract.

Section 7.3 No Conflict or Contractual Violation

To the best of Development Owner's knowledge, the making of this Contract and Development Owner's obligations hereunder:

- a. will not violate any contractual covenants or restrictions (A) between Development Owner or any third party or (B) affecting the Property;
- b. if Development Owner is other than an individual, will not conflict with any of the instruments that create or establish Development Owner's authority;
- c. will not conflict with any applicable public or private restrictions;
- d. do not require any consent or approval of any public or private authority which has not already been obtained; and
- e. are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Development Owner, without regard to capacity, (B) any person with whom Development Owner may be jointly or severally liable, or (C) the Property or any part thereof

Section 7.4 Prior Warranties, Representations, and Certifications

All warranties, representations and certifications made and all information and materials submitted or caused to be submitted to the Department in connection with the Development are true and correct, and there have been no material changes in or conditions affecting any of such warranties, representations, certifications, materials or information prior to the effective date hereof.

Section 7.5 Reserve Account

Development Owner covenants that the deposits to the Reserve Account required under Section 8.8 of this Contract, if applicable, and the repairs and maintenance of the Development required under Section 8.9 of this Contract, if applicable, fulfill and comply with the requirement of Section 2306.186 of the

Texas Government Code and the implementing regulations (10 TAC §10.404). This Section 7.5 of the Contract does not apply to a Development for which a Development Owner is required to maintain a reserve account under any other provision of federal or state law.

Section 7.6 Community Housing Development Organizations (CHDO)

- a. If the Development Owner, or the entity which the Development Owner is wholly owned by, has been certified by the Department as a Community Housing Development Organization (CHDO) in accordance with 24 CFR §92.2 for the purpose of acquiring, rehabilitating, constructing, managing or owning the Development, the CHDO, in any of its capacities as sponsor, developer or owner in accordance with 24 CFR §92.300, must have effective control over the Development.
- b. If the CHDO owns the Development in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. The subsidiary of the CHDO may be a for-profit or nonprofit organization and must be wholly owned by the CHDO. If the limited partnership or limited liability company agreement permits the CHDO to be removed as general partner or sole managing member, the agreement must provide that the removal must be for cause and that the CHDO must be replaced with another community housing development organization approved by the Department pursuant to 24 CFR §92.300(a)(4)(i).
- c. Property is “owned” by the CHDO if the CHDO is the owner in fee simple absolute of multifamily or single family housing (or has a long term ground lease) for rental to low-income families in accordance with 24 CFR §92.252. For construction or Rehabilitation of the Property, the CHDO hires and oversees the developer that rehabilitates or constructs the housing. At minimum, the CHDO must hire or contract with an experienced project manager to oversee all aspects of the Development, including obtaining zoning, securing non-HOME financing, selecting a developer or general contractor, overseeing the progress of the work and determining the reasonableness of costs. The CHDO must own the Property during the Development Period and for a period at least equal to the Federal Affordability Period. If the CHDO acquires the Property with housing that meets the property standards in 24 CFR §92.251, the CHDO must own the Property for a period at least equal to the Federal Affordability Period.
- d. If the CHDO is acting in the capacity of a developer, the CHDO must own the Property and develop the housing to be constructed or rehabilitated. The CHDO must be in sole charge of all aspects of the development process, including obtaining zoning, securing non-HOME financing, selecting architects, engineers and general contractors, overseeing the progress of the work and determining the reasonableness of costs. At a minimum, the CHDO must own the Property during Development Period and for a period at least equal to the Federal Affordability Period. If the CHDO in its capacity as a developer is not the owner of the Property, the CHDO must be under a contractual obligation with the owner to obtain financing and rehabilitate or construct the Property.
- e. If the CHDO is acting in the capacity of a sponsor, the development must be owned or developed by a subsidiary of the CHDO, a limited partnership of which the CHDO or its subsidiary is the sole general partner, or a limited liability company of which the CHDO or its subsidiary is the sole managing member. Development is also sponsored by a CHDO if the CHDO developed the

development that it agrees to convey to an identified private nonprofit organization at a predetermined time after Development Period, subject to the requirements under 24 CFR §92.300(a)(5).

- f. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME funds under the CHDO Set-Aside.]

Section 7.7 Conflict of Interest

- a. If the Development Owner is the owner, developer, or sponsor of HOME-assisted housing, Development Owner must comply with 24 CFR §§92.356(b)-(f). No owner, developer or sponsor of HOME-assisted housing, including their officers, employees, agents, consultants or elected or appointed officials may occupy a HOME-assisted Unit in a development (with the exceptions of (1) an individual living in a HOME-assisted rental housing development where he/she is a project manager or a maintenance worker in that development and (2) an individual receiving HOME funds to acquire or rehabilitate his/her principal residence).
- b. None of the funds provided under this Contract may be paid to an entity or organization that provides down payment assistance if the activities of that entity or organization are financed in whole or in part, directly or indirectly, by contributions, service fees, or other payments from the sellers of housing, whether or not made in conjunction with the sale of specific housing acquired with funds provided under this Contract.

Section 7.8 Political Aid and Legislative Influence Prohibited

- a. None of the funds provided under this Contract shall be used for influencing the outcome of any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of the Developer from furnishing to any member of its governing body upon request, or to any other local or state official or employee or to any citizen information in the hands of the employee or official not considered under law to be confidential information. Any action taken against an employee or official for supplying such information shall subject the person initiating the action to immediate dismissal from employment.
- b. No funds provided under this Contract may be used directly or indirectly to fund or support candidates for the legislative, executive, or judicial branches of government of the State of Texas or the government of the United States.
- c. None of the funds provided under this Contract shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award governed by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) as the Development Owner and each of its tiers have certified by their execution of the "Certification Regarding Lobbying for Contracts, Grants,

Loans, and Cooperative Agreements” attached hereto as Addendum A and incorporated herein for all relevant purposes.

