

**DEVELOPER AGREEMENT FOR
CONSTRUCTION OF AFFORDABLE HOUSING RENTAL UNITS**

PROJECT NAME: WEST END LOFTS

This DEVELOPER AGREEMENT FOR CONSTRUCTION OF AFFORDABLE HOUSING RENTAL UNITS (this "*Agreement*"), effective as of February ____, 2020 (the "*Effective Date*"), is entered into by and between the CITY OF SAN ANTONIO, a Texas municipal corporation ("*CITY*"), and TERRAMARK INTERESTS, LLC, a Texas limited liability company ("*DEVELOPER*"). CITY and DEVELOPER are sometimes referred to herein each individually as a "*Party*" and collectively as the "*Parties*".

RECITALS

WHEREAS, DEVELOPER is in the process of developing a mixed income multi-family residential property that will be located within the city limits of the City of San Antonio on various sites within City Council District 5, and will consist of the construction of twelve (12) multi-family apartment units with six (6) reserved for households earning at or below sixty percent (60%) of the Area Median Income ("*AMI*") for the San Antonio-New Braunfels Metropolitan Area with the DEVELOPER investing approximately \$1,900,000.00 in acquiring and developing the properties (the "*Project*"); and

WHEREAS, DEVELOPER has requested a forgivable loan from the CITY in the amount of TWO HUNDRED FORTY-TWO THOUSAND DOLLARS AND NO/100 (\$242,000.00) from the CITY's Affordable Housing Fund for the purpose of deferring costs associated with the construction related to the Project (the "*Loan*"); and

WHEREAS, CITY has determined that there are funds available in the Affordable Housing Fund that are appropriate to utilize for the purpose of developing affordable housing in the CITY and for the DEVELOPER to carry out the Project; and

WHEREAS, the City Council has authorized the City Manager or his designee to enter into this Agreement with DEVELOPER as reflected in Ordinance No. _____, passed and approved on February 20, 2020;

WHEREAS, as a material condition to CITY making the Loan, DEVELOPER has agreed to reserve six (6) apartment units out of the twelve (12) apartment units constructed for the Project for households with incomes at or below sixty percent (60%) of the San Antonio area median income ("*AMI*"), adjusted for household size, as determined by the Secretary of Housing and Urban Development; and

WHEREAS, as a further material condition to CITY making the Loan, DEVELOPER has agreed to make the six (6) units reserved for households with incomes at or below 60% of the AMI for a period of not less than twenty (20) years as set forth in detail below;

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the Parties understand and agree to all of the following:

ARTICLE I. DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“**Business Day**” means every day of the week, except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by CITY’s City Council for its employees.

“**Days**” shall mean calendar days.

“**Environmental Law**” means any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Property (defined below).

“**Environmental Report**” means a report prepared by a reputable engineer or other party reasonably satisfactory to CITY in such detail as CITY may reasonably require, indicating that no part of the Property is contaminated with Hazardous Materials or is subject to undue risk of contamination by Hazardous Materials.

“**Force Majeure**” means any event beyond the control of a party and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent that event or circumstance, including, without limitation, acts of God; fire; flood; storm; earthquake; accident; war; rebellion; insurrection; riot; or invasion.

“**Governmental Authority**” means any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, or otherwise), whether now or hereafter in existence, with jurisdiction over the applicable matter.

“**Hazardous Materials**” – Any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as “hazardous substances,” “hazardous materials” or “toxic substances” in any Environmental Law.

“**Legal Requirements**” means (A) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to DEVELOPER, any guarantor of the Project or the Loan, or the Property, including, without limitation, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (B) any and all covenants, conditions, and restrictions contained

in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; and (C) any other bona fide written contracts of any nature that relate in any way to the Property or the Project and to which DEVELOPER is bound.

ARTICLE II. PROJECT

2.1 **Agreement Purpose.** The purpose of this Agreement is to set the terms and conditions applicable to the CITY's making of the Loan to DEVELOPER to defray costs in connection with DEVELOPER'S construction of the Project which is in furtherance of the CITY's affordable housing programs established to provide affordable and workforce housing within the City of San Antonio.

2.2 (A) **Project Requirements.** DEVELOPER shall undertake and complete the Project in accordance with the following schedule and as further described in **Exhibit "B"**:

- 1) DEVELOPER shall undertake the Project in March 2020 and complete six (6) affordable multi-family rental units prior to April 30, 2021.
- 2) Upon completion of construction, and for a period of twenty (20) years, DEVELOPER shall reserve six (6) rental units to be available to households earning at or below 60% of the AMI for the San Antonio-New Braunfels Metropolitan Area.

Adjustments to the schedule above require advance notice to CITY and written approval by the Director of the Neighborhood & Housing Services Department.

