

AN ORDINANCE 2015-09-17-0816

APPROVING THE ALLOCATION OF \$1,100,000.00 IN FY 2016 HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) FUNDING FOR THE DEVELOPMENT OF ACME ROAD APARTMENTS AND THE ALLOCATION OF \$1,600,000.00 IN FY 2014 AND FY 2016 HOME COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) FUNDING FOR THE DEVELOPMENT OF LENWOOD HEIGHTS SUBDIVISION; AND AUTHORIZING THE EXECUTION OF LOAN DOCUMENTS.

* * * * *

WHEREAS, the City Council has approved the appropriation of \$1,100,000.00 in FY 2016 HOME Investment Partnerships (HOME) Program funds for the Acme Road Apartments Multi-family Rental Housing Development Project and \$1,600,000.00 for the Lenwood Heights Subdivision Community Housing Development Organization (CHDO) Single-family New Construction Development Project (“Projects”); and

WHEREAS, the City released a Request for Applications (RFA) seeking applications to allocate the HOME funds to develop low and moderate income income housing projects; and

WHEREAS, in connection therewith, the City evaluated applications based on the experience of the developers, efficient use of HOME funds, project feasibility, loan terms, site characteristics, transit amenities, project readiness, resident services, and the developer’s Section 3 Utilization Plan (“Evaluation Criteria”); and

WHEREAS, based on the Evaluation Criteria, the City selected the Acme Road Apartments Project and the Lenwood Heights Subdivision Project (“the Projects”); and

WHEREAS, it is the City Council’s intention to approve the allocation of FY 2016 HOME Program funds in the amount of \$1,100,000.00 to the Acme Road Apartments Project and FY 2014 and FY 2016 HOME Community Housing Development Organization (CHDO) Program funds in the amount of \$1,600,000.00 for the development of the Lenwood Heights Subdivision Project; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The allocation of FY 2016 HOME Program funds in the amount of \$1,100,000.00 to the Acme Road Apartments Project and FY 2014 and FY 2016 HOME Community Housing Development Organization (CHDO) Program funds in the amount of \$1,600,000.00 for the development of Lenwood Heights Subdivision Project is hereby approved.

SECTION 2. The City Manager, or, in her stead, a Deputy City Manager, an Assistant City Manager, an Assistant to the City Manager, the Director of the Department of Planning and Community Development or his designee, or the Grants Administrator of the Division of Grants Monitoring and Administration is hereby authorized to execute HOME Loan documents,

DF:bh
09/17/2015
Item #43

attached hereto and incorporated herein in substantially final form as **Attachment I**, with The NRP Group for the Acme Road Apartments Project and with Habitat for Humanity of San Antonio, Inc. for the Lenwood Heights Subdivision Project.

SECTION 3. The City Manager or her designee, or the Director of the Department of Planning and Community Development or his designee, or the Grants Administrator of the Division of Grants Monitoring and Administration, is hereby authorized to approve budget adjustments within project allocations to conform with actual expenditures if line item cost overruns occur or are anticipated.

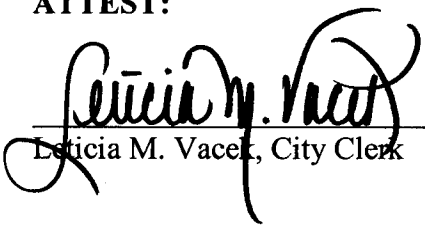
SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

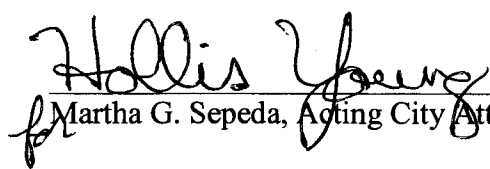
PASSED AND APPROVED this 17th day of September, 2015.


M A Y O R
Ivy R. Taylor

ATTEST:


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:


for Martha G. Sepeda, Acting City Attorney

Agenda Item:	43 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22A, 22B, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43)						
Date:	09/17/2015						
Time:	10:02:11 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving the allocation of \$1,100,000.00 in FY 2016 HOME Investment Partnerships Program funding for the development of Acme Road Apartments and the allocation of \$1,600,000.00 in FY 2014 and FY 2016 HOME Community Housing Development Organization funding for the development of Lenwood Heights Subdivision and authorizing the execution of loan documents. [Peter Zanoni, Deputy City Manager; John M. Dugan, Director; Planning and Community Development]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

ATTACHMENT I

, 20

Acme Road Apartments, Ltd.
200 Concord Plaza, Suite 900
San Antonio, Texas 78216

ATTENTION: John Kenny, Executive Director of the San Antonio Housing Trust Public Facility Corporation, a Texas nonprofit public facility corporation, sole member of Acme Road Apartments GP, LLC, a Texas limited liability company, general partner of Acme Road Apartments, Ltd., a Texas limited partnership

RE: COMMITMENT LETTER AND LOAN AGREEMENT – Loan for certain costs associated with the construction of residential units in the Acme Road Apartments, located at S. Acme Road at Prosperity Drive, in San Antonio, Bexar County, Texas (the “Project”).

Dear Mr. Kenny:

Regarding the above-referenced matter, please be advised that the City of San Antonio (“CITY”) has approved a HOME loan (the “Loan”) to Acme Road Apartments, Ltd. (hereinafter referred to as “BORROWER”) based on the information and documents that BORROWER has submitted for CITY’s review and approval as required in connection with BORROWER’s request for this Loan. CITY’s agreement to make the Loan, however, is conditioned upon (a) BORROWER’s compliance with each of the provisions set forth in this Letter which are conditions to closing or which are agreements that remain in effect during the term of the herein-described Note; (b) execution of a HOME Program Agreement, HOME Loan Agreement, Real Estate Lien Note, Leasehold Deed of Trust, Assignment of Leases and Rentals, and Declaration of Restrictive Covenant of Affordability, (said documents, together with this Letter, hereinafter collectively referred to as the “Loan Documents”), in form and substance to be approved by the City Attorney; and (c) fund availability at the time of closing.

I. Terms of Note (the “Note”):

- A. Borrower: Acme Road Apartments, Ltd., a Texas limited partnership
- B. Lender: CITY OF SAN ANTONIO, a Texas municipal corporation
- C. Principal Amount: One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00)

- D. Annual Interest Rate on Unpaid Principal: Interest shall accrue at a rate of percent (%). In the event BORROWER defaults in the payment of the Note or fails to comply with any of the terms and conditions of the Loan Documents beyond any applicable grace notice or cure periods then, interest on the unpaid principal shall thereafter (a) accrue at the highest nonusurious rate allowed by law until such default is cured, and (b) be immediately payable in addition to the entire remaining principal amount. The specific terms of payment will be set forth in a related Real Estate Lien Note to be executed by BORROWER at the time of closing.
- E. Annual Interest Rate on Matured, Unpaid Amounts: A maximum rate no greater than the highest nonusurious rate allowed by law.
- F. Maturity Date: Final maturity date of the Note is , 20 .
- G. Terms of Payment (principal and interest): The specific terms of payment will be set forth in the Note, to be executed by BORROWER at the time of closing.
- H. Prepayment: BORROWER may prepay the Note at any time before maturity without penalty.
- I. Purpose: For the construction of three hundred twenty-two (322) rental units in Acme Road Apartments, () of which will be HOME units.
- J. Leasehold Property (including any improvements): That certain tract of land more particularly described as:

Leasehold Estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by that certain Memorandum of Lease dated as of even date hereof, demising the following property to wit:

, being more particularly described in the attached Exhibit “A,” and which is hereinafter referred to as the “Leasehold Property”).

Street Address: Acme Road Apartments
S. Acme Road at Prosperity Drive
San Antonio, Texas .

II. Security for Loan:

The security for the loan will be:

- A. Leasehold Deed of Trust (hereinafter referred to as “Leasehold Deed of Trust”) executed by BORROWER”) of the subject Leasehold Property, to Martha Sepeda, Trustee, against the Leasehold Property.

- B. An Assignment of Leases and Rentals to be executed by BORROWER and acknowledged by San Antonio Housing Trust Public Facility Corporation (hereinafter referred to as "Property Owner").
- C. A Declaration of Restrictive Covenant of Affordability to be executed by BORROWER and acknowledged by San Antonio Housing Trust Public Facility Corporation (hereinafter referred to as "Property Owner").

III. Loan Documents:

The Loan will be evidenced by the Loan Documents and such other documents as required by the U.S. Department of Housing and Urban Development (HUD) or as deemed reasonably necessary by the City Attorney. Furthermore, said Loan Documents, at minimum, shall contain the following:

- A. A provision requiring BORROWER to annually deliver to CITY, on the "Document Date" referenced in paragraph IV below and annually thereafter, for the duration of the Note term:
 - (1) proof of continuous and renewed insurance held by BORROWER in such types and amounts as specifically set forth in Exhibit "B" hereof, with an accompanying provision that in addition to any other remedies CITY may have upon BORROWER's failure to provide and maintain any insurance or policy endorsements in the manner, to the extent and within the time therein required, and continued failure after the expiration of reasonable time after receipt of written notice from the CITY, the CITY shall have the right to (a) withdraw from the Project, (b) withhold any Loan payment(s) to BORROWER until BORROWER demonstrates compliance with the requirements thereof, (c) terminate the Loan Documents, and/or (d) declare a default on the Note, upon the expiration of any applicable notice and cure periods;
 - (2) during construction, proof of continuous and renewed professional liability insurance having been obtained by all professional persons performing work or services in connection with the Project, with whom BORROWER has privity, such insurance policy having an extended discovery period of two (2) years, with such insurance policy being maintained in the same manner as set forth in Exhibit "B" hereof;
 - (3) proof of timely payment in full of all taxes assessed against the Leasehold Property prior to delinquency; and
 - (4) evidence of BORROWER's current payment status on all other loans in connection with the Leasehold Property and the Project.
- B. A provision permitting CITY to inspect at all times deemed appropriate by CITY and with reasonable notice to BORROWER and its tenants, the Leasehold

Property to determine if it is being maintained in accordance with local Uniform Building Code standards.

C. Subject to the terms of the documents evidencing any senior liens or assigns and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____, as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____ and the CITY and BORROWER hereof (hereinafter referred to as the "Subordination Agreements"), a provision permitting CITY to accelerate the maturity of the Note and declare any unpaid amount immediately due and payable should any one or more of the following (each to be considered and at times referred to herein as an "Event of Default") occur and remain uncured after the expiration of any applicable cure or grace period provided for in the Loan Documents:

- (1) Subject to that certain Amended and Restated Agreement of Limited Partnership of Acme Road Apartments, Ltd. of even date herewith (the "Partnership Agreement") of the BORROWER and Leasehold Deed of Trust, and excepting any items replaced in the ordinary course of business and excepting residential leases of the Project, any utility or telecommunication easements, and excepting the recording of that certain Bond, _____ and City HOME loan documents to be entered into by BORROWER, BORROWER fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers, or encumbers all or any part of the Leasehold Property or improvements thereon or any interest therein, the rents therefrom, the income therefrom, or any other item of collateral, whether voluntarily or involuntarily, without the prior written consent of CITY through its Department's Grants Administrator or his designee, which such consent shall not be unreasonably withheld, conditioned or delayed;
- (2) Subject to the Partnership Agreement and except for limited partner or general partner's (limited to the terms of that certain Master Agreement by _____ and between NRP Acme Road Apartments SLP LLC, NRP Contractors LLC, NRP Holdings LLC, NRP Investments Corp., The NRP Group LLC, NRP Lone Star Development LLC, T. Richard Bailey, Jr., individually, J. David Heller, individually, and San Antonio Housing Trust Public Facility Corporation), BORROWER fully or partially sells, conveys, assigns, mortgages, pledges, transfers or encumbers an interest in BORROWER (if BORROWER is not a natural person or persons but a corporation, partnership, trust or other legal entity) including, in the event BORROWER is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interest in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, without the prior written consent of CITY, which such consent shall not be unreasonably withheld, conditioned or delayed, whether such interest is in the form of a beneficial or partnership

interest or in the form of a power of direction, control or management, or otherwise;

- (3) BORROWER converts the Leasehold Property or a portion thereof to a form of condominium, cooperative ownership or other non-residential use;
- (4) BORROWER: (1) files, or has filed against it, a petition for the appointment of a receiver or for bankruptcy or insolvency, (2) becomes or is adjudicated insolvent or bankrupt or admits in writing the inability to pay debts in general as they mature, (3) petitions or applies to any tribunal for, or consents to, or does not contest the appointment of a receiver, trustee, custodian or similar officer for BORROWER, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, however, CITY hereby agrees that BORROWER shall have ninety (90) days after notice of any involuntary bankruptcy petition or judgment described in this paragraph to (1) dismiss the same, or (2) post adequate security satisfactory to CITY with CITY during the pendency of any good faith proceeding brought by BORROWER;
- (5) The Leasehold Property or any material part thereof is taken on execution or other process of law in any action against BORROWER;
- (6) BORROWER abandons the Leasehold Property or a portion thereof, in which event such abandonment shall constitute an assignment to CITY, at CITY's option, of BORROWER's interest in any lease (except the Ground Lease) or contract then affecting the abandoned property;
- (7) BORROWER defaults or fails to timely comply with any one or more terms and conditions of the Loan Documents after any applicable notice and cure period;
- (8) The holder of any lien or security interest on the Leasehold Property, without implying the consent of CITY to the existence or creation of any such lien or security interest (except as otherwise acknowledged herein), and whether superior or subordinate to the Loan, the Note evidencing the Loan or the Deed of Trust securing such Note, (1) declares a default and (2) such default is not cured within any applicable grace period set forth, if at all, in the applicable document or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, provided however, CITY agrees that BORROWER shall have the right to defend such action in good faith;
- (9) The Leasehold Property, or any significant portion thereof, is subjected to actual continued waste or to removal, demolition or alteration so that the value of the Leasehold Property is materially diminished thereby and CITY reasonably determines that it is not adequately protected from any

loss, damage or risk associated therewith provided; however, CITY shall permit BORROWER to post adequate security as satisfactory to CITY to protect CITY from such loss, damage, or risk;

- (10) Any representation or warranty made herein by acceptance signature of BORROWER hereto, or in any of the Loan Documents, such representation or warranty made by BORROWER, any principal of BORROWER, general partner in BORROWER, any person authorized by BORROWER to execute any of the aforesaid documents on behalf of BORROWER, or by any indemnitor under any indemnity executed in connection with the Loan, is reasonably determined by CITY to have been false or misleading in any material, adverse respect at the time made and is not remedied within thirty (30) calendar days after BORROWER receives notice thereof from Lender, as delineated in Section K of the Note;
 - (11) BORROWER (i) initiates any material changes (as defined in sub-section 14 below) in construction work on the Leasehold Property without CITY's prior, written approval through its Department's Grants Administrator or his designee or (ii) fails after thirty (30) days from the CITY's written request to provide to CITY documentation acceptable to CITY of the actual construction project costs incurred in connection with the Leasehold Property, as delineated in Section K of the Note;
 - (12) BORROWER fails to have commenced the Project by _____, 20____ and complete the Project by _____, 20____, subject to delays resulting from force majeure;
 - (13) BORROWER uses, maintains, operates or occupies, or allows the use, maintenance, operation or occupancy of any part of the Leasehold Property for any purpose which violates any federal, state or local rules, regulations or laws or in any manner which is dangerous unless safeguarded as required by law or which constitutes a public or private nuisance or which may be made void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto and is not remedied within thirty (30) calendar days after BORROWER receives notice thereof from CITY, as delineated in Section K of the Note; and
 - (14) If CITY reasonably determines that the likelihood of payment of BORROWER's indebtedness evidenced by the Note or the performance of any of BORROWER's obligations hereunder or under any of the Loan Documents is threatened by reason of a material adverse change in the financial condition or credit standing of BORROWER or, if BORROWER is a partnership, joint venture, trust or other type of business association, of any of the parties comprising BORROWER (for purposes of this Section C, the word "material" shall mean any amount in excess of \$250,000.00).
- D. A provision requiring that BORROWER not discriminate against any prospective tenant of any rental unit on the Leasehold Property on the basis of the prospective

tenant's race, color, creed, sex, national origin, age or handicap or on the basis of said tenant's receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program or on the basis that the prospective tenant has a minor child or children who will be living with him/her.

- E. A provision requiring BORROWER to comply with each and every procedure and requirement contained in the Affirmative Marketing, Non-Discrimination and Equal Opportunity Procedures and Requirements, codified at 24 CFR 92, as delineated in the CITY's HOME Entitlement Grant Program Policies and Regulations, as provided in the HOME Program Agreement to be executed by BORROWER as of even date hereof.
- F. A provision requiring BORROWER to maintain the Leasehold Property in a safe, sanitary, and decent condition, in compliance with CITY's Building and Housing Codes, throughout the term of the Note, or the affordability term, whichever is the longer period of time.
- G. A provision requiring that upon written request, BORROWER shall provide CITY's Division of Grants Monitoring and Administration and Department of Internal Review with copies of:
 - (1) all audits associated with the Project, including all annual audits, said audits addressing reasonably satisfactory to CITY all applicable federal compliance issues including issues that are part of OMB Circular A-133; and
 - (2) copies of management letters associated with such audits, together with written details of steps taken to correct any audit problems.
- H. A provision requiring that Site Specific Environment Reports be completed by BORROWER and approved by CITY which such approval shall be reasonable prior to the establishment of an Integrated Disbursement and Information System Account ("IDIS").
- I. A provision requiring BORROWER to assure the following:
 - (1) BORROWER shall not be authorized to serve as solicited general contractors or subcontractors for its own project(s);
 - (2) Subcontractors shall provide a one-year warranty on all work performed; and
 - (3) BORROWER shall provide on or before _____, 20____ the Environmental Review Assessment for the Project.

Upon the happening of any of the foregoing Events of Default after any applicable notice and cure periods have expired, all obligations, if any, of CITY hereunder, including, without limitation, any obligation to advance funds hereunder or under any of the other

Loan Documents, shall immediately cease and terminate until such event of default is cured.

Notwithstanding anything to the contrary herein contained or inferable from any provisions hereof and subject to the Subordination Agreement, upon the happening of an Event of Default under the Loan Documents after notice to BORROWER and a thirty (30) calendar day cure period, the unpaid principal and applicable accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of CITY, and BORROWER expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the indebtedness evidenced by the Note. However, if failure relates to non-monetary compliance, Maker shall be permitted additional time as may be reasonable, provided Maker commenced cure within said thirty (30) days pursuant to Section K of the Note, but in no event shall such time to cure a non-monetary default be more than sixty (60) days from BORROWER's receipt of notice.

IV. Conditions to Closing:

Except as otherwise provided, CITY must be furnished with the following from BORROWER upon availability or in all cases before commencement of construction of the Project, unless otherwise agreed to by CITY:

- A. A valid and current Commitment for Title Insurance, issued by a title company authorized to do business in the State of Texas, wherein it is indicated that (1) fee simple title shall be vested solely in the San Antonio Housing Trust Public Facility Corporation and Leasehold Estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by Memorandum of Lease dated as of even date hereof, (2) CITY shall have a valid () lien thereon, which it shall be subordinate to the San Antonio Housing Trust Public Facility Corporation upon the issuance of its bonds, to the deed of trust lien on the Leasehold Property associated with the senior bond financing, the City CDBG Loan deed of trust and to any grants or loans provided thereafter by the (" "), and (3) CITY's interest is insured in an amount not less than the total amount of the Loan, with an acceptable corresponding Mortgagee's Title Insurance policy with CITY as beneficiary, issued by the same title company which issued the foregoing Commitment for Title Insurance on the form promulgated by the Texas State Board of Insurance, to be delivered by BORROWER to CITY immediately upon such issuance.
- B. An insurance policy with original, completed Certificates of Insurance in the manner, of the type and in such amounts as are set forth in Exhibit "B" attached hereto.
- C. Evidence from BORROWER that all insurance required herein has been paid current as of the date of such evidence being furnished through BORROWER to CITY.

- D. Evidence from BORROWER of payment of all taxes due and payable as of the date of closing.
- E. Evidence of the completion of all required other loan transactions and/or of the escrowed personal or other funds in the appropriate amount.
- F. Evidence in a manner satisfactory to CITY of the Description of Work (DOW) having been formally accepted by CITY and BORROWER's general contractor for the Project.
- G. BORROWER's Final Plans and Specifications for the Project as related to the environmental mitigation measures required by Texas Commission of Environmental Quality (TCEQ), if any.
- H. A copy of the contract executed by and between BORROWER and BORROWER's general contractor in connection with the Project, together with evidence that formal bids were solicited and received for the entire Project as related to the environmental mitigation measures required by Texas Commission of Environmental Quality (TCEQ), if any.
- I. A certified check made payable to the Bexar County Clerk's Office in an amount sufficient to cover the recording fees for those documents executed in connection with this Loan which must be recorded (may be furnished at closing).
- J. A copy of the most recent professional property appraisal instructed by a regulatory financial institution.
- K. An original, current survey of the Leasehold Property containing the certification of the surveyor in form and substance reasonably satisfactory to CITY and showing the perimeter of the Leasehold Property by courses and distances, all easements and rights-of-way, the boundary lines of the streets abutting the Leasehold Property and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed improvements to the Leasehold Property by distances to the perimeter of the Leasehold Property and the proposed building lines, if applicable, all acceptable to the title company issuing the Commitment for Title Insurance and corresponding Title Policy for the Leasehold Property, retained by BORROWER in connection with the Project, to modify the "area, boundaries and encroachments" exception of the corresponding Title Insurance to the maximum extent permitted by law.
- L. A copy of all environmental reports and tests prepared for the Project, with an accompanying certification by BORROWER that all such reports and tests applicable to the Project have been prepared and submitted to the Department.
- M. A copy of any and all documents creating and establishing BORROWER, and the authority of BORROWER's representative to contract for BORROWER.

- N. A copy of any and all consultant reports pertaining to the Project construction process and/or which may be required by CITY.
- O. A Certification from BORROWER that the terms of the Loan are in compliance with the IRC Section 42.

By accepting the terms of this Loan, as evidenced by acceptance signature of BORROWER of this Letter and by execution by BORROWER of accompanying Loan Documents, BORROWER agrees, on or before the time of closing of the Loan to submit the following Project documentation to CITY:

- (1) Revised Project Pro Forma;
- (2) Financial commitments totaling sum of not less than the total Project cost;
- (3) Final Plans and Specifications and Davis-Bacon Wage provisions, if applicable;
- (4) A pre-construction appraisal of the Leasehold Property; and
- (5) Comprehensive documentation of compliance with all Uniform Relocation and Acquisition Act procedures and requirements associated with all property acquisition, if applicable.

BORROWER further acknowledges and agrees that CITY may withhold any or all HOME loan monies unless and until CITY approves, in form and content, all such Project documentation.

V. Closing:

Closing shall occur no later than _____, 20____, contingent upon BORROWER's execution and delivery to CITY of the Loan Documents and any and all such other documents as are required in connection with the closing of this transaction.

Funding of the Loan herein described, however, shall be contingent upon CITY's receipt within ten (10) business days from the date of closing and recording of certain loan documents, a Title Policy, issued by a title company on the form promulgated by the Texas State Board of Insurance, wherein the title to the Leasehold Property is insured to be as indicated in the Commitment for Title Insurance described in IV(A). For purposes of this paragraph, the term "business day" is defined as every day of the week except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for its employees.

VI. General Conditions:

- A. The form and substance of each and every document evidencing this Loan and the security therefor, any proceedings incident thereto, and the title and evidence thereof must be reasonably satisfactory to the City Attorney and City Manager.

- B. This commitment is expressly conditioned upon approval by the City Manager, or her designee, of all the documents required by this Letter and any additional documents as the City Manager may require.
- C. Neither this commitment nor the Loan proceeds shall be assignable without the written consent of CITY. If assigned, CITY reserves the right to renegotiate the terms and interest rate of the Loan.

In the event of any conflict between the provisions of the Leasehold Deed of Trust and the Subordination Agreement, the Subordination Agreement shall prevail; provided, however, that with respect to any matters addressed in both said documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless applicable provisions are inconsistent and could not be simultaneously enforced or performed.

VII. Definition:

For purposes of this Letter, the term “business day” shall mean every day of the week except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for its employees.

VIII. Additional Conditions:

- A. The following Project information must be submitted by BORROWER and received by CITY’s Division of Grants Monitoring and Administration upon availability or in all cases before construction commences on the Project unless otherwise agreed to by CITY:
 - (1) The full and complete Project budget, and supporting documentation, identifying all funding sources and amounts, and the proposed use of all HOME funds;
 - (2) The Project proforma, and supporting documentation and detail, indicating cash flow (all revenues and expenses) over the affordability period, at minimum;
 - (3) A description of the current Project status, and the construction work schedules, specifically indicating the HOME funded work items;
 - (4) A copy of the Project’s plans and specifications; and
 - (5) Evidence that all applicable federal procurement and labor standards have been followed in the phases of the construction process implemented to date.

- B. For each third party contractor to be paid from Loan funds, evidence documenting full compliance with all applicable federal procurement standards must be submitted prior to CITY's release of Loan drawdown funds.

IX. Survival of Agreements and Conditions:

The agreements of BORROWER as set forth herein and the conditions hereof which are not required to be complied with prior to the closing of the Loan shall survive the closing, and, upon the failure of BORROWER to perform any such agreement or to comply with any such condition, CITY shall have the right to accelerate the maturity of the Note and exercise the remedies set out in the Loan Documents and/or any other instruments executed by BORROWER in connection with or as security for the Note, provided that, written notice of the agreement not performed or condition not complied with is given to BORROWER and BORROWER is given a period of time deemed appropriate by CITY, in any event, a period of time not to exceed thirty (30) calendar days from the date of such notice to cure the default if such default is non-monetary, or thirty (30) calendar days from the date of such notice to cure the default if such default is monetary as delineated in Section K of the Note; provided, however, if such non-monetary violation cannot be cured within said thirty (30) days to such case BORROWER shall be permitted additional time as may be reasonable provided that BORROWER commenced cure within said thirty (30) days, but in no event shall such time to cure a non-monetary default be more than sixty (60) days.

X. Acceptance and Expiration:

BORROWER's acceptance of this commitment and its agreement to the terms and conditions hereof must be given to CITY by execution of the enclosed duplicate original letter. If so accepted by BORROWER by the Document Date, this commitment will be binding upon CITY and BORROWER through _____, 20____, the closing expiration date. If the Loan contemplated is not accepted on or before the Document Date, however, this commitment shall automatically terminate and be null and void and all obligations of the parties hereto shall cease.

BORROWER hereby expressly acknowledges that information pertaining to this program as well as information pertaining to BORROWER as a participant in this program may be subject to the Texas Public Information Act, and upon written request, this information may be available to the public.

[Executed on the following page]

Sincerely,

CITY OF SAN ANTONIO

By: _____
THOMAS W. MORGAN
Grants Administrator
Division of Grants Monitoring and
Administration

APPROVED AS TO FORM:

By: _____
DENISE FREDERICK
Assistant City Attorney

Attachments:

Exhibit "A" – Legal Description

Exhibit "B" – Insurance Requirements

ACCEPTANCE

On this the _____ day of _____, 20____, the terms and conditions of the foregoing Commitment Letter and Loan Agreement are accepted and the undersigned hereby agrees to be bound thereby.

BORROWER:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company,
its General Partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public Facility
Corporation, its Sole Member

By: _____
JOHN KENNY
Assistant Secretary

ATTACHMENT I

HOME LOAN AGREEMENT

PROJECT NAME: ACME ROAD APARTMENTS

PROJECT NO.:

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This AGREEMENT is hereby made and entered into this day of , 20 , by and between the CITY OF SAN ANTONIO (hereinafter referred to as “CITY”), a Texas municipal corporation, acting by and through its Grants Administrator of the Division of Grants Monitoring and Administration pursuant to Ordinance No. , dated , 20 , and Acme Road Apartments, Ltd. (hereinafter referred to as “BORROWER”), a Texas limited partnership, acting by and through its general partner hereto duly authorized.

WHEREAS, CITY has received certain funds from the U.S. Department of Housing and Urban Development (“HUD”) under Title II of the National Affordable Housing Act of 1990, (P.L. 101-625) (hereinafter referred to as “HOME”), for utilization in connection with its HOME Investment Partnerships Grant (hereinafter referred to as “HOME”) Program; and

WHEREAS, the City Council has adopted a budget for such funds and has included therein the expenditure of funds in the form of a loan (the “Loan”) to BORROWER for the project entitled, “Acme Road Apartments” (hereinafter referred to as “Project”); and

WHEREAS, the City Council has designated the Division of Grants Monitoring and Administration as the CITY department responsible for the administration and monitoring of the Project and all matters pertaining thereto; and

WHEREAS, CITY wishes to engage BORROWER to implement and manage said Project; and

WHEREAS, as a part of said Project implementation and management by BORROWER, it is proposed that the Loan be made to BORROWER to fund the construction of three hundred twenty-two (322) rental units in the Acme Road Apartments of which () will be HOME units described in Exhibit “F” attached hereto, incorporated herein and made a part hereof for all purposes (such Project hereafter to be referred to herein as the “Leasehold Property”), such Loan to be secured by, among other things, liens and security interests (the “CITY Liens”) against the Leasehold Property; **NOW THEREFORE:**

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

1.1 For purposes of this AGREEMENT, in addition to the definitions and references set forth throughout this AGREEMENT, the following terms shall have the meanings indicated:

- (A) “Business Day” - Every day of the week, except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for its employees.
- (B) “Environmental Law” - Any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Leasehold Property including, without limitation, (i) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, as now or hereafter amended (“RCRA”) (42 U.S.C. §6901, *et. seq.*); (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as now or hereafter amended (“CERCLA”) (42 U.S.C. §9601, *et. seq.*); (iii) the Clean Water Act, as now or hereafter amended (“CWA”) (33 U.S.C. §1251, *et. seq.*); (iv) the Toxic Substances Control Act, as now or hereafter amended (“TSCA”) (15 U.S.C. §2601, *et. seq.*); (v) the Clean Air Act, as now or hereafter amended (“CAA”) (42 U.S.C. §7401, *et. seq.*), Texas Solid Waste Disposal Act (V.T.C.A. Health and Safety Code §361.001, *et. seq.*) and the Texas Water Code (V.T.C.A. Water Code §26.001-26.407); (vi) all regulations promulgated under any of the foregoing; (vii) any local, state or federal law, statute, regulation or ordinance analogous to any of the foregoing; and (viii) any other federal, state or local law (including any common law), statute, regulation or ordinance regulating, prohibiting or otherwise restricting the placement, discharge, release, threatened release, generation, treatment or disposal upon or into any environmental media of any substance, pollutant or waste which is now or hereafter classified or considered to be hazardous or toxic to human health or the environment.
- (C) “Environmental Report” - 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 Leasehold Property is contaminated with Hazardous Materials or is subject to undue risk of contamination by Hazardous Materials.
- (D) “Governmental Authority” - 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, having jurisdiction over the applicable matter.
- (E) “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.