Section 7.9 Certification Regarding Certain Disaster Relief Contracts

The Department may not award a contract that includes proposed financial participation by a person who, during the five-year period preceding the date of this Contract, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459 of the Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. By executing this Contract, the Development Owner hereby certifies that: **Under Section 2261.053 of the Texas Government Code, Development Owner certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.**

Section 7.10 Certification Regarding Undocumented Workers

Pursuant to Chapter 2264 of the Texas Government Code, by execution of the Contract, Development Owner hereby certifies that the Development Owner, or a branch, division or department of Development Owner does not and will not knowingly employ an undocumented worker, where “undocumented worker” means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Development Owner, or a branch, division, or department of Development Owner is convicted of a violation under 8 U.S.C. §1324a(f), Development Owner shall repay the amount of the public subsidy with interest, at the rate of 5% per annum, not later than the 120th day after the date Department notifies Development Owner of the violation.

SECTION VIII. CONSTRUCTION REQUIREMENTS, SCHEDULE & INSPECTION

Section 8.1 Commencement of Construction

At the sole discretion of Department, if Development Owner has not commenced construction in accordance with 24 CFR §92.2 no later than twelve (12) months from the Effective Date of this Contract, this Contract may be terminated and any disbursed funds must be repaid. Development Owner may petition the TDHCA Board to have the Contract reinstated in accordance with 10 TAC §1.7.

Section 8.2 Payment and Performance Bonds

If the Loan has a first lien position and is for new construction and/or Rehabilitation, assurance of completion of the Development in the form of payment and performance bonds in the full amount of the construction contract or equivalent guarantee in the sole determination of the Department will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing. Development Owners utilizing the U. S. Department of Agriculture (USDA) Rural

Rental Housing Loans (Section 515) Program are exempt from this requirement but must meet the alternative requirements set forth by USDA.

Section 8.3 Construction Standards

Each Unit must, at a minimum, meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies and will adhere to local building codes, or if no local building codes are in place then to the most recent version of the International Building Code, and all other required property standards in accordance with 24 CFR §92.251. The Property must also meet the design and construction requirements at 24 CFR §100.205, which implements the Fair Housing Act, the disaster mitigation construction requirement as outlined in Section 8.10 of this Contract and the Accessibility standards as outlined in Section 6.2 of this Contract. If the Property triggers the rehabilitation requirements of 24 CFR §92, the Property must meet all applicable state and local codes, ordinances, and standards, the 2012 International Existing Building Code (“IEBC”), and the requirements under 10 TAC §10.101(b)(3)(D). If a Property is reconstructed or newly constructed, Development Owner must also ensure compliance with the energy efficiency standards established by Section 2306.187 of the Texas Government Code, energy standards as verified by a RESCHECK certification, as well as the International Residential Codes, as required by Subchapter G, Chapter 214, of the Texas Local Government Code.

Section 8.4 Right of Inspection and Access

Department representatives, agents, and contractors shall have the right to review the plans and specifications and to inspect the Improvements periodically during and after construction. Subject to the rights of tenants under residential leases, Development Owner will permit the Department, its agents, employees and representatives, and any interested Governmental Authority, during business hours, to enter upon and inspect the Development and all materials to be used in the ■ [Rehabilitation] [construction] thereof and to examine and copy all of Development Owner's books, records, contracts and bills pertaining to the Development. Development Owner will also cooperate and cause all Contractors to cooperate with the Department and its agents, employees and representatives during such inspections; provided, however, nothing herein shall be deemed to impose upon the Department any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections

Section 8.5 Notice to Proceed and Inspections

Development Owner shall be required to adhere to all of the following notice and inspection requirements.

- a. Notice to Proceed. Development Owner must receive a “Notice to Proceed” or “Notice of Exemption” [if Davis Bacon regulations do not apply] from the Department prior to the start of any construction activities, or prior to disbursements of funding for eligible costs.
- b. Draw Inspection Contractor. Development Owner or lender (if other than Department), shall retain the services of a third-party licensed architect or engineer to perform construction progress inspections, approve the percentage of work completed in accordance with the plans and

specifications, and certify as to the corresponding dollar amount of the Contractor's application and certificate for payment under the terms of the Loan.

- c. Final Inspection and Clearance. The Development Owner must have a final construction inspection performed after construction completion. A final construction inspection request must be sent to the Department within 18 months of the Loan Closing Date. Evidence of construction completion must be submitted within thirty days of completion and shall be provided in a format prescribed by the Department to the Compliance Division. The clearance of deficiencies identified in the final inspection letter is required for Developments not layered with Housing Tax Credits in order to release the final draw for HOME funds.

Section 8.6 Site Inspection/Monitoring

The Loan is subject to a satisfactory inspection of the Property by the Department. Department reserves the right, from time to time, to carry out field inspections and desk reviews to ensure compliance with the requirements of the Loan Documents. After each monitoring visit, Department shall provide Development Owner with a written report of monitor's findings. If the monitoring reports note deficiencies in Development Owner's performance under the terms of any of the Loan Documents, the monitoring report shall include requirements for the timely correction of such deficiencies by Development Owner. Failure by Development Owner to take the action specified in the monitoring report may be considered an event of default under this Contract and the Loan Documents and may be cause for suspension, termination, or repayment of the funds under this Contract.

Section 8.7 Construction Completion

- a. Construction Completion. Construction Completion of the Development must be completed, as evidenced by the Development's certificate(s) of occupancy and Certificate of Substantial Completion (AIA Form G704), by the end of the Development Period, but in no event later than twenty-four (24) months of the Loan Closing Date.
- b. Termination of Contract and Repayment of HOME Funds. Failure to complete construction of the Property within four (4) years of the Effective Date of this Contract may be considered a default under the Loan and termination of this Contract, and may result in the Development Owner having to repay any HOME funds loaned to Development Owner or invested in the Property by the Department.

Section 8.8 Reserve Accounts for Repairs

If the Department is the first lien lender and the Property consists of 25 or more multifamily rental Units, Development Owner shall create a reserve for any necessary repairs for the Property by depositing not (1) less than \$250.00 per Unit per year for newly constructed Units, or (2) the greater of the amount per Unit per year either established by the information presented in a Property Condition Assessment ("PCA") in conformance with Subchapter D of Chapter 10, Title 10 of the Texas Administrative Code (relating to Underwriting and Loan Policy) or \$300.00 per Unit for Units that are for Reconstruction, Rehabilitation or adaptive reuse, beginning on the date that occupancy of the Property stabilizes or the date that permanent financing for the Property is completely in place, whichever occurs later, in an account in a federally insured bank or savings and shall continue making deposits until the end of the LURA Term or Contract Period, whichever period is longer, or the Property

ceases to be used as multifamily rental property. If the Department is the subordinate lender and said reserve account is not required by the first lien lender, Development Owner shall set aside the repair reserve amount as a reserve for capital improvements for each Unit in the Development. This requirement and condition to create a reserve account for repairs is statutorily required and cannot be waived unless Development Owner is required to maintain a reserve account under any other provisions of Federal or State law.