- 3) DEVELOPER shall invest or cause to be invested approximately ONE MILLION, NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,900,000.00) in real improvements to the Project Site prior to April 2021.
- 4) Upon completion of the improvements, DEVELOPER shall:
 - i) Provide CITY with evidence of the \$1,900,000.00 investment by DEVELOPER in real and personal property improvements directly associated with the Project; and
 - ii) Provide CITY with documentation evidencing the affordability of the six (6) units described in **Exhibit "B"**; and

- iii) Provide CITY annually with evidence indicating that DEVELOPER is current on the CITY's portion of ad valorem taxes for the term of the Agreement.
- (B) DEVELOPER shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement.
- (C) Work Statement. DEVELOPER shall ensure that all construction performed with Loan Funds made available to DEVELOPER by CITY under this Agreement shall be in accordance with the Work Statement. DEVELOPER acknowledges, understands, and agrees that:
- (1) Environmental review records have only been completed and approved for the Work Statement, and any change to the Work Statement requires further environmental review and that no choice limiting actions related to a change in the scope of work may be undertaken without prior written approval from CITY;
 - (2) All construction performed with assistance made available to DEVELOPER by CITY under this Agreement shall be in accordance with the timeline included as part of the Work Statement, and unless written approval is obtained from CITY to modify the commencement date, Project construction must begin in accordance with the established timeline; and
 - (3) All Loan Funds provided to DEVELOPER by CITY under this Agreement shall be subject to recapture if construction of the Project has not begun within three hundred sixty-five (365) days after the Effective Date of this Agreement.
- (D) Changes in Work.
- (1) Other than a ten percent (10%) allowance in field changes necessary to continue the work on the Project, prior to implementing any other change to the work items specified in the Work Statement, DEVELOPER must obtain the written approval of CITY, which approval shall not be unreasonably withheld, conditioned, or delayed. Approval of changes shall be considered based on the following factors: (i) eligibility in accordance with CITY's affordable housing and displacement policies; (ii) change in contract price and proposed source/availability of funds; and (iii) change in completion time.
 - (2) Change orders shall be in writing, signed by DEVELOPER and the DEVELOPER or sub-developer, if applicable, and approved by the City

Manager, Director of Neighborhood & Housing Services Department or other appropriate designee.

- (3) Should DEVELOPER (i) initiate any changes without prior CITY approval, other than a ten percent (10%) allowance in field changes necessary to continue the work on the Project, or (ii) fail to provide acceptable documentation of the actual Project costs incurred, then, in either event, CITY may, at its option (a) reduce the Loan to a lesser amount based on the actual obligated development / construction cost documentation received or (b) withdraw CITY's funding for the development / construction of the Property, cancel the Loan, and terminate the Loan Documents (defined below).

ARTICLE III. TERM

3.1 Term. Unless terminated earlier pursuant to Article XVIII below, this Agreement shall commence on the Effective Date and shall continue until the end of the Affordability Period.

ARTICLE IV. LOAN DOCUMENTS

4.1 Loan Documents. In addition to this Agreement, DEVELOPER shall execute the following documents in connection with the Loan:

- (A) Real Estate Lien Note payable to CITY in the amount of Two Hundred Forty-Two Thousand and No/100 Dollars (\$242,000.00) (the "*Note*");
- (B) Deed of Trust on the Property in favor of CITY (the "*Deed of Trust*"), which shall secure payment of the Note; and
- (C) Declaration of Restrictive Covenant of Affordability (the "*Restrictive Covenant*"), and together with this Agreement, the Note, and the Deed of Trust (the "*Loan Documents*").

4.2 Default under Loan Documents. A default under any of the Loan Documents shall be a default under each of the other Loan Documents and any other contract or agreement relating to the Project between DEVELOPER and CITY. If an event of default continues beyond any applicable grace or cure period, any obligation of CITY to advance funds hereunder or under any of the other Loan Documents shall immediately cease and CITY may terminate this Agreement and the other Loan Documents pursuant to Article XVIII.

ARTICLE V. LOAN TERMS

5.1 CITY has agreed to provide DEVELOPER with a Loan in the amount of TWO HUNDRED FORTY-TWO THOUSAND DOLLARS (\$242,000.00) (the "**Loan Funds**") to assist in the construction and completion of the Project.

5.2 **Loan Disbursement.** CITY will make the Loan Funds available to DEVELOPER in one lump sum of TWO HUNDRED FORTY-TWO THOUSAND DOLLARS (\$242,000.00). The disbursement shall be made upon DEVELOPER submitting documents evidencing, to CITY's satisfaction, that DEVELOPER is prepared to commence the Project in accordance with Section 2.2 (A) above.

5.3 **Requirement to Maintain Affordability.** DEVELOPER shall maintain the affordability of the Property in accordance with this Agreement for a period of twenty (20) years from the effective date of this Agreement.

5.4 **Payment of Principal and Accrued Interest.** In addition to the principal amount of the Loan Funds, upon default as provided in Article VI, DEVELOPER shall also pay accrued interest on the Loan Funds in the amount of the applicable federal rate (the "**AFR**") published by the Internal Revenue Service. The AFR shall be determined as of the date of the disbursement.

5.5 **Unconditional Obligation to Repay the Loan.** Unless forgiven pursuant to Section 5.6 below, the obligations of DEVELOPER to make the loan repayment and interest payment required by Section 5.4 above are absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the CITY, and during the term of this Agreement, DEVELOPER shall repay the Loan Funds free of any deductions and without abatement, diminution or set-off.

5.6 **Loan Forgiveness.** DEVELOPER shall have a right to reduce or eliminate the amount of the repayment of the loan by showing strict compliance with Sections 2.2 (A) and (B) above on the due date of the loan or sooner.