- (F) “Legal Requirements” - (i) 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 BORROWER, any guarantor of the Project, the Loan, or the Leasehold Property, including, without limitation, the ownership, use, construction, rehabilitation, development, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (ii) 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 Leasehold Property or the ownership, use, construction, rehabilitation, development occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, (iii) BORROWER’s or any project or Loan guarantor’s presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all leases related to the Leasehold Property or the Project, (v) other contracts, whether written or oral, of any nature that relate in any way to the Leasehold Property or the Project and to which BORROWER or any Loan or project guarantor may be bound.
- (G) “Loan Documents” - (i) this AGREEMENT, (ii) that certain Commitment Letter and Loan Agreement (“Commitment Letter”) of even date herewith, signed by LENDER and accepted to by signature of BORROWER; (iii) that certain Real Estate Lien Note (“Note”) of even date herewith, signed by BORROWER, evidencing its obligation for payment to CITY in connection with the Loan; (iv) that certain Leasehold Deed of Trust (“Leasehold Deed of Trust”) of even date herewith, signed by BORROWER and securing payment of the Note, (v) that certain HOME Program Agreement (the “Program Agreement”) of even date herewith, signed by CITY and BORROWER in connection with the Project, (vi) that certain Assignment of Leases and Rentals (“Assignment), and (vii) that certain Declaration of Restrictive Covenant of Affordability (“Declaration”) of even date herewith, signed by OWNER in connection with the Project.
- (H) “Material” - (i) as to monetary matters, any amount in excess of \$250,000.00 or (ii) as to all other matters, any fact or circumstance without which CITY, in its sole opinion, would not have made the Loan.
- (I) “Plans” - Any and all contracts and agreements, written or oral, between the CITY-approved architect for the Project and BORROWER, together with the final plans, specifications, shop drawings, and other technical descriptions prepared for the construction done in connection with the Project, and all amendments and modifications thereof.

II. TERM

2.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall commence immediately upon its execution and shall terminate at the end of the Note term.

III. RESPONSIBILITIES

3.1 BORROWER hereby accepts responsibility for the performance, in a satisfactory and efficient manner as reasonably determined by CITY, of all services and activities set forth in this AGREEMENT.

3.2 Unless written notification by BORROWER to the contrary is received and approved by CITY, BORROWER's general partner (Acme Road Apartments GP, LLC) shall be BORROWER's designated representative responsible for the management of all contractual matters pertaining to this AGREEMENT.

3.3 CITY's Grants Administrator of the Division of Grants Monitoring and Administration or his designee shall be CITY's representative responsible for the administration of this AGREEMENT.

3.4 Communications between CITY and BORROWER shall be directed to the designated representatives of each as set forth in paragraphs numbered 3.2 and 3.3 hereinabove.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

4.1 BORROWER understands that funds provided to it pursuant to this AGREEMENT are funds, which have been made available to CITY by the federal government under the HOME Investment Partnership Program (Final Rule) and in accordance with CITY's HUD-approved Grant Application and with other specific assurances made and executed by CITY. BORROWER, therefore, assures and certifies that it will comply with the requirements of the HOME Investment Partnership Program (Final Rule) and with all regulations promulgated thereunder, codified at Title 24 of the Code of Federal Regulations. BORROWER understands, however, that the HOME Investment Partnership Program (Final Rule) in no way is meant to constitute a complete compilation of all duties imposed upon BORROWER by law or administrative ruling, or to narrow the standards which BORROWER must follow. Accordingly, BORROWER understands that if the regulations and issuances promulgated pursuant to the HOME Investment Partnership Program (Final Rule) are amended or revised, it shall comply with them or otherwise immediately notify CITY pursuant to the provisions of Article XLIV of this AGREEMENT.

4.2 BORROWER understands that certain compliance requirements mandated by applicable laws or regulations are summarized as follows:

- (A) BORROWER shall comply with the Affordable Housing Policies attached hereto and incorporated herein as Exhibit "G" for this purpose.

- (B) BORROWER shall ensure that all units constructed with assistance made available to BORROWER by CITY under this AGREEMENT shall comply with the provisions set forth in 24 CFR 92.251, Property Standards and shall comply with City codes, including the Universal Design Ordinance, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit “H”.
- (C) BORROWER shall comply with the “HUD Form 4010: Federal Labor Standard Provisions” attached hereto and incorporated herein as Exhibit “I” for this purpose.
- (D) BORROWER shall comply with the “Insurance Requirements” attached hereto and incorporated herein as Exhibit “J” for this purpose.
- (E) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.251, Property Standards.
- (F) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.350, Use of debarred, suspended or ineligible contractors or sub-recipients and 24 CFR 92 Section 92.508 (a)(7)(viii), Records demonstrating compliance with debarment and suspension requirements.
- (G) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.351(A)(B), Affirmative Marketing, and 24 CFR 92 Section 92.508 (a)(7)(ii)(A), Records demonstrating compliance with the affirmative marketing.
- (H) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.352, Environmental, and 24 CFR 92 Section 58, Environmental standards, and 24 CFR 92 Section 92.508 (a)(7)(iii), Records demonstrating compliance with the environmental review requirements.
- (I) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.353, Displacement, relocation, and acquisition, and 24 CFR 92 Section 92.508 (a)(7)(iv), Records demonstrating compliance with the requirements of §92.353 regarding displacement, relocation, and real property acquisition.
- (J) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.354, Labor standards - Federal Labor Standards which includes:
 - (i) Davis- Bacon and Related Acts (Title 40 U.S.C. 3141) - Ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.

- (ii) Copeland Act (Anti-kickback) (Title 40 U.S.C. 3145)- Governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
 - (iii) The Contract Work Hours and Safety Standards Act (CWHSSA) (Title 40 U.S.C. 3701)- Provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- (K) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92.355, Lead Based Paint, 24 CFR 92.508 (a)(7)(vi), Records demonstrating compliance with the lead-based paint requirements.
 - (L) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92.356, Conflict of interest, and 24 CFR 92.508 (a)(7)(vii), Records supporting exceptions to the conflict of interest prohibition.
 - (M) BORROWER Y acknowledges, understands, and agrees to comply to with 24 CFR 92.508 (a)(7)(i)(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, and
 - (i) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92.508 (a)(7)(i)(B), Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended.
 - (ii) BORROWER acknowledges, understands, and agrees to comply to with 24 CFR 92.508 (a)(7)(v), Records demonstrating compliance with the labor requirements.

4.3 BORROWER must at all times remain in compliance with the requirements set out in Section 4.2 hereinabove. BORROWER further understands that said requirements in Section 4.2 are summaries and are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon BORROWER by law or administrative ruling, or to narrow the standards which BORROWER must follow.

4.4 BORROWER assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and all applicable rules

and regulations as contained in Section 4.2 and that BORROWER shall include Section 4.2 as part of every contract awarded in connection with this Project.

4.5 BORROWER shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting BORROWER 's operations pursuant to this AGREEMENT.

4.6 BORROWER understands and acknowledges that the Provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045, are expressly made a part of this AGREEMENT.

4.7 BORROWER shall provide the CITY with sufficient documentation to verify that the provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045, attached hereto as part of Exhibit "I", are met.

4.8 BORROWER shall obtain the applicable wage decision of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this AGREEMENT prior to the bidding of the PROJECT. Such wage decision shall be obtained from the CITY's Labor Compliance Office for inclusion by BORROWER or its contractor in the construction solicitation.

4.9 BORROWER understands and acknowledges that CITY may request periodic reports or support to ensure adherence to prevailing wage rates provisions.

4.10 If, as a result of CITY's review, the CITY finds any violations, BORROWER shall forfeit as a penalty to the CITY sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said Agreement, by the contractor or any sub-contractor.

4.11 BORROWER understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code and City Ordinance 2008-11-20-1045 shall not be construed to relieve BORROWER, BORROWER's contractor or any subcontractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder.

4.12 BORROWER, its contractor and any subcontractor, in the execution of this PROJECT, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. BORROWER and its contractor and any subcontractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

4.13 BORROWER ensures that this Article IV, paragraphs 4.6 through 4.12 and the related wage decision shall be included in its entirety in any sub-contract agreement entered into by BORROWER, BORROWER's contractor, and/or subcontractor employed on the project.

4.14 BORROWER shall forward any questions regarding these prevailing wage provisions to LaborComplianceOffice-LCO@sanantonio.gov.

4.15 BORROWER understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in CITY's Housing Program Policies, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "G" and that BORROWER must at all times remain in compliance therewith; BORROWER further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon BORROWER by law or administrative ruling, or to narrow the standards which BORROWER must follow.

4.16 BORROWER assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and *all* applicable rules and regulations as contained in CITY's Housing Program Policies.

4.17 BORROWER shall observe and comply with all Legal Requirements.

V. BORROWER'S WARRANTIES AND REPRESENTATIONS

5.1 BORROWER hereby unconditionally warrants, represents, assures, and guarantees unto CITY the following as of the date hereof:

- (A) BORROWER possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this AGREEMENT and the other Loan Documents and to perform the responsibilities herein required, and each such document constitutes a legal and binding obligation of, and is valid and enforceable against, BORROWER and the Leasehold Property (as the case may be) in accordance with the terms thereof.
- (B) BORROWER represents, warrants, assures, and guarantees that the individual signing this AGREEMENT has full legal authority to execute this AGREEMENT on behalf of BORROWER and to bind BORROWER to all terms, performances, and provisions herein contained.
- (C) To BORROWER's knowledge, any and all information, reports, papers, and other data (including, without limitation, any and all balance sheets, statements of income or loss, reconciliation of surplus and financial data of any other kind) heretofore furnished or to be furnished to CITY by or on behalf of BORROWER are, or when delivered will be, true, and correct in all material respects; all financial data has been, or when delivered will have been, prepared in accordance with generally accepted accounting principles consistently applied, and fully and accurately present, or will present, the financial condition of the subjects thereof as of the dates thereof; and, with respect to the financial data heretofore furnished, no materially adverse change has occurred in the financial condition reflected therein, since the dates thereof.

- (D) Except as may be otherwise set forth on any exhibit attached hereto, there are no actions, suits or proceedings of a material nature pending in Bexar County, Texas, or, to the knowledge of BORROWER, threatened against or affecting BORROWER, any Loan or the Leasehold Property, or involving the validity or enforceability of the Leasehold Deed of Trust or the priority of the liens and security interests created therein; and to BORROWER's knowledge, no event exists (including specifically BORROWER's execution of its respective security documents related to the Loan and BORROWER's consummation of the Loan) which will violate, be in conflict with, result in the breach of or constitute a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on the Leasehold Property other than the liens and security interests created by or expressly permitted under the Loan Documents.
- (E) BORROWER has (i) received or ensured the BORROWER's receipt of all requisite building permits and approvals in connection with the Project, (ii) filed and/or recorded all requisite plats and other instruments; and (iii) complied or ensured the compliance with all Legal Requirements required to be met prior to commencement of construction work done in connection with the Project.
- (F) All streets, easements, utilities, and related services necessary for the construction done in connection with the Project and the operation thereof for their intended purpose are, or will be, available to the boundaries of the Leasehold Property, including, without limitation, potable water, storm and sanitary sewer, gas, electric and telephone facilities and garbage removal.
- (G) To the best of BORROWER's knowledge based on an environmental report, the Leasehold Property has not been the site of any activity that would violate any past or present Legal Requirement, including, without limitation, any Environmental Law. Specifically, without limitation, (i) no solid waste, as that term is defined in the Texas Solid Waste Disposal Act, and no petroleum or petroleum products have been handled on the Property such that they may have leaked or spilled on to the Leasehold Property or contaminated the Leasehold Property, (ii) there is no on-site contamination resulting from activities on the Leasehold Property or adjacent tracts, (iii) there is no off-site contamination resulting from activities on the Leasehold Property, (iv) the Leasehold Property contains no Hazardous Materials; and (v) there are no underground storage tanks located in, on or under the Leasehold Property, and that it has obtained specific written assurance from the BORROWER to such effect.
- (H) BORROWER has delivered to CITY duly executed documentation creating and lawfully establishing BORROWER including evidence of any required filing with the Secretary of State.

5.2 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the BORROWER or the person signing on behalf of BORROWER, and the same is not

remedied or dismissed within sixty (60) calendar days, CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, BORROWER shall remain liable to CITY for any money it has received from CITY for performance of any of the provisions hereof.

VI. MAINTENANCE OF EFFORT

6.1 BORROWER agrees that the funds and resources provided to it under the terms of this AGREEMENT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services or other benefits which would have been available to, or provided through, BORROWER had this AGREEMENT not been executed.

VII. PERFORMANCE BY BORROWER

7.1 BORROWER, in accordance and compliance with the terms, provisions, and requirements of this AGREEMENT, and notwithstanding the fact that it is not the owner of the Leasehold Property, shall manage, perform, and provide all of the activities and services set forth in the Work Statement attached hereto and incorporated herein for all purposes as Exhibit "A," to CITY's reasonable satisfaction, utilizing only those funds remitted to BORROWER by CITY under the terms of this AGREEMENT; the funds available for utilization hereunder shall be as described in the "Project Budget" attached hereto as Exhibit "B" and incorporated herein for all purposes.

7.2 Modifications or alterations to Exhibit "A" may be made only pursuant to the prior written approval of CITY's Grants Administrator of the Division of Grants Monitoring and Administration or his designee, which such approval shall not be unreasonably withheld, conditioned or delayed.

VIII. REIMBURSEMENT BY CITY

8.1 In consideration of BORROWER's performance, in a satisfactory and efficient manner as reasonably determined by CITY, of all services and activities set forth in this AGREEMENT, CITY agrees to reimburse BORROWER for all eligible expenses incurred hereunder. Such reimbursement, however, shall be in accordance with the Project Budget set forth in Exhibit "B" and shall be subject to any and all limitations and provisions set forth in this Article and in Article X hereof.

8.2 Notwithstanding any other provision of this AGREEMENT, or of any of the other Loan Documents, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00), evidenced by the Note.

8.3 It is expressly understood and agreed by CITY and BORROWER that CITY's obligations under this Article are contingent upon its actual receipt of adequate HOME

Entitlement funds from HUD specifically to meet CITY's liabilities hereunder. Should CITY not receive such funds to make payments pursuant to this AGREEMENT or should fund awards be reduced, CITY shall notify BORROWER in writing within a reasonable time after such fact has been determined and may, at its option, either terminate this AGREEMENT and cancel the Loan or reduce the amount of its liability accordingly.

8.4 It is expressly understood by CITY and BORROWER that this AGREEMENT in no way obligates CITY's general fund monies or any other monies or credits of CITY.

8.5 CITY shall not be liable for any BORROWER cost, or portion thereof, which:

- (A) Has been paid, reimbursed or is subject to payment or reimbursement from another source;
- (B) Is not in strict accordance with the terms of this AGREEMENT or of the other Loan Documents, including all exhibits attached;
- (C) Has not been billed to CITY in accordance with the terms of this AGREEMENT within thirty (30) calendar days following billing to BORROWER, or termination of this AGREEMENT, whichever is earlier; or
- (D) Is not an allowable cost as defined by Article X of this AGREEMENT or by the Project Budget (Exhibit "B").

8.6 CITY shall not be liable for any BORROWER cost, or portion thereof, which is or was incurred in connection with an activity of BORROWER where:

- (A) Prior written authorization from CITY is required for the activity and such authorization was not first procured; or
- (B) CITY has requested in writing that BORROWER furnish data concerning an activity prior to proceeding further therewith and BORROWER nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

8.7 CITY shall not be obligated or liable under this AGREEMENT to any party, including the owner of the Leasehold Property, other than BORROWER, for payment of any monies or provision of any goods or services.

8.8 In addition to any other requirements or restrictions herein or in any of the Loan Documents, CITY shall not be obligated to make the first advance under this Article, unless otherwise stated or agreed to by CITY, to BORROWER unless and until:

- (A) CITY has received true, legible, and correct copies of the following:
 - (1) The Plans and the final draft of all contracts for any construction work to be done in connection with the Project;

- (2) A certificate from the architect approved by CITY for the Project, stating that the Plans have been approved by such architect and that the contracts for any construction work executed or to be executed in connection with the Project are acceptable to such architect and satisfactorily provide for the construction contemplated herein in connection with the Project and the Leasehold Property to be submitted to CITY when available or in any case prior to construction of the Project;
- (3) All authorizations and permits which are then procurable and required by any Legal Requirement for the construction and proposed use contemplated herein in connection with the Project and the Leasehold Property;
- (4) An original current survey of the Leasehold Property containing the certification of the surveyor in form and substance satisfactory to CITY in its reasonable discretion and showing the perimeter of the Leasehold Property by courses and distances, all easements and rights-of-way, the boundary lines of the streets abutting the Leasehold Property and the width thereof, any encroachments and the extent thereof in feet and inches, the relation of the proposed improvements to the Leasehold Property by distances to the perimeter of the Leasehold Property and the proposed building lines, all acceptable to the title company issuing the Commitment for Title Insurance and corresponding title policy for the Leasehold Property, retained by BORROWER in connection with the Project, to modify the "area, boundaries, and encroachments" exception of the corresponding Title Insurance to the maximum extent permitted by law;
- (5) The policies of insurance required by the Loan Documents and by the insurance requirements set forth in Exhibit "J" hereof, which requirements BORROWER must comply with and maintain, accompanied by evidence of the payment of the premium therefor;
- (6) Intentionally deleted;
- (7) A soils investigation report from a soils engineer satisfactory to CITY, to be submitted to CITY when available or in any case prior to construction of the Project;
- (8) Evidence satisfactory to CITY in its reasonable discretion that the Leasehold Property is not located within the 100-year flood plain or identified by CITY as a special flood hazard area, to be submitted to CITY when available or in any case prior to construction of the Project;

- (9) A complete Project Budget in form and substance reasonably satisfactory to CITY, to be submitted to CITY when available or in any case prior to construction of the Project;
 - (10) A copy of the form of tenant lease satisfactory to CITY to be used by BORROWER in connection with the use of the Leasehold Property upon completion of construction set forth herein, to be submitted to CITY when available or in any case prior to construction of the Project;
 - (11) The Environmental Report; and
 - (12) Any other documents and information as CITY may reasonably require.
- (B) The Loan Documents have been duly authorized, executed, and delivered to the title company or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to CITY.
 - (C) The title company issuing the Commitment for Title Insurance and corresponding Title Policy for the Leasehold Property, retained by BORROWER in connection with the Project has issued the title insurance for the benefit of CITY in connection with the Leasehold Property.
 - (D) BORROWER pays to CITY, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this AGREEMENT or any of the other Loan Documents.
 - (E) BORROWER has complied with each and every provision of this AGREEMENT and other Loan Documents requiring such compliance prior to the disbursement or reimbursement by CITY of Loan funds, unless CITY has waived any such requirement in writing.

8.9 In addition to any other requirements or restrictions herein or in any of the Loan Documents, CITY shall not be obligated to make any subsequent advance, unless otherwise stated or agreed to by CITY, to BORROWER unless and until:

- (A) BORROWER shall have delivered to CITY a copy of all construction contracts in connection with the Project or the Leasehold Property, when available or in any case prior to construction of the Project; and
- (B) CITY shall have received (i) certification from the contractor reasonably approved by CITY for the Project that in the opinion of such contractor, the construction on the Leasehold Property theretofore performed in connection with the Project has been in substantial accordance with the Plans, (ii) at the request of CITY, lien waivers or releases, in recordable form, from the general contractor, all subcontractors, laborers, and materialmen employed or furnishing materials in

connection with the Project construction completion, (iii) any certifications or evidence of cost and Project completion as CITY may request.

8.10 Notwithstanding anything to the contrary contained in or inferable from any of the above, CITY shall not be required to make any advance of the Loan hereunder or under any of the Loan Documents if, at the time of the requested advance, any of the following exists:

- (A) Any Event of Default under any of the other Loan Documents exists and is continuing beyond any applicable notice and cure period;
- (B) The requested advance, plus the sum of the previous advances, if any, or other sums disbursed by CITY under any of the Loan Documents exceed the face amount of the Note, notwithstanding anything to the contrary CITY shall disburse up to the maximum requested amount of the loan amount;
- (C) Intentionally deleted;
- (D) In the reasonable and sole judgment of CITY, the sum of the unadvanced Loan proceeds and with all other funds available to BORROWER are insufficient to complete the Project construction in material accordance with the Plans and this AGREEMENT;
- (E) The Leasehold Property or any significant part thereof is demolished or substantially destroyed or condemnation or similar type proceedings are commenced with reference thereto;
- (F) Any change in the status of title to the Leasehold Property has occurred subsequent to the date hereof without CITY's prior, written consent;
- (G) Any event has occurred which has given rise to a lien claim of equal or superior rank to the lien and security interest intended to be created by the Loan Documents, other than those specifically set forth in the Loan Documents or otherwise permitted by CITY in writing, including the contemplated senior financing for the Project;
- (H) A final order or decree in any court of competent jurisdiction exists enjoining the Project construction or enjoining or prohibiting BORROWER or CITY or either of them from performing their respective obligations under this AGREEMENT;
- (I) Intentionally deleted; or
- (J) Any significant encroachment undisclosed in the Title Commitment or Survey provided in connection with the Loan exists which has occurred without the approval of CITY and such encroachment does not benefit the Leasehold Property or this BORROWER's tenants.

**IX. RECEIPT, DISBURSEMENT AND ACCOUNT
OF FUNDS BY BORROWER**

9.1 To the extent there are disbursements of proceeds of the Loan other than the initial disbursement, BORROWER understands and agrees that it shall maintain a separate numbered account for the receipt and disbursement of all funds received pursuant to this AGREEMENT and of any program income resulting therefrom. BORROWER further agrees that:

- (A) Such account shall contain only those funds received pursuant to this AGREEMENT and no other funds shall be mingled therewith, except funds deemed to be program income as defined in Article XI hereunder;
- (B) All checks and withdrawals from such account shall have itemized documentation in support thereof;
- (C) Such account shall be maintained, under conditions approved in writing by CITY, in a financial institution having federal deposit insurance coverage, with any account balance exceeding the federal deposit insurance coverage likewise collaterally secured; and
- (D) Upon BORROWER's written request and solely within the discretion of CITY, an alternative accounting mechanism may be permitted, provided CITY approves such alternative in writing and such alternative adheres at all times to generally accepted accounting principles.

9.2 Regarding method of payment, CITY and BORROWER agree as follows:

- (A) BORROWER shall deliver purchase agreement or other evidence of costs associated with the acquisition of the Leasehold Property to CITY's satisfaction for disbursement of the proceeds of the Loan, in accordance with instructions contained in the Billing Package, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "D," to CITY's Division of Grants Monitoring and Administration.
- (B) BORROWER shall promptly submit to CITY such other reports and other information as may reasonably be required by CITY to document CITY liabilities under this AGREEMENT.
- (C) Upon receipt of and approval by CITY of BORROWER's proof of purchase or lease of the Leasehold Property, CITY shall pay to BORROWER an amount equal to CITY's liabilities not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable. CITY shall provide BORROWER with written instructions on Invoice Processing upon execution of this AGREEMENT. Delinquent or unacceptable billing of CITY by BORROWER, however, shall justify delay of payment by CITY.

- (D) BORROWER's financial management system shall provide for an adequate procedure to minimize the time elapsed between CITY's payment to BORROWER and BORROWER's disbursement of funds.

9.3 Within ten (10) business days of CITY's written request therefor, BORROWER shall refund to CITY any sum of money paid by CITY to BORROWER later determined to:

- (A) Have resulted in overpayment to BORROWER;
- (B) Have not been spent by BORROWER strictly in accordance with the terms of this AGREEMENT; or
- (C) Not be supported by adequate documentation to fully justify the expenditure.

9.4 Upon termination of this AGREEMENT, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, BORROWER shall refund such amount to CITY within ten (10) business days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, however, shall not be made from funds received pursuant to this AGREEMENT or from funds received from or through the federal government or CITY.

9.5 In the event that the actual amount expended by BORROWER to meet the level of performance specified in Exhibit "A," or any amendment thereto, is less than that amount provided to BORROWER pursuant to this AGREEMENT, then CITY reserves the right to reappropriate or recapture any such underexpended funds.

9.6 Utilizing the format provided by CITY, a "Contract Close-Out Package," together with a final expenditure report, for the period commencing on the date of BORROWER's last invoice requesting reimbursement of funds pursuant to this AGREEMENT, shall be submitted by BORROWER to CITY within fifteen (15) business days following the expiration of the term of this AGREEMENT.

9.7 Upon termination of this AGREEMENT, all unclaimed (i.e., 30 calendar days or older) monies must be returned to CITY in the following format:

- (A) A cashier's check for the net aggregate amount payable to the "City of San Antonio"; and
- (B) If applicable, a listing showing each person's social security number, full name, last known complete address and amount owing to such person.

X. ALLOWABLE COSTS

10.1 Costs shall be considered allowable only if approved by CITY in writing and incurred directly and specifically in the performance of and in compliance with this AGREEMENT and with all Legal Requirements.

10.2 Approval of BORROWER's budget as set forth in Exhibit "B," however, shall not constitute prior written approval of the items included therein. For example, CITY's prior written authorization shall be required in order for the following to be considered allowable costs:

- (A) Encumbrance or expenditure during any one month period falling within the term of this AGREEMENT which exceeds one-twelfth (1/12) of any budgeted line items for personnel costs as specified in Exhibit "B";
- (B) Sub-contracts, *to-wit*, CITY shall not be obligated to any third parties (including any sub-contractors of contractor) nor shall CITY funds be used to pay for contract services extending beyond the expiration of this AGREEMENT;
- (C) Out of town travel;
- (D) Costs or fees associated with the alteration or relocation of the facilities on and in which the activities specified in Exhibit "A" are conducted;
- (E) Costs or fees associated with alterations, deletions or additions to the Personnel Schedule incorporated within Exhibit "B";
- (F) Costs or fees for temporary employees or services;
- (G) Costs or fees for consultant and/or professional services; and
- (H) Costs or fees associated with attendance at meetings, seminars or conferences.

10.3 Written requests for prior approval shall be BORROWER's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Procurements and/or purchases which must be approved pursuant to the terms of this AGREEMENT shall be conducted entirely in accordance with all applicable terms, provisions, and requirements hereof.

XI. PROGRAM INCOME

11.1 For purposes of this AGREEMENT, "program income" shall mean earnings of BORROWER realized from activities resulting from this AGREEMENT or from BORROWER's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income; usage or rental/lease fees (excluding rental income earned from rental of the units in the Project); income produced from contract-supported services of individuals or employees or from the use of equipment or facilities of BORROWER

provided as a result of this AGREEMENT; and payments from clients or third parties for services rendered by BORROWER pursuant to this AGREEMENT.

11.2 On a monthly basis, BORROWER shall report and return to CITY all program income received or accrued during the preceding month, except for rental income earned from the units in the Project. Alternative arrangements to this requirement may be made only upon written request to and written approval by CITY.

11.3 Records of the receipt and disposition of program income shall be maintained by BORROWER in the same manner as required from other AGREEMENT funds and shall be submitted to CITY in the format prescribed by CITY.

11.4 BORROWER shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

11.5 It shall be BORROWER's responsibility to obtain from CITY a prior determination as to whether or not income arising directly or indirectly from this AGREEMENT, or from the performance thereof, constitutes program income, and unless otherwise approved in writing by CITY, BORROWER shall be responsible to CITY for the repayment of any and all amounts determined by CITY to be program income.

XII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 BORROWER further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY is, shall be and shall remain complete and accurate in all material respects as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant adverse change without prior, written notice to CITY;
- (B) Any supporting financial statements heretofore or hereafter provided to CITY are, shall be and shall remain, in all material respects, complete, accurate and fairly reflective of the financial condition of BORROWER on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of BORROWER;
- (C) No litigation or proceedings are presently pending in Bexar County, Texas or threatened against BORROWER, to the best of BORROWER's knowledge after diligent inquiry;
- (D) To BORROWER' knowledge, none of the provisions contained herein contravene or in any way conflict with the authority under which BORROWER is doing business or with the provisions of any existing indenture or agreement of BORROWER;

- (E) BORROWER has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of contract and acceptance of payments pursuant to the terms and conditions hereof; and
- (F) Except as disclosed in the title policy delivered to the CITY on even date hereof, and except as thence disclosed in the Leasehold Deed of Trust executed by BORROWER of even date hereof, none of the assets of BORROWER are currently and for the duration of this AGREEMENT subject to any lien or encumbrance of any character, except for current taxes not delinquent and except as shown in the financial statements provided by BORROWER to CITY and except as described in the other Loan Documents.

12.2 Except as otherwise provided in the Leasehold Deed of Trust, partnership agreement or as otherwise disclosed in the proforma provided by BORROWER to CITY, prior to and during the period of time that payment may be made hereunder and so long as any payments remain unliquidated, BORROWER covenants that it shall not, except as provided in the Loan Documents, without the prior written consent of CITY's Grants Administrator of the Division of Grants Monitoring and Administration or his designee, such consent shall not be unreasonably withheld, conditioned or delayed:

- (A) Further mortgage, pledge, or otherwise encumber or cause to be encumbered any of the assets of BORROWER now owned or hereafter acquired by it (excluding utility and telecommunication easements) and the recording of that certain CDBG Loan with CITY (the "CDBG Loan") to be entered into by and between BORROWER and CITY;
- (B) Permit any pre-existing mortgages (except for the Issuer's Leasehold Deed of Trust with Joinder and 's Leasehold Deed of Trust with Joinder), liens, or other encumbrances to remain on or attached to any of the assets of BORROWER which are allocated to the performance of this AGREEMENT and with respect to which CITY has ownership hereunder;
- (C) Sell, assign, pledge, transfer or otherwise dispose of accounts receivable, notes or claims for money due or to become due;
- (D) Sell, convey, or lease (except for residential leases, involuntary transfers pursuant to condemnation action, laundry room leases, and easements) all or any substantial part of its assets; or
- (E) Make any advance or loan to, or incur any liability as guarantor, surety or accommodation endorser for any other firm, person, entity or corporation.