Section 8.9 Third Party Physical Assessment Needs

Beginning with the eleventh (11th) year after the date of this Contract, Development Owner shall contract for a third-party physical needs assessment, specifically a Property Condition Assessment (“PCA”) in accordance with 10 TAC §10.306, at appropriate intervals that are consistent with the first lien lender requirements. If the Department is the first lien lender or said third-party physical needs assessment/ Property Condition Assessment (“PCA”) is not required by the first lien lender, Development Owner shall contract with a third party to conduct a physical needs assessment at least once during each five-year period beginning the eleventh (11th) year after the date of this Contract. Development Owner shall submit the third-party needs assessment to the Department as well as any response to the assessment, and repairs made in response, and information on any necessary changes to the required reserve based on the assessment within 30 days of completion of the Property Condition Assessment (“PCA”), as such term is defined in the implementing HOME Regulations. The Department may complete the necessary repairs if Development Owner fails to do so and Development Owner shall pay for those repairs directly or through a reserve account. If the Department is notified of health and safety violations in the report, the Department may complete the repairs and pay for them through a reserve account. This requirement to contract with a third party to conduct a physical needs assessment is statutorily required and cannot be waived. The Department shall assess administrative penalties for Development Owner’s failure to conduct the inspection, to make the identified repairs, or to otherwise comply with this Section 8.9 of the Contract in an amount computed by multiplying \$200 by the number of dwelling Units payable to the Department. The Office of the Texas Attorney General may assist in the enforcement of this Section 8.9 of the Contract and the collection of any administrative penalties assessed under this Section 8.9 of the Contract.

Section 8.10 Disaster Mitigation

Pursuant to 24 CFR §92.251(a)(2)(iii), the Development Owner must ensure that this Property will be constructed to mitigate the impact of potential disasters such as earthquakes, hurricanes, flooding and wildfires, in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish.

Section 8.11 Disbursement of Funds

Development Owner must comply with the requirements under Section 10.403(c) of the Uniform Multifamily Rules for a request for disbursement of HOME Funds, including developer’s fee, to reimburse eligible cost incurred.

SECTION IX. CROSS-CUTTING FEDERAL REQUIREMENTS

Section 9.1 Affirmative Marketing

Development Owner shall adopt affirmative marketing procedures and requirements in accordance with 10 TAC §10.617. The affirmative marketing procedures and requirements shall include, but not be limited to, those specified in 24 CFR §92.351. Development Owner shall maintain and abide by an affirmative marketing plan which shall be designed to attract tenants and employees from all racial, ethnic/national origin, sex, religion, familial status and Persons with Special Needs groups and shall require all press releases and written materials, advertising or promoting of the Development to, when feasible, include the equal housing opportunity logo or slogan. Development Owner further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements imposed by the HOME Regulations, specifically 10 TAC §10.617, and any guidance provided by the Department.

Section 9.2 Site and Neighborhood Standards Review

In accordance with 24 CFR §92.202 and 24 CFR §§983.57(e)(2) and (3), Properties involving the new construction of affordable housing Units: (1) the Development Owner shall submit a letter from a certified architect or engineer stating that the site is adequate in size, exposure, and contour to accommodate the number and type of Units proposed, and a letter from a local planning or building official stating adequate utilities (water, sewer, gas, and electricity) and streets are available; (2) the site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-2000d-4), the Fair Housing Act (42 U.S.C. §3601 *et seq.*), Executive Order 11063 (3 CFR §§1959-1963 Comp., p. 652), and implementing HUD regulations; and (3) the site must not be located in an area of minority concentration, except as permitted under 24 CFR §983.6(e)(3), and may not be located in a racially mixed area if the Development will cause a significant increase in the proportion of minority to non-minority resident in the area.

Section 9.3 Faith-Based Activities

Performances rendered by Development Owner under this Contract shall not involve, and funds received by Development Owner under this Contract shall not be used, in support of any inherently religious activity, such as worship, religious instruction, or proselytization. Development Owner shall comply with the regulations promulgated by the HUD at 24 CFR §92.257.

Section 9.4 Labor Standards

All laborers and mechanics (except laborers and mechanics employed by Development Owner while acting as the principal Development Owner of the Development) employed in construction of a development assisted under this Contract, that contains 12 or more HOME assisted Units, shall be paid wages at rates not less than those prevailing on similar developments in the locality, if such a rate category exists, or the appropriate rate as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §§3141-3144 and 3146-3148 and 24 CFR §92.354. Contracts involving their employment shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701-3708) as supplement by the Department of Labor regulations (“Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction” at 29 CFR Part 5), Copeland (Anti-Kickback) Act (40 U.S.C. Sec. 3145) and 24 CFR Part 70 (with regards to volunteers). Construction contractors and subcontractors must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor

standards and HUD Handbook Federal Labor Standards Compliance in Housing and Community Development Programs, as applicable.

Section 9.5 Displaced Persons

In the event there are any Displaced Persons, including families, individuals, businesses, nonprofit organizations, and farms, in accordance with 24 CFR §92.353(a), as a result of any buildings, structures or real property being acquired, rehabilitated or reconstructed with HOME Funds, Development Owner shall comply with the requirements and provisions of the Relocation Plan as required under the Uniform Relocation Act and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §4201 to 4655) and its implementing regulations at 49 CFR Part 24 and in some developments, Section 104(d) of the Housing and Community Development Act of 1974 (the “Barney Frank Amendments”), as amended, as set out in subpart B of 24 CFR Part 42.