ARTICLE VI. LOAN DEFAULT AND CITY's REMEDIES

6.1 **Loan Default Events.** Any one of the following which occurs and continues shall constitute a Loan Default Event:

- (A) Failure of DEVELOPER to observe and perform in any material respect any covenant, condition or agreement on its part required to be observed or performed under this Agreement following the expiration of sixty (60) days written notice to cure; or
- (B) The dissolution or liquidation of DEVELOPER or the filing by DEVELOPER of a voluntary petition in bankruptcy, or failure by

DEVELOPER to promptly cause to be lifted any execution, garnishment, or attachment of such consequence as will impair DEVELOPER's ability to carry on its obligations under this Agreement, or

- (C) The commission by DEVELOPER of any act of voluntary or involuntary bankruptcy under any state or federal law; or
- (D) The admittance of DEVELOPER, in writing, of its inability to pay its debts generally as they become due, or a receiver, trustee or liquidator of DEVELOPER shall be appointed in any proceeding brought against DEVELOPER and shall not be discharged within ninety (90) days after such appointment.

6.2 **Remedies to CITY upon a Loan Default Event.** Should DEVELOPER cause or allow a Loan Default Event to occur and it shall be continuing:

- (A) CITY, by written notice to DEVELOPER, shall accelerate the loan and the entire lump sum payment of the Loan Funds shall become immediately due and payable to the CITY, and
- (B) CITY may take whatever action at law or in equity as may be necessary or desirable to collect the payment and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement, or covenant of DEVELOPER under this Agreement.

6.3 Reserved.

6.4 **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT.

ARTICLE VII.

Reserved.

ARTICLE VIII. DEPARTMENT OBLIGATIONS

8.1 In consideration of full and satisfactory performance of activities required by Article II of this Agreement, the CITY will make the Loan as described in Section 5.1 to

DEVELOPER in the amounts and at the times specified by Sections 5.1 and 5.2 of this Agreement, and subject to the conditions and limitations set forth in this Agreement.

8.2 CITY will not be liable to DEVELOPER or other entity for any costs incurred by DEVELOPER.

ARTICLE IX. RETENTION AND ACCESSIBILITY OF RECORDS

9.1 DEVELOPER shall maintain the fiscal records and supporting documentation for expenditures of funds directly associated with this Agreement. DEVELOPER shall retain such records, and any supporting documentation, for the greater of: (1) four (4) years from the end of the Agreement term; or (2) the period required by other applicable laws and regulations.

9.2 DEVELOPER shall following reasonable advance written notice from the CITY, give the CITY, its designee, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by DEVELOPER pertaining directly to the Loan (the "**Records**"). The CITY's access to DEVELOPER's books and records will be limited to information needed to verify that DEVELOPER is and has been complying with the terms of this Agreement and to verify that the proceeds of the Loan are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by CITY. DEVELOPER shall not be required to disclose to the CITY any information that by law DEVELOPER is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right at its expense to require DEVELOPER to obtain an independent firm to verify the information. The rights to access the Records shall continue as long as the Records are retained by DEVELOPER. Failure to provide reasonable access to the Records to authorized CITY representatives shall give the CITY the right to suspend or terminate this Agreement as provided for in Articles XVII and XVIII below, or any portion thereof, for reason of default. All Records shall be retained by DEVELOPER for a period of four (4) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. DEVELOPER agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the CITY as set forth above. All of the above notwithstanding, the CITY and the citizens shall have no right to access any confidential or proprietary records of DEVELOPER, including but not limited to the ownership and capital structure of DEVELOPER.

ARTICLE X. MONITORING

10.1 CITY reserves the right to confirm DEVELOPER's compliance with the terms and conditions of this Agreement. CITY will provide DEVELOPER with a written report of the monitor's findings. If the monitoring report notes deficiencies in DEVELOPER's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements

for the correction of such deficiencies by DEVELOPER and a reasonable amount of time in which to attain compliance. Failure by DEVELOPER to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Articles XVII and XVIII herein.

ARTICLE XI. NOTICE

11.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for CITY, to: City of San Antonio
Neighborhood & Housing Services Department
Attn: Director
1400 S. Flores Street
San Antonio, Texas 78205

If intended for DEVELOPER, to: Terramark Interests, LLC
905 N. Pine Street
San Antonio, TX 78202

ARTICLE XII. CONFLICT OF INTEREST

12.1 DEVELOPER shall use reasonable business efforts to ensure that no employee, officer, or individual agent of DEVELOPER shall participate in the selection, award, or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such sub-developer on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. DEVELOPER shall comply with Chapter 171, Texas Local Government Code as well as the CITY's Code of Ethics.

ARTICLE XIII. NONDISCRIMINATION AND SECTARIAN ACTIVITY

13.1 DEVELOPER shall ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the

benefits of, be subjected to discrimination under, or be denied access to subcontracts for project improvements funded in whole or in part with funds made available under this Agreement.

13.2 None of the performances rendered by DEVELOPER under this Agreement shall involve, and no portion of the funds received by DEVELOPER under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

13.3 DEVELOPER shall include the substance of this Article XIII in all agreements associated with the funds made available through this Agreement.