12.3 Each of the foregoing representations, warranties and covenants shall be continuing and deemed repeated each time BORROWER submits a new request for payment in accordance with the terms, provisions and requirements of this AGREEMENT.

XIII. MAINTENANCE OF RECORDS

13.1 BORROWER agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. BORROWER further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this AGREEMENT and with all applicable federal and state regulations establishing standards for financial management; and
- (B) That BORROWER's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

13.2 BORROWER agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this AGREEMENT.

13.3 To the extent of any executory sub-contracts, BORROWER agrees to include the substance of this Article in all of its sub-contracts.

13.4 Nothing in this Article shall be construed to relieve BORROWER of:

- (A) Responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this AGREEMENT; and
- (B) Fiscal accountability and liability pursuant to this AGREEMENT and any Legal Requirements.

XIV. ACCESSIBILITY OF RECORDS

14.1 At any reasonable time during business hours on Business Days and as often as CITY may deem necessary, BORROWER shall make all of its records available to CITY, HUD, or any of their authorized representatives, and shall permit CITY, HUD, or any of their authorized representatives to audit, examine, and make excerpts and/or copies of same. BORROWER's records shall include, but shall not be limited to, the following: payroll, personnel and employment records, contracts, and invoices.

XV. PERFORMANCE RECORDS AND REPORTS

15.1 As often and in such form as CITY may require, BORROWER shall furnish CITY such performance records and reports as deemed by CITY as pertinent to matters covered by this AGREEMENT.

15.2 At minimum, monthly performance records and reports shall be submitted to CITY by BORROWER no later than the tenth (10th) day of the month following. Records and reports shall be in accordance with the formats set forth in Exhibit "C" attached hereto and incorporated herein for all purposes.

15.3 As of the commencement date of this AGREEMENT, BORROWER agrees to gather, retain and make available to CITY information and data relative to all programmatic and financial reporting.

XVI. MONITORING AND EVALUATION

16.1 CITY shall perform on-site monitoring of BORROWER's performance pursuant to the terms of this AGREEMENT.

16.2 BORROWER agrees that CITY may, at CITY's sole discretion, carry out monitoring and evaluation activities so as to ensure compliance by BORROWER with this AGREEMENT, with the Community Development Act, with the Work Statement set forth in Exhibit "A," with the program assurances and certifications executed by CITY, and with all other Legal Requirements.

16.3 BORROWER agrees to cooperate with CITY in the development, implementation and maintenance of record-keeping systems and to provide CITY with any data determined by CITY to be necessary for its effective fulfillment of its monitoring and evaluation responsibilities.

16.4 BORROWER agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its monitoring of BORROWER's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

16.5 After each official monitoring visit, CITY shall provide BORROWER with a written report of monitoring findings.

16.6 Copies of any fiscal, management, or audit reports by any of BORROWER's funding or regulatory bodies shall be submitted by BORROWER to both CITY's Department of Internal Review and CITY's Division of Grants Monitoring and Administration within five (5) business days of receipt thereof by BORROWER.

XVII. INSURANCE

17.1 BORROWER shall observe sound business practices with respect to providing such bonding and insurance as would provide adequate coverage for activities under this AGREEMENT; provided, however, that the foregoing provision of this paragraph shall in no way be construed or deemed to limit or diminish the insurance requirements set forth in Exhibit "J" hereof, with which BORROWER must comply and maintain.

17.2 Upon signing this AGREEMENT, and annually thereafter for the duration of the Note, in addition to any other requirements and obligations of BORROWER in Exhibit "J" hereof and in the other Loan Documents, BORROWER shall provide CITY with: (1) proof of timely (before

past due) payment in full of all taxes assessed against the Leasehold Property and (2) evidence of BORROWER's current payment status on all loans in connection with the Leasehold Property and the Project.

17.3 Premiums chargeable for any and all insurance referred to in this Article, including Exhibit "J" hereof, shall be paid by BORROWER, at its own expense, unless otherwise authorized in writing by CITY, and such insurance shall be kept in force during and throughout the term of this AGREEMENT. Such insurance shall not be materially changed, canceled, terminated or otherwise allowed to expire unless thirty (30) calendar days advance written notice to such effect is submitted to CITY, and it shall be the responsibility of BORROWER to ensure such submission.

17.4 In addition to BORROWER's obligation set forth in Exhibit "J" hereof to provide CITY with Certificates of Insurance evidencing the above-required insurances prior to the commencement of this AGREEMENT and thereafter, BORROWER must provide to CITY certificates evidencing renewals or replacements of the policies of said insurance at least thirty (30) calendar days prior to the expiration or cancellation of any such policies. Additionally, BORROWER shall provide CITY evidence of the payment of all premiums therefor.

17.5 Actual losses not covered by insurance as required by this Article shall not be allowable costs under this AGREEMENT, and shall therefore remain the sole responsibility of BORROWER.

17.6 Should BORROWER, either directly or indirectly, engage in any construction, rehabilitation, or renovation type activities utilizing funds provided pursuant to this AGREEMENT, then the current and specific bonding and compliance provisions required at that time shall prevail.

XVIII. INDEMNIFICATION

18.1 BORROWER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all 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 the CITY directly or indirectly arising out of, resulting from or related to BORROWER's activities under this AGREEMENT including any acts or omissions of BORROWER, any agent, officer, director, representative, employee, consultant or subcontractor of BORROWER, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BORROWER 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

18.2 The provisions of this INDEMNITY 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. BORROWER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BORROWER known to BORROWER related to or arising out of BORROWER's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at BORROWER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BORROWER of any of its obligations under this paragraph.

18.3 Defense Counsel – CITY shall have the right to select or to approve defense counsel to be retained by BORROWER in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. BORROWER shall retain CITY approved defense counsel within seven (7) business days of CITY's written notice that CITY is invoking its right to indemnification under this AGREEMENT. If BORROWER fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and BORROWER shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

18.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of BORROWER, any subcontractor of BORROWER, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for BORROWER or any subcontractor of BORROWER under worker's compensation or other employee benefit acts.

XIX. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

19.1 BORROWER shall comply with all applicable local, state and federal equal employment opportunity and affirmative action rules, regulations and laws.

19.2 So that CITY can investigate compliance with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, BORROWER shall furnish to CITY any and all information and reports reasonably requested by CITY, and shall permit access by CITY of any and all of its books, records and accounts.

In the event of non-compliance by BORROWER (or BORROWER's general contractor) with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, this AGREEMENT may be canceled, terminated, or suspended by CITY, in whole or in part, and BORROWER may be barred from further contracts with CITY.

XX. NONDISCRIMINATION

20.1 BORROWER covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, handicap or familial status, in employment practices or in the use of or admission to the Leasehold Property, which said discrimination BORROWER acknowledges is prohibited.

XXI. CONFLICT OF INTEREST

21.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the City's Ethics Code, from having a financial interest in any AGREEMENT with City or any City agency such as City owned utilities. A City officer or employee has a "prohibited financial interest" in a AGREEMENT with the City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the AGREEMENT or sale: a City officer or employee; his parent, child or spouse; a business entity in which the City officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

21.2 BORROWER warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees and agents performing on this AGREEMENT are neither a City officer nor an employee as defined by Section 2-52 (e) of the City's Ethics Code. BORROWER further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XXII. NEPOTISM

22.1 BORROWER shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by BORROWER or who is a member of BORROWER's governing body. The term "member of immediate family" shall include: wife, husband, son, daughter, mother, father, brother, sister, in-law, aunt, uncle, cousin, nephew, niece, step-parent, step-child, half-brother and half-sister.

XXIII. POLITICAL ACTIVITY

23.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XXIV. SECTARIAN ACTIVITY

24.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operation, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

XXV. PUBLICITY

25.1 When appropriate, as determined by and upon written approval of CITY, BORROWER shall publicize the activities conducted by BORROWER pursuant to the terms of this AGREEMENT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for BORROWER, however, mention shall be made of HUD funded CITY participation having made this Project possible.

XXVI. PUBLICATIONS

26.1 All published materials and written reports submitted pursuant to this AGREEMENT shall be originally developed unless otherwise specifically provided for herein. If material not originally developed is included in a report, however, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

26.2 All published materials submitted pursuant to this Project shall include the following reference on the front cover or title page:

“This document was prepared in accordance with the City of San Antonio’s HOME Investment Partnership Program, with funding received from the United States Department of Housing and Urban Development.”

XXVII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

27.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by BORROWER, shall, upon receipt, become the property of CITY.

XXVIII. FUNDING APPLICATIONS

28.1 To the extent funds will create a lien on the Leasehold Property, BORROWER agrees to notify CITY each time BORROWER is preparing or submitting any application for funding (other than as set forth in the Leasehold Deed of Trust and/or partnership agreement). When so preparing or submitting such an application, BORROWER shall comply with the following procedures:

- (A) When the funding application is in the planning stages, a description of the funds being applied for and of the proposed use for the funds shall be submitted by BORROWER to CITY;
- (B) Upon award or notice of award, whichever is sooner, BORROWER shall notify CITY of the award or notice thereof, and of the effect, if any, of such funding on the funds and programs agreed to hereunder. Such notice shall be submitted by BORROWER to CITY, in writing, within ten (10) business days of receipt of the award or notice thereof, together with copies of the applicable budget, personnel complement, program description, and contract; and
- (C) Except pursuant to prior written consent of CITY, BORROWER shall not use, either directly or indirectly, resources provided hereunder to prepare applications for other federal, other public or private funds, nor shall said resources be used, directly or indirectly, as contributions.

**XXIX. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
PROPOSED DEBARMENT AND OTHER
RESPONSIBILITY MATTERS**

29.1 BORROWER certifies, and the CITY relies thereon in execution of this AGREEMENT, that neither BORROWER nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts by any Federal governmental agency or department.

29.2 "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions).

29.3 BORROWER shall provide immediate written notice to CITY, in accordance with Article XLIV. Notice, if, at any time during the term of this AGREEMENT, including any renewals hereof, BORROWER learns that its certification under Section 29.1 was erroneous when made or has become erroneous by reason of changed circumstances.

29.4 BORROWER's certification is a material representation of fact upon which the CITY has relied in entering into this AGREEMENT. Should CITY determine, at any time during this AGREEMENT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this AGREEMENT in accordance with Article XXXIV Termination, provided if certificate becomes false due to a change in circumstances the CITY shall permit BORROWER to replace such principal with another.

XXX. SUB-CONTRACTING

30.1 Any other clause of this AGREEMENT to the contrary notwithstanding, none of the work or services covered by this AGREEMENT, except development by NRP Lone Star Development LLC for the development of the Project, NRP Contractors LLC for construction of the Project, NRP Management LLC for the management of the Project, and for the sub-contract by and between San Antonio Housing Trust Public Facility Corporation and NRP Contractors, Inc., shall be sub-contracted without the prior written approval of CITY, which such approval shall not be unreasonably withheld, conditioned or delayed. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by sub-contractors with this AGREEMENT shall be the responsibility of BORROWER.

30.2 BORROWER agrees that no sub-contract approved pursuant to this AGREEMENT shall provide for payment on a “cost plus a percentage of cost” basis.

30.3 Despite CITY approval of a sub-contract, CITY shall in no event be obligated to any third party, including any sub-contractor of BORROWER, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of AGREEMENT execution or extending beyond the date of AGREEMENT expiration.

XXXI. CHANGES AND AMENDMENTS

31.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and BORROWER.

31.2 Whenever and as often as deemed reasonably necessary by CITY, CITY may request and require changes to BORROWER’s Work Statement (Exhibit “A”); such changes as reasonably requested or required by CITY, however, must be by written amendment hereto and may incorporate therein increases or decreases (except to the extent BORROWER expended money or obligated to do so prior to such request) in the total monetary obligation of CITY to BORROWER as provided for pursuant to the terms, provisions and conditions of this AGREEMENT.

31.3 Except pursuant to (a) prior submission by BORROWER of detailed information regarding budget and Project revisions, and (b) prior written approval thereof by CITY, BORROWER shall neither make transfers between or among line items approved within the budget categories set forth in the Budget Summary incorporated within Exhibit “B” nor shall BORROWER alter, add to or delete from the Budget Detail likewise incorporated within said Exhibit “B.” Instead, BORROWER shall request budget revisions in writing and in a form prescribed by CITY; such request for revisions, however, shall not increase the total monetary obligation of CITY as provided for pursuant to this AGREEMENT, nor shall said revisions significantly change the nature, intent, or scope of the Project funded hereunder.

31.4 In the event that the level of funding for BORROWER or for the Project described herein is significantly altered, BORROWER shall submit, immediately upon written request by CITY, revised budget and Project information so as to enable re-evaluation by CITY of the original funding levels set forth in Exhibit "B."

31.5 It is understood and agreed by the parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this AGREEMENT and that any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

31.6 BORROWER further agrees to notify CITY of any changes in governing board or governing board composition, such notice to be provided within ten (10) business days of the change.

XXII. NOTICE AND CURE

32.1 Notwithstanding anything to the contrary, where is it determined the BORROWER has failed to comply with any of the terms and/or conditions of this AGREEMENT or other Loan Documents, LENDER shall notify BORROWER of such determination and shall grant BORROWER thirty (30) days to cure monetary violations of default and thirty (30) days to cure non-monetary violations of default, as delineated in Section K of the Note, prior to CITY enforcing any of its remedies set forth herein or in any of the other Loan Documents, provided if such non-monetary default cannot be cured within such thirty (30) days then BORROWER shall be permitted additional reasonable time provided that BORROWER commenced cure within such thirty (30) days.

XXXIII. SUSPENSION OF FUNDING

33.1 Upon reasonable determination by CITY of BORROWER's failure to timely and properly perform pursuant to the provisions of this AGREEMENT beyond any applicable notice and cure period, or of any of the other Loan Documents beyond any applicable notice and cure period, CITY, without limiting or waiving any rights it may otherwise have, may, at its discretion, withhold any, all and further payments to BORROWER.

33.2 The period of funding suspension shall be of such duration as CITY deems appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period:

- (A) Should CITY determine that the default or deficiency has been cured, BORROWER may, at City's option, be restored to full compliance status and paid all eligible funds withheld during the suspension period; or
- (B) Should CITY determine continued non-compliance, the provisions of Article XXXIV hereunder may be effectuated.

XXXIV. TERMINATION

34.1 "Termination" of this AGREEMENT shall mean termination by expiration of the AGREEMENT term or earlier termination pursuant to any of the provisions hereof.

34.2 CITY may terminate this AGREEMENT for any of the following reasons:

- (A) Neglect or failure by BORROWER to perform or observe any of the terms, conditions, covenants or guarantees of 1) this AGREEMENT, 2) any of the other Loan Documents, or 3) any other valid, written contract or amendment between CITY and BORROWER; provided, however LENDER shall provide BORROWER notice of such neglect or failure and permit BORROWER an opportunity to cure same;
- (B) Termination of funding of the Project by HUD;
- (C) Failure by BORROWER to timely cure after written notice from CITY and opportunity to cure any Event of Default;
- (D) Finding by CITY that BORROWER:
 - (1) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of or related to this AGREEMENT or the Project, and such delinquency continues after written notice from CITY to BORROWER and BORROWER fails to cure such delinquency;
- (E) Appointment of a trustee, receiver or liquidator for all or a material part of BORROWER's Leasehold Property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against BORROWER, which is not dismissed within ninety (90) days or BORROWER fails to post adequate security during the proceeding brought by BORROWER;
- (F) The entry by a US Bankruptcy Court of competent jurisdiction of a non-appealable final order providing for the modification or alteration of the rights of BORROWER's creditors;
- (G) Inability by BORROWER to conform to changes in local, state and federal rules, regulations and laws as provided for in Article IV and in paragraph number 33.5 of this AGREEMENT and all Legal Requirements, provided that CITY made BORROWER aware of such non-conformance and BORROWER continued failure to conform after being aware of same; and
- (H) Violation by BORROWER of any rule, regulation or law to which BORROWER is bound or shall be bound under the terms of this AGREEMENT, provided that

CITY made BORROWER aware of such non-conformance and BORROWER continued failure to conform after being aware of same.

34.3 BORROWER may terminate this AGREEMENT for any of the following reasons:

- (A) Cessation of outside funding upon which BORROWER depends for performance hereunder; BORROWER may opt, however, within the limitations of this AGREEMENT and with the written approval of CITY, to seek an alternative funding source, provided that the termination of funding by the initial outside source was not occasioned by a breach of agreement as defined herein or as defined in a contract between BORROWER and the funding source in question; or
- (B) Upon the dissolution of the BORROWER organization, provided such dissolution was not occasioned by a breach of this AGREEMENT.

34.4 Subject to the terms of this AGREEMENT, upon a decision to terminate by either CITY or BORROWER, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

34.5 Upon receipt of notice to terminate, CITY shall not be liable to BORROWER or BORROWER's creditors for any expense, encumbrances or obligations whatsoever incurred after the date of termination or which was not canceled, withdrawn or otherwise terminated by BORROWER in accordance with the provisions of this paragraph.

34.6 Subject to any Event of Default by BORROWER beyond any applicable notice and cure period and subject to senior lien documents and assigns, upon receipt of notice to terminate, 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 BORROWER under this AGREEMENT shall, at the option of CITY, and in accordance with Article XXVII hereof, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by BORROWER to CITY in a timely and expeditious manner.

34.7 Within thirty (30) calendar days after receipt of notice to terminate, BORROWER shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT prior to the effective date of termination.

34.8 Subject to an Event of Default by BORROWER beyond any applicable notice and cure period, any termination of this AGREEMENT as herein provided shall not relieve BORROWER from the payment of any sum(s) 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 BORROWER hereunder or by law or in equity, and any such termination shall not prevent CITY from enforcing the payment of any such sum(s) or claim for damages from BORROWER. Instead, 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.

34.9 Subject to the terms of this AGREEMENT, should this AGREEMENT be terminated by either party hereto, if the work required hereunder of BORROWER is not fully completed or caused to be fully completed to the reasonable satisfaction of CITY in accordance with the terms of this AGREEMENT, BORROWER shall refund any and all sums of money paid by CITY to BORROWER within thirty (30) calendar days of CITY's written request therefor, upon repayment of such sums the Leasehold Deed of Trust shall immediately be released.

34.10 Upon termination of this AGREEMENT by CITY under paragraph number 34.2(A) hereof, BORROWER shall be barred, to the extent BORROWER acted in bad faith, from future contracts with CITY absent the express written consent of the City Manager of CITY, or her designate, to contract with CITY.

XXXV. NOTIFICATION OF ACTION BROUGHT

35.1 In the event that any material claim, demand, suit, proceeding, cause of action or other action filed with a court with proper jurisdiction (hereinafter collectively referred to as "claim") which would jeopardize the Project, is made or brought against BORROWER, BORROWER shall give written notice thereof to CITY within ten (10) business days after itself being notified. BORROWER's notice to CITY shall state the date and hour of notification to BORROWER of the claim; the names and addresses of those instituting or threatening to institute the claim, the basis of the claim; and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XLIV of this AGREEMENT.

XXXVI. ASSIGNMENTS

36.1 BORROWER shall not transfer, pledge or otherwise assign this AGREEMENT, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY's Grants Administrator of the Division of Grants Monitoring and Administration. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXXVII. NO WAIVER OF PROVISIONS OR COMPLIANCE

37.1 Any failure by CITY to insist, or any election by CITY not to insist, upon the performance by BORROWER of the Project or the Loan, of any of the terms, provisions or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and CITY shall have the right at any time thereafter to insist upon performance by BORROWER of any and all of same. Additionally, no advance by CITY of any Loan proceeds shall in any way preclude CITY from thereafter declaring a failure (subject to notice and cure periods) by BORROWER to comply with any of the terms, provisions or

conditions of the Loan Documents an Event of Default subject to termination in accordance with Article XXXIV hereof.

XXXVIII. SEVERABILITY OF PROVISIONS

38.1 If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXXIX. RENEWAL NOT AUTOMATIC

39.1 Funding under this AGREEMENT and any amendments or waivers that may be made or granted hereunder shall not be automatically renewed on the anniversary date of this AGREEMENT. To the contrary, funding of any project requiring contract execution shall be achieved only pursuant to approval of the City Council of the City of San Antonio.

XL. NON-WAIVER OF PERFORMANCE

40.1 No waiver by CITY of a breach by BORROWER of any of the terms, conditions, covenants or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach by BORROWER of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

40.2 No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

40.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

XLI. SPECIAL CONDITIONS

41.1

41. BORROWER understands and agrees to comply with the following federal regulations as promulgated in the Section 3 clause of the Housing and Urban Development Act of 1968, as amended, and shall provide CITY with the information requested in the Section 3 Utilization Plan, attached hereto and incorporated herein for all purposes as Exhibit "K", upon CITY's request:

- (A) The work to be performed under this AGREEMENT 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 projects 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 to this AGREEMENT agree to comply with HUD's regulations in 24 CFR, Part 135, which implement Section 3. As evidenced by their execution of this AGREEMENT, the parties to this AGREEMENT certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (C) The BORROWER agrees to send to each labor organization or representative of workers with which the contract has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, 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, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- (D) On and after the date of this AGREEMENT, the BORROWER 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 BORROWER will not subcontract with any subcontractor where the BORROWER has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR, Part 135.
- (E) The BORROWER will certify that any vacant employment positions, including training positions, that are filled (1) after the 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,

where not filled to circumvent the BORROWER'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 AGREEMENT for default, and debarment or suspension from further 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 (24 U.S.C. 450e) also applies to the work to be performed under this AGREEMENT. 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 AGREEMENT that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

XLII. ENTIRE AGREEMENT

42.1 This AGREEMENT, along with the other Loan Documents, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and duly executed by the parties.

XLIII. INTERPRETATION

43.1 In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing rules, regulations, laws, codes or ordinances, CITY, as the party ultimately responsible to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

XLIV. NOTICES

44.1 All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another national reputable private courier service for next business day delivery to the intended addressee at its address set forth below signature requested at delivery or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private nationally recognized courier service, or five (5) business days after

being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. Service of any notice required by Texas Property Code Section 51.002, as the same may be amended, shall be effective when the requirements to that statute are met. The following are the addresses of CITY and BORROWER for all purposes in connection herewith:

LENDER:

City of San Antonio
Division of Grants Monitoring and Administration
1400 S. Flores
San Antonio, Texas 78204-1617
Attention: Grants Administrator

With a copy to:

City of San Antonio
City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: CDBG Attorney

BORROWER:

Acme Road Apartments, Ltd.
c/o San Antonio Housing Trust Public Facility Corporation
200 Concord Plaza, Suite 900
San Antonio, Texas 78216
Attention: Executive Director

By giving to the other party hereto at least ten (10) days' prior, written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address.

XLV. PARTIES BOUND

45.1 THIS AGREEMENT shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, except as otherwise expressly provided herein.

XLVI. GENDER

46.1 Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XLVII. RELATIONSHIP OF PARTIES

47.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

47.2 It is expressly understood and agreed that BORROWER is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that CITY shall in no way be responsible therefor.

XLVIII. TEXAS LAW TO APPLY

THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

XLIX. CAPTIONS

49.1 The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

XL. MISCELLANEOUS

50.1 CITY shall take actions it deems reasonably necessary and as may be reasonably requested by BORROWER to secure additional financing for this Project, including entering into that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____, as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____ and the CITY and BORROWER hereof (hereinafter referred to as the "Subordination Agreements").

50.2 CITY shall permit the Class B limited partner and the investor limited partner the right to cure any default by BORROWER hereunder or other Loan Documents and for purposes hereof such curative actions shall be considered the actions of BORROWER.

[Executed on the following page]

EXECUTED this the _____ day of _____, 20 .

LENDER:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
THOMAS MORGAN
Grants Administrator
Department of Planning and
Community Development,
Division of Grants Monitoring
and Administration

BORROWER:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company
its general partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public
Facility Corporation, its Sole Member
its sole member

APPROVED AS TO FORM:

By: _____
DENISE FREDERICK
Assistant City Attorney

By: _____
JOHN KENNY
Assistant Secretary

Attachments:

- Exhibit "A" – Work Statement
- Exhibit "B" – Budget Package
- Exhibit "C" – Performance Reports
- Exhibit "D" – Invoice / Billing Package
- Exhibit "E" – HOME Project Set-up and Completion Reports
- Exhibit "F" – Legal Description
- Exhibit "G" – CDBG and HOME Affordable Housing Policies
- Exhibit "H" – City Code Regarding Specific Design Features
- Exhibit "I" – HUD Form 4010: Federal Labor Standard Provisions
- Exhibit "J" – Insurance Requirements
- Exhibit "K" – Section 3 Utilization Plan

ATTACHMENT I

HOME PROGRAM AGREEMENT

PROJECT NAME: ACME ROAD APARTMENTS

PROJECT NO.:

STATE OF TEXAS §
§
COUNTY OF BEXAR §

The City of San Antonio (hereinafter referred to as “LENDER”), a Texas municipal corporation, and Acme Road Apartments, Ltd. (hereinafter referred to as “BORROWER”), a Texas limited partnership, acting by and through its general partner, in consideration of the mutual promises herein contained, agree as follows:

1. Definitions. For purposes of this AGREEMENT, in addition to the definitions and references set forth throughout this AGREEMENT, the following terms shall have the meanings indicated:

- (A) “Business Day” - Every day of the week, except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for its employees.
- (B) “Governmental Authority” - 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.
- (C) “Legal Requirements” - (i) 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 BORROWER, 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, (ii) 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, (iii) BORROWER’s or any Project or Loan guarantor’s presently or subsequently effective bylaws and articles of incorporation or partnership, limited partnership, joint venture, trust or other form of business association agreement, (iv) any and all leases related to the Property or the Project, (v) other contracts, whether written or oral, of any nature that relate in any way to the Property or the Project and to which BORROWER or any Loan or Project guarantor may be bound.

- (D) "Material" - (i) as to monetary matters, any amount in excess of \$250,000.00 or (ii) as to all other matters, any fact or circumstance without which LENDER in its sole opinion, would not have made the Loan.
- (E) "Plans" - Any and all contracts and agreements, written or oral between the CITY-approved architect for the Project and BORROWER, together with the final plans, specifications, shop drawings, and other technical descriptions prepared for the construction of the Project, and all amendments and modifications thereof.

2. Purpose. The purpose of this HOME Program Agreement (hereinafter referred to as "AGREEMENT") is to state the terms and conditions under which LENDER shall loan funds to BORROWER: to fund the construction of three hundred twenty-two (322) rental units in Acme Road Apartments project, of which () will be HOME units (hereinafter referred to as the "Project"), such work further described in the Work Statement, Final Plans and Specifications and the Project budget, all such documents required to be submitted by BORROWER to LENDER in accordance with the terms of this AGREEMENT.

3. Real Property Ownership. BORROWER hereby acknowledges that San Antonio Housing Trust Public Facility Corporation (hereinafter referred to "Property Owner") will be the sole, current owner in fee simple title of the Property on which construction in connection with the Project has taken or will take place and has provided LENDER with a valid and current Commitment for Title Insurance, wherein Property Owner's ownership is set forth, and any and all liens and encumbrances filed against the Property are indicated. The Property Owner will lease the Property to BORROWER pursuant to that certain Ground Lease executed by the Property Owner, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by that certain Memorandum of Lease, dated as of even date herewith.

4. Real Property Description. The real property, including improvements thereon, if any, on which the Project will occur pursuant to this AGREEMENT is described as follows:

, being more particularly described in the attached Exhibit "A," and which is hereinafter referred to as the "Leasehold Property").

Street Address: Acme Road Apartments
S. Acme Road at Prosperity Drive
San Antonio, Texas .

5. Intentionally deleted.

6. LENDER's Construction Financing ("Public Loan"). Subject to the terms and conditions of this AGREEMENT, BORROWER shall this day execute in favor of LENDER a Real Estate Lien Note (the "Note") in the amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00), the form and content of such Note to be approved by LENDER. Such Note shall be secured by a Leasehold Deed of Trust executed by BORROWER on the

Leasehold Property and its funds shall be used to pay for construction and related soft costs associated with the Project.

7. LENDER's Note & Deed of Trust.

- (A) BORROWER hereby agrees it has this date executed the Note in favor of LENDER for and in the amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00), such Note providing that the maximum nonusurious rate of interest shall accrue if (1) BORROWER defaults in the payment or any other term or provision of such Note beyond any applicable notice and cure period, (2) BORROWER fails to comply beyond any applicable notice and cure period with any one or more terms or provisions of (a) this AGREEMENT, (b) that certain "Commitment Letter and Loan Agreement" (the "Commitment Letter") this date executed by LENDER and accepted to by signature of BORROWER, (c) that certain "HOME Loan Agreement" (the "Loan Agreement") this date executed by BORROWER, (d) Leasehold Deed of Trust (the "Leasehold Deed of Trust") this date executed by BORROWER, (e) that certain "Assignment of Leases and Rentals" (the "Assignment") this date executed by BORROWER consented to by Property Owner against the Leasehold Property, and (f) that certain "Declaration of Restrictive Covenant of Affordability" (the "Declaration") this date executed by BORROWER and consented to by Property Owner against the Leasehold Property (said Leasehold Property described above) (said documents hereinafter collectively referred to as the "Loan Documents") or (3) LENDER accelerates the maturity of the Note under or in accordance with any of the provisions of such Note, whereupon interest shall accrue at a maximum rate no greater than the highest nonusurious rate allowed by law.
- (B) The specific terms of payment of such loan (hereinafter referred to as the "Loan") are set forth in the Note.
- (C) Payment shall be to the City of San Antonio, mailed to City of Antonio, Division of Grants Monitoring and Administration, 1400 S. Flores, San Antonio, Texas 78204-1617, Attn: Contracts Manager, or may be delivered in person to the Division of Grants Monitoring and Administration, 1400 S. Flores, San Antonio, Texas. BORROWER assumes sole responsibility for ensuring timely receipt by LENDER of all such payments.
- (D) Subject to the terms of the documents evidencing any senior liens or assigns and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____, as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____ and the LENDER and BORROWER hereof, (hereinafter referred to as the "Subordination Agreements"), BORROWER's failure to comply with reasonable written requests by LENDER for any and all information regarding the Leasehold Property or the Project, including financial information, shall cause an Event of

Default, subject to expiration of applicable notice and cure periods the outstanding balance of LENDER's Note to become immediately due and payable in full.