Section 9.6 Environmental

- a. The environmental effects of each activity carried out with funds provided under this Contract must be assessed in accordance with the provisions of the Multifamily Programs Procedures Manual, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 *et. seq.*), 24 CFR §92.352 and the related activities listed in HUD’s implementing regulations at 24 CFR Parts 50, 51, 55 and 58 (NEPA regulations). Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA and NEPA regulations, including screening for vapor encroachment following American Society for Testing and Materials (“ASTM”) 2600-10. No entity in the ownership structure may close on the Land or commit any choice limiting activities as defined by 24 CFR Part 58 between the time of application and environmental clearance. The Department will not close a loan or federally commit funds to an activity before the completion of environmental review, including the requirements of 24 CFR §58.6, and the provision of written clearance.
- b. A non-governmental entity is not delegated authority to become a Responsible Entity (“RE”) and make environmental determinations and therefore, shall assist Department in completing the environmental review by providing all relevant documentation needed to perform an environmental review, or carry out mitigating measures required, or selecting an alternate property for assistance.
- c. Violations of any Environmental Laws will be reported HUD (the federal awarding agency) and the Regional Office of EPA.

Section 9.7 Flood Hazard

In accordance with Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106), funds provided under this Contract may not be used in connection with acquisition or Rehabilitation of a development located in an area identified by the Federal Emergency Management Agency (“FEMA”) as having special flood hazards, unless the locality in which the site is located is participating in the National Flood Insurance Program (NFIP) or less than a year has passed since FEMA notification regarding such hazards and flood insurance is obtained as a condition of approval of the Contract. Development Owner must determine if the locality participates in the NFIP during the preliminary stages of the environmental clearance process.

Section 9.8 Lead-Based Paint

Development Owner shall comply with 24 CFR §92.355 which requires that housing assisted with HOME Funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Development Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule (40 CFR Part 745) and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

Section 9.9 Section 3 Compliance

- a. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u (“**Section 3**”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted developments covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- b. The Parties agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the Parties certify that they are under no contractual or other impediment that would prevent them from complying with the regulations at 24 CFR Part 135.
- c. The Development Owner agrees to send to each labor organization or representative of workers with which the Development Owner has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Development Owner's commitments under this section of the Contract, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and shall set forth the following: (i) minimum number and job titles subject to hire, (ii) availability of apprenticeship and training positions, (iii) qualifications for each, (iv) name and location of the person(s) taking applications for each of the positions, and (v) the anticipated date the work shall begin.
- d. The Development Owner agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Development Owner will not subcontract with any subcontractor where the Development Owner has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- e. The Development Owner will certify that any vacant employment positions, including training positions, that are filled (1) after a contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require

employment opportunities to be directed, were not filled to circumvent the Development Owner's obligations under 24 CFR Part 135.

- f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) ("**Section 7b**") also applies to the work to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7b agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7b.

Section 9.10 Equal Employment Opportunity Program

The Development Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

Section 9.11 Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity

The Development Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Contract. The Development Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255), as implemented by U. S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107, The Fair Housing Act (42 U.S.C. §3601 *et. seq.*), as implemented by HUD at 24 CFR Part 100-115, 24 CFR §92.250, 24 CFR §92.202 and 24 CFR §5.105(a).

[By the Development Owner's execution of this Contract, Development Owner agrees to affirmatively further fair housing by using funds in a manner that follows the "State of Texas's Analysis of Impediments" and maintaining records in this regard.]

Section 9.12 Minority/Womens' Business Enterprise

The Development Owner will use its best efforts for minority outreach to afford minority business enterprises and women's business enterprises the maximum practicable opportunity to participate in the performance of this Contract and must prescribe procedures acceptable to HUD for a minority outreach program under Executive Orders 11625, 12432 and 12138 and its implementing regulations at 2 CFR

§200.321. The Development Owner may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.

Section 9.13 Drug-Free Workplace

The Development Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, *et seq*) and HUD's implementing regulations at 2 CFR Part 2429.

Section 9.14 Limited English Proficiency

Development Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000 reprinted at 65 FR 50121, August 16, 2000 Improving Access to Services for Persons with Limited English Proficiency (LEP) at 67 FR 41455. To ensure compliance, the Development Owner must take reasonable steps to ensure that LEP persons have meaningful access. Meaningful access entails providing language assistance services, including oral and written translation.

Section 9.15 Procurement of Recovered Materials

Development Owner and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR, Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition where the purchase price exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000, procuring solid waste management services in a manner that maximizes energy and resource recovery, and establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

SECTION X. RECORDS AND REPORTING

Section 10.1 Records

Development Owner must establish and maintain sufficient records, as determined by the Department, including but not limited to those listed under 24 CFR Part 92. Development Owner agrees that the Department, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to access and to examine all books, accounts, records, reports, files, and other papers or property belonging to or in use by Development Owner pertaining to this Contract. All records pertinent to this Contract shall be retained by Development Owner for a period of five (5) years following the date of HUD's close-out of the Department's program funding year, with the following exceptions:

- a. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- b. Records covering displacement and acquisitions must be retained for five (5) years after the date by which all persons displaced from the Property and all persons whose property is acquired for

the Development have received the final payment to which they are entitled in accordance with 24 CFR Part 92.

- c. For rental housing developments, records may be retained for five (5) years after the development completion date; except that records of individual tenant income verifications, development rents and development inspections must be retained for the most recent five (5) year period, until five (5) years after the State Affordability Period terminates.

Section 10.2 Reporting Requirements

- a. Development Owner shall submit to Department reports required under Section 10.607 of the Uniform Multifamily Rules and such other reports on the operation and performance of this Contract as may be required by Department, including but not limited to the reports specified in this Section 10.2 of this Contract. Development Owner shall provide Department with all reports necessary for Department's compliance with 24 CFR Part 92.
- b. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the Parties hereto that if Development Owner fails to submit to the Department in a timely and satisfactory manner any report required by this Contract, the Department may, at its sole option and in its sole discretion, withhold any or all disbursements otherwise due or requested by Development Owner hereunder. If Department withholds such disbursements, it shall notify Development Owner in writing of its decision, the reasons for this action and the time period in which Development Owner must bring itself into compliance. Disbursements withheld pursuant to this paragraph may be held by Department until such time as the Development Owner is in compliance with the requirements for which funds are being withheld. If Development Owner fails to perform as required within the stated cure period, Department may terminate this Contract and Development Owner hereby agrees and acknowledges that upon termination, Development Owner's rights to any funds shall be terminated.
- c. In addition to other reports, the Development Owner shall provide reports to Department regarding program activities to evidence progress of performance in accordance with the requirements of the Federal Act, the State Act, the HOME Regulations and this Contract.