ARTICLE XIV. LEGAL AUTHORITY

14.1 Each party assures and guarantees to the other that they possess the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

14.2 The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she, or they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

14.3 CITY will have the right to suspend or terminate this Agreement in accordance with Articles XVII and XVIII herein if there is a dispute as to the legal authority, of either DEVELOPER or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. DEVELOPER is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY suspends or terminates this Agreement for reasons enumerated in this Article XIV.

ARTICLE XV. LITIGATION AND CLAIMS

15.1 DEVELOPER shall give CITY immediate notice in writing of any action, including any proceeding before an administrative agency, filed against DEVELOPER directly related to the project improvements. Except as otherwise directed by CITY, DEVELOPER shall furnish immediately to CITY copies of all pertinent papers received by DEVELOPER with respect to such action or claim. DEVELOPER shall notify the CITY immediately of any legal action filed against the DEVELOPER or any sub-developers, or of any proceeding filed under the federal bankruptcy code. DEVELOPER shall submit a copy of such notice to CITY within 30 calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations. The above notwithstanding DEVELOPER is not required to notify CITY of claim litigation which arise out of DEVELOPER's operations on the Project, including

without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

15.2 CITY and DEVELOPER acknowledge that CITY is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

15.3 This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

ARTICLE XVI. CHANGES AND AMENDMENTS

16.1 Except as provided in Section 16.2 below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon CITY approval and authorization of DEVELOPER.

16.2 Any alterations, additions, or deletions to the terms of this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

ARTICLE XVII. SUSPENSION

17.1 In the event DEVELOPER fails to comply with the terms of this Agreement, CITY shall provide DEVELOPER with written notification as to the nature of the non-compliance. CITY shall grant DEVELOPER a sixty (60) day period from the date of the CITY's written notification to cure any issue of non-compliance under such agreement. Should DEVELOPER fail to cure any default within this period of time, the CITY may, upon written Notice of Suspension to DEVELOPER, suspend this Agreement in whole or in part and withhold further payments to DEVELOPER or accelerate the due date of the repayment of the Loan, and prohibit DEVELOPER from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and (3) in the case of partial suspension, the portion of the Agreement to be suspended.

17.2 In the case of default for causes beyond DEVELOPER's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the CITY may, in its sole discretion, extend the cure period provided that DEVELOPER shall: (1) immediately upon receipt of Notice of Suspension advise CITY of DEVELOPER's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same.

17.3 A suspension under this Article XVII may be lifted only at the sole discretion of the CITY upon a showing of compliance with or written waiver by CITY of the term(s) in question.

17.4 With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, CITY shall not be liable to DEVELOPER or to DEVELOPER's creditors for costs incurred during any term of suspension of this Agreement.

ARTICLE XVIII. TERMINATION

18.1 Termination For Cause by CITY. If any event of default specified in Article VI continues beyond any applicable notice and cure period, CITY may immediately terminate this Agreement for cause by providing written notice to DEVELOPER.

18.2 Termination For Convenience. Notwithstanding anything to the contrary in this Agreement, CITY may terminate this Agreement for convenience at any time, in whole or in part, if CITY determines that continuation of the Project is not in CITY's interest. CITY shall provide DEVELOPER at least thirty (30) days' advance written notice prior to termination under this Article XVIII; *provided, however*, if termination is due to the reduction or termination by CITY of funds allocated for the Project, termination shall be effective immediately upon CITY providing notice to DEVELOPER.

18.3 Repayment of Loan Funds. In the event that this Agreement is terminated prior to completion of the Project, either voluntarily or otherwise, any Loan Funds disbursed by CITY for the Project under this Agreement shall be repaid by DEVELOPER to CITY's Affordable Housing Fund. Upon repayment of all disbursed Loan Funds to CITY in accordance with this Article, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of DEVELOPER under this Agreement shall become the property of DEVELOPER.

18.4 Effect of Termination.

- (A) Upon receipt of notice to terminate, CITY shall not be liable to DEVELOPER or DEVELOPER's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination. Further, if DEVELOPER fails to repay all disbursed Loan Funds to CITY in accordance with Section 18.3, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of DEVELOPER under this Agreement shall, at the option of CITY, become the property of CITY and shall be delivered by DEVELOPER to CITY in a timely and expeditious manner.

- (B) Within thirty (30) days after receipt of notice to terminate, DEVELOPER shall submit a statement to CITY, indicating in detail the services performed under this Agreement prior to the effective date of termination.
- (C) Termination of this Agreement shall not relieve DEVELOPER from the payment of any sums that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, or any claim for damages then or theretofore accruing against DEVELOPER hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sums or claim for damages from DEVELOPER. All rights, options, and remedies of CITY contained in this Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and CITY shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this Agreement.
- (D) Should this Agreement be terminated by either Party for any reason, if the work required hereunder of DEVELOPER is not fully completed to the satisfaction of CITY in accordance with the terms of this Agreement, DEVELOPER shall refund any and all sums of money paid by CITY to DEVELOPER within ten (10) business days of CITY's written request therefor.
- (E) In the event that CITY terminates this Agreement for the reasons set forth in Article XVIII, section (A), DEVELOPER shall be barred from future contracts with CITY absent the express written consent of CITY's City Manager or City Manager's designee.