- (E) Subject to the Subordination Agreement, LENDER's Note and Leasehold Deed of Trust shall provide that, except as provided therein, if the Leasehold Property is transferred in any form, including sale, conveyance, or assignment, prior to maturity, without the prior written consent of Lender then, in that event, LENDER's Note shall mature and become immediately due and payable in full.
- (F) An Event of Default under the Note which has not been cured within any applicable grace or cure period, as may be provided in the Note, shall be a default under each of the other Loan Documents and any other contract or agreement, if applicable, between BORROWER and LENDER, with respect to this Project.
- (G) Upon the happening and continuance of any Events of Default under any of the Loan Documents, which continues beyond any applicable grace or cure period all obligations, if any, of LENDER hereunder, including, without limitation, any obligation to advance funds hereunder or under any of the other Loan Documents, shall immediately cease and terminate until such default is cured or in accordance with Article XXXIV of the HOME Loan Agreement.
- (H) Subject to the Subordination Agreement, notwithstanding anything to the contrary herein contained or inferable from any provisions hereof, upon the happening and continuance of an Event of Default under any of the Loan Documents, which continues beyond any applicable grace or cure period the unpaid principal and applicable accrued interest on the Note shall immediately become due and payable in full, without the necessity of any further action on the part of LENDER, and BORROWER expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the indebtedness evidenced by the Note.

8. Intentionally deleted.

9. BORROWER's Representations. BORROWER represents and warrants the following as of the date hereof:

- (A) BORROWER has been duly organized and is validly existing as a limited partnership formed and in existence under the laws of the State of Texas, with full power and authority specifically to execute and perform the Loan Documents.
- (B) BORROWER is conducting business in full compliance with all current and applicable laws, rules, and regulations of and under the State of Texas.
- (C) BORROWER has duly authorized by all necessary action, the execution and performance of the Loan Documents. To the best of its knowledge after diligent

inquiry, no approval, authorization, consent or other action by any entity other than LENDER is required in connection with the execution or performance by BORROWER of the Loan Documents and neither the execution nor the performance of the Loan Documents will conflict with, breach or violate BORROWER's Certificate of Formation or any indenture, deed of trust, lease, note, judgment, decree, order, lien, statute, ordinance, title, regulation, plan, agreement or other instrument or restriction to which BORROWER is a party or by which it or any of its property or assets may be subject or bound.

- (D) Subject to the present financing, existing encumbrances and permitted exceptions (as defined in the Leasehold Deed of Trust), BORROWER has good and indefeasible title to the Leasehold Property and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, and mortgage its interest in the Leasehold Property in the manner and form hereby done or intended.
- (E) BORROWER agrees that it will comply with each and every provision of this AGREEMENT, whether or not such provision relates directly or indirectly to the Leasehold Property.

10. BORROWER's Obligations. In addition to the other requirements set forth herein, BORROWER shall, if applicable:

- (A) Upon signing this Agreement, and annually thereafter, provide LENDER with: (1) proof of continuous and renewed (a) builder's risk insurance during construction, (b) property and casualty insurance on the Leasehold Property showing LENDER as a loss payee for a sum equal at least to BORROWER's indebtedness to LENDER, and (c) adequate fire and extended coverage insurance, in an amount not less than eighty percent (80%) of the appraised value of said Leasehold Property, with LENDER named as additional insured, such proof to be in the form of a copy of the policy of such insurance, delivered to LENDER within thirty (30) days of policy annual renewal and/or amendment/modification, with each policy of such insurance to provide that it shall not be cancelable or subject to modification except upon the prior, written approval of LENDER with thirty (30) days' prior, written notice to LENDER; (2) proof of timely payment in full of all taxes assessed against said Leasehold Property; and (3) evidence of BORROWER's or Property Owner's current payment status on all private loans in connection with such Leasehold Property, or proof of such taxes are not yet due and owing and in any case, BORROWER shall have no more than sixty (60) days from the date of written notice of the dispute to the taxing entity to settle any dispute. BORROWER shall make a written request to LENDER for approval of an additional extension of time, if necessary, providing justification for such extension.
- (B) Permit LENDER at all reasonable times on business days and upon reasonable notice to BORROWER, to examine, copy, and make extracts of the books, records, accounting data, and other documents of BORROWER that relate in any

way to the Leasehold Property or the Project, including without limiting the generality of the foregoing, all permits and licenses in connection with the Leasehold Property and all the relevant books and records of contractors and subcontractors supplying goods and/or services in connection with the Project and all books and records pertaining to the income of the tenants and other occupants of the Leasehold Property.

- (C) Deliver to LENDER upon completion of the Project: (i) a copy of the Certificate of Occupancy for the Leasehold Property from the City of San Antonio, when issued, (ii) a copy of the Certificate of Substantial Completion from the contractor for the Project, (iii) an endorsement from the title company issuing the title insurance for the benefit of LENDER in connection with the Leasehold Property, such endorsement deleting any exception in such title insurance relating to completion of the Project and other exceptions specified by LENDER which may be deleted pursuant to applicable title insurance regulations, and (iv) a file-stamped copy of an Affidavit and Full Release of Liens, duly recorded in the Real Property Records of Bexar County, Texas from the general contractor for the Project and, upon request of LENDER, any other contractors or subcontractors who have performed work on, or furnished materials for, the Project.

- (D) In addition to any other inspection rights of LENDER as provided herein, at all reasonable times during the Project, (i) if applicable, permit LENDER, the LENDER-approved contractor for the Project or any other contractor, engineer, agent, consultant or other inspector representing or selected to perform services by LENDER in connection with the Project, or their representatives, to enter upon the Leasehold Property, to inspect the same and all materials to be used in the Project and to examine the Plans, (ii) if applicable, comply strictly with all applicable federal, state, and local rules, regulations and laws, (iii) if applicable, deliver to LENDER, within a reasonable time not to exceed ten (10) days, counterparts and/or conditional assignments of any and all contracts related in any manner to the Project, bills of sale, statements, conveyances, receipted vouchers or agreements of any nature under which BORROWER claims title to any materials or supplies used or to be used in the Project, (iv) upon receipt by BORROWER, provide copies to LENDER of all City of San Antonio building permits and final inspection reports, (v) during construction erect and maintain, or cause the erection and maintenance, on the Leasehold Property, in a reasonable size and location, a sign reasonably satisfactory to LENDER stating that financing for the Project has been furnished by LENDER with HOME Investment Partnerships Act (HOME) funds, (vi) except for existing contracts and for the contemplated senior bond financing and any other documents associated with such senior financing either cause each contract executed by or on behalf of BORROWER in connection with the Project to contain a provision specifically subordinating any lien right against the Leasehold Property to the liens and security interests created for the benefit of BORROWER and as assigned to LENDER in connection with the Project or cause the other party to each such contract to execute any and all instruments, reasonably acceptable in form and

substance to LENDER, to accomplish the same, (vii) if requested by LENDER, furnish to LENDER, after the completion of the improvements in connection with the Project a survey certified to by a licensed engineer reasonably acceptable to LENDER showing all of same and that the location thereof is entirely within the property lines of the Leasehold Property and does not encroach upon, breach or violate any building line, easement or similar restriction, (viii) use all advances made to it by LENDER for, and only for, payment of the costs itemized in paragraph 10 hereof and under no circumstances use, directly or indirectly, any portion of such advances for any other purpose, (ix) upon known written demand of LENDER if not otherwise obligated, furnish LENDER with a current list of original contractors, subcontractors, materialmen, vendors, artisans, and laborers performing the Project or any portion thereof, and (x) upon reasonable written demand of LENDER, correct any material structural defect in the Project or any material departure from the Plans not accepted in writing by LENDER, it being understood and agreed that the advance of any loan proceeds shall not constitute a waiver of LENDER's right to require compliance with this paragraph with respect to any such defects or departures. Within five (5) days after completion of the Project, BORROWER and the general contractor for the Project shall execute and file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code, or if such Affidavit of Completion must be lawfully executed and filed by BORROWER and the general contractor for the Project, BORROWER shall ensure such execution and filing, and immediately upon such filing, BORROWER shall provide a file-stamped copy thereof to LENDER.

- (E) Except for previously recorded mortgage, lien, pledge, security interest, encumbrance or charge within ten (10) days from the date any mortgage, lien, pledge, security interest, encumbrance or charge is asserted or recorded against the Leasehold Property and is known to BORROWER either actually or constructively, give LENDER notice thereof, regardless of whether or not such mortgage, lien, pledge, security interest, encumbrance or charge is permitted by LENDER or constitutes a violation of any of the provisions hereof; such notice to specify who is asserting such mortgage, lien, pledge, security interest, encumbrance or charge, with a detailed description of the origin and nature of the underlying claim giving rise to the asserted mortgage, lien, pledge, security interest, encumbrance or charge.

- (F) Give LENDER prompt, written notice of the occurrence of any casualty or the institution of any proceedings for eminent domain or for the condemnation of the Leasehold Property or any portion thereof. Subject to terms of the documents evidencing any senior liens or assigns and the Subordination Agreement, (as hereinafter defined), BORROWER ensures that all insurance proceeds on the Leasehold Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Leasehold Property or for any damage or injury to it or for any loss or diminution in value of the Leasehold Property are hereby assigned to and shall be paid to LENDER. LENDER, subject to the Subordination Agreement, may participate in

any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and may join with BORROWER, as applicable, in adjusting any loss covered by insurance, and BORROWER shall from time to time deliver to LENDER any instruments from all applicable sources required to permit such participation. Also subject to the Subordination Agreement, LENDER shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

- (1) In the event that less than twenty-five percent (25%) of the buildings located on the Leasehold Property have been taken or destroyed, then if:
 - (a) no Event of Default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or under any of the other Loan Documents; and
 - (b) the Leasehold Property can, in LENDER's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage within twelve (12) months after the occurrence of said casualty, provided additional time shall be permitted for any delay resulting from force majeure, but in no event shall such additional time exceed thirty (30) days, or partial taking and prior to the maturity date of the Note; and
 - (c) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by BORROWER, the full amount of which shall have been deposited with LENDER) for such restoration or repair (including, without limitation, for any costs and expenses of LENDER to be incurred in administering said restoration or repair) and for payment of principal or interest to become due and payable under the Note during such restoration or repair, if such payment is required at such time, under the terms of the Note; and
 - (d) the economic feasibility of the improvements to the Leasehold Property after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Leasehold Property and debt service on the indebtedness reflected in the Public Loan in full, pursuant to the terms of the Note; and
 - (e) BORROWER shall have delivered to LENDER, at BORROWER's sole cost and expense, an appraisal report in form and substance

approved by LENDER, appraising the value of the Leasehold Property, as so restored or repaired, to be not less than the appraised value of the Leasehold Property considered by LENDER in its determination to make the Public Loan; and

- (f) BORROWER, as applicable, so elects by written notice delivered to LENDER within ten (10) business days after settlement of the aforesaid insurance or condemnation claim, then, LENDER shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such insurance proceeds or condemnation claim sums as may be required for such restoration or repair, and any funds deposited by BORROWER therefor, to BORROWER, if such funds are lawfully to be advanced to BORROWER, in the manner and upon such terms and conditions as may be reasonably required by LENDER, including, but not limited to, the prior, written approval by LENDER of plans and specifications and the furnishing to LENDER of lien waivers, invoices, receipts and bills paid affidavits, with any remainder being applied by LENDER for payment of the Public Loan in whatever order LENDER directs in its absolute discretion.

- (2) In all other cases, namely, in the event that twenty-five percent (25%) or more of the buildings located on the Leasehold Property have been taken or destroyed or BORROWER, as applicable, does not elect to restore or repair the Leasehold Property pursuant to paragraph 10(F)(1) hereof or otherwise fails to meet the requirements of paragraph 10(F)(1) hereof, then, in any of such events, LENDER shall elect, in LENDER's absolute discretion and without regard to the adequacy of LENDER's security, to do either of the following: (1) apply the remainder of such sums to the payment of the Public Loan in whatever order LENDER directs in its absolute discretion, with any remainder being paid to BORROWER, if such funds are lawfully to be paid to BORROWER or (2) notwithstanding that BORROWER, as applicable, may have elected not to restore or repair the Leasehold Property pursuant to the provisions hereof, require BORROWER to restore or repair the Leasehold Property in the manner and upon such terms and conditions as would be required by a prudent lender, including, but not limited to, the deposit by BORROWER with LENDER of any deficiency necessary in order to assure the availability of sufficient funds to pay for such restoration or repair, including LENDER's costs and expenses to be incurred in connection therewith, the prior, written approval by LENDER of plans and specifications and the furnishing to LENDER of lien waivers, invoices, receipts and bills paid affidavits, and apply the remainder of such sums toward such restoration and repair, with any balance thereafter remaining being applied by LENDER for payment of the Public Loan in whatever order LENDER directs in its absolute discretion.

Any reduction in the amount owed by BORROWER in connection with the Public Loan resulting from LENDER's application of any sums received by it hereunder shall take effect only when LENDER actually receives such sums and, in any event, the unpaid portion of such amount owed by BORROWER shall remain in full force and effect and BORROWER shall not be excused in the payment thereof. If BORROWER elects or LENDER directs BORROWER to restore or repair the Leasehold Property after the occurrence of a casualty or partial taking of the Leasehold Property as provided herein, BORROWER, at BORROWER's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for its purpose, shall promptly and diligently restore, repair, replace, and rebuild the Leasehold Property as nearly as possible to its value, condition, and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and BORROWER shall pay to LENDER all costs and expenses of LENDER incurred in administering said restoration, repair, replacement or rebuilding subject to the Subordination Agreement. BORROWER agrees to execute and deliver, , from time to time, such further instruments as may be requested by LENDER to confirm the foregoing assignment to LENDER of any award, damage, insurance proceeds, payment or other compensation. BORROWER has obtained a written irrevocable constitution and appointment of LENDER as the attorney-in-fact of BORROWER (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of BORROWER and shall not be affected by any disability or incapacity suffered by BORROWER subsequent to the date hereof), with full power of substitution, subject to the terms of this paragraph, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

- (G) Provide to LENDER the following documents and information, to the extent not already provided, upon availability or in any case prior to the commencement of construction of the Project unless otherwise agreed to by CITY:
 - (i) For contractor fees and other authorized Project expenses:
 - (a) Itemized invoices from BORROWER;
 - (b) Appropriate receipts, bills, and invoices documenting all actual costs;
 - (c) A summary of total Project costs to date and the total amount of the draw requested; and
 - (d) Davis-Bacon Wage Reports, if applicable.
 - (ii) Revised Project Development Plan;
 - (iii) Financial commitments totaling the sum of not less than the total Project cost;

- (iv) Final Plans and Specifications and Davis-Bacon Wage provisions, if determined applicable by LENDER;
 - (v) An after-development appraisal of the Leasehold Property, that is constructed based on the approved Description of Work (DOW) to be provided by BORROWER prior to submission by BORROWER of vouchers for payment;
 - (vi) Comprehensive documentation of compliance with all Uniform Relocation and Acquisition Act procedures and requirements associated with all property acquisition;
 - (vii) The full and complete Project budget, and supporting documentation, identifying all funding sources and amounts, and the proposed use of all HOME funds;
 - (viii) A description of the current Project status, and the construction schedule, specifically indicating the HOME funded work items;
 - (ix) A copy of the Project's Description of Work (DOW), and plans and specifications; and
 - (x) The Environmental Review Assessment for the Project.
- (H) Submit an itemized invoice to LENDER, including appropriate documentation of actual costs (i.e., receipts, bills, invoices), indicating the total Project costs and the total amount of draw requested.
- (I) Submit reasonable evidence that all federal procurement regulations have been followed, as applicable, throughout Project implementation.
- (J) Comply with each and every procedure and requirement contained in the Affirmative Marketing Non-Discrimination and Equal Opportunity Procedures and Requirements, as delineated in the HOME Investment Partnerships Program, codified at 24 CFR 92.
- (K) Submit to LENDER Davis-Bacon Wage Reports.
- (L) Secure all appropriate permits, as required by local, state, and federal regulations or policies, for work related to the development/construction of the Project.
- (M) Ensure that the work to be performed and completed, including all work relating in any way to the construction performed or to be performed in connection with the Project, in a timely manner and in accordance with the highest standards and customs of the trade, complying with all Legal Requirements, including those

requirements of the building, electrical, fire, mechanical, and plumbing codes of the City of San Antonio, free and clear from all liens or claims for liens, other than the liens and security interests created for the benefit of the senior lenders or the in connection with the Project or with LENDER's express approval evidenced in writing. BORROWER agrees that (i) construction in connection with the Project shall not be continued or completed unless and until BORROWER has furnished the Plans to LENDER and afforded LENDER the opportunity to accept them (which acceptance shall be evidenced, if at all, by the signature of an authorized representative of LENDER thereon), (ii) when the Plans have been furnished to LENDER, no changes of a material nature will be made to them by, or be permitted to be made to them by BORROWER, any personal or corporate guarantors for payment of the indebtedness to LENDER referred to herein or for performance or partial performance of the Project, the architect(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 LENDER, (iii) in instances where LENDER does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgment of LENDER's consent to the construction in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation or approval by LENDER 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, and (iv) immediately after execution by BORROWER hereof, BORROWER and its general contractor for such construction 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 LENDER.

- (N) Report in writing to LENDER on the progress of all Project activities, which reports shall be submitted to LENDER on no less than a monthly basis until such activities have been completed.
- (O) Ensure that all work delineated and described in the attached Exhibits "B" and "C" is timely performed.
- (P) Not discriminate against any prospective tenant of the above-described Leasehold Property on the basis of the prospective tenant's race, color, creed, sex, national origin or handicap or on the basis of said tenant's receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance.
- (Q) Maintain the Leasehold Property in a safe, sanitary, and decent condition, in compliance with LENDER's Building and Housing Codes, throughout the term of the affordability period applicable under applicable federal HOME regulations.

- (R) Upon request of LENDER, provide resident documentation of income verification.
- (S) Provide to LENDER Site Specific Environmental Report (said report must be both completed and approved by LENDER, prior to establishing an Integrated Disbursement and Information System (IDIS) set-up).
- (T) 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.
- (U) Provide LENDER's Division of Grants Monitoring and Administration and the Department of Internal Review each with copies of (1) all audits associated with the Project, including annual audits, said audits addressing to LENDER's reasonable satisfaction all applicable federal compliance issues including issues that are part of OMB Circular A-133; and (2) copies of management letters associated with such audits, together with written details of steps taken to correct any audit problems.
- (V) Provide to LENDER upon availability or in any case prior to the commencement of construction of the Project unless otherwise agreed to by CITY, the following:
 - (i) During the construction process, proof to LENDER that the selected contractor is (1) licensed, and (2) has 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; additionally:
 - (a) Subcontractors shall provide a one-year warranty on all work performed.
 - (ii) BORROWER's written proposal to LENDER as to the methods by which it shall inspect the Leasehold Property to ensure that the Leasehold Property is being kept in a safe, sanitary, and decent condition, with BORROWER being obligated to obtain LENDER's written approval of such proposal, which such approval shall not be unreasonably withheld, conditioned or delayed prior to the implementation of such proposal.
 - (iii) Except for the permitted encumbrances described in that certain Leasehold Deed of Trust of even date herein, BORROWER's written assurance to LENDER that Property Owner will not:
 - (a) Except as contemplated under the senior debt documents, including the bond loan, the loan, and the City of San Antonio HOME Loan, except for granting of an easement to obtain utility services or related services; except for transfers as a result of

a casualty or condemnation, fully or partially sell, convey, dispose of, alienate, hypothecate, assign, mortgage, pledge, transfer, except for transfers for the benefit of the Leasehold Property (including utility and telecommunication easements) and its tenants or encumber all or any part of the Leasehold Property or improvements thereon or any other item of collateral, whether voluntarily or involuntarily (except for partial condemnation);

- (b) convert the Leasehold Property to a form of condominium or cooperative ownership or other non-residential use; or
- (c) fail to comply with the resale and recapture provisions established by LENDER in its HOME Entitlement Grant Program Policies and Regulations in this AGREEMENT.

11. BORROWER's Assurances. BORROWER assures, understands, and agrees to the following:

- (A) Ten percent (10%) of the Public Loan funds shall be retained by LENDER until the Project is complete and proof of a Certificate of Occupancy is provided by BORROWER to LENDER.
- (B) All costs incurred by BORROWER in connection with this AGREEMENT or any of the other Loan Documents shall be at BORROWER's sole expense.
- (C) Except for the permitted encumbrances described in the Leasehold Deed of Trust of even date herein or as permitted herein, BORROWER shall ensure that the following events shall not occur:
 - (i) Except as permitted pursuant to Section 10(V)(iii)(a) hereabove, and subject to Borrower's Partnership Agreement, permitted exceptions and residential leases of the Project, fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers, or encumbers all or any part of the Leasehold Property or improvements thereon or any interest therein, the income therefrom, or any other item of collateral, whether voluntarily or involuntarily, without the prior written consent of LENDER, which such consent shall not be unreasonable withheld, conditioned or delayed;
 - (ii) Subject to Borrower's Partnership Agreement and except for transfer of limited partner or general partner's (limited to the term of the Master Agreement and with CITY's prior written approval) interest in BORROWER, as well as the transfers allowed by Borrower's Partnership Agreement, BORROWER fully or partially sells, conveys, assigns, mortgages, pledges, transfers or encumbers an interest in BORROWER (if BORROWER is not a natural person or persons but a corporation,

partnership, trust or other legal entity), including, in the event BORROWER is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, without the prior written consent of LENDER, which such consent shall not be unreasonably withheld, conditioned or delayed, whether such interest is in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise, except as permitted pursuant to Section 6.b of the Beneficiary's Rights clause in that certain Deed of Trust of even date herein;

- (iii) BORROWER converts the Leasehold Property, condominium or cooperative ownership or other non-residential use;
- (iv) BORROWER files, or has filed against it, a petition for the appointment of a receiver or for bankruptcy or insolvency, becomes or is adjudicated insolvent or bankrupt or admits in writing the inability to pay debts in general as they mature, petitions or applies to any tribunal for, or consents to, or does not contest, the appointment of a receiver, trustee, custodian or similar officer for BORROWER, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, however, LENDER hereby agrees that BORROWER shall have ninety (90) days after notice of any involuntary bankruptcy petition or judgment described in this paragraph to (1) dismiss the same or (2) post adequate security satisfactory to LENDER with LENDER during the pendency of any good-faith proceeding brought by BORROWER;
- (v) The Leasehold Property or any material part thereof is taken on execution or other process of law in any action against BORROWER;
- (vi) BORROWER abandons the Leasehold Property or any portion thereof, in which event such abandonment shall constitute an assignment to LENDER, at LENDER's reasonable option, of BORROWER's interest in any lease (except the Ground Lease) or contract then affecting the abandoned property;
- (vii) BORROWER defaults as defined in any of the Loan Documents after the expiration of any applicable notice and cure period;
- (viii) The holder of any lien or security interest on the Leasehold Property, without implying the consent of LENDER to the existence or creation of any such lien or security interest (except as otherwise acknowledged herein), and whether superior or subordinate to the Note, declares a default and such default is not cured within any applicable grace period set forth

in the applicable document or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; provided, however LENDER agrees that BORROWER shall have the right to defend such action in good faith;

- (ix) The Leasehold Property, or any significant portion thereof, is subjected to actual continued waste or to removal, demolition or alteration so that the value of the Leasehold Property is diminished thereby and LENDER determines that it is not adequately protected from any loss, damage or risk associated therewith; provided, however, LENDER shall permit BORROWER to post adequate security as satisfactory to LENDER to protect LENDER from such loss, damage, or risk;
- (x) Subject to Section K of the Note, any representation or warranty made in any of the Loan Documents, such representation or warranty made by BORROWER, any principal, general partner in BORROWER, any person authorized by BORROWER to execute any of the aforestated documents on behalf of BORROWER or by any indemnitor under any indemnity executed in connection with the Note, determined by LENDER to have been false or misleading in any material adverse respect at the time made and is not remedied within thirty (30) calendar days after BORROWER receives a notice thereof from LENDER;
- (xi) Subject to Section K of the Note, if LENDER reasonably determines that the likelihood of payment of BORROWER's indebtedness evidenced by the Note or the performance of any of BORROWER's obligations hereunder or under any of the Loan Documents is threatened by reason of a material adverse change in the financial condition or credit standing of BORROWER or, if BORROWER is a partnership, joint venture, trust or other type of business association, of any of the parties comprising BORROWER;
- (xi) Subject to Section K of the Note, BORROWER at any time fails to remain in total timely compliance with each and every term and condition of the Loan Documents and is not remedied within thirty (30) calendar days after BORROWER receives notice thereof from LENDER;
- (xii) Subject to Section K of the Note, BORROWER uses, maintains, operates or occupies, or allows the use, maintenance, operation or occupancy of any part of the Leasehold Property for any purpose which violates any federal, state or local rules, regulations or laws or in any manner which is dangerous unless safeguarded as required by law or which constitutes a public or private nuisance or which may be made void, voidable or cancelable or increase the premium of any insurance then in force with respect thereto and is not remedied within thirty (30) calendar days after BORROWER receives notice thereof from LENDER;

- (xiii) BORROWER (i) initiates any material changes in the construction work on the Leasehold Property that would adversely affect the Leasehold Property without LENDER's written approval or (ii) subject to Section K of the note, fails after thirty (30) days from LENDER's written request to provide to LENDER documentation accepted to by LENDER of the actual quoted costs incurred; and
- (xiv) Subject to Section K of the Note, BORROWER fails to comply with the resale and recapture provisions established by LENDER in its HOME Entitlement Grant Program Policies and Regulations and is not remedied within thirty (30) calendar days after BORROWER receives notice thereof from LENDER.
- (D) BORROWER shall ensure that it will not commit or permit any waste, damage or deterioration on the Leasehold Property.
- (E) BORROWER will maintain, preserve, and keep the Leasehold Property in good repair.
- (F) BORROWER shall from time to time make all necessary repairs and renewals, replacements, and substitutions so that the efficiency, effectiveness, and utility of the Leasehold Property is at all times fully preserved and maintained.
- (G) BORROWER ensures that allowance of LENDER to enter upon the Leasehold Property and inspect the Leasehold Property and the construction done in connection with the Leasehold Property at all times deemed reasonably appropriate by LENDER to determine if it is in substantial conformity with the Plans and is being maintained in accordance with local Uniform Building Code standards.

12. No Duty to Inspect. It is expressly understood and agreed that LENDER shall have no duty to supervise or to inspect the Project or any activity conducted or to be conducted on the Leasehold Property, or any books and records, and that any such inspection shall be for the sole purpose of determining whether or not the obligations of BORROWER hereunder or under any of the other Loan Documents are being properly discharged and of preserving LENDER's rights hereunder. If LENDER, or its representative should inspect the Leasehold Property and the construction thereon or any books and records, LENDER and its representative shall have no liability or obligation to BORROWER or any third party arising out of such inspection. Inspection not followed by notice of default shall not constitute a waiver of any default then existing; nor shall it constitute an acknowledgment or representation by LENDER and its representative that there has been or will be compliance with the Plans and all Legal Requirements or that the construction done in connection with the Project is free from defective materials or workmanship or a waiver of LENDER's right thereafter to insist that the improvements be constructed in accordance with the Plans and Legal Requirements. LENDER's failure to inspect the Project or any part thereof or any books and records shall not constitute a waiver of any of LENDER's rights hereunder. Neither BORROWER nor any third party shall be

entitled to rely upon any such inspection or review. LENDER and its representatives owe no duty of care to BORROWER, or any third person to protect against, or inform BORROWER or any third person of the existence of negligent, faulty, inadequate or defective design or construction of any of the Project.

13. BORROWER's Business and Conduct. BORROWER shall be solely responsible for all aspects of BORROWER's business and conduct in connection with the Leasehold Property, including without limitation:

- (A) the quality and suitability of the Plans.
- (B) supervision of construction in connection with the Project.
- (C) the qualifications, financial condition, and performance of all architects, engineers, contractors, and material suppliers, consultants contracted by BORROWER and property managers.
- (D) conformance of construction done in connection with the Project to the Plans, to all Legal Requirements and to the requirements of this AGREEMENT and the other Loan Documents.
- (E) the quality and suitability of all materials and workmanship.
- (F) the accuracy of all requests for the disbursement of Loan proceeds and the proper application of disbursed Loan proceeds.

14. Agreement Deadline.

- (A) The effective date of this AGREEMENT shall be the date it is executed by LENDER.
- (B) The commencement date for construction work for the Project shall be no later than _____, 20____.
- (C) The completion date for construction work for the Project shall be no later than _____, 20____.
- (D) This AGREEMENT shall terminate at the end of the Note term.

15. Program Violations or Default. Where it is determined that BORROWER has failed to comply with any of the terms and/or conditions of this AGREEMENT and/or any of the other Loan Documents, LENDER shall notify BORROWER of such determination and shall, at LENDER's absolute discretion, grant BORROWER such period of time as LENDER deems reasonably appropriate to take and complete corrective action, but in no event shall such period of time exceed thirty (30) days to complete corrective monetary violations or defaults and thirty (30) days to complete corrective non-monetary violations or defaults unless extended pursuant to

Section K of the Note, unless such non-monetary violation cannot be cured within such thirty (30) days in such case BORROWER shall be permitted additional time as may be reasonable provided that BORROWER commenced cure within said thirty (30) days but in no event shall such time to cure a non-monetary default be more than sixty (60) days from BORROWER's receipt of notice. At the end of the applicable grace and cure period, LENDER shall review BORROWER's effort to correct such violations and defaults; failure of BORROWER to take timely, corrective action shall then be a breach of this AGREEMENT and shall cause the balance of BORROWER's Note to LENDER to mature and become immediately due and payable, or if LENDER is not, at such time, yet obligated to transfer to BORROWER funds under the Note, such failure of BORROWER shall cause the Public Loan to be canceled and the Loan Documents to terminate. LENDER shall permit the Class B limited partner and the investor limited partner the right to cure any default by BORROWER hereunder or other Loan Documents and for purposes hereof such curative actions shall be considered the actions of BORROWER.

16. Changes in Work.

- (A) Prior to implementing any Material change to the work items specified in the Project's Description of Work (DOW), as submitted to and approved by LENDER, BORROWER must obtain the written approval of LENDER, which approval shall not be unreasonably withheld, conditioned or delayed. Approval of changes shall be subject to the following:
 - (i) Eligibility in accordance with the HOME program federal regulations and policies;
 - (ii) Change in contract price and proposed source/availability of funds; and
 - (iii) Change in completion time.
- (B) Change orders shall be in writing, signed by BORROWER and the general contractor, if applicable, and approved by the Grants Administrator of LENDER's Division of Grants Monitoring and Administration.
- (C) Should BORROWER (i) initiate any material changes without prior LENDER approval, or (ii) fail to provide acceptable documentation of the actual Project costs incurred, then, in either event, LENDER may, at its option (1) reduce the Public Loan amount to a lesser amount based on the actual obligated construction cost documentation received or (2) withdraw LENDER's funding for the construction of the Leasehold Property, cancel the Public Loan and terminate the Loan Documents.