Section 10.3. Reports

Development Owner shall deliver to the Department:

- a. Within ten (10) days after the last day of each quarter in each fiscal year of Development Owner, or as requested by the Department, a Unit Status Report. The Department may require electronic submission of the Unit Status Report.
- b. From time to time and promptly upon each request, such data, certificates, reports, statements, documents, or further information regarding the assets or the business, liabilities, financial

position, projections, results of operations, or business prospects of Development Owner or such other matters concerning Development Owner's compliance with the HOME Regulations as the Department may reasonably request during the State Affordability Period or as necessary to assist the Department in meeting its recordkeeping and reporting requirements under the Federal HOME Regulations during the Federal Affordability Period, including, without limitation, the following:

1. Records that demonstrate that the Development meets the Property Standards set out in 24 CFR §92.251;
2. Records that demonstrate that the Development meets the requirements set out in 24 CFR §92.252 for the Contract Period;
3. Records that demonstrate compliance with the requirements of 24 CFR §92.253 for tenant protections;
4. Records that indicate whether the Development is mix-income, mix-use, or both.
5. Other federal requirements records:
 - (i) Equal opportunity and fair housing records containing:
 - (A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.
 - (B) Documentation of actions undertaken to meet the requirements of 24 CFR §92.350, which implements Section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. §1701u).
 - (C) Documentation and data on the steps taken to implement the Development Owner's outreach programs to minority-owned and female-owned businesses pursuant to Executive Orders 11625, 12432 and 12138 and its implementing regulations at 2 CFR §200.321, including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of Development Owner's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

- (D) Documentation of the actions the Development Owner has taken to affirmatively further fair housing,
- (ii) Records indicating the affirmative marketing procedures and requirements under 24 CFR §92.351.
- (iii) Records that demonstrate compliance with environmental review requirements in 24 CFR §92.352 (and Part 58 of this Title 24 of the Code of Federal Regulations).
- (iv) Records which demonstrate compliance with the requirements in 24 CFR §92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in 24 CFR §92.353(c)(2)(i)(A), moving into the property on or after the date described in said 24 CFR §92.353(c)(2)(i)(A), and occupying the Property upon completion of the Development.
- (v) Records demonstrating compliance with labor requirements in 24 CFR §92.354, including contract provisions and payroll records.
- (vi) Records concerning lead-based paint under 24 CFR §92.355.
- (vii) Records supporting requests for waivers of the conflict of interest prohibition in 24 CFR §92.356.
- (viii) Records of certifications concerning debarment and suspension required by 24 CFR Part 24.
- (ix) Records demonstrating compliance with flood insurance requirements under 24 CFR Part 92.
- (x) Records demonstrating intergovernmental review, as required by 24 CFR Part 52.

Section 10.4. Information and Reports Regarding the Development

Development Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department but not more frequently than once per month, (a) a statement in such reasonable detail as the Department may request, certified by Development Owner, of the leases relating to the Development, and (b) a statement in such reasonable detail as the Department may request, certified by a certified public accountant or, at the option of the Department, by the Development Owner, of the income from and expenses of any one or more of the following: (i) the conduct of any business on the

Development, (ii) the operation of the Development, or (iii) the leasing of the Development or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand, Development Owner shall furnish to the Department executed counterparts of any such tenant leases and any other contracts and agreements pertaining to facilities located on the Property or which otherwise generate ancillary income for the Development, for the audit and verification of any such statement.

Section 10.5. Other Information

Development Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the Department.

Section 10.6. Maintenance of Documents

All Development Documents and any other report or records which Development Owner is required to prepare and/or provide to the Department pursuant to this Contract or the HOME Regulations must be retained for the periods set out in the HOME Regulations, or if no specific period is set out, for five (5) years after the end of the Federal Affordability Period, or as otherwise specified by law or required by the Department. All Development Documents shall at all times be kept separate and identifiable from any other business of Development Owner which is unrelated to the Property, and shall be maintained in compliance with the HOME Regulations and any other requirements of the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department, HUD, or the United States Comptroller General. Development Owner agrees and acknowledges that any and all of the Development Documents are confidential in nature. Development Owner agrees not to disclose the Development Documents or any of the terms, provisions or conditions thereof, or any other information that is deemed confidential under federal law or state law related to tenants' or applicants' income, social security number, employment status, disability, or other related matters to any party outside of Development Owner's organization or to Development Owner's management company for the Development, except as otherwise expressly required in this Contract, or by the HOME Regulations. Development Owner further agrees that within its organization, the Development Documents and other confidential information will be disclosed and exhibited only to those persons within Development Owner's organization whose position and responsibilities make such disclosure necessary.

Section 10.7 Public Information

Development Owner acknowledges that Department is subject to the Texas Public Information Act and Development Owner agrees that funds received from the Department are subject to the Texas Public Information Act and the exceptions to disclosure as provided under the Texas Public Information Act.

SECTION XI. COMPLIANCE MONITORING; AUDITS

Section 11.1. Compliance Review

During the Contract Period, Development Owner agrees to permit the Department and HUD, or its designated representative, access to the Property for the purpose of performing Department Compliance Monitoring Procedures in accordance with Subchapter F of the Uniform Multifamily Rules. The Department or HUD periodically will monitor and audit Development Owner's compliance with the

requirements of this Contract, the requirements for Reserve Account under 10 TAC §10.404, the HOME Regulations, and any and all other Governmental Requirements, in accordance with Department Compliance Monitoring Procedures during the Federal Affordability Period. The Department will continue to periodically monitor and audit Development Owner's compliance with the requirements of this Contract and , the requirements for Reserve Account under 10 TAC §10.404, and any and all other Governmental requirements, in accordance with Department Compliance Monitoring Procedures during the Contract Period. In conducting its compliance review, the Department and HUD will rely primarily on information obtained from the Development Owner's records and reports, findings from onsite monitoring in accordance with 10 TAC §10.618, and audit reports. The Department and HUD may also consider relevant information gained from other sources, including litigation and citizen complaints. In accordance with Section 2306.231 of the State Act, and to the extent permitted by the Federal Act and its implementing regulations, Development Owner shall reimburse the Department or HUD, as appropriate, on demand for their respective costs incurred in connection with monitoring, auditing, inspecting and examining the Development Owner's compliance with the requirements of this Contract.