ARTICLE XIX. RESPONSIBILITIES OF DEVELOPER

19.1 DEVELOPER's Business and Conduct. DEVELOPER shall perform, in a satisfactory and efficient manner as determined by CITY, all work and activities set forth in this Agreement, and shall be solely responsible for all aspects of DEVELOPER's business and conduct in connection with the Project, including, without limitation, the following:

- (A) Quality and suitability of the Plans;
- (B) Supervision of construction of the Project;
- (C) Qualifications, financial condition and performance of all of the Project's architects, engineers, developers, sub-developers, consultants, and suppliers;

- (D) Conformance of construction done in connection with the Project to the Plans, all Legal Requirements, and all requirements of this Agreement and the other Loan Documents;
- (E) Quality and suitability of all materials and workmanship; and
- (F) Accuracy of all requests for the disbursement of Loan Funds and the proper application of disbursed Loan Funds.

19.2 Taxes. Upon signing this Agreement, and annually thereafter, DEVELOPER, if not exempt, shall provide CITY with proof of timely payment in full of all taxes assessed against the Property or proof that DEVELOPER is contesting any such taxes and as a result such taxes are not yet due and owing.

19.3 Payment Status of Other Loans. Upon signing this Agreement, and annually thereafter, provide CITY evidence of DEVELOPER's current payment status on all private loans in connection with the Property.

19.4 Plans. DEVELOPER agrees that construction in connection with the Project shall not be continued or completed unless and until DEVELOPER has furnished the Plans to CITY and afforded CITY the opportunity to accept them (which acceptance shall be evidenced, if at all, by the signature of an authorized representative of CITY thereon). When the Plans have been furnished to CITY, no changes of a material nature will be made to them by, or be permitted to be made to them by DEVELOPER, any personal or corporate guarantors for payment of the indebtedness to CITY referred to herein or for performance or partial performance of the Project, the engineer(s) for the Project or any other person or entity without the prior, written approval therefor of all requisite Governmental Authorities, prior compliance with all applicable federal, state and local rules, regulations and laws and prior, written acceptance by CITY. In instances where CITY does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgment of CITY's consent to the construction in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by CITY that such construction, if so performed, will be structurally sound, will comply with all federal, state and local rules, regulations and laws, will be fit for any particular purpose or will have a market value of any particular magnitude.

19.5 Affidavit of Commencement. If requested by CITY, immediately after execution by DEVELOPER of this Agreement, DEVELOPER and its general DEVELOPER for the Project shall execute and file an Affidavit of Commencement in accordance with Section 53.124(c) of the Texas Property Code and provide a copy thereof to CITY.

19.6 Pre-Construction Deliveries. Unless otherwise agreed by CITY, DEVELOPER shall provide the following documents to CITY prior to commencement of construction of the Project:

- (A) Proof that the selected general DEVELOPER or main sub-developer (i) possesses all required licenses for the work performed on the Project; (ii)

maintains appropriate insurance coverage covering the total cost of the construction done in connection with the Project, including, but not limited to, worker's compensation, general liability and personal liability; and (iii) provides a minimum of one (1) year warranty on all work performed; and

- (B) DEVELOPER's written proposal to CITY as to the methods by which it shall inspect the Property to ensure that the Property is being kept in a safe, sanitary, and decent condition, with DEVELOPER being obligated to obtain CITY's approval of such proposal prior to its implementation.

19.7 Deliveries Upon Project Completion. Upon completion of the Project, DEVELOPER shall deliver the following to CITY: (A) evidence that all residential building permits have been properly closed out by CITY; (B) a copy of the Certificate of Substantial Completion from the DEVELOPER for the Project; (C) an endorsement from the title company issuing the title insurance for the benefit of CITY in connection with the Property, such endorsement deleting any exception in such title insurance relating to completion of the Project and other exceptions specified by CITY which may be deleted pursuant to applicable title insurance regulations; (D) a file-stamped copy of an Affidavit and Full Release of Liens, duly recorded in the Real Property Records of Bexar County, Texas from any third party general DEVELOPER for the Project and, upon request of CITY, any other developers or sub-developers who have performed work on, or furnished materials for, the Project; and (E) if requested by CITY, within five (5) days after completion of the Project, DEVELOPER and the general DEVELOPER for the Project shall execute and file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code, and immediately upon such filing, DEVELOPER shall provide a file-stamped copy thereof to CITY.

19.8 Encumbrances. Except for DEVELOPERS financing for development and construction of the Project, to include financial institution financing and financing from the DEVELOPERS affiliates to be secured by superior prior liens on the Project, DEVELOPER shall ensure that the Property remains free and clear from all other liens or claims for liens, other than the liens or security interests created for the benefit of CITY in connection with the Project, or as expressly authorized by CITY in writing. In the event that any other mortgage, lien, pledge, security interest, encumbrance or charge is asserted or recorded against the Property (a "***New Encumbrance***"), DEVELOPER shall notify CITY within five (5) days after the date DEVELOPER either actually or constructively has knowledge of the New Encumbrance, regardless of whether or not the New Encumbrance is permitted by CITY or constitutes a violation of any of the provisions hereof; such notice to specify who is asserting the New Encumbrance, with a detailed description of the origin and nature of the underlying claim giving rise to the New Encumbrance.