17. Changes and Amendments. Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall only be by amendment in writing executed by both LENDER and BORROWER.

18. TEXAS LAW TO APPLY. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE PERFORMABLE IN BEXAR COUNTY, TEXAS.

19. Parties Bound. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assignees.

20. Legal Construction. In case any one or more of the provisions of this AGREEMENT shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision and this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

21. Gender. Where appropriate, the masculine shall include the feminine and the feminine shall include the masculine.

22. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another national reputable private courier service for next business day delivery to the intended addressee at its address set forth below signature requested at delivery or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided. All notices, demands, and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private nationally recognized courier service, or five (5) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. Service of any notice required by Texas Property Code Section 51.002, as the same may be amended, shall be effective when the requirements to that statute are met. The following are the addresses of LENDER and BORROWER for all purposes in connection herewith:

LENDER:

City of San Antonio
Division of Grants Monitoring and Administration
1400 S. Flores
San Antonio, Texas 78204-1617
Attention: Grants Administrator

With a copy to:
City of San Antonio
City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: CDBG Attorney

BORROWER:
Acme Road Apartments, Ltd.
c/o San Antonio Housing Trust Public Facility Corporation
200 Concord Plaza, Suite 900
San Antonio, Texas 78216
Attention: Executive Director

By giving to the other party hereto at least thirty (30) days' prior, written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address.

23. BORROWER's Documents. BORROWER understands that the preparation and execution of any and all documents between BORROWER and any third party in furtherance of the purpose set forth in paragraph 2 and/or the Project is the sole responsibility of BORROWER; therefore, BORROWER agrees and warrants that said documents shall contain all provisions that will adequately protect LENDER's interests and that will not allow LENDER to incur any liability thereunder.

24. Prior Agreements Superseded. This AGREEMENT, along with the other Loan Documents, constitutes the only Agreement of the parties and supersedes any prior understandings and/or written or oral agreements between the parties affecting the Leasehold Property.

[Executed on the following page]

EXECUTED this _____ day of _____, 20 .

LENDER:

CITY OF SAN ANTONIO,
a Texas municipal corporation

By: _____
THOMAS MORGAN
Grants Administrator
Department of Planning and
Community Development,
Division of Grants Monitoring
and Administration

BORROWER:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company
its general partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public
Facility Corporation, its Sole Member
its sole member

APPROVED AS TO FORM:

By: _____
DENISE FREDERICK
Assistant City Attorney

By: _____
JOHN KENNY
Assistant Secretary

Attachments:

- Exhibit "A" – Legal Description
- Exhibit "B" – Description of Work Specifications
- Exhibit "C" – Borrower-General Contractor Contract

ATTACHMENT I

REAL ESTATE LIEN NOTE

Date: _____, 20____

Maker: ACME ROAD APARTMENTS, LTD, a Texas limited partnership

Maker's Mailing Address (including county):
200 Concord Plaza, Suite 900
San Antonio, Bexar County, Texas 78216

Payee: CITY OF SAN ANTONIO, a Texas municipal corporation

Place for Payment (including county): City of San Antonio, Division of Grants Monitoring and Administration, ATTN: Contract Manager, 1400 S. Flores, San Antonio, Bexar County, Texas 78204-1617; or any other place that Payee may designate in writing.

Principal Amount: One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00)

Annual Interest Rate on Unpaid Principal: Interest shall accrue at a rate of _____ percent (_____ %), unless and until Maker (1) defaults beyond any applicable notice and cure period in the payment of this Note or (2) fails to comply with any one or more terms or conditions of the Note beyond any applicable notice and cure period, or defaults beyond any applicable notice and cure period under any one or more of the other Loan Documents. In the event that Maker so defaults in the payment of this Note or fails to comply with any provision of the Loan Documents beyond any applicable notice and cure period, interest on the unpaid principal shall thereafter (a) accrue at the highest nonusurious rate allowed by law until such default is cured, and (b) be immediately payable in addition to the entire remaining principal amount then owing.

Annual Interest Rate on Matured, Unpaid Amounts: A maximum rate no greater than the highest nonusurious rate allowed by law, if a default occurs and is continuing beyond any applicable cure period as defined in the Loan Documents.

Non-Recourse Terms: This Loan shall be a non-recourse loan. The Loan Documents shall be enforceable against Maker only to the extent of Maker's interest in the Property, in the rents and in any other collateral given to Payee in connection with the Note. Nothing contained in this section shall impair the validity of any of the provisions hereof or the exercise of any of the remedies hereunder as to the Property and other collateral herein described.

Terms of Payment (Principal and interest): This Note is a _____ (_____) year interest free loan, and shall be payable from _____ percent (_____ %) of Surplus Cash and shall mature _____, 20____, subject to Maker's compliance with each and every term and condition of (1) this Note, (2) that certain "Leasehold Deed of Trust" (the

“Leasehold Deed of Trust”) this date executed by Maker to secure this Note, (3) that certain “Commitment Letter and Loan Agreement” (the “Commitment Letter”) this date executed by Payee and accepted to by signature of Maker, (4) that certain “HOME Program Agreement” (the “Program Agreement”) this date executed by Maker in favor of Payee, (5) that certain “HOME Loan Agreement” (the “Loan Agreement”) this date executed by Maker, (7) that certain “Assignment of Leases and Rentals (the “Assignment”) this date executed by Maker, and (6) that certain “Declaration of Restrictive Covenant of Affordability” (the “Declaration”) this date executed by Maker and acknowledged by San Antonio Housing Trust Public Facility Corporation (hereinafter referred to as “Property Owner”) against the Property (said Property described below). (This Note, the Leasehold Deed of Trust, the Commitment Letter, the Program Agreement, the Loan Agreement, the Assignment, and the Declaration collectively referred to herein as the “Loan Documents”).

The specific terms of payment of this Note are as follows:

Principal shall be due and payable from Surplus Cash, as defined below, in () annual installments in the amount of and /100 Dollars (\$), payable each and every , beginning , 20 , and continuing regularly thereafter until the whole of said principal in the amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) has been duly paid, with the final maturity date of , 20 (“Maturity Date”). Said payments shall be made from percent (%) of the payments Maker receives from the Project’s Surplus Cash Flow, as that term is defined below.

In the event Maker’s percent (%) Surplus Cash is insufficient to make said payments, Maker will be responsible for submitting a letter and appropriate cash flow statement to the Payee in the absence of said payments on or before the due date of said payment. If available Surplus Cash Flow is not sufficient to pay the principal and interest on the Note such amounts shall be added to the next payment due.

Notwithstanding anything to the contrary herein, prior to the Maturity Date, no claim for payment by Payee, or any successor or assign of Payee as holder of this Note, may be made against the Project, the insured mortgage or any condemnation proceeds, or any reserve or deposit of the rents or other income from the Project other than from Surplus Cash.

Available Surplus Cash shall be defined as follows:

1. With respect to any period, any operating revenues of the Maker remaining after paying, or setting aside funds for paying, the following: (i) all sums due or currently required to be paid under any financing agreement (including but not limited to any deposits to a principal reserve fund), (ii) all sums due or currently required to be paid under any reimbursement agreement or any of the other senior loan documents (including but not limited to any imposition

deposits as defined in the senior mortgage) or subordinate debt that has a hard payment requirement, (iii) all deposits to any replacement reserve, operating reserve, completion/repair reserve or other reserve or escrow required by the bond mortgage loan documents or by the senior loan documents that are due or currently payable, (iv) credit adjuster payments, loan/advance repayments and/or other amounts due and owing under the partnership agreement, (v) all fees due or currently payable by the Maker in connection with the bonds, including but not limited to fees and expenses of the issuer, the trustee, the remarketing agent, the tender agent and any rebate analyst, and (vi) all reasonable operating expenses (including accrued expenses) of the Leasehold Property, including but not limited to real estate taxes, insurance premiums, utilities, supplies, building maintenance and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (including any developer fees, asset management fees, marketing, administrative, security and building services (trash, exterminating).

2. The segregation of:

- (i) An amount equal to the aggregate of all special funds to be maintained by the Project; and
- (ii) All security deposits held.

The foregoing terms of payment shall continue throughout the entire term of this Note provided Maker complies with each and every term and condition of the Loan Documents; should Maker fail to so comply, or should Maker at any time default under the terms of this Note, interest on the unpaid principal shall thereafter (a) accrue at the highest nonusurious rate allowed by law, and (b) be immediately payable in addition to the entire outstanding principal amount.

The indebtedness evidenced by this Note is payable only from _____ percent (_____ %) of Surplus Cash as set forth in Section 6.01 of the Maker's Amended and Restated Agreement of Limited Partnership dated as of even date herewith (the "Partnership Agreement") and the right of the holder of this Note to payment of any of the indebtedness evidenced by this Note is and shall at all times be subordinate to the rights of Senior Lenders under the Bond and _____ loans (the "Senior Lenders"). It is expressly agreed that the _____ % of Surplus Cash referenced above is designed to pay both the City's CDBG loan and this loan, and in the event the _____ % of Surplus Cash is insufficient to pay amounts due under both loans _____ % of this loan shall be paid before the CDBG loan, but in no event will greater than _____ % of Surplus Cash be used to pay amounts due under both loans.

Security for Payment: A Leasehold Deed of Trust of even date herewith from Maker to Payee, against the real property more particularly described Leasehold Estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by Memorandum of Lease dated as of even date hereof, demising the following property to wit:

A Leasehold Estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by Memorandum of Lease dated as of even date hereof, demising the following property to wit:

, being more particularly described in the attached Exhibit "A," and which is hereinafter referred to as the "Leasehold Property").

Maker promises to pay to the order of Payee at the place for payment and according to the terms of payment the principal amount plus interest at the rates stated above. All unpaid amounts shall be due by the final scheduled payment date.

Subject to the terms of the documents evidencing any senior liens or assigns and that certain Subordination Agreement (HOME/CDBG Loans) dated as of , 20 , among , as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of , 20 , among and the Maker and Payee hereof (hereinafter referred to as the "Subordination Agreements"), and Section K below, if Maker defaults in the payment of this Note or Maker defaults in the performance of any obligation in any instrument securing or collateral to it, and such default continues after Payee gives Maker written notice of the default and thirty (30) calendar days within which it must be cured (subject to Section K below), then Payee may declare the unpaid principal balance and earned interest on this Note immediately due. Maker and each surety and endorser waive all demands for payment, presentations for payment, notices of intention to accelerate maturity, notices of acceleration of maturity, protests, and notices of protest, to the extent permitted by law.

If this Note or any of the documents referenced in the "Terms of Payment" section above, or any instrument securing or collateral to it is given to an attorney for collection or enforcement, or if suit is brought for collection or enforcement, or if it is collected or enforced through probate, bankruptcy, or other judicial proceeding, then Maker shall pay Payee all costs of collection and enforcement, including reasonable attorney's fees and court costs, in addition to other amounts due. Reasonable attorney's fees shall be the lesser of actual fees and expenses incurred or five percent (5%) of all amounts due unless either party pleads otherwise.

In the event Maker defaults in the payment of this Note or fails to comply with any of the terms and conditions of the Loan Documents, after giving effect to all applicable notice and cure periods under the Loan Documents, interest on the debt evidenced by this Note shall be at, but not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under law; any interest in excess of the maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. Subject to the Subordination Agreement, this provision overrides other provisions in this and all other instruments concerning the debt.

In addition to rights of Payee as contained herein, Payee shall have the further right to accelerate the maturity of this Note and declare any unpaid amount immediately due, after any applicable notice and cure periods designated in the Loan Documents, should any one or more of the following events occur:

- A. Subject to the terms of the Partnership Agreement and the Leasehold Deed of Trust, the resident leases of the Leasehold Property, excepting any items replaced in the ordinary course of business, any utility or telecommunication easements, and the entering into and recording of those certain Bond and loans, Maker fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers, or encumbers all or any part of the Leasehold Property or improvements or any interest therein, the rents therefrom, the income therefrom or any other item of collateral, whether lawfully or unlawfully or voluntarily without the prior written consent of Payee, except for the permitted encumbrances described in that certain Deed of Trust of even date herein, any utility and telecommunication easements or as otherwise permitted under the Loan Documents;
- B. Except for transfer of limited partnership interest in Maker, as well as other transfers allowed by the Partnership Agreement, Maker fully or partially sells, conveys, assigns, mortgages, pledges, transfers or encumbers an interest in Maker (if Maker is not a natural person or persons but a corporation, partnership, trust or other legal entity) including, in the event Maker is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, without the prior written consent of Payee, whether such interest is in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise;
- C. Maker or Owner converts the Leasehold Property, the improvements or a portion thereof to a form of condominium, cooperative ownership or other non-residential use other than the specific use agreed to in writing by Payee and Maker;
- D. Maker files, or has filed against it, a petition for the appointment of a receiver or for bankruptcy or insolvency, becomes or is adjudicated insolvent or bankrupt or admits in writing the inability to pay debts in general as they mature, petitions or applies to any tribunal for, or consents to, or does not contest, the appointment of a receiver, trustee, custodian or similar officer for Maker or for any principal or general partner of Maker or for a substantial part of the assets of Maker, of any principal or general partner of Maker, or commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, notwithstanding anything to the contrary, Payee agrees that Maker shall have ninety (90) days after notice of involuntary bankruptcy petition or judgment to dismiss the same or post adequate security with Payee during the pendency of a good faith proceeding brought by Maker;

- E. The Leasehold Property or any material part thereof is taken on execution or other process of law in any action against Maker;
- F. Maker abandons the Leasehold Property, the improvements or portion of either of the foregoing, in which event such abandonment shall constitute an assignment to Payee, at Payee's reasonable option, of Maker's interest in any lease (except for the Ground Lease) or contract then affecting the abandoned property;
- G. Maker defaults as defined herein, or Maker defaults as defined in any covenant or instrument securing or collateral to the Note, and after notice to Maker and a cure period as described in Section K below;
- H. The holder of any lien or security interest on the Leasehold Property, without implying the consent of Payee to the existence or creation of any such lien or security interest (except as otherwise acknowledged herein or in any other written agreement between Maker and Payee), and whether superior or subordinate to the Loan or the Note(s) evidencing the Loan, declares a default and such default is not cured within any applicable grace period set forth in the applicable document or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; provided, however, Payee agrees that Maker shall have the right to defend such action in good faith;
- I. The Leasehold Property, the improvements, or any significant portion of either of the foregoing, is subjected to actual continued waste or to removal, demolition or alteration so that the value of the Leasehold Property or the improvements is diminished thereby and Payee reasonably determines that it is not adequately protected from any loss, damage or risk associated therewith; provided, however, Payee shall permit Maker to post adequate security as satisfactory to protect Payee from such loss, damage or risk;
- J. Any representation or warranty made herein or in the above-referenced Commitment Letter and Loan Agreement, HOME Program Agreement, HOME Loan Agreement, Deed of Trust, Assignment of Leases and Rentals or Declaration of Restrictive Covenant of Affordability, such representation or warranty made by Maker, any principal, general partner in Maker, any person authorized by Maker to execute any of the aforesaid documents on behalf of Maker or by any indemnitor under any indemnity executed in connection with the Loan, reasonably determined by Payee to have been false or misleading in any material adverse respect at the time made, and is not remedied within thirty (30) calendar days (subject to Section K) after Maker receives notice thereof from Payee;
- K. Maker at any time fails to remain in compliance with each and every term and condition of or in the Loan Documents, after notice to Maker and a thirty (30) calendar day cure period; provided, however, if failure relates to non-monetary compliance, Maker shall be permitted additional time as may be reasonable provided Maker commenced cure within said thirty (30) days, but in no event

shall such time to cure a non-monetary default be more than sixty (60) days from BORROWER's receipt of notice;

- L. Maker (i) initiates any material changes, as that term is defined in Section 10(M) of the HOME Program Agreement, in the Project which changes the scope of the Project without Payee's written approval or (ii) fails after ten (10) days from Payee's written request to provide to Payee documentation acceptable to Payee of the actual quoted costs incurred in connection with the Project; or
- M. Maker fails to commence the Project on _____, 20____, or to complete this Project by _____, 20____, subject to delays resulting from force majeure.

Note Subordinations:

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by the Promissory Note dated as of _____, 20____, in the original principal amount of \$ _____ issued by Maker and payable to the San Antonio Housing Trust Public Facility Corporation, a public and official agency of the State of Texas, together with its successors and assigns as trustee (the "**Bond Note**"), and the Promissory Note dated as of _____, 20____, in the principal amount of \$ _____ (the "**Bridge Note**"), issued by Maker and payable to _____, to the extent and in the manner provided in that certain Subordination Agreement dated as of _____, 20____, among the payee of this Note, _____, as trustee, _____ and Maker (the "**Subordination Agreement**"). The Deed of Trust securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the deeds of trust securing the Bond Note and Bridge Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Deed of Trust securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Subordinate Lender under the Subordination Agreement.

The right of the holder of this Real Estate Lien Note to payment of any of the indebtedness evidenced by this Real Estate Lien Note is and will at all times be subordinate to the right of _____, as trustee, its successors and assigns, under a Promissory Note dated as of _____, 20____ ("**Senior Note**"), to payment in full of the indebtedness evidenced by the Senior Note. The foregoing subordination is pursuant to a Subordination Agreement dated as of _____, 20____ between _____, as trustee, and the holder of this Real Estate Lien Note on the date of the Subordination Agreement.

When the context requires, singular nouns, and pronouns include the plural.

MAKER:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company,
its General Partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public Facility
Corporation, its Sole Member

By: _____
JOHN KENNY
Assistant Secretary

Attachment:
Exhibit "A" – Legal Description

ATTACHMENT I

LEASEHOLD DEED OF TRUST

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: , 20

Grantor: ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

Grantor's Mailing Address (including, county):
200 Concord Plaza, Suite 900
San Antonio, Bexar County, Texas 78216
Attn: Executive Director

Trustee: MARTHA SEPEDA

Trustee's Mailing Address (including, county):
City Hall, Third Floor
P.O. Box 839966
San Antonio, Bexar County, Texas 78283-3966

Beneficiary: CITY OF SAN ANTONIO, a Texas municipal corporation

Beneficiary's Mailing Address (including county):
P.O. Box 839966
San Antonio, Bexar County, Texas 78283-3966

Note:

Date: , 20

Amount: One Million One Hundred Thousand and No/100 Dollars
(\$1,100,000.00) (hereinafter referred to as "the Note")

Maker: ACME ROAD APARTMENTS, LTD., a Texas limited partnership

Payee: CITY OF SAN ANTONIO, a Texas municipal corporation

Final Maturity Date: , 20

Terms of Payment: As provided in the Note.

Property (including any improvements):

Leasehold estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by Memorandum of Lease dated as of even date, demising the following property to wit:

, being more particularly described in the attached Exhibit "A," and which is hereinafter referred to as the "Leasehold Property").

Street Address: Acme Road Apartments
S. Acme Road at Prosperity Drive
San Antonio, Texas .

Prior Lien(s) (including recording information):

None, however it is anticipated that Beneficiary will subordinate this lien on the Leasehold Property to the San Antonio Housing Trust Public Facility Corporation upon the issuance of bonds for the Project, the leasehold deed of trust lien on the Leasehold Property associated with the senior bond financing, and any grants or loans provided by the (together, the "Senior Loan").

Other Exceptions to Conveyance and Warranty:

Easements, rights-of-way, and prescriptive rights, whether of record or not, and all presently recorded instruments, other than liens and conveyances, that affect the Leasehold Property to include those listed on Exhibit "B" attached hereto and made a part hereof for all purposes.

FOR VALUE RECEIVED AND TO SECURE PAYMENT OF THE NOTE, BY ACME ROAD APARTMENTS, LTD., A TEXAS LIMITED PARTNERSHIP (HEREINAFTER REFERRED TO AS "BORROWER") GRANTOR HEREBY IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, AND ASSIGNS THE LEASEHOLD PROPERTY TO TRUSTEE, TRUSTEE'S SUCCESSORS AND ASSIGNS, IN TRUST, WITH POWER OF SALE. TO HAVE AND TO HOLD the Leasehold Property, together with the rights, privileges, and appurtenances thereto belonging unto Trustee and Trustee's substitutes or successors, forever, and Grantor hereby binds Grantor and Grantor's successors, and assigns to warrant and forever defend the Leasehold Property unto Trustee, Trustee's substitutes or successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof through Grantor.

Subject to the permitted exceptions set forth in Exhibit "B" attached hereto and incorporated herein for all purposes, Grantor warrants that it has good and indefeasible leasehold interest to the Leasehold Property and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, and mortgage Grantor's interest in the Leasehold Property in the manner and form hereby done or intended. Grantor will preserve Grantor's interest in and right to the Leasehold Property and will forever warrant and defend the same to Trustee and Beneficiary

against any and all claims and will during the leasehold period warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever claiming an interest herein through Grantor. Further, the foregoing leasehold interest shall inure to the benefit of and be enforceable by Beneficiary in the event Beneficiary acquires title to the Leasehold Property pursuant to any foreclosure. If Grantor performs all the covenants and pays the Note according to its terms, this Leasehold Deed of Trust (hereinafter referred to as the "Leasehold Deed of Trust") shall have no further effect, and Beneficiary shall release it at Grantor's expense.

GRANTOR'S OBLIGATIONS

Grantor agrees to:

1. keep the Leasehold Property in good repair and condition and in a safe, sanitary, and decent condition, in compliance with the City of San Antonio Building and Housing Codes throughout the term of the Note wherein City of San Antonio is designated Payee;
2. not convert the Leasehold Property to any form of condominium, cooperative ownership or other non-residential use;
3. pay all taxes and assessments on the Leasehold Property before becoming delinquent and provide on an annual basis to Beneficiary proof of such payment. Grantor shall have the right to contest any tax or assessment, and Grantor shall, as reasonably required by Grantee, deposit such additional security as necessary;
4. pay when due all claims and demands of mechanics, materialmen, laborers, and others for any and all work performed or materials delivered for the Leasehold Property. Grantor shall have the right to contest any lien or claim, and Grantor shall, as reasonably required by Grantee, deposit such additional security as necessary;
5. unless otherwise agreed to by the Beneficiary, preserve the lien's priority as it is established in this Leasehold Deed of Trust;
6. deliver to Beneficiary, within ten (10) business days from the date of execution and recording thereof, a Mortgagee's Title policy, issued by a title company authorized to do business in the State of Texas, on the form promulgated by the Texas State Board of Insurance, wherein the title to the Leasehold Property is insured to be as indicated in the corresponding Commitment for Title Insurance required to be submitted by Grantor;
7. maintain, at Grantor's sole expense, in a form acceptable to Beneficiary, an insurance policy that is in strict accordance with the insurance requirements set forth in Exhibit "C" attached hereto and made a part hereof for all purposes;
8. provide evidence to Beneficiary that all insurance required herein has been paid current as of the date of such evidence being furnished to Beneficiary;
9. keep any buildings occupied as required by the insurance policy;
10. give Beneficiary prompt, written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain, or for the condemnation of the Leasehold Property, or any significant portion thereof;
11. Subject to the terms of the documents evidencing any senior liens or assigns and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____, as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20____, among _____ and the Grantor and Grantee hereof

- (hereinafter referred to as the "Subordination Agreement") assign to Beneficiary all insurance proceeds on the Leasehold Property, and all causes of action, claims, compensation, awards or recoveries for any damage, condemnation or taking of all or any significant part of the Leasehold Property, or for any significant damage or significant injury to it, or for any significant loss, or significant diminution in value of the Leasehold Property;
12. if this is not a first lien, pay all prior notes as they become due that Grantor is liable to pay and abide by all prior lien instruments, as may be reasonably amended from time to time;
 13. subject to tenant's rights, permit Beneficiary to inspect, at all times deemed reasonably appropriate by Beneficiary, the Leasehold Property to determine if it is being maintained in accordance with the local Uniform Building Code, and property maintenance and upkeep standards;
 14. ensure that Grantor performs all obligations and complies at all times with each and every term and condition of this Leasehold Deed of Trust;
 15. ensure that Grantor performs all obligations and the compliance at all times with each and every term and condition of that certain "Real Estate Lien Note" (the "Note") this date executed by Maker in favor of Beneficiary;
 16. ensure that Grantor performs all obligations and complies at all times with each and every term and condition of that certain "HOME Program Agreement" (the "Program Agreement") this date executed by Grantor;
 17. ensure the performance of all obligations and the compliance at all times with each and every term and condition of that certain "Assignment of Leases and Rentals" (the "Assignment") this date executed by Grantor;
 18. ensure that Grantor performs all obligations and the compliance at all times with each and every term and condition of that certain "Declaration of Restrictive Covenant of Affordability" (the "Declaration") this date executed by Grantor;
 19. ensure the performance of all obligations and the compliance at all times with each and every term and condition of that certain "Commitment Letter and Loan Agreement" (the "Commitment Letter") this date executed by Beneficiary and accepted to by signature of Grantor (this Leasehold Deed of Trust, the Note, the Commitment Letter, the Program Agreement, the Assignment, and the Declaration are referred to hereinafter collectively as the "Loan Documents");
 20. not discriminate against any prospective tenant to the Leasehold Property on the basis of the prospective tenant's race, color, creed, sex, national origin, age, handicap, familial status or on the basis of said tenant's receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program or on the basis that the prospective tenant has a minor child or children who will be living with him/her and acknowledges that the project for which this Leasehold Deed of Trust and the Note are given, is to be constructed specifically as a housing development intended and authorized for "low income" persons, as that term is defined in the City of San Antonio HOME ENTITLEMENT GRANT PROGRAM POLICIES AND REGULATIONS, as provided in the HOME Program Agreement executed by Grantor as of the date herein, and in 24 CFR Part 812 and all other applicable regulations, however such acknowledgement does not waive Grantor's obligation not to discriminate on the above basis;

21. remain liable for the following and for any loss, cost, expense, liability, obligation, claim, action or proceeding which may ever be suffered, incurred or asserted against Beneficiary on account of any of the following, it being understood that the liability provisions contained in this paragraph are binding upon Grantor and Grantor's successors and assigns and shall inure to the benefit of Beneficiary and any subsequent holder of the Note:
- a. the commission of any fraud, or the material adverse breach of any representation or warranty contained in the Loan Documents or any document or instrument submitted in connection with the Note hereby secured by Grantor or on behalf of Grantor, and such fraud or breach is not remedied within thirty (30) calendar days after Grantor receives notice thereof from Beneficiary (subject to Section K of the Note);
 - b. any default by Grantor in Grantor's respective obligations under any of the Loan Documents, to pay all taxes, assessments, and other charges imposed or assessed against the Leasehold Property before becoming delinquent or any personalty used in connection with the operation of the Leasehold Property, or to keep the Leasehold Property and all such personalty insured as required by the Loan Documents pertaining hereto. However, Grantor shall have the right to contest any tax or assessment, and Grantor shall, as reasonably required by Grantee, deposit such additional security as necessary;
 - c. except for normal wear and tear, any waste of the Leasehold Property or any damage to the Leasehold Property caused by any negligent or willful violation of any covenant or agreement contained in any of the Loan Documents pertaining hereto regarding the maintenance, repair, and restoration of the Leasehold Property or any damage to or deterioration in the Leasehold Property caused by any negligent or willful act or omission of Grantor or the employees, agents, other representatives or contractors of Grantor; provided, however, Grantor shall be permitted a reasonable time to cure after receipt of notice from the Beneficiary;
 - d. the taking or allowing the taking of any action that may invalidate or diminish any insurance carried on the Leasehold Property, unless replacement insurance is provided;
 - e. the failure of Grantor to pay any indebtedness or obligation that does result in the filing or creation of a mechanic's, materialman's or judgment lien or other lien against the Leasehold Property or any part thereof. Grantor shall have the right to contest any lien or claim, and Grantor shall, as reasonably required by Grantee, deposit such additional security as necessary;
 - f. subject to the Leasehold Deed of Trust and subject to the terms of the documents evidencing any senior liens or assigns and the Subordination Agreement, the failure of Grantor to properly apply, or ensure the application of, in accordance with the Loan Documents, all insurance proceeds and condemnation rewards received by Grantor with respect to the Leasehold Property;
 - g. the knowing failure of Grantor to return or deliver to Beneficiary any of Grantor's tangible personal property (including leases, books, records, and files relating to the leasing, operation, and maintenance of the Leasehold Property) taken from the Leasehold Property or kept elsewhere by Grantor following any foreclosure of the Leasehold Property;

- h. the failure of Grantor to comply with any applicable governmental, statutory or other legal requirements, or to ensure such compliance in connection with the Project after being aware of it, or to correct any material defects in construction of the Leasehold Property of which Grantor has actual knowledge and after a reasonable time to correct such defect;
- i. subject to the terms of the documents evidencing any senior liens or assigns, the knowing failure of Grantor to deliver to Beneficiary all rents and profits collected or received by Grantor after the occurrence and continuance of any of the following:
 - (i) the date on which Grantor notifies Beneficiary that Grantor abandoned the Leasehold Property;
 - (ii) the date on which Grantor is given written notice of the occurrence and continuance of any default under the Loan Documents which, after any applicable notice and cure periods, later results in the acceleration of the maturity of the Note and a judicial or non-judicial foreclosure against the Leasehold Property; or
 - (iii) any continued default under any of the Loan Documents, after any applicable notice and cure periods, pertaining hereto regarding the construction, maintenance, repair, restoration or rehabilitation of the Leasehold Property;
- j. any and all of Beneficiary's costs, expenses, damages or liabilities, whether incurred by Beneficiary prior to or following foreclosure of this Leasehold Deed of Trust, and whether Beneficiary shall be in the status of a lienholder or an owner of the Leasehold Property following foreclosure (directly or indirectly) arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under, or about the Leasehold Property of any hazardous substance;
- k. all reasonable attorneys' fees and other reasonable costs incurred by Beneficiary in order to recover from Grantor any of the amounts for which Grantor remains liable as provided herein;
- l. all reasonable attorneys' fees and other costs incurred by Beneficiary in the event any one or all of the following occur:
 - (i) Grantor defaults, as applicable, under any of the Loan Documents;
 - (ii) Beneficiary accelerates the maturity of the Note in accordance with its terms secured hereby and properly commences judicial or non-judicial foreclosure proceedings;
 - (iii) either before or after the foreclosure sale, Grantor institutes litigation or files a petition or claim in any judicial or administrative proceeding, including without limitation any bankruptcy or similar proceeding or any action seeking any injunctive relief against Beneficiary or Trustee, which contests Beneficiary's right of foreclosure or the legality of any of the Loan Documents; and
- m. it being understood that the liability provisions contained in this paragraph are binding upon Grantor and Grantor's successors and assigns and shall inure to the benefit of Beneficiary and any subsequent holder of the Note.