Section 11.2 Audits

- a. Development Owner shall submit to Department, within ninety (90) days after the end of each fiscal year, an Audit Certification Form as specified by Department for each fiscal year in which any months of the Development Owner's fiscal year overlaps a month of the Contract Period. Unless otherwise directed by Department, Development Owner shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Contract, subject to the following conditions and limitations:
 1. Development Owner shall have an audit conducted in accordance with 2 CFR Part 200, Subpart F, for any of its fiscal years included within the Contract Period specified in Section II of this Contract in which Development Owner has expenses of more than \$750,000, in federal financial assistance provided by a federal agency or a pass through entity in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term "federal financial assistance" includes awards of financial assistance received directly from federal agencies, or indirectly through other units of State and local government.
 2. The audit required by this Section 11.2 of the Contract must cover Development Owner's entire operations and each department, agency, related entity, or establishment of Development Owner which received, expended, or otherwise administered federal funds.
 3. Development Owner must follow the process in 10 TAC §1.3.
- b. If the Development Owner is not subject to a single audit, Department reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Contract. Development Owner agrees to permit Department, or its authorized representative, to audit Development Owner's records and to obtain any documents, materials, or information necessary to facilitate such audit.
- c. Development Owner understands and agrees that it shall be liable to Department for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Development Owner further understands and agrees that reimbursement to Department of such

disallowed costs shall be paid by Development Owner from funds which were not provided or otherwise made available to Development Owner under this Contract.

- d. Development Owner shall take all necessary actions to facilitate the performance of such audit or audits conducted pursuant to this Section 11 as Department may require of Development Owner.
- e. All approved HOME audit reports shall be made available for public inspection within thirty (30) days after completion of the audit.

SECTION XII. DEFAULT, ENFORCEMENT AND REMEDIES

Section 12.1. Events of Default

Occurrence of one or more of the following events will, at the sole election of the Department, constitute an event of default ("**Event of Default**") under this Contract:

- a. Breach of Contract. Development Owner shall default in the performance of any of its obligations under this Contract or breaches any covenant, agreement, restriction, representation or warranty set forth herein, and such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Development Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period);
- b. Bankruptcy. Development Owner shall be adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy or for reorganization shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within sixty (60) days of its entry or a receiver or trustee shall be appointed for the Development Owner or the Property, Land or any part thereof and remain in possession thereof for sixty (60) days;
- c. Transfer or Sale of Property. Development Owner shall sell or otherwise transfer the Property, in whole or in part (except leases of individual Units for a period not to exceed two (2) years and otherwise in accordance with this Contract and Loan Documents), without the prior written consent of Department;
- d. False Representations. If any representation, statement or warranty made by Development Owner or others in, under or pursuant to any of the Loan Documents or any affidavit or other instrument executed in connection with the Loan Documents shall be false or misleading in any material respect as of the date hereof or shall become so at any time prior to the repayment in full of the Loan.
- e. Destruction or Loss of Property.

1. If the Property is demolished, destroyed or substantially damaged so that (in Department's judgment) it cannot be restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time; or
 2. Development Owner shall fail to notify Department of the occurrence of any casualty loss of the Property within 30 days from the occurrence; or
 3. Development Owner shall fail to restore Property or replace Property with similar items due to casualty within a time period approved by Department not to exceed two (2) years.
- f. Change in Financial Condition. If the Department reasonably determines that the likelihood of payment of the Loan or performance of the obligations under the Loan Documents is threatened by reason of a material adverse change in the financial condition or credit standing of Development Owner or, if Development Owner is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Development Owner, or if the estate held by Development Owner in the Land is a leasehold estate, of the ground lessor.
- g. Foreclosure of Other Liens. If the holder of any lien or security interest on the Property (without hereby implying Department's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
- h. Failure to Timely Pay Loan. If Borrower shall fail, refuse or neglect to pay, in full, any installment or portion of the Loan as and when the same shall become due and payable, whether at the due date thereof stipulated in the Loan Documents, or at a date fixed for prepayment or otherwise, and such failure, refusal or neglect continues for a period of fifteen (15) days thereafter; provided, however, that if such installment or portion of the Loan becomes due and payable as a result of Department's accelerating the maturity of the Loan in accordance with the Loan Documents, the fifteen (15) day grace period for payment set forth in this Section 12.1(h) of the Contract shall not apply to the accelerated due date.
- i. Performance of Obligations. If Development Owner shall fail, refuse or neglect to perform and discharge fully and timely any of the obligations under this Contract or any of the Loan Documents as and when called for and such failure, refusal or neglect shall either be incurable or, if curable, shall remain uncured for a period of thirty (30) days after the earlier to occur of (i) the date Department gives written notice thereof to Development Owner or (ii) the date upon which Development Owner had actual knowledge of the obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) day period, no Event of Default shall be deemed to have occurred if Development Owner commences same within such thirty (30) day period and thereafter diligently and continuously prosecutes the same to completion within sixty (60) days after such notice or date of actual knowledge.
- j. Merger. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas, and such is not cured prior to causing material

harm to Development Owner's ability to repay the indebtedness under the Loan Documents or perform the contractual obligations hereunder and under the Loan Documents.

- k. Events of Noncompliance. If Development Owner is found to be in noncompliance for compliance monitoring purposes in accordance with 10 TAC §10.624.

Section 12.2. Debarred and Suspended Parties

By signing this Contract, Development Owner certifies that neither it nor its current principle parties are included in the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA) as provided in the Certification Regarding Debarment, Suspension and Other Responsibility Matters attached hereto as Addendum B and incorporated herein for all relevant purposes. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in the certification attached as Addendum B, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Development Owner also certifies that it will not make any award provided by this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Development Owner agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management (SAM) at www.sam.gov and including a copy of the results in its project files. Development Owner may decide the frequency by which it determines the eligibility of its subcontractors. Development Owner may rely upon a certification of a prospective subcontractor that is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless Development Owner knows that the certification is erroneous. Failure of Development Owner to furnish the certification attached hereto as Addendum B or an explanation of why it cannot provide said certification shall disqualify Development Owner from participation under this Contract. The certification or explanation will be considered in connection with the Department's determination whether to continue with this Contract. Development Owner shall provide immediate written notice to Department if at any time Development Owner learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Development Owner further agrees by executing this Contract that it will include the certification provision titled "Certification Regarding Debarment, Suspension and Other Responsibility Matters" "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusive-Subcontracts," as set out in Addendum B, without modification, and this language under this Section 12.2 of the Contract, in all its subcontracts.