19.9 Performance of Work. DEVELOPER shall (A) secure all appropriate permits, as required by local, state, and federal regulations or policies, for work related to the construction of the Project; and (B) ensure that the work to be performed in connection with the Project is performed in a timely manner and in accordance with the highest standards and customs of the

trade, complies with all Legal Requirements, including those requirements of the building, electrical, fire, mechanical, and plumbing codes of CITY.

19.10 DEVELOPER understands and agrees that if DEVELOPER is a “business” and if the CITY’s contribution under this Agreement is a “public subsidy” as that term is defined in Chapter 2264 of Subtitle F, Title 10 of the Government Code (80 (R) HB 1196), the following applies: if DEVELOPER convicted of knowingly employing an undocumented worker) DEVELOPER shall repay the Loan Funds and interest within six (6) months of final conviction. Interest shall accrue at the rate of one-half percent (0.50%) per month until the time of such repayment from the date of final conviction.

19.11 DEVELOPER shall ensure that the Project shall comply with the provisions set forth in 24 C.F.R. § 92.355, *Lead-based paint*, and the lead-based paint prevention and reduction implementing regulations found at 24 C.F.R. Part 35.

19.12 DEVELOPER acknowledges, understands, and agrees to comply with Chapter 2, Art. III of the City of San Antonio’s Code of Ordinance (*Ethics Code*) which prohibits any persons who exercises or have exercised any functions or responsibilities with respect to activities assisted with CITY funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a CITY-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the CITY-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

19.13 DEVELOPER acknowledges, understands, and agrees to comply to with *Title VII of the Civil Rights Act of 1964* (Title VII), as well as Chapter 2, Art. X of the CITY’s Code of Ordinances which prohibits employment discrimination based on race, color, religion, sex, or national origin;

19.14 DEVELOPER acknowledges, understands, and agrees to comply to with the *Equal Pay Act of 1963 (EPA)*, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination.

19.15 DEVELOPER acknowledges, understands, and agrees to comply with the property standards set forth in Chapter 10, Art. III of CITY’s Code of Ordinances.

19.16 DEVELOPER acknowledges, understands, and agrees to comply to with the *Age Discrimination in Employment Act of 1967 (ADEA)*, which protects individuals who are forty (40) years of age or older.

19.17 DEVELOPER acknowledges, understands, and agrees to comply to with *Title I and Title V of the Americans with Disabilities Act of 1990*, as amended, which prohibit

employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments.

19.18 DEVELOPER agrees to comply with the provisions of Ordinance No. 2016-05-19-0367, as amended (*Small Business Economic Development Advocacy Ordinance*), by taking all necessary affirmative steps to assure that small minority businesses and small women's business enterprises are used when possible, with such affirmative steps to include:

- (A) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (B) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (C) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (D) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (E) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (F) Requiring the prime DEVELOPER, if subcontracts are to be let, to take the affirmative steps listed in Section 10(L)(i) through Section 10(L)(v).

19.19 DEVELOPER agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. §§ 7401-7671q, and the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended. DEVELOPER agrees to report each violation to CITY and understands that CITY will, in turn, report each violation as required to the state or federal agency with jurisdiction over the violation.

19.20 Equal Opportunity Clause.

- (A) During the performance of this Agreement, DEVELOPER agrees as follows:
 - (1) DEVELOPER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. DEVELOPER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation,

gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. DEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) DEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the DEVELOPER, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) DEVELOPER will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the DEVELOPER's legal duty to furnish information.
- (4) DEVELOPER will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the DEVELOPER's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) DEVELOPER will permit access to DEVELOPER's books, records, and accounts to CITY for purposes of investigation to ascertain compliance with all applicable federal, state and local rules and regulations.
- (6) In the event of DEVELOPER's noncompliance with the nondiscrimination clauses of this Agreement or with any of the

said rules and regulations, this Agreement may be canceled, terminated, or suspended in whole or in part and DEVELOPER may be declared ineligible for further CITY funded construction contracts and such other sanctions may be imposed and remedies invoked as provided by law.

- (7) DEVELOPER will include the portion of the sentence immediately preceding Section 19.21(A)(1) and the provisions of Section 19.2(A)(1) through this Section 19(A)(7) in every subcontract or purchase order unless exempted by rules, regulations, or ordinances of the CITY, so that such provisions will be binding upon each sub-developer of DEVELOPER or vendor. DEVELOPER will take such action with respect to any subcontract or purchase order as the CITY may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a DEVELOPER becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the DEVELOPER may request the CITY to enter into such litigation to protect the interests of the CITY.

(B) Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion.

- (1) DEVELOPER represents and warrants that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by the CITY.
- (2) DEVELOPER will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the CITY from which the transaction originated.

19.21 DEVELOPER shall include the certification contained in Section 19.21(B) in any and all subcontracts hereunder and shall require any sub-developers to comply with any and all applicable laws, rules and regulations, policies and procedures or guidance concerning debarment, suspension, and exclusion.

19.22 DEVELOPER will immediately notify CITY in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances DEVELOPER or any of its principals have subsequently been excluded by a federal agency.