GRANTOR'S REPRESENTATIONS AND WARRANTIES

Grantor, on behalf of Grantor and Grantor's successors and assigns, hereby represents, warrants, and covenants the following as of the date hereof:

1. No bankruptcy or insolvency proceedings are pending or contemplated by or to Grantor's knowledge against Grantor;
2. All reports, certificates, affidavits, statements, and other data furnished by Grantor to Beneficiary in connection with the loan evidenced by the Note secured hereby are materially true and correct and will continue to be materially true and correct throughout the term of the Note or, if not so materially continuing to be true and correct upon Grantor's knowledge will promptly be made materially true and correct by Grantor, and Grantor has not omitted to state any fact or circumstance necessary to make the statements contained therein not misleading;
3. The execution, delivery, and performance of the Loan Documents have been duly authorized by all necessary action to be binding and enforceable against Grantor in accordance with the respective terms thereof and to Grantor's knowledge do not contravene, result in a breach of or constitute a default under any contract or agreement of any nature to which Grantor is a party or by which Grantor or any of Grantor's properties may be bound and to Grantor's knowledge do not violate or contravene any law, order, decree, rule or regulation to which Grantor is subject;
4. To the best of Grantor's knowledge, the Leasehold Property and the intended use thereof by Grantor complies with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Leasehold Property;
5. To the best of Grantor's actual or constructive knowledge, all utility services necessary and sufficient for the full use, occupancy, operation, and disposition of the Leasehold Property for its intended purposes are or will be available upon completion of the Project, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities;
6. To the best of Grantor's actual or constructive knowledge, all adjacent streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation, and disposition of the Leasehold Property have been or will be completed upon completion of the Project, have been or will be dedicated to the appropriate governmental authority, and are or will be open and available upon completion of the Project, to the Leasehold Property without further condition or known cost to Grantor;
7. To the best of Grantor's knowledge, there are no judicial or administrative actions, suits or proceedings pending or threatened against or affecting Grantor or the Leasehold Property which, if adversely determined, would impair either the Leasehold Property or Grantor's ability to perform the covenants or obligations required to be performed under this Leasehold Deed of Trust or any of the Loan Documents pertaining hereto;
8. As of the date of this Leasehold Deed of Trust due as except as disclosed, the Leasehold Property is free from any lien for water charges, sewer rents, taxes, and assessments;
9. As of the date of this Leasehold Deed of Trust, the Leasehold Property is free from unrepaired damage caused by fire or other casualty; and

10. As of the date of this Leasehold Deed of Trust, no part of the Leasehold Property has been taken in condemnation, eminent domain or like proceeding nor, to the best of Grantor's actual knowledge, is any such proceeding pending.

BENEFICIARY'S RIGHTS

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the Note secured hereby are used to pay any debt secured by prior liens, Beneficiary is subrogated to all of the rights and liens of the holders of any debt so paid.
3. Subject to terms of the documents evidencing any senior liens, or assigns and subject to this Leasehold Deed of Trust, any proceeds payable under the insurance policy required to be obtained by this Leasehold Deed of Trust or any of the Loan Documents shall be payable to Beneficiary. Beneficiary may apply such proceeds it receives either to reduce the amount of the Note secured hereby or to repair or replace damaged or destroyed improvements covered by the policy in accordance with the terms and conditions of Section 10(F) of the HOME Program Agreement.
4. Subject to the terms and conditions of the Subordination Agreement and Section K of the Note, if Grantor fails to perform any of Grantor's obligations, after notice to Grantor and a thirty (30) calendar day cure period , or longer period of time provided that such failure cannot be reasonably cured within such thirty (30) days, provided Grantor has started to cure failure within said thirty (30) days, , but in no event shall such time to cure a non-monetary default be more than sixty (60) days, Beneficiary may, at its option, perform such obligations and be reimbursed by Grantor on demand at the place where the Note secured hereby is payable for any sums so paid, including reasonable attorney's fees, plus interest on those sums from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The sum to be reimbursed shall be secured by this Leasehold Deed of Trust.
5. Subject to the terms and conditions of the Subordination Agreement and Section K of the Note, if Grantor defaults, fails to perform any of Grantor's respective obligations, or fails to comply with any term or condition of the Loan Documents or if default occurs on a prior lien note, and the default continues after Beneficiary gives Grantor notice of the default and a thirty (30) calendar day cure period and as may be required by law or by written agreement, then Beneficiary may:
 - a. accelerate the maturity of the Note hereby secured and declare the entire unpaid principal balance and applicable interest on the Note immediately due without the necessity of any further action on the part of Beneficiary, and Grantor expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the Note hereby secured;
 - b. request Trustee to foreclose this lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and
 - c. purchase the Leasehold Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Note.

6. Subject to the terms and conditions of the Subordination Agreement, in addition to the rights of Beneficiary contained herein, Beneficiary shall have the further right to accelerate the maturity of the Note hereby secured and declare the entire unpaid principal balance and all applicable interest immediately due should any one or more of the following occur:
- a. Subject to the terms of that certain Amended and Restated Agreement of Limited Partnership of Acme Road Apartments, Ltd., of even date herewith (the "Partnership Agreement"), the Leasehold Deed of Trust, the residential leases of the Property, exempting any items replaced in the ordinary course of business, and the entering into and recording of that certain Bond, and City loans, Grantor fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers, except for transfers for the benefit of the Leasehold Property or its tenants, or encumbers all or any part of the Leasehold Property or any interest therein, the rents therefrom, the income therefrom, or any other items of collateral, whether voluntarily or involuntarily, without the prior written consent of Beneficiary, subject to (i) the permitted encumbrances set forth in Exhibit "B" attached hereto and incorporated herein for all purposes and (ii) utility and telecommunication easements;
 - b. Subject to terms of Partnership Agreement and Senior Loan documents, except for limited partner and general partner's (limited to the terms of that certain Master Agreement by and between NRP Acme Road Apartments SLP LLC, NRP Contractors LLC, NRP Holdings LLC, NRP Investments Corp., The NRP Group LLC, NRP Lone Star Development LLC, T. Richard Bailey, Jr., individually, J. David Heller, individually, Acme Road Apartments GP, LLC, Acme Road Apartments, Ltd., and San Antonio Housing Trust Public Facility Corporation (the "Master Agreement"), Grantor fully or partially sells, conveys, assigns, mortgages, pledges, transfers or encumbers a respective interest in Grantor (if Grantor is not a natural person or persons but a corporation, partnership, trust or other legal entity), including, in the event Grantor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any member either voluntarily or otherwise, whether such interest is in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise, without the prior written consent of Beneficiary;
 - c. Grantor converts the Leasehold Property or a portion thereof to a form of condominium, cooperative ownership or other non-residential use;
 - d. Grantor: (1) files or has filed against it, a petition for the appointment of a receiver or for bankruptcy or insolvency, (2) becomes or is adjudicated insolvent or bankrupt or admits in writing the inability to pay debts in general as they mature, (3) petitions or applies to any tribunal for, or consents to, or does not contest, the appointment of a receiver, trustee, custodian or similar officer for Grantor or for any principal or general partner of Grantor or for a substantial part of the assets of Grantor, or (4) commences any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, notwithstanding anything to the contrary, Beneficiary hereby

agrees that Grantor shall have ninety (90) days after notice of involuntarily bankruptcy petition or judgment to dismiss the same or post adequate security satisfactory to Beneficiary with Beneficiary during the petition of any good faith proceedings brought by the Grantor;

- e. Subject to Grantor's right to contest such a proceeding, and security is made therefore securing Beneficiary's interest, as described herein, the Leasehold Property or any material part thereof is taken on execution or other process of law in any action against Grantor;
- f. Grantor abandons the Leasehold Property or a significant portion thereof, in which event such abandonment shall constitute an assignment to Beneficiary, at Beneficiary's option, of Grantor's interest in any lease (except the Ground Lease) or contract then affecting the abandoned property;
- g. Subject to Section K of the Note, Grantor defaults or fails to timely comply with any one or more terms or conditions of the Loan Documents, after notice to Grantor and a thirty (30) calendar day cure period, or such longer time as permitted herein;
- h. The holder of any lien or security interest on the Leasehold Property, without implying the consent of Beneficiary to the existence or creation of any such lien or security interest, and whether superior or subordinate to this Leasehold Deed of Trust or the Note secured hereby, declares a default and such default is not cured within any applicable grace period set forth in the applicable document or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; provided, however, Beneficiary agrees that Grantor shall have the right to defend such action in good faith;
- i. Subject to Section K of the Note, the Leasehold Property, or any significant portion thereof, is subjected to actual continued waste or to removal, demolition or alteration so that the value of the Leasehold Property is diminished thereby and Beneficiary reasonably determines that it is not adequately protected from any loss, damage or risk associated therewith and the same is not remedied following thirty (30) calendar days notice from Beneficiary to Grantor; provided, however, Beneficiary shall permit Grantor to post adequate security as satisfactory to Beneficiary to protect Beneficiary from such loss, damage or risk;
- j. Subject to Section K of the Note, any representation or warranty made in the Loan Documents, such representation or warranty made by Grantor, in connection with the loan secured hereby, determined by Beneficiary to have been knowingly false or misleading in any material adverse respect at the time made and the same is not remedied following thirty (30) calendar days' notice from Beneficiary to Grantor; provided, however, Beneficiary shall permit Grantor to put adequate security as satisfactory to Beneficiary to protect Beneficiary from loss, damage or risk;
- k. Subject to Section K of the Note, Grantor (i) initiates any material changes in construction work, as that term is defined in the HOME Program Agreement, on the Leasehold Property without Beneficiary's prior, written approval or (ii) fails to provide to Beneficiary documentation, acceptable to Beneficiary, in its reasonable discretion, of the actual Project costs incurred in connection with the Leasehold Property and the same is not remedied following thirty (30) calendar days' notice from Beneficiary to Grantor;

- l. Grantor fails to commence construction of the Project for which this Leasehold Deed of Trust and the Note are given, and more specifically detailed in paragraph 15, General Provisions hereof, by no later than _____, 20____ or fails to complete construction in substantial compliance with all conditions and requirements set forth in the Loan Documents, including all attachments and exhibits thereto, by _____, 20____, subject to delays resulting from force majeure; unless waived by the Beneficiary for construction that has been completed;
- m. Grantor fails to timely submit all of the documentation required in the Loan Documents and the same is not remedied following thirty (30) business days' notice from Beneficiary to Grantor or such longer than as permitted under the Loan Documents; or
- n. Subject to Section K of the Note, if Beneficiary reasonably determines that the likelihood of payment of Grantor's indebtedness evidenced by the Note or the performance of any of Grantor's obligations hereunder or under any of the Loan Documents is actually or substantially threatened by reason of a material adverse change in the financial condition or credit standing of Grantor or, if Grantor is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Grantor and the same is not remedied following thirty (30) calendar days' notice from Beneficiary to Grantor.

Upon the happening and continuance of any of the foregoing Events of Default, all obligations, if any, of Beneficiary hereunder, including, without limitation, any obligation to advance funds hereunder or under any of the other Loan Documents, shall immediately cease and terminate, until and unless such default is cured within the time permitted in the Loan Documents.

Notwithstanding anything to the contrary herein contained or inferable from any provisions hereof, upon the happening of an Event of Default under the Loan Documents, after notice to Grantor and a thirty (30) calendar day cure period (subject to Section K of the Note), the unpaid principal and applicable accrued interest on the Note shall, at Beneficiary's option, immediately become due and payable in full, without the necessity of any further action on the part of Beneficiary, and Grantor expressly waives any requirement of notice of intent to accelerate, or of notice of such acceleration of, the maturity of the indebtedness evidenced by the Note.

A default hereunder which has not been cured within any applicable grace period shall be a default under each of the other Loan Documents.

TRUSTEE'S DUTIES

Subject to the terms and conditions of the Subordination Agreement, if requested by Beneficiary to foreclose this lien during the existence of an Event of Default beyond any applicable notice and cure periods, Trustee shall:

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then amended;

2. sell and convey all or part of the Leasehold Property and the Fee Estate to the highest bidder for cash with a general warranty binding Grantor, subject to prior liens and to other exceptions to conveyance and warranty; and
3. from the proceeds of the sale, pay, in this order:
 - a. expenses of foreclosure;
 - b. to Beneficiary, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
 - c. any amounts required by law to be paid before payment to Grantor; and
 - d. to Grantor, any balance.

GENERAL PROVISIONS

1. If any of the Leasehold Property is sold under this Leasehold Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.
2. Recitals in any Trustee's deed conveying the Leasehold Property will be presumed to be true in all material respects.
3. Proceeding under this Leasehold Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.
4. Except for the liens created by the senior loan documents, the liens associated with the and/or grants from the for the Project, and the Leasehold Deed of Trust, this lien shall remain superior to liens later created even if the time of payment of all or part of the Note secured hereby is extended or part of the Leasehold Property is released.
5. If any portion of the Note secured hereby cannot be lawfully secured by this Leasehold Deed of Trust, payment shall be applied first to discharge that portion.
6. Subject to the terms of the documents evidencing any senior liens or assigns and the Subordination Agreement and subject to the Leasehold Deed of Trust, Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or significant part of the Leasehold Property, from private sale in lieu of condemnation of all or significant part of the Leasehold Property, and from damages caused by public works or construction on or near the Leasehold Property. Subject to the terms of the documents evidencing any senior liens or assigns and subject to the Leasehold Deed of Trust, should such an event occur, said sums shall be payable to Beneficiary. After deducting any expenses incurred by Beneficiary, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the unpaid balance of the Note. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.
7. Subject to the permitted exceptions referenced above and any senior lien loan documents and the Subordination Agreement on the Project, Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future leases, rent, and other income and receipts from the Leasehold Property. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor (a) is not in Event of Default, beyond all applicable notice and cure periods, and (b) complies with each and every term and provision of the Loan Documents. Subject to the terms and conditions of the Subordination Agreement,

Grantor will apply all rent and other income and receipts to payment of the Note secured hereby and performance of the Loan Documents, after notice to Grantor and a thirty (30) calendar day cure period (subject to Section K of the Note); but if the rent and other income and receipts exceed the amount due under the Note secured hereby, Grantor may retain the excess. If Grantor is in an Event of Default under the Loan Documents, beyond all applicable notice and cure periods, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the Leasehold Property if it is vacant and collect all rent and other income and receipts. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Leasehold Property. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Borrower's obligations under the Loan Documents in the order determined by Beneficiary. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies. If Grantor becomes voluntarily or involuntarily bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. If Grantor is in an Event of Default hereunder, beyond all applicable notice and cure periods, interest on the debt secured by this Leasehold Deed of Trust shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged or received under Texas law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded. Upon any acceleration during the existence of an Event of Default beyond any applicable notice and cure periods, or required or permitted prepayment, any such excess shall be canceled automatically as of the date of acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.
9. Grantor shall at all times comply with and ensure that the Leasehold Property and the Project comply with all federal, state and local statutes, ordinances, regulations, and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, development, construction, rehabilitation, use or operation of the Leasehold Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Leasehold Property and any environmental, disabled person access or ecological requirements, even if such compliance shall require structural changes to the Leasehold Property. Grantor shall not use or occupy, or allow the use or occupancy of, the Leasehold Property in any manner which violates any lease of the Leasehold Property or any applicable federal, state or local law, rule, regulation or order or which constitutes a public or private nuisance, or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.
10. Intentionally deleted.
11. When the context requires singular nouns and pronouns, include the plural.
12. The term "Note" includes all sums secured by this Leasehold Deed of Trust.
13. This Leasehold Deed of Trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.
14. If Grantor and Maker is not the same person, the term "Grantor" shall include Maker.

15. Grantor represents that this Leasehold Deed of Trust and the Note secured hereby are given for the following purpose: to fund the construction of three hundred twenty-two (322) rental units in Acme Road Apartments project, of which will be HOME units, to provide affordable housing for residents of “low to moderate income,” as such term is defined by Section 8 of the U.S. Department of Housing and Urban Development (HUD) Income Guidelines (said purpose referred to herein as the “Project”).
16. Beneficiary may remedy any Event of Default without waiving it.
17. Beneficiary may waive any Event of Default without waiving prior or subsequent defaults.
18. The term “days” when used herein shall mean calendar days. The term “business day” when used herein shall mean that part of any given day from Monday through Friday excluding those scheduled holidays officially adopted and approved by the San Antonio City Council for its employees.
19. In the event of any conflict between the provisions of this Leasehold Deed of Trust and those of the Subordination Agreement, the Subordination Agreement shall prevail; provided, however, that with respect to any matters addressed in both said documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless applicable provisions are inconsistent and could not be simultaneously enforced or performed.
20. Grantee shall permit the Class B limited partner and the investor limited partner the right to cure any default by Grantor hereunder on other Loan Documents and for purposes hereof such curative actions shall be considered the actions of Grantor.
21. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another national reputable private courier service for next business day delivery to the intended addressee at its address set forth below or at such other address as may be designated by such party as herein provided, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the intended addressee at its address set forth below signature requested at delivery or at such other address as may be designated by such party as herein provided. All notices, demands, and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private nationally recognized courier service, or five (5) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. Service of any notice required by Texas Property Code Section 51.002, as the same may be amended, shall be effective when the requirements to that statute are met. The following are the addresses of Beneficiary and Grantor for all purposes in connection herewith:

BENEFICIARY:

City of San Antonio
Division of Grants Monitoring and Administration
1400 S. Flores Street
San Antonio, Texas 78204-1617
Attention: Grants Administrator

With a copy to:

City of San Antonio
City Attorney's Office
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: CDBG Attorney

BORROWER:

Acme Road Apartments, Ltd.
c/o San Antonio Housing Trust Public Facility Corporation
200 Concord Plaza, Suite 900
San Antonio, Texas 78216
Attention: Executive Director

By giving to the other party hereto at least thirty (30) days' prior, written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address.

The Leasehold Deed of Trust herein is intended to be a security interest and not a current conveyance except for the rights provided in this Leasehold Deed of Trust.

[Executed on the following page]

GRANTOR:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company,
its General Partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public Facility
Corporation, its Sole Member

By: _____
JOHN KENNY
Assistant Secretary

Consented to by:

**SAN ANTONIO HOUSING TRUST
PUBLIC FACILITY CORPORATION,**
a Texas nonprofit public facility corporation

By: _____
JOHN KENNY
Executive Director

Attachments:

Exhibit "A" – Legal Description

Exhibit "B" – Exceptions

Exhibit "C" – Insurance Requirements

(ACKNOWLEDGMENT)

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Instrument was acknowledged before me on this _____ day of _____, 20____ by John Kenny, Assistant Secretary of the SAN ANTONIO HOUSING TRUST PUBLIC FACILITY CORPORATION, a Texas nonprofit public facility corporation and the sole member of ACME ROAD APARTMENTS GP, LLC, a Texas limited liability company and the general partner to ACME ROAD APARTMENTS, LTD., a Texas limited partnership, on behalf of such partnership.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

AFTER RECORDING, RETURN TO:
City of San Antonio
City Attorney's Office
ATTN: CDBG Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

LOAN RIDER (Borrower's Limited Partner Provisions)

This Loan Rider (the "Rider") is attached to and made a part of that certain Leasehold Deed of Trust (the "Mortgage") entered into by and between CITY OF SAN ANTONIO, a Texas municipal corporation ("Lender") and ACME ROAD APARTMENTS, LTD., an Texas limited partnership (the "Borrower"), and modifies the Mortgage and all of the other documents entered into by Borrower in connection with the HOME Loan (collectively, the "Loan Documents") respecting that certain \$1,100,000.00 mortgage loan from Lender (the "Loan"), all with respect to the development of a 322- unit multifamily residential development to be known as the "Acme Road Apartments", situated in Bexar County, San Antonio, Texas (the "Project"). The Borrower and Lender hereto agree that the following terms and agreements shall be part of and shall modify or supplement each of the Loan Documents, and shall prevail in the event of conflict or inconsistency between this Rider and the Loan Documents:

Non-recourse Obligation. Payment and performance of the obligations set forth in the Loan Documents shall be non-recourse to Borrower and Borrower's partners, and the Lender's sole recourse with respect to the Loan shall be the right to foreclose under the Mortgage and other collateral forming part of the Loan Documents; provided that this provision shall not restrict any exceptions to non-recourse liability set forth in the Loan Documents, respecting such matters as fraud, waste and similar matters respecting actions of the General Partner of Borrower.

General Partner Change. The withdrawal, removal, transfer and/or replacement of the General Partner of Borrower pursuant to the terms of the Amended and Restated Limited Partnership Agreement of Borrower (the "Partnership Agreement") with the Special Limited Partner, _____, is hereby approved by the Lender, and shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Borrower and its Limited Partner agree to notify and obtain Lender's prior written approval of any subsequent, proposed replacement General Partner that is a third party prior to replacement, and the Lender's consent to such third party replacement general partner shall not be unreasonably withheld, delayed or conditioned.

Class B Limited Partner Change. The withdrawal, removal, transfer and/or replacement of the Class B Limited Partner of Borrower pursuant to the terms of the Partnership Agreement with the Special Limited Partner, _____ is hereby approved by the Lender, and shall not constitute a default under any of the Loan Documents, and any such actions shall not accelerate the maturity of the Loan; provided that Borrower and its Limited Partner agree to notify the Lender and obtain Lender's prior written approval of any subsequent proposed replacement Class B Limited Partner prior to replacement that is a third party prior to replacement, and the Lender's consent to such replacement Class B Limited Partner shall not be unreasonably withheld, delayed or conditioned.

Transfer of Limited Partner Interests. Nothing in the Loan Documents shall limit or restrict the ability of Borrower's Limited Partner, _____, its successors and assigns (the "Limited Partner") to transfer, sell or assign its ownership interest in Borrower, from time to time, without consent of Lender, provided that said Limited Partner remains or the

transferee will be liable for payment of any then unpaid capital contributions to Borrower, as and when payable, as set forth in the Partnership Agreement, notwithstanding any such transfer, sale or assignment. In particular, Lender hereby consents to any transfers, sales or assignments of membership interests in Borrower to any affiliate of the Limited Partner or any entity in which the Limited Partner, or an affiliate, is the manager or general partner and agrees that such transfers shall not constitute defaults under the Loan Documents.

Replacement of Management Agent. The Lender acknowledges that Limited Partner has the right, under the Partnership Agreement, to direct the General Partner to remove the Project property management agent. Borrower agrees to give Lender notice of the proposed replacement management agent, and the Lender agrees to consent to same, assuming that such replacement property manager is acceptable to Limited Partner and has experience in managing projects occupied by low-income households pursuant to Section 42 of the Internal Revenue Code.

Notice. Copies of all notices to Borrower under the Loan Documents shall be sent to Limited Partner in accordance with the procedures for delivering notices set forth in the Loan Documents to the following address or such alternate or additional contact names and/or addresses of which Lender is so notified in writing by the Limited Partner. Failure to provide copies of the notices to Borrower to the following shall not cause a breach of any of the Loan Documents by Lender, nor does it waive any of Lender's rights or Borrower's obligations under the Loan Documents ;

The address and fax number
of Limited Partner are:

The address and fax number of Special
Limited Partner are:

With a Copy to:

Notice and Cure Rights. The Lender agrees to give Limited Partner written notice of any and all defaults by the Borrower under the Loan Documents, and an opportunity, at the Limited Partner's option, to cause the cure of such default within the cure periods set forth below, prior to exercising any remedies under the Loan Documents. The Lender agrees that the Limited Partner will have ten (10) days after the Limited Partner's receipt of notice of such default to cure, or cause the cure of a monetary default under the Loan Documents, and thirty (30) days (or such longer period as is set forth in the Loan Documents) after the Limited Partner's receipt of such notice to cure any non-monetary defaults under the Loan Documents, or, as to non-monetary defaults, such longer period as is reasonably necessary for the Limited Partner to cause cure, provided that cure is commenced within the above cure period and diligently prosecuted, including, without limitation, such time period as is necessary to remove General Partner, if necessary in order to effect a cure. The Lender agrees to accept cure by the Limited Partner as if such cure were made by Borrower. Failure to provide this notice shall not cause a breach of any of the Loan Documents by Lender, nor does it waive any of Lender's rights or Borrower's obligations under the Loan Documents.

Insurance and Condemnation Proceeds Subject to the terms and conditions of the Subordination Agreement and this Leasehold Deed of Trust, the Lender agrees that insurance and condemnation proceeds shall be used to rebuild or restore the Project provided that (i) if such proceeds are not reasonably sufficient to so rebuild or repair, sufficient additional funds are provided from other sources to rebuild or restore the Project and (ii) Lender shall have the right to reasonably approve plans and specifications for any major rebuilding and the right to reasonably approve disbursement of such proceeds under a construction escrow or similar arrangement, subject to the prior rights of any senior lenders.

Partial Subordination to Section 42 Extended Use Agreement. Notwithstanding anything herein to the contrary, if the Lender takes title to the Project through foreclosure or deed of lieu of foreclosure, the Property shall remain subject to the provisions of Section 42(h)(6)(E)(ii) of the Internal Revenue Code or any similar successor provision of the Code. This section shall apply notwithstanding the order of recording of any of the Loan Documents and the Extended Use Agreement, executed in connection with the allocation of federal low income housing tax credits to the Borrower for the Project pursuant to Section 42 of such Code.

Force Majeure. There shall be no default under the Loan Documents for construction or rehabilitation delays beyond the reasonable control of the Borrower, provided that such delays do not exceed 90 days or such longer period as may be specified in the Loan Documents.

Purchase Rights. The Lender consents to those purchase options and rights of first refusal in favor of the General Partner of Borrower or its designee which are set forth in the Partnership Agreement, and agrees that transfer of title to the Project in accordance therewith shall not constitute a default under the Loan Documents, provided that Borrower gives Lender prior written notice of such transfer and contact information for such transferee, and provided that the transferee agrees to assume the duties and obligations of the Borrower respecting the Loan on the same terms as those imposed on the Borrower.

Lender Approvals. Amendments to the Partnership Agreement entered into in order to effect transfers or assignments of the Limited Partner's or the General Partner's interest pursuant to Sections 2, 3 and 11 above shall not require the consent or approval of the Lender.

EXHIBIT A

Legal Description

EXHIBIT B

Exceptions

EXHIBIT "C"
Insurance Requirements

ATTACHMENT I

ASSIGNMENT OF LEASES AND RENTALS

This ASSIGNMENT OF LEASES AND RENTALS (hereinafter referred to as "Assignment") is made by ACME ROAD APARTMENTS, LTD. (hereinafter referred to as "Assignor"), a Texas limited partnership, for the benefit of the CITY OF SAN ANTONIO (hereinafter referred to as "Assignee"), a Texas municipal corporation as of _____, 20_____.

WITNESSETH:

For value received and as additional security for the indebtedness hereinafter mentioned, Assignor hereby assigns, transfers, and conveys unto Assignee all of the rights, title, and interest of Assignor in and to the rents, issues, profits, revenues, royalties, rights, and benefits (hereinafter simply referred to as "rents") from the following described property: A Leasehold Estate created by that certain Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to Acme Road Apartments, Ltd., as lessee, dated as of even date hereof, notice of which is given by Memorandum of Lease dated as of even date hereof, demising the following property to wit:

_____, being more particularly described in the attached Exhibit "A," and which is hereinafter referred to as the "Leasehold Property").

Street Address: Acme Road Apartments
S. Acme Road at Prosperity Drive
San Antonio, Texas _____.

In addition, _____, subject to the terms of the documents evidencing any senior liens or assigns and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20_____, among _____, as bond trustee, and that certain Subordination Agreement (HOME/CDBG Loans) dated as of _____, 20_____, among _____ and the Assignor and Assignee hereof (hereinafter referred to as the "Subordination Agreements"), and the documents evidencing any senior liens or assigns, Assignor hereby assigns, transfers, and conveys unto said Assignee any and all leases and rental agreements relating to said Leasehold Property (hereinafter referred to as "leases"), now existing or hereafter made, executed or delivered, whether written or verbal, including all amendments thereto.

The term of this Assignment shall be until that certain Real Estate Lien Note of even date herewith executed by Assignor for certain costs associated with the acquisition of land for the construction of Acme Road Apartments, the subject Leasehold Property herein, in favor of Assignee in the original principal amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00), together with any renewal, extension or modification thereof (hereinafter referred to as "Note"), executed by Assignor, shall have been fully paid and satisfied, at which time this Assignment shall be fully satisfied, canceled, and released. Said Note is additionally secured by a Leasehold Deed of Trust ("Leasehold Deed of Trust") and Declaration of Restrictive Covenant of Affordability ("Declaration") of even date herewith to be

executed by Assignor in favor of Assignee. Said documents shall be hereinafter referred to as the "Security Documents."

Subject to the Subordination Agreement, Assignor does hereby authorize and empower Assignee to collect the rents payable under the leases as they shall become due, and does hereby direct each and all of the tenants to pay such rents as they become due to Assignee upon written demand for payment thereof by said Assignee. It is understood and agreed, however, that no such demand shall be made unless and until there has been an Event of Default beyond all applicable notice and cure periods in either the payment of the Note, the payment of any other sum secured by the Security Documents, or the performance of any of the covenants set forth in the Note, the Security Documents or this Assignment; and, until such written demand is made, Assignor is authorized to collect or continue to collect the rents, but such privilege of Assignor to collect or continue to collect the rents shall not operate to permit the collection by Assignor of any installment of rent more than two (2) months in advance of the date prescribed in the leases for the payment thereof. If an Event of Default is timely cured to the reasonable satisfaction of Assignee by Assignor, tenants shall resume paying rents to Assignor.

The authority and power of Assignee to collect the rents, as set forth herein, may be exercised and said rents may be collected with or without the taking of possession of the Leasehold Property, or any part thereof, and without the necessity of Assignee instituting foreclosure under the Security Documents and/or instituting an action upon the Note or upon this Assignment. Nothing herein, however, shall be construed to prohibit Assignee from instituting such foreclosure or such actions upon the Note or upon this Assignment.