Section 12.3. Remedies

Upon an occurrence of an Event of Default, the Department, in its sole discretion may, (i) apply to any court having jurisdiction of the subject matter for specific performance of this Contract, and/or for an injunction against any violation of this Contract, or (ii) take any action authorized under Subchapters F and G of Chapter 10, Title 10 of the Texas Administrative Code or Chapter 2, Title 10 of the Texas Administrative Code, or (iii) take any and all action at law, in equity, or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Development Owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of Development Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in

which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon a default by Development Owner hereunder.

Section 12.4. Cumulative and Concurrent Remedies

Each right, power and remedy of the Department provided for in this Contract now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one or more of the rights, powers or remedies provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

Section 12.5. Purchase Options, Rights of First Refusal, Preemptive Rights to Purchase

The Department has the option to utilize purchase options, rights of first refusal or any other preemptive rights to purchase Property in accordance with 10 TAC §10.407, 24 CFR §92.503 and 24 CFR §92.252 in order to preserve the affordability requirements under Section VI of this Contract during the Federal Affordability Period. Pursuant to Section 2306.185(f) of the Texas Government Code, Development Owner must provide notice to the Department at least 12 months before the date of any attempt to dispose of the Property or prepay any loan insured by the United States Department of Housing and Urban Development to enable the Department to attempt to locate a buyer who will conform to this Contract and the LURA.

SECTION XIII. GENERAL PROVISIONS

Section 13.1. Independent Contractor

It is expressly understood and agreed by the Parties hereto that Department is contracting with Development Owner as an independent contractor, and that Development Owner, as such, agrees to hold Department harmless and to the extent allowed by law indemnify Department from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by Development Owner under this Contract.

Section 13.2. Subcontracts

- a. Development Owner shall only subcontract for performance of activities described in this Contract after Development Owner has obtained the appropriate documentation verifying the subcontractor's eligibility, as specified by Department, for each such proposed subcontract. Development Owner, in subcontracting for any activities described in this Contract, expressly understands that in entering into such subcontracts, Department is in no way liable to Development Owner's subcontractor(s).
- b. In no event shall any provision of this Section 13.2 constitute adoption, ratification, or acceptance of Development Owner's or subcontractor's performance hereunder. Department

maintains the right to insist upon Development Owner's full compliance with the terms of this Contract, and by the act of approval under this Section 13.2, Department does not waive any right of action which may exist or which may subsequently accrue to Department under this Contract.

- c. Development Owner shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurements under this Contract.
- d. Development Owner shall include language in any subcontract that provides the Department and HUD the authority to directly review, monitor, and/or audit the operational and financial performance and/or records of work performed under this Contract by any third-party, including subcontractors, contractors and consultant or service provider.
- e. Development Owner shall include in any subcontracts that failure to adequately perform under this Contract may result in penalties up to and including debarment from performing additional work for the Department.

Section 13.3. Development Budget

The final sources and uses for the Development as evidenced in the Department's Credit Underwriting Report and Amended/Revised Reports, as revised, updated or amended, attached hereto as Exhibit C, and incorporated herein for all relevant purposes, which may be updated, revised and amended from time to time.

Section 13.4. Notices

All notices required or permitted to be given under this Contract must be in writing. Notice will be deemed effective three (3) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

Department: 221 E. 11th Street
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Director of Multifamily Finance Division

with copy to: Texas Department of Housing and Community Affairs
221 E. 11th Street
P.O. Box 13941
Austin, Texas 78711-3941
Attention: Chief of Compliance and Asset Oversight

Development Owner:

■
■
■

Attention: ■

[with copy to: Fee Title Owner:

■

■

■

Attention: ■]

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 13.4 of the Contract.

Section 13.5 Conflicting Agreements

Development Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Contract are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

Section 13.6 Amendments

- a. Except as specifically provided otherwise in this Contract or in the Uniform Multifamily Rules, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both Parties and shall comply with the amendment requirements of Section 10.405 of the Uniform Multifamily Rules.
- b. Any changes, additions, or deletions to the terms of this Contract which are required by changes in federal or state law, or regulations, are automatically incorporated into this Contract without the requirement of a written amendment hereto, and shall become effective on the date designated by such law or regulation.

Section 13.7 Severability

If any provision of this Contract is held invalid, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be and remain in full force and effect and construed so as best to effectuate the intent of the parties.

Section 13.8 Counterparts and Facsimile Signatures

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or electronic transmission, and any such signature shall have the same legal effect as an original. An executed facsimile or email copy approved by the Department will be

sufficient to evidence the parties' agreement to any amendment, revision, or change to this Contract if it is made on a form provided by the Department. If any party returns a copy by facsimile machine, the signing party intends the copy of its authorized signature printed by the receiving machine to be its original signature. If any party returns a copy by email, the signing party intends the copy of its authorized signature emailed to the receiving email to be its original signature.

Section 13.9 Captions

The captions used herein are for reference purposes only and shall not define, limit, extend, or describe the scope of this Contract or the intent of any provisions hereof.

Section 13.10 Number, Gender

Whenever used herein the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 13.11 Jurisdiction

This Contract is delivered and is intended to be performed in the State of Texas.

Section 13.12 Venue

For purposes of litigation pursuant to this Contract, venue shall lie in Travis County, Texas.

Section 13.13 Litigation and Claims

- a. No action, litigation, investigation or proceeding is now pending or, to the best of Development Owner's knowledge, threatened against Development Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation or enforceability of this Contract..
- b. Development Owner shall give Department prompt notice, in writing, of the occurrence of any of the following events:
 - (i) any action, including any proceeding before an administrative agency, filed against Development Owner in connection with this Contract; and
 - (ii) any claim against Development Owner, the cost and expense of which Development Owner may be entitled to be reimbursed by Department.
- c. Except as otherwise directed by Department, Development Owner shall furnish promptly to Department copies of all pertinent papers received by Development Owner with respect to such action or claim.