19.23 During the term of this Agreement, DEVELOPER covenants as follows:

- (A) Subject to the Permitted Liens and other Permitted Exceptions (as defined in the Deed of Trust including liens of the subordinate lenders), and except as otherwise provided under the Loan Documents, DEVELOPER shall not fully or partially sell, convey, dispose of, alienate, hypothecate, assign, mortgage, pledge, transfer, or encumber, except for transfers for the benefit of the Property (including without limitation utility and telecommunication easements) or its tenants (including the execution of lease agreements in the ordinary course of business), all or any part of the Property or improvements thereon or any other item of collateral securing the repayment of the Loan, whether voluntarily or involuntarily (except for partial condemnation); provided, however, that notwithstanding the foregoing, DEVELOPER shall have the ability to refinance the Senior Loan and/or the HOME Loan only if such modification does not: (i) increase the amount of the Other Lien (excluding any amounts having been advanced by such lenders for the protection of its security interest pursuant to such loan documents); (ii) increase the interest rate of the Other Liens; or (iii) decrease the original maturity term of the Other Liens;
- (B) DEVELOPER shall not convert the Property to a form of condominium or cooperative ownership or other non-residential use;
- (C) DEVELOPER will not commit or permit any physical waste, damage, or deterioration (other than normal wear and tear and insured casualty) on the Property;
- (D) DEVELOPER shall maintain, preserve, and keep the Property in good repair (subject to normal wear and tear and insured casualty);
- (E) Subject to the other terms in the Loan Documents, DEVELOPER shall from time to time make all necessary repairs and renewals, replacements, and substitutions so that the efficiency, effectiveness, and utility of the Property are at all times reasonably preserved and maintained;
- (F) All third-party agreements related to the Project shall be on terms equivalent to an arm's length transaction;
- (G) DEVELOPER shall comply with each and every provision of this Agreement and the other Loan Documents;
- (H) To the extent applicable, if at all, DEVELOPER shall assume any and all relocation costs in accordance with the Uniform Relocation and Acquisition Act associated with all property acquisition in connection with the Project;

- (I) *Intentionally deleted;*
- (J) Upon written demand of CITY, DEVELOPER shall correct any material structural defect in the Project or any material departure from the Plans not accepted in writing by CITY; and
- (K) During construction of the Project and upon CITY's request, DEVELOPER shall erect and maintain, or cause the erection and maintenance on the Property, a sign reasonably satisfactory to CITY stating that financing for the Project has been furnished by CITY with HOME funds.
- (L) *Intentionally deleted.*
- (M) All applicable federal and local procurement and bidding policies have been, and will be during the term of this Agreement, adhered to in the implementation of these Loan Funds.
- (N) *Intentionally deleted.*

ARTICLE XX. INSURANCE

20.1 DEVELOPER shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at DEVELOPER's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation a. Employers' Liability b. Blanket Waiver of Subrogation	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General Liability, to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Waiver of subrogation (blanket) e. Primary and non-contributory wording f. No residential exclusion g. Per Project Aggregate h. Additional insured with completed operations coverage	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
3. Business Automobile Liability a. Owned/leased vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of

b. Non-owned vehicles	\$1,000,000 per occurrence
c. Hired Vehicles	
d. CITY and homeowner as additional insured	

20.2 DEVELOPER agrees to require, by written contract, that all sub-developers providing goods or services hereunder obtain the same categories of insurance coverage required of DEVELOPER herein, and provide a certificate of insurance and endorsement that names DEVELOPER and CITY as additional insureds. Policy limits of the coverages carried by sub-developers will be determined as a business decision of DEVELOPER. DEVELOPER shall provide CITY with said certificate and endorsement prior to the commencement of any Work by the sub-developers.

20.3 As they apply to the limits required by CITY, CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. DEVELOPER shall pay any costs incurred resulting from provision of said documents. DEVELOPER shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within ten (10) days:

City of San Antonio
 Attn: Neighborhood and Housing Services Department
 P.O. Box 839966
 San Antonio, Texas 78283-3966

20.4 DEVELOPER agrees that with respect to the above-required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions: (i) name CITY as an additional insured by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed under this Agreement, with the exception of the workers' compensation and professional liability policies; (ii) provide for an endorsement that the "other insurance" clause shall not apply to CITY where CITY is an additional insured shown on the policy; (iii) workers' compensation and employers' liability, general liability and automotive liability policies will provide a waiver of subrogation in favor of CITY; and (iv) provide advance written notice directly to CITY of any suspension, or non-renewal in coverage, and not less than ten (10) days advance notice for nonpayment of premium.

20.5 Within five (5) days of a suspension, cancellation, or non-renewal of coverage, DEVELOPER shall provide a replacement Certificate of Insurance and applicable endorsements to CITY, CITY shall have the option to suspend DEVELOPER's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

20.6 DEVELOPER and any sub-developers are responsible for all damage to their own equipment and/or property.

20.7 In addition to any other remedies CITY may have upon DEVELOPER's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order DEVELOPER to stop work hereunder, and/or

withhold any payment(s) which become due to DEVELOPER hereunder until DEVELOPER demonstrates compliance with the requirements hereof.

20.8 Nothing herein contained shall be construed as limiting in any way the extent to which DEVELOPER may be held responsible for payments of damages to persons or property resulting from DEVELOPER's or its sub-developer(s)' performance of the work covered under this Agreement.

20.9 DEVELOPER understands and agrees that its insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of the activities under this Agreement.