In furtherance of this Assignment, Assignor does hereby additionally authorize and empower Assignee, through Assignor's employees, agents or representatives at the option of Assignee and upon the occurrence and continuance of an Event of Default continuing beyond any applicable notice and cure period, to enter upon the Leasehold Property and to collect, in the name of Assignor or in its own name as Assignee, the rents accrued but unpaid and in arrears on the date of such default, as well as the rents thereafter accruing and becoming payable during the period this Assignment is operative; to this end, Assignor further agrees to cooperate and to assist Assignee, its employees, agents or representatives, in all reasonable ways with collection of said rents.

Assignor does hereby authorize, but nothing herein shall be deemed to require or obligate Assignee, upon such entry onto the Leasehold Property, to take over and assume its management, operation, and maintenance, to perform all acts necessary and proper in its sole discretion, and to expend such sums as may be necessary in connection therewith, including the authority to effect new leases, to cancel or surrender existing leases, and/or to make concessions to tenants, with Assignor releasing all claims against Assignee arising out of such management, operation, and maintenance, excepting the liability of Assignee to account as hereafter set forth.

Assignee, after payment of all actual and proper charges and expenses, including reasonable compensation to such agents, employees or representatives as shall have been selected or employed to manage, operate or maintain the Leasehold Property, and after the accumulation of a reasonable reserve to meet taxes, assessments, utility, rents, and fire and

liability insurance in requisite amounts, shall credit the net amount of income received by it by virtue of this Assignment to any amounts due and owing to it under the terms of the Note and Loan Documents, but the manner of the application of such net income and the determination of which items to be credited shall be in accordance with the sole discretion of Assignee. Any remaining amounts after all payments and credits have been made in accordance with this paragraph shall be paid to Assignor.

Assignor expressly covenants and agrees with Assignee that at the time of execution and delivery of this Assignment, there has been no anticipation of prepayment of any rents by any of the tenants occupying the Leasehold Property under the leases more than two months in advance, except for security deposits; that to Assignor's knowledge, the leases (if any) are valid and enforceable and no default exists thereunder; except as expressly disclosed in writing to Assignee, other than the other liens, no prior assignment has been made of the leases or of any rents from the Leasehold Property; that Assignor shall perform all obligations and duties of lessor under the leases and will promptly notify Assignee of any default claimed by any party to said leases. Assignor further covenants and agrees that Assignor shall have no right, power or authority to alter, modify or amend the terms or conditions of any of the leases in any material manner whatsoever without first obtaining the consent in writing of Assignee to such alteration, modification or amendment, which approval shall not be unreasonably withheld, conditioned or delayed, and except as is customary in the industry, Assignor shall not terminate any of the leases or take any action to forfeit same without the prior written approval of Assignee, which approval shall not be unreasonably withheld, conditioned or delayed.

Nothing herein contained shall be construed as making Assignee a mortgagee in possession, nor shall said Assignee be liable for laches or for failure to collect the rents. It is understood, however, that Assignee is to account for such sums as are actually collected pursuant to this Assignment prior to any foreclosure under the Security Documents. Furthermore, it is covenanted and agreed that Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the leases by reason of this Assignment.

Assignor covenants and agrees with Assignee that no tenant need determine whether or not a default has occurred to make this Assignment operative, but instead, each tenant shall pay over the rents to Assignee upon written notice from it to do so and upon so doing shall be relieved from liability therefor to Assignor in all respects and shall do so until the Note has been paid in full or written notice is otherwise provided.

It is covenanted and agreed that neither the existence of this Assignment, nor the exercise by Assignee of its privilege to collect rents, shall be construed as a waiver by Assignee of the right to enforce payment of the Note in strict accordance with its terms and provisions and those of the Leasehold Deed of Trust, and the collection of rents hereunder shall not constitute waiver of any default which may exist under the terms of the Note or Leasehold Deed of Trust and the Note may be accelerated in accordance with its terms and those of the Leasehold Deed of Trust, notwithstanding such collection.

This Assignment is given as additional security for the performance of each and all of the obligations and covenants of the Note and Leasehold Deed of Trust, together with any renewal, extension or modification thereof.

The covenants and agreements herein contained shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to both genders.

In the event of any conflict between the provisions of this ASSIGNMENT and those of the Subordination Agreement, the Subordination Agreement shall prevail; provided, however, that with respect to any matters addressed in both said documents, the fact that one document provides for greater, lesser or different rights or obligations than the other shall not be deemed a conflict unless applicable provisions are inconsistent and could not be simultaneously enforced or permitted.

The Assignment herein is intended to be a security interest and not a current conveyance, except for the rights provided in Security Documents.

THIS ASSIGNMENT IS TO BE GOVERNED, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF TEXAS. IF ANY PROVISION OF THIS ASSIGNMENT SHALL BE DETERMINED TO BE ILLEGAL OR UNENFORCEABLE, ALL OTHER TERMS AND PROVISIONS HEREOF SHALL NEVERTHELESS REMAIN EFFECTIVE AND SHALL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY LAW.

[Executed on the following page]

EXECUTED to be effective as of the date and year first written above.

ASSIGNOR:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company,
its General Partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public Facility
Corporation, its Sole Member

By: _____
JOHN KENNY
Assistant Secretary

Consented to by:

**SAN ANTONIO HOUSING TRUST
PUBLIC FACILITY CORPORATION,**
a Texas nonprofit public facility corporation

By: _____
JOHN KENNY
Executive Director

Attachment:
Exhibit "A"– Legal Description

(ACKNOWLEDGMENT)

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Instrument was acknowledged before me on this _____ day of _____, 20____ by John Kenny, Assistant Secretary of the SAN ANTONIO HOUSING TRUST PUBLIC FACILITY CORPORATION, a Texas nonprofit public facility corporation and the sole member of ACME ROAD APARTMENTS GP, LLC, a Texas limited liability company and the general partner to ACME ROAD APARTMENTS, LTD., a Texas limited partnership, on behalf of such partnership.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

AFTER RECORDING, RETURN TO:

City of San Antonio
City Attorney's Office
ATTN: CDBG Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

ATTACHMENT I

DECLARATION OF RESTRICTIVE COVENANT OF AFFORDABILITY

ACME ROAD APARTMENTS LTD. ("Owner") makes this declaration of affordability to assure the long-term use of the real property described below to provide decent and affordable housing for low to moderate income residents of the City of San Antonio, Texas as defined in the HOME Investment Partnerships Program, Final Rule, 24 CFR Part 92.203.

1. Owner is the record owner of the leasehold real property located at S. Acme Road at Prosperity Drive (Acme Road Apartments) in the City of San Antonio, Bexar County, Texas, and as more particularly described as that certain tract of land more particularly described as the Leasehold Estate created by that certain Amended and Restated Ground Lease executed by the San Antonio Housing Trust Public Facility Corporation, as lessor, to BORROWER, as lessee, dated as of the date hereof, notice of which is given by that certain Memorandum of Ground Lease dated as of even date hereof, demising the property attached as Exhibit "A" to that certain HOME Loan Deed of Trust given by Owner to and for the benefit of the CITY OF SAN ANTONIO, and which is hereinafter referred to as the "Leasehold Property."

2. In consideration of the loan of funds by the CITY OF SAN ANTONIO to Owner, to fund the eligible costs associated with the construction of three hundred twenty-two (322) rental units in the Acme Road Apartments of which () will be HOME units (the "Project") to provide affordable residences, Owner hereby agrees to restrict the use of the Property in the manner and for the period of time set forth herein.

3. For the benefit of itself, the CITY OF SAN ANTONIO, and the future residents of the Project to be constructed on the Leasehold Property, Owner, its successors and assigns, do hereby adopt and impose on the Leasehold Property the following condition, covenant, and restriction, hereinafter referred to as "restrictive covenant," which shall be a covenant running with the land and shall be binding upon any purchaser, grantee, owner or lessee of any land or building on the Leasehold Property, and their respective successors and assigns:

3.1 For a continuous period of () years from the date of the recording of this Declaration of Restrictive Covenant of Affordability in the Real Property Records of Bexar County, Texas, the Leasehold Property shall be used only to provide housing for eligible low to moderate income residents, as defined herein, under all applicable federal guidelines on the Leasehold Property, as developed by Owner.

3.2 For purposes of this covenant, "persons of low to moderate income" means individuals or families whose incomes do not exceed eighty percent (80%) of the San Antonio area median income, adjusted for household size, as determined by the Secretary of Housing and Urban Development.

3.3 () of the 322 units at any one time will be restricted to the HOME Entitlement Grant Program Regulations.

4. Every person who now or hereafter owns or acquires any rights, title or interest in, or to any portion of the Leasehold Property is and shall be conclusively deemed to have consented and agreed to every restrictive covenant, whether or not any reference to this Declaration is contained in the instrument by which the Leasehold Property was conveyed to such person.

5. This Declaration of Restrictive Covenant of Affordability shall be binding upon the undersigned party and all successive owners of the Leasehold Property or any part thereof. Whenever in this Declaration of Restrictive Covenant of Affordability a reference is made to a party, such reference shall be deemed to include a reference to the successors and assigns of such party.

[Executed on the following page]

ADOPTED on this _____ day of _____, 20 .

OWNER:

ACME ROAD APARTMENTS, LTD.,
a Texas limited partnership

By: Acme Road Apartments GP, LLC,
a Texas limited liability company,
its General Partner

By: San Antonio Housing Trust Public Facility
Corporation, a Texas non-profit Public Facility
Corporation, its Sole Member

By: _____
JOHN KENNY
Assistant Secretary

Consented to by LESSOR:

**SAN ANTONIO HOUSING TRUST
PUBLIC FACILITY CORPORATION,**
a Texas nonprofit public facility corporation

By: _____
JOHN KENNY
Executive Director

Attachment:

Exhibit "A" – Legal Description

(ACKNOWLEDGMENT)

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Instrument was acknowledged before me on this _____ day of _____, 20____ by John Kenny, Assistant Secretary of the SAN ANTONIO HOUSING TRUST PUBLIC FACILITY CORPORATION, a Texas nonprofit public facility corporation and the sole member of ACME ROAD APARTMENTS GP, LLC, a Texas limited liability company and the general partner to ACME ROAD APARTMENTS, LTD., a Texas limited partnership, on behalf of such partnership.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

AFTER RECORDING RETURN TO:

City of San Antonio
City Attorney's Office
ATTN: CDBG Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

ATTACHMENT I

HOME CHDO AGREEMENT

**PROJECT NAME: LENWOOD HEIGHTS SUBDIVISION
CFDA-14.239**

PROJECT NO.:

**STATE OF TEXAS §
 §
COUNTY OF BEXAR §**

This HOME CHDO Agreement (hereinafter referred to as “AGREEMENT”) is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as “CITY”), a Texas municipal corporation, acting by and through its Grants Administrator of the Division of Grants Monitoring and Administration, pursuant to Ordinance No. 2015- , dated , 2015, and Habitat for Humanity of San Antonio, Inc., a Community Housing Development Organization (hereinafter referred to as “CHDO”), a Domestic non-profit corporation, acting by and through its duly authorized President and CEO.

WHEREAS, CITY has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title II of the National Affordable Housing Act of 1990, (P. L. 101-625) (hereinafter referred to as “the Act”) for utilization in connection with its HOME Investment Partnerships Grant (hereinafter referred to as “HOME) Program; and

WHEREAS, the City Council has adopted a budget for such funds and has included therein the expenditure of funds for the project entitled, “Lenwood Heights Subdivision” (hereinafter referred to as “Project”); and

WHEREAS, CHDO will fund certain eligible construction costs associated with the Project;

WHEREAS, the City Council has designated the Division of Grants Monitoring and Administration as the CITY’s representative responsible for the administration and monitoring of the Project and all matters pertaining thereto; and

WHEREAS, CITY wishes to engage CHDO to implement and manage said Project;
NOW THEREFORE:

The parties hereto severally and collectively agree, and by the execution hereof are bound to the mutual obligations herein contained, and to the performance and accomplishment of the tasks hereinafter described.

I. TERM AND TYPE OF ASSISTANCE

1.1 Except as otherwise provided for pursuant to the provisions hereof, this AGREEMENT shall be effective upon its execution and shall terminate on the earlier of (a) , or (b) Project completion.

1.2 The amount of One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00) to CHDO under this AGREEMENT will be made by CITY to CHDO under the terms and conditions set forth herein. CITY shall not be required to make any additional disbursements to CHDO or to any third party under this AGREEMENT.

II. RESPONSIBILITIES

2.1 CHDO hereby accepts responsibility for the performance, in a satisfactory and efficient manner as solely determined by CITY, of all services and activities set forth in this AGREEMENT.

2.2 Unless written notification by CHDO to the contrary is received and approved by CITY, CHDO's President and CEO shall be CHDO's designated representative responsible for the management of all contractual matters pertaining to this AGREEMENT.

2.3 The Grants Administrator of the Division of Grants Monitoring and Administration or his designee shall be CITY's representative responsible for the administration of this AGREEMENT.

2.4 Communications between CITY and CHDO shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.2 and 2.3 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

3.1 CHDO understands that funds provided to it pursuant to this AGREEMENT are funds, which have been made available to CITY by the federal government under the HOME Investment Partnership Program (Final Rule) and in accordance with CITY's HUD-approved Grant Application and with other specific assurances made and executed by CITY. CHDO, therefore, assures and certifies that it will comply with the requirements of the HOME Investment Partnership Program (Final Rule) and with all regulations promulgated thereunder, codified at Title 24 of the Code of Federal Regulations. CHDO understands, however, that the HOME Investment Partnership Program (Final Rule) in no way is meant to constitute a complete compilation of all duties imposed upon CHDO by law or administrative ruling, or to narrow the standards which CHDO must follow. Accordingly, CHDO understands that if the regulations and issuances promulgated pursuant to the HOME Investment Partnership Program (Final Rule) are amended or revised, it shall comply with them or otherwise immediately notify CITY pursuant to the provisions of Article XLIII of this AGREEMENT.

3.2 CHDO understands that certain compliance requirements mandated by applicable laws or regulations are summarized as follows:

- (A) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.251, Property Standards.
- (B) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.350, Use of debarred, suspended or ineligible contractors or sub-recipients and 24 CFR 92 Section 92.508 (a)(7)(viii), Records demonstrating compliance with debarment and suspension requirements.
- (C) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.351(A)(B), Affirmative Marketing, and 24 CFR 92 Section 92.508 (a)(7)(ii)(A), Records demonstrating compliance with the affirmative marketing.
- (D) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.352, Environmental, and 24 CFR 92 Section 58, Environmental standards, and 24 CFR 92 Section 92.508 (a)(7)(iii), Records demonstrating compliance with the environmental review requirements.
- (E) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.354, Labor standards - Federal Labor Standards which includes:
 - (i) Davis- Bacon and Related Acts (Title 40 U.S.C. 3141) - Ensures that mechanics and laborers employed in construction work under federally assisted contracts are paid wages and fringe benefits equal to those which prevail in the locality where the work is performed. This act also provides for the withholding of funds to ensure compliance and excludes from the wage requirements apprentices enrolled in bona fide apprenticeship programs.
 - (ii) Copeland Act (Anti-kickback) (Title 40 U.S.C. 3145)- Governs the deductions from paychecks which are allowable and makes it a criminal offense to induce anyone employed on a federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.
 - (iii) The Contract Work Hours and Safety Standards Act (CWHSSA) (Title 40 U.S.C. 3701)- Provides that mechanics and laborers employed on federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. This act also addresses safe and healthy working conditions.
- (F) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.356, Conflict of interest, and 24 CFR 92 Section 92.508 (a)(7)(vii), Records supporting exceptions to the conflict of interest prohibition.
- (G) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.503, Program income, repayments, and recaptured funds.

- (H) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.505(B), Uniform administrative requirements and cost principles:
 - (i) 24 CFR Part 84, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations";
 - (ii) OMB Circular A-122, "Cost Principles for Non-profit Organizations"; and
 - (iii) OMB Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations".
- (I) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.506, Audit.
- (J) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.508 (a)(7)(i)(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, and
 - (i) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.508 (a)(7)(i)(B), Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended; and
 - (ii) CHDO acknowledges, understands, and agrees to comply to with 24 CFR 92 Section 92.508 (a)(7)(v), Records demonstrating compliance with the labor requirements.

3.3 CHDO must at all times remain in compliance with the requirements set out in Section 3.2 hereinabove. CHDO further understands that said requirements in Section 3.2 are summaries and are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon CHDO by law or administrative ruling, or to narrow the standards which CHDO must follow.

3.4 CHDO assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in Section 3.2 and that CHDO shall include Section 3.2 as part of every contract awarded in connection with this Project.

3.5 CHDO shall observe and comply with all city, state and federal laws, regulations, ordinances and codes affecting CHDO's operations pursuant to this AGREEMENT.

3.6 CHDO understands and acknowledges that the Provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045, are expressly made a part of this AGREEMENT.

3.7 CHDO shall provide the CITY with sufficient documentation to verify that the provisions of Chapter 2258, Texas Government Code, and City Ordinance 2008-11-20-1045, attached hereto as Exhibit "G", are met.

3.8 CHDO shall request the applicable wage decision of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this AGREEMENT prior to the bidding of the PROJECT. Such wage decision shall be obtained from the CITY's Labor Compliance Office for inclusion by CHDO or its contractor in the construction solicitation.

3.9 CHDO understands and acknowledges that CITY may request periodic reports or support to ensure adherence to prevailing wage rates provisions.

3.10 If, as a result of CITY's review, the CITY finds any violations, CHDO shall forfeit as a penalty to the CITY sixty dollars (\$60.00) for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said AGREEMENT, by the contractor or any sub-contractor.

3.11 CHDO understands and agrees that the establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code and City Ordinance 2008-11-20-1045 shall not be construed to relieve CHDO, CHDO's contractor or any subcontractor from his obligation under any Federal or State Law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed hereunder.

3.12 CHDO, its contractor and any subcontractor, in the execution of this PROJECT, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. CHDO and its contractor and any subcontractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation.

3.13 CHDO ensures that this Article III, paragraphs 3.6 through 3.12 and the related wage decision shall be included in its entirety in any sub-contract agreement entered into by CHDO, CHDO's contractor, and/or subcontractor employed on the project.

3.14 CHDO shall forward any questions regarding these prevailing wage provisions to LaborComplianceOffice-LCO@sanantonio.gov .

3.15 CHDO understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in CITY's Housing Program Policies, and HOME Program Recapture/Resale Requirements for Homebuyer Activities, copies of which are attached hereto and incorporated herein for all purposes as Exhibit "D" and that CHDO must at all times remain in compliance therewith; CHDO further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon CHDO by law or administrative ruling, or to narrow the standards which CHDO must follow.

3.16 CHDO assures that all contractors and subcontractors receiving funds in connection with this Project are familiar with, and shall comply with, any and *all* applicable rules and regulations as contained in CITY's Housing Program Policies.

3.17 CHDO shall observe and comply with all Legal Requirements.

IV. LEGAL AUTHORITY

4.1 CHDO represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this AGREEMENT and to perform the responsibilities herein required. A certified resolution by CHDO authorizing this AGREEMENT and its execution must be submitted to the Grants Administrator of the CITY's Division of Grants Monitoring and Administration prior to execution of this AGREEMENT.

4.2 The signer of this AGREEMENT for CHDO represents, warrants, assures, and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of CHDO and to bind CHDO to all terms, performances, and provisions herein contained. A certified resolution approving such authority by CHDO must be submitted to the Grants Administrator of the CITY's Division of Grants Monitoring and Administration prior to execution of this AGREEMENT.

4.3 In the event that a dispute arises as to the legal authority to enter into this AGREEMENT of either the CHDO or the person signing on behalf of CHDO, CITY shall have the right, at its option, to either temporarily suspend, or permanently terminate this AGREEMENT. Should CITY suspend or permanently terminate this AGREEMENT pursuant to this paragraph, however, CHDO shall be liable to CITY for any monies it has received from CITY hereunder.

V. MAINTENANCE OF EFFORT

5.1 CHDO agrees that the funds and resources provided to it under the terms of this AGREEMENT shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through CHDO, had this AGREEMENT not been executed.

VI. PERFORMANCE BY CHDO

6.1 (A) The Project to be assisted pursuant to this AGREEMENT is for the purpose of purchasing real property (the "Property"), the metes and bounds of said Property is attached hereto and incorporated herein for all purposes as Exhibit "J", for resale to, constructing new homes for, performing rehabilitation work for, and/or providing gap financing of low interest loans to "qualified first-time homebuyers," as that term is defined in CITY's CDBG and HOME Housing Program Policies and HOME Program Recapture/Resale Requirements (attached hereto and incorporated herein for all purposes as Exhibit "D"). CHDO shall ensure that the foregoing purpose is maintained and completed in accordance and compliance with the terms, provisions, and requirements of this AGREEMENT.

- (B) CHDO shall manage, perform, and provide all of the activities and services set forth in the Work Statement, attached hereto and incorporated herein for all purposes as Exhibit “A”, to CITY’s satisfaction, utilizing those funds in the Budget Package available hereunder described in Exhibit “C”, attached hereto and incorporated herein for all purposes, and is remitted to CHDO by CITY.
- (C) Prior to the closing of the loan between CHDO and each homebuyer, CHDO shall maintain a report of the verified income of such homebuyer, copies of all closing documents regarding CHDO’s loan with such homebuyer, written evidence that all taxes on the parcel of property to be sold to such homebuyer are paid and such other information as may be reasonably required by CITY and be submitted to CITY upon CITY’s request.
- (D) CHDO shall ensure that one hundred percent (100%) of the dwelling units in the Project financed with funds provided under this AGREEMENT are sold to qualified first-time homebuyers, as that term is defined in the CDBG and HOME Housing Program Policies and HOME Program Recapture/Resale Requirements.
- (E) CHDO certifies that all real property and improvements thereon financed under the terms of this AGREEMENT will remain affordable to qualified first-time homebuyers, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by CITY that will ensure that the Property will remain affordable without regard to the term of any mortgage or the transfer of ownership, for the period of affordability as set forth in the CDBG and HOME Housing Program Policies and HOME Program Recapture/Resale Requirements.
- (F) The funds provided under this AGREEMENT may be used only to purchase real property for resale, constructing new homes, performing rehabilitation work and/or provide gap financing of low interest loans to “qualified first-time homebuyers,” as that term is defined in the CDBG and HOME Housing Program Policies and HOME Program Recapture/Resale Requirements. Such funds may not be used for expenses incurred prior to execution of this AGREEMENT nor for administrative or indirect costs, nor for costs incurred for any “non-arms length” contractor or such other prohibited uses set forth elsewhere in this AGREEMENT.
- (G) CHDO shall ensure that the Project meets such other requirements as CITY may reasonably require with reasonable notice to CHDO.
- (H) CHDO must submit to CITY for its written approval prior to execution, any contract for the sale of any dwelling unit acquired pursuant to this AGREEMENT, along with such information as CITY may require in order to assure that the affordability and other requirements set forth in this AGREEMENT will be satisfied in connection with such sale.

6.2 Modifications or alterations to Exhibit “A” may be made only pursuant to the prior written approval of the Grants Administrator of the CITY’s Division of Grants Monitoring and Administration or his designee.

6.3 CHDO shall comply with each and every term and condition of the Universal Design and Construction Ordinance attached hereto and incorporated herein as Exhibit "F" for all intents and purposes.

VII. DISBURSEMENT BY CITY

7.1 The funds provided under this AGREEMENT will be disbursed to CHDO upon request to CITY in accordance with the provisions herein. The following procedure will be used to ensure orderly and timely disbursement to CHDO upon request in accordance with the provisions below:

CITY will release the funds to be provided hereunder to CHDO within ten (10) days after CITY's receipt from CHDO of a fully complete and CITY-approved invoice billing package, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "E". Not less than fourteen (14) days prior to the requested date for each disbursement under the loan, CHDO shall submit to CITY a written request for such disbursement, together with such supporting documentation and information as CITY may reasonably require. After submission by CHDO of this disbursement request and required information, CITY staff will inspect the Property, verify the information submitted, and inform CHDO of disapproval, if such is the case, at least three (3) business days before the projected funding date. It is expressly understood and agreed by the parties hereto that such approval or disapproval lies exclusively and solely within the discretion of CITY. If disapproved, the Grants Administrator of the CITY's Division of Grants Monitoring and Administration will specify in writing the grounds for denial of the request for disbursement. CHDO will have the opportunity to cure any deficiency in its request for disbursement and obtain CITY approval of such cure within five (5) business days after the date of such denial. For purposes of this AGREEMENT, the term "business day" shall mean every day of the week except all Saturdays, Sundays, and those scheduled holidays officially adopted and approved by the San Antonio City Council for CITY employees. If, and to the extent that, CHDO's request for such disbursement is approved, CITY will disburse funds in a certified check made payable to the order of CHDO within ten (10) business days thereafter. It is expressly agreed by the parties hereto that CITY shall pay CHDO an amount equal to CITY's obligations at such time, not previously billed to and subsequently paid by CITY, subject to deduction for any costs questioned or not allowable.

7.2 This AGREEMENT obligates only the specific funds made to CHDO by CITY as specified in paragraph 1.2 of this AGREEMENT. It does not obligate CITY's general funds or any other monies or credits of CITY.

7.3 CITY shall not be liable for any cost, or portion thereof, which:

- (A) Has been paid, reimbursed, or is subject to payment or reimbursement from another source;
- (B) Is not in strict accordance with the terms of this AGREEMENT, including all exhibits attached hereto; or

- (C) Is not an allowable cost as defined by Article VIII of this AGREEMENT or by the Budget Package, attached hereto and incorporated herein for all purposes as Exhibit "C".

7.4 CITY shall not be liable for any cost, or portion thereof, which is or was incurred in connection with an activity of CHDO where:

- (A) Prior written authorization from CITY is required for the activity and such authorization was not first procured; or
- (B) CITY has requested that CHDO furnish data concerning an activity prior to proceeding further therewith and CHDO nonetheless proceeds without first submitting the data and receiving CITY approval thereof.

7.5 CITY shall not be obligated or liable under this AGREEMENT to any party, other than CHDO, for payment of any monies or provision of any goods or services.

7.6 Upon termination of this AGREEMENT, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY, HUD, or any other federal agency, CHDO shall refund such amount to CITY within ten (10) business days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified. Refunds of disallowed or disapproved costs, or refunds of any other nature referred to in this AGREEMENT, however, shall not be made from funds received pursuant to this AGREEMENT or from funds received from or through the federal government or CITY.

7.7 In the event that the actual amount expended by CHDO to meet the level of performance specified in Exhibit "A", or any amendment thereto, is less than that amount provided to CHDO pursuant to this AGREEMENT, then CITY reserves the right to reappropriate or recapture any such underexpended funds.

VIII. ALLOWABLE COSTS

8.1 Costs shall be considered allowable only if approved in writing by CITY and incurred directly and specifically in the performance of and in compliance with this AGREEMENT and with all city, state and federal laws, regulations, and ordinances affecting CHDO's operations hereunder. Further, approval of CHDO's Budget Package as set forth in Exhibit "C" shall not constitute prior written approval of the items included therein.

8.2 Written requests for prior approval by CITY under any provision of this AGREEMENT shall be CHDO's responsibility and shall be made within sufficient time to permit a thorough review by CITY. Written approval by CITY must be obtained prior to the commencement of procedures to solicit or purchase services, or real or personal property. Procurements and/or purchases which must be approved pursuant to the terms of this AGREEMENT shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

IX. PROGRAM PROCEEDS

9.1 For purposes of this AGREEMENT, "Program Proceeds" shall mean earnings of CHDO realized from activities resulting from this AGREEMENT or from CHDO's management of funding provided or received hereunder. Such earnings shall include, but shall not be limited to, interest income, usage or rental/lease fees, income produced from contract-supported services of individuals or employees or from the use of equipment, or facilities of CHDO provided as a result of this AGREEMENT, and payments from clients or third parties for services rendered by CHDO pursuant to this AGREEMENT.

9.2 On a monthly basis, CHDO shall report to CITY all Program Proceeds received or accrued during the preceding month. CHDO shall be allowed to retain such Program Proceeds provided that said funds are used by CHDO solely and specifically for affordable housing purposes and the administration of these affordable housing programs. For purposes of this AGREEMENT, the term "affordable housing purposes" shall be defined as the expansion of the supply of decent, safe, sanitary, and affordable housing for low-income residents of San Antonio, Texas. For purposes of this AGREEMENT, "low-income" shall mean a household whose income cannot exceed eighty percent (80%) of the median income, adjusted for household size, in accordance with the most recently issued HUD Section 8 Income Guidelines, and "affordable" shall mean having the monthly payments for principal, interest, property taxes, and insurance for the home purchased not exceed thirty-three percent (33%) of household gross income. Prior to the retaining of such Program Proceeds by CHDO, CHDO shall first make a written request and obtain written approval from CITY as to the activity for which CHDO desires to expend Program Proceeds. Should CITY not approve such an activity, such Program Proceeds shall be immediately returned to CITY.

9.3 Records of the receipt and disposition of Program Proceeds shall be maintained by CHDO in the same manner as required for other contract funds and shall be submitted to CITY in the format prescribed by CITY.

9.4 CHDO shall include this Article, in its entirety, in all of its subcontracts involving income-producing services or activities.

9.5 It shall be CHDO's responsibility to obtain from CITY a prior determination as to whether or not income arising directly or indirectly from this AGREEMENT, or from the performance thereof, constitutes Program Proceeds, and unless otherwise approved in writing by CITY, CHDO shall be responsible to CITY for the repayment of any and all amounts determined by CITY to be Program Proceeds.

X. RECAPTURE AND RESALE PROVISIONS

10.1 For purposes of this AGREEMENT, "Recapture Provisions" shall mean provisions that ensure that the CITY recoups all or a portion of the HOME assistance provided to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability.

10.2 Where applicable, CHDO shall have in its written agreements with homebuyers Recapture Provisions pursuant to 24 C.F.R. 92.254. CHDO written agreements shall include a

note, deed of trust, and a restrictive covenant of affordability as part of its written agreements with homebuyers.

10.3 The definitions and formulas that apply to Recapture Provisions and Resale Provisions are detailed fully in Exhibit “D”, attached hereto.

10.4 For purposes of this AGREEMENT, “Resale Provisions” shall mean requirements that ensure that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.

10.5 Where applicable, CHDO shall have in its written agreements with homebuyers Resale Provisions pursuant to 24 C.F.R. 92.254. CHDO written agreements shall ensure that if the HOME assisted property is sold within the affordability period, it is sold to an eligible low-income household. CHDO written agreements shall include a restrictive covenant of affordability as part of its written agreements with homebuyers.

10.6 Notwithstanding any provision to the contrary herein, CHDO shall not include both Recapture and Resale provisions in its agreements with homebuyers, or any combination or hybrid thereof.