Section 13.14 No Bankruptcy

There is not pending or, to Development Owner's best knowledge, threatened against Development Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization,

arrangement, composition, readjustment, liquidation, dissolution or similar relief for Development Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

Section 13.15 Compliance with Applicable Law

This Contract is expressly subject to Development Owner's compliance to Department's satisfaction with all applicable laws, federal, state and local, and with all governmental regulations, rules and ordinances, as well as Department's program guidelines relating to the HOME Program, this Loan and affecting the Development, or its use, all of which may be modified or amended from time to time.

Section 13.16 Assignment

This Contract is made by Department to Development Owner only. Accordingly, it is not assignable without the written consent and agreement of Department, which consent may be withheld at Department's sole discretion.

Section 13.17 Alternative Dispute Resolution

In accordance with Section 2306.082 of the State Act, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by Department's ex parte communications policy, Department encourages informal communications between Department staff and the Administrator, to exchange information and informally resolve disputes. Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Administrator would like to engage Department in an ADR procedure, the Administrator may send a proposal to Department's Dispute Resolution Coordinator. For additional information on Department's ADR policy, see Department's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

Section 13.18 Additional Terms and Conditions

- a. Development Owner understands and hereby acknowledges that this Contract does not address all of the terms and conditions of the Loan and that additional terms and conditions will be required by the Loan Documents to be executed at closing on the Loan Closing Date. All information, documents and reports required must be satisfactory to Department in its sole discretion. Any change which occurs after the final acceptance of the Application and subsequent award of HOME funds by the Department, and not agreed to by the Department in writing, may result in a reduction of the Loan Amount or the termination of this Contract.
- b. Development Owner will be responsible for fulfilling all of the additional terms and conditions required within the Department Real Estate Analysis Credit Underwriting Report and Amended/Revised Reports attached hereto as Exhibit C, as may be amended. In the event any of the conditions listed herein cause the Development Owner to become an ineligible applicant

and/or the Development to become an ineligible award, Development Owner must inform the Department, and the Department reserves the right to terminate this Contract.

Section 13.19 Time is of the Essence

Time is of the essence with respect to Development Owner's compliance with all covenants, agreements, terms and conditions of this Contract.

Section 13.20 Oral and Written Agreements

- a. All oral and written agreements between the Parties to this Contract relating to the subject matter of this Contract that were made prior to the execution of this Contract have been reduced to writing and are contained in this Contract.
- b. The attachments enumerated and denominated below are incorporated herein by reference for all purposes and are a part of this Contract and constitute promised performances under this Contract:
 1. Addendum A, Certification Regarding Lobbying
 2. Addendum B, Certification Regarding Debarment, Suspension and Other Responsibility Matters
 3. Exhibit A, Legal Description
 4. Exhibit B, Award Letter and Loan Term Sheet (including any and all amendments)
 5. Exhibit C, Credit Underwriting Report and Amended/Revised Reports

Section 13.21 Effective Date

The Effective Date of this Contract shall be the date identified below in the signature clause.

Section 13.22 Acceptance

This Contract is not valid until signed by Development Owner and Department. Development Owner must deliver this Contract to the Department via mail, fax, or electronic mail on or before the close of business on . If a copy of the executed Contract is not in Department's possession by such time and date, this Contract shall terminate and become null and void unless Department, in its sole discretion, shall choose to extend this date in writing, but in no event shall this acceptance date be extended later than sixty (60) days before Loan Closing.

THIS CONTRACT WAS APPROVED BY THE BOARD OF DIRECTORS ON _____, 20____ (the “Board Approval Date”) AND IS NOT EFFECTIVE UNLESS SIGNED BY THE EXECUTIVE DIRECTOR OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, OR HIS/HER AUTHORIZED DESIGNEE.

WITNESS OUR HAND EFFECTIVE:

DEVELOPMENT OWNER:

_____, **ENTITY TYPE**

By: _____, **ENTITY TYPE**, its

By: _____
_____ ,

Date: _____

[CHDO:

_____, **ENTITY TYPE nonprofit corporation,**

By: _____
_____ ,

Date: _____]

THIS CONTRACT IS APPROVED, ACCEPTED AND MADE EFFECTIVE ON _____, 20____ (the “Effective Date”) AND WILL TERMINATE AT THE END OF THE CONTRACT PERIOD AS DEFINED IN SECTION II OF THIS CONTRACT, ON BEHALF OF DEPARTMENT:

**TEXAS DEPARTMENT OF HOUSING AND
COMMUNITY AFFAIRS, a public and official
agency of the State of Texas**

By: _____
Its duly authorized officer or representative

Date: _____

[THIS CONTRACT IS JOINED AND CONSENTED TO BY:

FEE TITLE OWNER:



By: _____

Name: _____

Title: _____

Date: _____]

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM**

CONTRACT # _____

ADDENDUM A

**Certification Regarding Lobbying for
Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned hereby certifies, to the best of its knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form -LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is material representation of fact on which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of its knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement

is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

_____, a _____

By: _____, a _____, its

By: _____
_____, _____

Date: _____

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM**

CONTRACT # _____

ADDENDUM B

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The undersigned certifies, to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the undersigned Development Owner is unable to certify to any of the statements in this certification, such Development Owner shall attach an explanation of why it cannot provide said certification to this Contract.

The undersigned Development Owner further agrees and certifies that it will include the below clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Subcontracts/Lower Tier Covered Transaction," without modification, in all subcontracts and in all solicitations for subcontracts:

***"CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION – SUBCONTRACTS/ LOWER TIER COVERED TRANSACTIONS***

(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

LOWER TIER PARTICIPANT/ **Entity Name, Entity Type**
SUBCONTRACTOR:

By: _____
Signature Authority Name, Title

Date: _____”

This certification is a material representation of fact upon which reliance is placed when the Department awards the grant. If it is later determined that Development Owner knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, the Department may terminate this Contract for cause or default.

DEVELOPMENT OWNER:

Entity Name, Entity Type

By: _____
Signature Authority Name, Title

Date: _____

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM**

CONTRACT # _____

**EXHIBIT A
Legal Description**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM**

CONTRACT # _____

EXHIBIT B

Award Letter and Loan Term Sheet (including any and all amendments)

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
HOME INVESTMENT PARTNERSHIPS PROGRAM**

CONTRACT # _____

**EXHIBIT C
Credit Underwriting Report and Amended/Revised Reports**