20.10 DEVELOPER understands and agrees that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.

ARTICLE XXI. INDEMNIFICATION

21.1 **INDEMNIFICATION.** DEVELOPER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY (each, an "*Indemnified Party*" and collectively, "*Indemnified Parties*"), individually and collectively, from and against any and all actual costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon CITY directly or indirectly arising out of, resulting from or related to DEVELOPER's activities under this Agreement, including any acts or omissions of DEVELOPER, any of DEVELOPER's agents, officers, directors, representatives, employees, consultants or sub-developers of DEVELOPER, while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this Section 21.1 shall not apply to any liability resulting from the negligence of Indemnified Party, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT DEVELOPER AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

21.2 The indemnity provisions set forth in Section 21.1 are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. DEVELOPER shall advise CITY in writing within three (3) business days of any claim or demand against CITY or DEVELOPER known to DEVELOPER related to or arising out of DEVELOPER's activities under this Agreement and shall see to the investigation and defense of such claim or demand at DEVELOPER's cost. CITY shall have the right, at its

option and at its own expense, to participate in such defense without relieving DEVELOPER of any of its obligations under this Section 21.1.

ARTICLE XXII. SUBCONTRACTS

22.1 DEVELOPER shall use reasonable business efforts to ensure that the performance rendered under all subcontracts directly related to the project improvements complies with all terms and provisions of this Agreement as if such performance were rendered by DEVELOPER.

22.2 DEVELOPER, in subcontracting any of the project improvements contemplated hereunder, expressly understands that in entering into such subcontracts, CITY is in no way liable to DEVELOPER's sub-developer(s).

22.3 DEVELOPER assures and shall obtain assurances from all of its sub-developer(s) providing services directly related to the project improvements, where applicable, that no person shall, on the grounds of race, creed, color, disability, national origin, sex or religion, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

ARTICLE XXIII. DEBARMENT

23.1 By signing this Agreement, DEVELOPER certifies that it will not knowingly award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by the CITY.

ARTICLE XXIV. RIGHTS UPON DEFAULT

24.1 It is expressly understood and agreed by the Parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any other agreements between DEVELOPER and the CITY or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

ARTICLE XXV. NON-ASSIGNMENT

25.1 This Agreement is not assignable without the written consent of CITY and the passage of a City Ordinance approving such assignment. Any other attempt to assign the Agreement shall not relieve DEVELOPER from liability under this Agreement and shall not release DEVELOPER from performing any of the terms, covenants and conditions herein. DEVELOPER shall be held responsible for all funds received under this Agreement.

25.2 However, except as otherwise provided in this Section, no City Council consent is required for an assignment or transfer to a parent of DEVELOPER, a subsidiary of DEVELOPER, an affiliate entity of DEVELOPER, or to any new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of DEVELOPER, and any

assignment to such an entity shall release Terramark Interests, LLC from Liability under this agreement and the loan documents. In such case, DEVELOPER shall give CITY prior written notice of any potential assignments or other transfers that DEVELOPER concludes is compliant with this Article XV, and shall submit such notice for CITY to review and confirm that such assignment is compliant with this Article XV. Final determination shall be made by the City Manager's Office in consultation with the City Attorney's Office. The City reserves the right to make a final determination as to whether an assignment under this Section must be approved by City Council. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

ARTICLE XXVI. ORAL AND WRITTEN AGREEMENTS

26.1 All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

ARTICLE XXVII. AUTHORIZED RELIEF FROM PERFORMANCE (*Force Majeure*)

27.1 CITY may grant temporary relief from performance of this Agreement if the DEVELOPER is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the DEVELOPER. The burden of proof for the need for such relief shall rest upon the DEVELOPER. To obtain release based upon *force majeure*, the DEVELOPER must file a written request with the CITY. Should CITY grant temporary relief to DEVELOPER, it shall in no case relieve DEVELOPER from any repayment obligations as specified in Article V, Sections 5.3 and 5.4 of this Agreement.

ARTICLE XXVIII. INDEPENDENT CONTRACTOR

28.1 DEVELOPER is an independent contractor and is not an employee, servant, agent, partner or joint venturer of CITY. CITY is interested only in the results achieved by the services of the DEVELOPER, and the manner of legally achieving those results is the responsibility of the DEVELOPER. CITY is not responsible for deducting, and shall not deduct, from payments to DEVELOPER any amounts for withholding tax, FICA, insurance or other similar item relating to DEVELOPER or DEVELOPER's employees. Neither DEVELOPER nor its employees shall be entitled to receive any benefits which employees of CITY are entitled to receive and shall not be entitled to workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or social security on account of their work for CITY.

[Signature page follows.]

WITNESS OUR HANDS, EFFECTIVE as of _____, 2020:

Accepted and executed in two duplicate originals on behalf of the City of San Antonio pursuant to Ordinance Number _____, dated February 20, 2020, and DEVELOPER pursuant to the authority of its _____.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

TERRAMARK INTERESTS, LLC

ERIK WALSH
City Manager



Name: CHARLES H. TURNER
Title: Chief Executive Officer

ATTEST:

LETICIA VACEK
City Clerk

APPROVED AS TO FORM:

JAMEENE YVONNE WILLIAMS
City Attorney

ATTACHMENTS:

Exhibit "A" – *Reserved*

Exhibit "B" – Scope of Work