10.7 CHDO shall provide its written agreements to CITY for approval prior to execution by homebuyers.

10.8 CHDO shall record all HOME funded security instruments, including said deed of trusts and restrictive covenants of affordability with the Bexar County Clerk’s Office and return a file stamped copy of said security instruments to CITY for CITY’s records.

XI. OWNERSHIP OF PERSONAL PROPERTY

11.1 CHDO shall be fully and solely responsible for safeguarding and maintaining all personal property referred to in this Article. Furthermore, CHDO shall be fully and solely responsible for reporting any and all lost, stolen, missing, damaged or destroyed property referred to in this Article. Inasmuch as funds provided to CHDO pursuant to this AGREEMENT are funds which have been made available to CITY by the federal government, all such lost, stolen, missing, damaged or destroyed property shall be reported by CHDO to the local Police Department. CHDO shall make such reports immediately and shall deliver a copy of the official written police report to the CITY’s Division of Grants Monitoring and Administration immediately. Prior to such delivery, CHDO shall ascertain that said report includes, at a minimum, the following:

- (A) An accurate and complete description of such property; and

- (B) An accurate and complete description of the circumstances surrounding the loss, theft, damage or destruction of such property.

In the event a copy of the official written police report has not been made available to CHDO, a summary of said report shall be provided and delivered by CHDO to the CITY's Division of Grants Monitoring and Administration, including therein the date the report was made to the local Police Department and the name and badge number of the police officer who wrote such police report.

XII. FURTHER REPRESENTATIONS AND WARRANTIES

12.1 CHDO further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY are, shall be and shall remain complete and accurate as of the date shown on the information, data or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY. Further, the submission of falsified information or the failure of CHDO to submit information as requested is grounds for termination of this AGREEMENT and CHDO will be liable to CITY for any and all monies it has received from CITY hereunder;
- (B) Any supporting financial statements heretofore or hereafter provided to CITY are, shall be, and shall remain complete, accurate and reflective of the financial condition of CHDO on the date shown on said statements and during the period covered thereby, and that since said date shown, except as provided by written notice to CITY, there has been no material change, adverse or otherwise, in the financial condition of CHDO;
- (C) No litigation or proceedings are presently pending or threatened against CHDO and CHDO has no information, or cause to believe, that litigation or proceedings, whether judicial or administrative against CHDO is imminent;
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which CHDO is doing business or with the provisions of any existing indenture or agreement of CHDO;
- (E) CHDO has the legal authority to enter into this AGREEMENT and accept payments hereunder, and has taken all necessary measures to authorize such execution of AGREEMENT and acceptance of payments pursuant to the terms and conditions hereof; and
- (F) None of the assets of CHDO are, both currently and for the duration of this AGREEMENT, subject to any lien or encumbrance of any character, except for current taxes not delinquent, and except as shown in the financial statements provided by CHDO to CITY.

XIII. CONDITIONS OF REIMBURSEMENT

13.1 In addition to the provisions of paragraph 35.1 hereof, CITY at its option, may terminate this AGREEMENT should any one or more of the following occur:

- (A) CHDO or a first-time homebuyer fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers or encumbers all or any part of the Property or improvements thereon or any interest therein, the income therefrom, or any other item of collateral, whether voluntarily or involuntarily, other than to a qualified first-time homebuyer, without the prior written consent of CITY;
- (B) CHDO fully or partially sells, conveys, assigns, mortgages, pledges, transfers, or encumbers an interest in CHDO (if CHDO is not a natural person or persons but a corporation, partnership, trust or other legal entity) including, in the event CHDO is a limited or general partnership, a joint venture, or a limited liability company, a change in the ownership interest in any general partner, any joint venturer or any member, either voluntarily, involuntarily or otherwise, without the prior written consent of CITY, whether such interest is in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise;
- (C) CHDO or a subsequent first-time homebuyer converts the Property or a portion thereof to a form of condominium or cooperative ownership or other non-residential use;
- (D) CHDO files or has filed against it, a petition for the appointment of a receiver, or for bankruptcy or insolvency becomes or is adjudicated, insolvent, or bankrupt, or admits in writing the inability to pay debts as they mature. Petitions or applies to any tribunal for, or consents to, or does not contest the appointment of a receiver, trustee, custodian, or similar officer for CHDO. Commences any case, proceeding, or other action under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law, or statute of any jurisdiction, whether now or hereafter in effect;
- (E) The Property or any part thereof is taken on execution or other process of law in any action against CHDO or a first-time homebuyer;
- (F) CHDO or a first-time homebuyer abandons the Property or a portion thereof, in which event such abandonment shall constitute an assignment to CITY, at CITY's option, of CHDO's interest in any contract then affecting the abandoned property;
- (G) The holder of any lien or security interest on the Property, without implying the consent of CITY to the existence or creation of any such lien or security interest (except as otherwise acknowledged herein), declares a default and such default is not cured within any applicable grace period set forth in the applicable document or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder;

- (H) The Property, or any portion thereof, is subjected to actual or threatened waste or to removal, demolition or alteration so that the value of the Property is diminished thereby and CITY determines that it is not adequately protected from any loss, damage or risk associated therewith;
- (I) CHDO submits false or falsified information to CITY or fails to timely submit information as requested by CITY;
- (J) CHDO (i) initiates any changes in the Project without CITY's written approval or (ii) fails to provide to CITY documentation acceptable to CITY of the actual quoted costs incurred;
- (K) CHDO fails to comply with the resales and recapture provisions established by CITY in its CDBG and HOME Housing Program Policies; and
- (L) CHDO fails to commence, continue, and complete the Project in accordance with the dates set forth in the Work Statement, attached hereto and incorporated herein for all purposes as Exhibit "A".

XIV. MAINTENANCE OF RECORDS

14.1 CHDO agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. CHDO further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions and requirements of this AGREEMENT and with all applicable federal and state regulations establishing standards for financial management; and
- (B) That CHDO's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure.

14.2 CHDO agrees to retain, for the period of time and under the conditions specified by CITY, all books, records, documents, reports, and written accounting policies and procedures pertaining to the operation of programs and expenditures of funds under this AGREEMENT.

14.3 CHDO agrees to include the substance of this Article in all of its sub-contracts.

14.4 Nothing in this Article shall be construed to relieve CHDO of:

- (A) Responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this AGREEMENT; and
- (B) Fiscal accountability and liability pursuant to this AGREEMENT and any applicable rules, regulations, and laws.

**XV. ACCESSIBILITY OF RECORDS, MONITORING,
EVALUATION AND INSPECTIONS**

15.1 The Grants Administrator of the CITY's Division of Grants Monitoring and Administration, or his duly authorized representative, will monitor, provide fiscal control, and evaluate CHDO's performance and operations under this AGREEMENT to ensure CHDO's compliance herewith, to ensure compliance with the National Affordable Housing Act, and to ensure compliance with all other laws, regulations and ordinances related to the performance hereof. CHDO agrees to cooperate fully with CITY in the development, implementation, and maintenance of record-keeping systems and will provide CITY staff and other authorized persons, (e.g., City of San Antonio internal auditors, EEO officers, independent public accountants, architects, and engineers) access during regular business hours, as often as CITY deems necessary for the purposes of audit, monitoring, evaluation, coordination, or investigation, to any and all of CHDO's books, records and files on the programs covered by this AGREEMENT and such other programs administered by CHDO with funds from any other sources, and to any and all books, records and files pertaining to CHDO's proprietary, agency or other funds as CITY may need and request. CITY may make excerpts, transcripts, and copies from all such books, records, and files, including all agreements, invoices, materials, and other data relating to all matters covered by this AGREEMENT. CHDO agrees that it will cooperate with CITY in such a way so as not to obstruct or delay CITY in its monitoring of CHDO's performance and that it will designate one of its staff to coordinate the monitoring process as requested by CITY staff.

- (A) Unless otherwise provided herein, all such records must continue to be available for inspection and audit for a period of four (4) years after the termination date hereof or until all audits are complete and findings on all claims have been finally resolved, whichever is the greater period of time.
- (B) CHDO agrees that during the term of this AGREEMENT any duly authorized representative of CITY may conduct on-site inspections at reasonable times, and interview personnel and clients, for the purpose of evaluating and monitoring CHDO's operations for compliance with this AGREEMENT.
- (C) Any designated representative of CITY may attend any of CHDO's board, executive, staff or other meetings if any item relating to this AGREEMENT will, or is reasonably anticipated to be discussed.
- (D) Copies of any and all fiscal, management or audit reports by any of CHDO's funding or regulatory bodies shall be submitted to both the CITY's Division of Grants Monitoring and Administration and Department of Internal Review within five (5) business days of receipt thereof by CHDO.

15.2 CHDO agrees to permit CITY to inspect the Property, or any portion thereof, at any time deemed appropriate by CITY, to determine if it is being maintained in accordance with local Uniform Building Code standards.

XVI. PERFORMANCE RECORDS AND REPORTS

16.1 As often and in such form as CITY may require, CHDO shall furnish CITY such performance records and reports as deemed by CITY as pertinent to matters covered by this AGREEMENT.

16.2 As of the commencement date of this AGREEMENT, CHDO agrees to gather information and data relative to all programmatic and financial reporting.

16.3 Performance records and reports shall be submitted to CITY by CHDO as often as CITY may require and shall be in accordance with the format set forth in Exhibit "B", attached hereto and incorporated herein for all purposes.

XVII. INSURANCE

17.1 CHDO agrees to comply with the following insurance provisions:

- (A) Prior to the commencement of any work under this AGREEMENT, CHDO shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the CITY's Division of Grants Monitoring and Administration, which shall be clearly labeled "Lenwood Heights Subdivision" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this AGREEMENT until such certificate and endorsements have been received and approved by the CITY's Division of Grants Monitoring and Administration. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- (B) The CITY reserves the right to review the insurance requirements of this Article during the effective period of this AGREEMENT and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this AGREEMENT. In no instance will CITY allow modification whereby CITY may incur increased risk.
- (C) A CHDO's financial integrity is of interest to the CITY; therefore, subject to CHDO's right to maintain reasonable deductibles in such amounts as are approved by the City, CHDO shall obtain and maintain in full force and effect for the duration of this AGREEMENT, and any extension hereof, at CHDO'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 below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury *d. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *e. Explosion, Collapse, Underground	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
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. *Professional Liability (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. *Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
7. *Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property
****Please consult w/ RM to amend the insurance table to suit the scope of your contract****	
*if applicable	

- (D) CHDO agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of CHDO herein, and provide a certificate of insurance and endorsement that names the CHDO and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of CHDO. CHDO shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by CITY's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. Such modification may be enacted by letter signed by CITY's Risk Manager, which shall become a part of the contract for all purposes.
- (E) As they apply to the limits required by the CITY, the CITY shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. CHDO shall be required to comply with any such requests and shall submit requested documents to CITY at the address provided below within 10 days. CHDO shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Division of Grants Monitoring and Administration
P.O. Box 839966
San Antonio, Texas 78283-3966

- (F) CHDO agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the CITY.
 - Provide advance written notice directly to CITY of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- (G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, CHDO shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend CHDO'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.
- (H) In addition to any other remedies the CITY may have upon CHDO's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order CHDO to stop work hereunder, and/or withhold any payment(s) which become due to CHDO hereunder until CHDO demonstrates compliance with the requirements hereof.
- (I) Nothing herein contained shall be construed as limiting in any way the extent to which CHDO may be held responsible for payments of damages to persons or property resulting from CHDO's or its subcontractors' performance of the work covered under this Agreement.
- (J) It is agreed that CHDO's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this AGREEMENT.
- (K) It is understood and agreed 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 the CITY shall be limited to insurance coverage provided.
- (L) CHDO and any subcontractors are responsible for all damage to their own equipment and/or property.

XVIII. INDEMNIFICATION

18.1 CHDO covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors and representatives of the CITY, individually or collectively, from and against any and all 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 injury or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to CHDO's activities under this AGREEMENT, including any acts or omissions of CHDO, any agent, officer, director, representative, employee, contractor or subcontractor of CHDO, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this INDEMNIFICATION 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. CHDO shall promptly advise the CITY in writing of any

claim or demand against the CITY or CHDO known to CHDO related to or arising out of CHDO's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CHDO's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CHDO of any of its obligations under this paragraph.

18.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this Article (Article XVIII), is an INDEMNITY extended by CHDO to INDEMNIFY, PROTECT, and HOLD HARMLESS the CITY from the consequences of the CITY's OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this Article SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death or damage. CHDO further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

18.3 It is expressly understood and agreed that CHDO is and shall be deemed to be an independent contractor and operator responsible to all parties for its acts or omissions and that CITY shall in no way be responsible therefor.

XIX. SPECIAL CONDITIONS

19.1 CHDO acknowledges, understands, and agrees to comply with the following federal regulations as promulgated in Section 3 clause of the Housing and Urban Development Act of 1968, as amended, and shall provide CITY with the information requested in the Section 3 Utilization Plan, attached hereto and incorporated herein for all purposes as Exhibit "I", upon CITY's request:

- (A) The work to be performed under this AGREEMENT is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701(u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects 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 to this AGREEMENT agree to comply with HUD's regulations in 24 C.F.R. 135, which implement Section 3. As evidenced by their execution of this AGREEMENT, the parties to this AGREEMENT certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (C) CHDO agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers'

representative of CHDO's commitments under this Section 3 clause, 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, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

- (D) CHDO agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. 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 C.F.R. 135. CHDO will not subcontract with any subcontractor where CHDO has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. 135.
- (E) CHDO will certify that any vacant employment positions, including training positions, that are filled (1) after CHDO is selected but before the AGREEMENT is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. 135 require employment opportunities to be directed, were not filled to circumvent CHDO's obligations under 24 C.F.R. 135.
- (F) Noncompliance with HUD's regulations in 24 C.F.R. 135 may result in sanctions, termination of this AGREEMENT for default, and debarment or suspension from further 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) also applies to the work to be performed under this AGREEMENT. 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 AGREEMENT that are subject to the provision of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

19.2

XX. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

20.1 In the event that CHDO receives funding hereunder in excess of \$10,000.00, CHDO shall submit for CITY approval, within thirty (30) calendar days following execution of this AGREEMENT, a written plan for compliance with federal equal employment opportunity and affirmative action rules, regulations, and laws.

20.2 CHDO shall comply with all applicable local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws.

20.3 So that CITY can investigate compliance with local, state, and federal equal employment opportunity and affirmative action rules, regulations, and laws, CHDO shall furnish to CITY any and all information and reports requested by CITY, and shall permit access by CITY of any, and all of its books, records, and accounts.

20.4 In the event of non-compliance by CHDO (or CHDO's sub-contractors) with local, state and federal equal employment opportunity and affirmative action rules, regulations and laws, this AGREEMENT may be canceled, terminated, or suspended by CITY, in whole or in part, and CHDO may be barred from further contracts with CITY.

XXI. NONDISCRIMINATION

21.1 CHDO covenants that it, or its agents, employees or anyone under its control to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, or familial status in employment practices or in the use of or admission to the premises at, in or on which the Project described herein is to be performed, which said discrimination CHDO acknowledges is prohibited.

XXII. PERSONNEL POLICIES, PROCEDURES, AND PRACTICES

22.1 Personnel policies, procedures, and practices shall be established by CHDO and shall be available for examination. Such policies, procedures, and practices, however, shall be in writing and approved by the governing body of CHDO.

XXIII. CONFLICT OF INTEREST

23.1 CHDO acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, his parent, child or spouse, a business entity in which the officer or employee, or his parent, child or spouse owns ten percent (10%) or more of the voting stock or shares of the business entity, or ten percent (10) or more of the fair market value of the business entity, a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

23.2 Pursuant to the subsection above, CHDO warrants and certifies, and this AGREEMENT is made in reliance thereon, that it, its officers, employees, and agents are neither officers nor employees of the CITY. CHDO further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY's Ethics Code.

XXIV. NEPOTISM

24.1 CHDO shall not employ in any paid capacity, any person who is a member of the immediate family of any person who is currently employed by CHDO, or who is a member of CHDO's governing body. The term "member of immediate family" shall include: wife, husband, son, daughter, mother, father, brother, sister, in-law, aunt, uncle, cousin, nephew, niece, step-parent, step-child, half-brother, and half-sister.

XXV. POLITICAL ACTIVITY

25.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used either directly or indirectly for any political activity, including, but not limited to, an activity to further the election or defeat of any candidate for public office. Nor shall said performance for any activity undertaken to influence the passage, defeat, or final content of local, state, or federal legislation.

XXVI. SECTARIAN ACTIVITY

26.1 None of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used directly or indirectly for the construction, operations, maintenance, or administration of any sectarian or religious facility or activity. Nor shall said performance rendered, or funds received be utilized to benefit directly or indirectly any such sectarian or religious facility or activity.

XXVII. DIRECTORS' MEETINGS

27.1 During the term of this AGREEMENT, CHDO shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors. Said copies of notices shall set forth the time and place of each meeting, shall be delivered to CITY in a timely manner so as to give CITY adequate notice thereof and shall include therein an agenda and a brief description of the matters to be discussed thereat.

27.2 CHDO understands and agrees that CITY representatives shall be afforded access to all Board of Directors' meetings.

27.3 Minutes of all meetings of CHDO's governing body shall be submitted to CITY within ten (10) business days of approval.

XXVIII. PUBLICITY

28.1 When appropriate, as determined by and upon written approval of CITY, CHDO shall publicize the activities conducted by CHDO pursuant to the terms of this AGREEMENT. In any news release, sign, brochure, or other advertising medium disseminating information prepared or distributed by or for CHDO, however, mention shall be made that HUD's funding and CITY's participation have made this Project possible.

XXIX. PUBLICATIONS

29.1 All published materials and written reports submitted pursuant to this AGREEMENT shall be originally developed unless otherwise specifically provided for herein. If material not originally developed is included in a report, however, said material shall have its source identified, either in the body of the report or by footnote, regardless of whether the material is in a verbatim or extensive paraphrase format.

29.2 All published materials submitted pursuant to this Project shall include the following reference on the front cover or title page:

“This document was prepared in accordance with the City of San Antonio’s HOME Entitlement Grant Program, with funding received from the United States Department of Housing and Urban Development.”

XXX. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

30.1 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by CHDO, shall, upon receipt, become the property of CITY.

XXXI. FUNDING APPLICATIONS

31.1 CHDO agrees to notify CITY each time CHDO is preparing or submitting any application for funding directly or indirectly relating to the Project. When so preparing or submitting such an application, the following procedures shall be adhered to by CHDO:

- (A) When the funding application is in the planning stages, a description of the funds being applied for and of the proposed use for the funds shall be submitted by CHDO to CITY;
- (B) Upon award or notice of award, whichever is sooner, CHDO shall notify CITY of the award or notice thereof, and of the effect, if any, of such funding on the funds and programs agreed to hereunder. Such notice shall be submitted by CHDO to CITY, in writing, within ten (10) business days of receipt of the award or notice thereof, together with copies of the applicable budget, personnel complement, program description, and contract; and
- (C) Except pursuant to prior written consent of CITY, CHDO shall not use, either directly or indirectly, resources provided hereunder to prepare applications for other federal or private funds, nor shall said resources be used, directly or indirectly, as contributions.

**XXXII. CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS**

32.1 CHDO certifies, and the CITY relies thereon in execution of this AGREEMENT, that neither CHDO nor its Principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded for the award of contracts by any Federal governmental agency or department.

32.2 "Principals," for the purposes of this certification, means officers, directors, owners, partners, and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).

32.3 CHDO shall provide immediate written notice to CITY, in accordance with Article XLIII, if, at any time during the term of this AGREEMENT, including any renewals hereof, CHDO learns that its certification was erroneous when made or has become erroneous by reason of changed circumstances.

32.4 CHDO's certification is a material representation of fact upon which the CITY has relied in entering into this AGREEMENT. Should CITY determine, at any time during this AGREEMENT, including any renewals hereof, that this certification is false, or should it become false due to changed circumstances, the CITY may terminate this AGREEMENT in accordance with Article XXXV relating to termination of the AGREEMENT.

XXXIII. SUB-CONTRACTING

33.1 Any other clause of this AGREEMENT to the contrary notwithstanding, none of the work or services covered by this AGREEMENT shall be sub-contracted without the prior written approval of CITY. Any work or services approved for sub-contracting hereunder, however, shall be sub-contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this AGREEMENT. Compliance by sub-contractors with this AGREEMENT shall be the responsibility of CHDO.

33.2 CHDO agrees that no sub-contract approved pursuant to this AGREEMENT shall provide for payment on a "cost plus a percentage of cost" basis.

33.3 Despite CITY approval of a sub-contract, CITY shall in no event be obligated to any third party, including any sub-contractor of CHDO, for performance of work or services, nor shall CITY funds ever be used for payment of work or services performed prior to the date of AGREEMENT execution or extending beyond the date of AGREEMENT expiration without the prior written approval of CITY.

XXXIV. CHANGES AND AMENDMENTS

34.1 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing executed by both CITY and CHDO.

34.2 It is understood and agreed by the parties hereto that changes in local, state, and federal rules, regulations, or laws applicable hereto may occur during the term of this AGREEMENT. Any such changes shall be automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation, or law.

34.3 CHDO agrees to notify CITY in writing of any proposed change in physical location for work to be performed pursuant to the terms of this AGREEMENT. Such notice shall be provided by CHDO to CITY at least thirty (30) calendar days in advance of the proposed change.

34.4 CHDO further agrees to notify CITY of any changes in personnel or governing board composition, such notice to be provided within five (5) business days of the change.

XXXV. TERMINATION AND SUSPENSION

35.1 If CHDO fails to fulfill in a timely and proper manner any of its obligations under this AGREEMENT, violates any of the covenants, agreements, guarantees or stipulations of this AGREEMENT, or violates any rule, regulation or law to which CHDO is bound or will be bound under the terms of this AGREEMENT, CITY will have the right to terminate this AGREEMENT by sending written notice to CHDO of such termination and specifying the effective date thereof.

35.2 Notwithstanding any other remedy contained herein or provided by law, and without limiting or waiving any rights and remedies it may otherwise have, CITY, at its option, may delay, suspend, limit, or cancel funds, rights and privileges herein given CHDO for failure to timely and properly comply with the letter or spirit of this AGREEMENT. Further, CITY may, at its option, place CHDO on probation or suspension, whichever CITY deems appropriate, during which time CITY may withhold disbursements where CITY determines that CHDO is not in full compliance with the AGREEMENT. The period of funding suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed thirty (30) calendar days. Upon expiration of the suspension period, one of the following shall occur:

- (A) If CITY determines that the default or deficiency has been cured, CHDO may at CITY's option, be restored to full compliance status and paid all eligible funds withheld during such probation or suspension period; or
- (B) If CITY determines that CHDO continues to not comply or cannot comply with this AGREEMENT, CITY may terminate this AGREEMENT.

35.3 The CITY shall have the further right to terminate this AGREEMENT if one or more of the following occur:

- (A) Neglect or failure by CHDO to perform or observe any of the terms, conditions, covenants or guarantees of this AGREEMENT or of any written contract or amendment between CITY and CHDO;
- (B) Termination or reduction of funding of the Project by HUD;

- (C) Failure by CHDO to cure, within the period prescribed pursuant to paragraph 35.2 of this AGREEMENT, any default or deficiency that is the basis for termination or suspension hereunder;
- (D) Finding by CITY that CHDO:
 - (1) is in such unsatisfactory financial condition as to endanger performance under this AGREEMENT, including, but not limited to:
 - (a) The apparent inability of CHDO to meet its financial obligations;
 - (b) The appearance of items that reflect detrimentally on the creditworthiness of CHDO, including, but not limited to, liens, encumbrances, etc., on the assets of CHDO;
 - (2) has allocated inventory to this AGREEMENT substantially exceeding reasonable requirements; or
 - (3) is delinquent, in the ordinary course of business, in the payment of taxes or in the payment of costs of performance of this AGREEMENT;
- (E) Appointment of a trustee, receiver or liquidator for all or a substantial part of CHDO's property, or property in which CHDO possesses an interest, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against CHDO;
- (F) The entry by a court of competent jurisdiction of a final order providing for the modification or alteration of the rights of CHDO's creditors;
- (G) Inability by CHDO to conform to changes in local, state, and federal rules, regulations, and laws as provided for in Article III and in paragraph number 35.2 of this AGREEMENT; and
- (H) Violation by CHDO of any rule, regulation or law to which CHDO is bound or shall be bound under the terms of this AGREEMENT.

35.4 Should this AGREEMENT be terminated by either party hereto for any reason, including termination under Section 35.5 of this AGREEMENT, if the work required hereunder of CHDO is not fully completed to the satisfaction of CITY in accordance with the terms of this AGREEMENT, CHDO shall refund any and all sums of money it has received hereunder within ten (10) working days of CITY's written request therefor.

35.5 CITY may terminate this AGREEMENT for convenience at any time.

35.6 Upon a decision to terminate by either CITY or CHDO, written notice of such, and the effective date thereof, shall be immediately provided to the other party.

35.7 Upon receipt of notice to terminate, CHDO shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts which relate to the performance of this AGREEMENT. To this effect, CITY shall not be liable to CHDO or CHDO's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination.

35.8 Upon default or upon receipt of notice to terminate, 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 CHDO under this AGREEMENT shall, at the option of CITY, and in accordance with Article XXX hereof, become the property of CITY and shall, if requested or agreed to by CITY, be delivered by CHDO to CITY in a timely and expeditious manner.

35.9 Within thirty (30) days after receipt of notice to terminate, CHDO shall submit a statement to CITY, indicating in detail the services performed under this AGREEMENT and the status of the Project prior to the effective date of termination.

35.10 Any termination of this AGREEMENT as herein provided shall not relieve CHDO from the payment or repayment of any sum(s) that shall then be due and payable or become due and payable to CITY hereunder or as provided for at law or in equity, and any such termination shall not prevent CITY from enforcing the payment or repayment of any such sum(s) or claim for damages from CHDO. Instead, 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.

XXXVI. NOTIFICATION OF ACTION BROUGHT

36.1 In the event that any claim, demand, suit, proceeding, cause of action or other action (hereinafter collectively referred to as "claim") is made or brought against CHDO, CHDO shall give written notice thereof to CITY within two (2) business days after itself being notified. CHDO's notice to CITY shall state the date and hour of notification to CHDO of the claim, the names and addresses of those instituting or threatening to institute the claim, the basis of the claim, and the name(s) of any others against whom the claim is being made or threatened. Written notice pursuant to this Article shall be delivered either personally or by mail in accordance with Article XLIII of this AGREEMENT.

XXXVII. ASSIGNMENTS

37.1 CHDO shall not transfer, pledge, or otherwise assign this AGREEMENT, any interest in, and to same or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt at transfer, pledge, or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXXVIII. SEVERABILITY OF PROVISIONS

38.1 If any clause or provision of this AGREEMENT is held invalid, illegal, or unenforceable under present or future federal, state, or local laws, including but not limited to, the CITY

Charter, CITY Code, or ordinances of the City of San Antonio, Texas, then, and in that event it is the intention of the parties hereto that such invalidity, illegality, or unenforceability shall not affect any other clause or provision hereof. The remainder of this AGREEMENT shall be construed as if such invalid, illegal, or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto, that in lieu of each clause or provision of this AGREEMENT that is invalid, illegal, or unenforceable, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

XXXIX. RENEWAL NOT AUTOMATIC

39.1 Funding under this AGREEMENT and any amendments or waivers that may be made or granted hereunder shall not be automatically renewed on the anniversary date of this AGREEMENT. CHDO shall make a written request to CITY for any renewal, amendment or waiver at least thirty (30) days prior to the expiration of this AGREEMENT. It shall be in CITY's sole discretion to approve or deny said request.

XL. NON-WAIVER OF PERFORMANCE

40.1 No waiver by CITY of a breach of any of the terms, conditions, covenants, or guarantees of this AGREEMENT shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this AGREEMENT, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this AGREEMENT shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

40.2 No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

40.3 No representative or agent of CITY may waive the effect of the provisions of this Article.

XLI. ENTIRE AGREEMENT

41.1 This AGREEMENT, including any and all existing exhibits and attachments cited herein, constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the parties hereto unless same be in writing, dated of even date or subsequent to the date hereof, and duly executed by the parties.

XLII. INTERPRETATION

42.1 In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this AGREEMENT or its governing

rules, regulations, laws, codes, or ordinances, CITY, as the party ultimately responsible to HUD for matters of compliance, shall have the final authority to render or secure an interpretation.

XLIII. NOTICES

43.1 For purposes of this AGREEMENT, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

LENDER: Grants Administrator
Division of Grants Monitoring and Administration
City of San Antonio
1400 S. Flores, Unit 3
San Antonio, Texas 78204

CHDO: Habitat for Humanity of San Antonio
311 Probandt
San Antonio, Texas 78204
President and CEO

Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

XLIV PARTIES BOUND

44.1 This AGREEMENT shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XLV. GENDER

45.1 Words of gender used in this AGREEMENT shall be held and construed to include the other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XLVI. RELATIONSHIP OF PARTIES

46.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto.

XLVII. TEXAS LAW TO APPLY

47.1 This AGREEMENT shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas. Venue and jurisdiction arising under or in connection with this AGREEMENT shall lie exclusively in Bexar County, Texas.

XLVIII. CAPTIONS

48.1 The captions contained in this AGREEMENT are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this AGREEMENT.

EXECUTED this the _____ day of _____, 2015.

CITY OF SAN ANTONIO,
a Texas municipal corporation

**HABITAT FOR HUMANITY OF
SAN ANTONIO,**
a Domestic nonprofit corporation

By: _____
THOMAS W. MORGAN
Grants Administrator
Division of Grants Monitoring and
Administration

By: _____
NATALIE GRIFFITH
President and CEO

APPROVED AS TO FORM:

By: _____
DENISE FREDERICK
Assistant City Attorney

ATTACHMENTS:

- Exhibit "A" – Work Statement
- Exhibit "B" – Performance Reports
- Exhibit "C" – Budget Package
- Exhibit "D" – CDBG and HOME Housing Program Policies/HOME Program Recapture/
Resale Requirements for Homebuyer Activities
- Exhibit "E" – Invoice and Billing Package
- Exhibit "F" – Universal Design and Construction Ordinance
- Exhibit "G" – HUD Form 4010: Federal Labor Standards Provisions
- Exhibit "H" – Project Set-Up and Completion Reports
- Exhibit "I" – Section 3 Utilization Plan
- Exhibit "J" – Legal Description