

1 were specifically authorized by special election held in the City on November 16, 2019 (the
2 “Election”).

3 **WHEREAS**, funds allocated to the City under the Go Bond Funds 2 are to be used to
4 strengthen the relationship between the City and organizations which serve the housing needs of
5 low-income persons within the community:

6 **WHEREAS**, the City of New Orleans will follow the federal rules and regulations that
7 governs the HOME Program from the U.S. Department of Housing and Urban Development
8 (“**HUD**”) (CFDA#14.239) as provided under the provisions of HOME Program which is listed in
9 the Catalog of Federal Domestic Assistance (“**CFDA**”) and is assigned CFDA number 14.239;

10 **WHEREAS**, the City desires to address the priority requirement of the HOME Program,
11 which is the provision of decent, safe, and sanitary housing that is affordable to low-income
12 households;

13 **WHEREAS**, the Developer is a Private For-Profit limited liability company serving the
14 housing needs of the community, and has demonstrated the desire and ability to provide decent,
15 safe and sanitary housing, which is affordable to low-income households;

16 **WHEREAS**, the Developer and the City, through the Office of Community Development
17 (“**OCD**”), have agreed to implement specific Go Bond Funds 2 activities in accordance with the
18 HOME Program regulations;

19 **WHEREAS**, the Developer understands that any funding the City provides under this
20 Agreement is **conditional** upon the completion of an environmental review; and **WHEREAS**, this
21 Agreement shall serve as a binding agreement and commitment to fund between the City and the
22 Developer.

23 **NOW, THEREFORE**, the City and the Developer, for the considerations and under the
24 conditions set forth herein do hereby agree as follows:

25 **ARTICLE I – DEFINITIONS**

26 As used in this Agreement, the following terms have the meanings defined below:

27 **A. Intercreditor Agreement.** That certain Intercreditor and Subordination Agreement
28 dated on even date herewith by and between Regions Bank, an Alabama banking
29 corporation, the City, Louisiana Housing Corporation, and Borrower.

1 response to the Notice of Funding Availability (“NOFA”) application and the application itself.
2 The responses to the NOFA application and the application itself are incorporated herein by
3 reference and made a part hereof, including the Project Description and the Sources and Uses.

4 **B. Provision of Housing Development Services.** Developer agrees to use the Go Bond Funds
5 provided hereunder to develop one-hundred three (103) **rental units** for who meet income
6 eligibility standards. One-Hundred three (103) units will be funded with City GO Bond Funds, and
7 are funded with Low Income Housing Tax Credits (LIHTC), which will be affordable units.

8 **C. Compliance with HOME Regulations and HUD Notices.** Developer agrees to comply
9 with the federal regulations published in Volume 24, Part 92, of the *Code of Federal Regulations*
10 (24 CFR 92), as well as all federal regulations and requirements incorporated therein by reference,
11 whether specifically discussed herein or not. The HOME regulations are incorporated herein by
12 reference and are a part of this Agreement. References to 24 CFR 92 are founded throughout the
13 remainder of this document in the following format: §92.XXX. The Developer also agrees to
14 comply with all applicable Notices and directives promulgated by the U.S. Department of Housing
15 and Urban Development.

16 **D. Affordable Housing Units.** Developer agrees to ensure that all housing units acquired,
17 developed, produced, or otherwise assisted with HOME funds provided under this Agreement are
18 “affordable” to low-income households, as defined in §92.252 and §92.254, for the applicable
19 “Period of Affordability.” The Developer understands that repayment of funds is required for the
20 period of time that the housing does not the aforementioned affordability requirements. Developer
21 hereby acknowledges that the affordability requirements must be enforced by deed restrictions
22 recorded against HOME-assisted properties, and undertakes the responsibility for ensuring all
23 required deed restrictions are properly executed and recorded. The deed restrictions are provided
24 by the City in the form of a Regulatory Agreement, Secured Promissory Note, and Multiple
25 Indebtedness Mortgage for projects with rental units, or in the form of a Second Mortgage, for
26 homebuyer projects.

27 **E. Rental Projects.** The following requirements apply to tenant-occupied projects:

- 28 1. HOME Rents. For rental units in a HOME-assisted project, the Developer agrees
29 to obtain the City’s approval of a Rent Schedule, which includes applicable utility

1 allowances. Said Rent Schedule must demonstrate the compliance of each project
2 with HOME Regulations as they relate to the "affordability" of HOME-assisted
3 rental housing for low and very-low income persons, as per §92.252. The currently
4 applicable HOME rents, as well as the procedures for rent increases, are available
5 from OCD.

6 2. Leases. The Developer shall ensure that leases are executed with all tenants
7 residing in HOME-assisted units. A Section 8 Program lease may be used when
8 renting to a Section 8 tenant.

9 3. Tenant Selection. In accordance with §92.253(d), the Developer agrees to adopt
10 and maintain written tenant selection policies.

11 4. Tenant Participation Plan [CHDOs only]. Developer hereby acknowledges, as
12 applicable, that it shall adhere to a fair lease and grievance procedure which must
13 be approved by the City. Developer further acknowledges that it shall provide a
14 plan for and follow a program of tenant participation in management decisions.
15 [See §92.303] Specifically, the Developer, as a CHDO set-aside recipient, must
16 provide a formal process for low-income program beneficiaries to advise the
17 CHDO on design, location of sites, development and management of affordable
18 housing. The minutes or summaries of this process must be provided to OCD prior
19 to the implementation of the project to demonstrate that the process was followed.

20 5. Periodic Monitoring: (Where applicable)

21 a. Income Re-certification. The Developer shall re-certify the incomes of all
22 tenants not less than annually, and provide the City with copies of the Re-
23 certification Application and related documentation, or other income
24 determination method authorized under §92.203 and approved for use by
25 OCD.

26 b. Site Inspections. The Developer shall make arrangements with tenants for
27 inspections of a sample of HOME-assisted units by OCD, in accordance
28 with the timetable found in §92.504(d).

1 c. Rent Review. The Developer agrees to submit to OCD not less than
2 annually, an Occupancy List, which includes the rents being charged for
3 each HOME-assisted unit. A report format for this requirement is available
4 from OCD.

5 **F. Income Targeting.** The Developer agrees to comply with the HOME income targeting
6 requirements as outlined in §92.216 and §92.217, by ensuring that units assisted with HOME funds
7 will only be occupied by HOME income eligible households, whose income does not exceed 80
8 percent of the median family income for the New Orleans Metropolitan Statistical Area (“MSA”):

9 1. Intentionally Omitted.

10 2. In the case of tenants, a lower income eligibility threshold applies, and the
11 household income generally must not exceed 60 percent of the MSA median family
12 income, unless approved by OCD.

13 When requested, but at least annually, the Developer must provide the City with demographic
14 information on all HOME Program applicants, which demonstrates their compliance with the
15 above income limitations. The determination of income eligibility is based upon the procedures
16 found in the *Technical Guide for Determining Income and Allowances for the HOME Program*
17 (HUD-1780-CPD).

18 **G. Eligible Costs.** The Developer shall use HOME funds only for the payment of costs
19 associated with eligible HOME activities as identified in §92.205 and §92.206, and budgeted in
20 accordance with the provisions of Section I, below.

21 **H. Prohibited Activities.** The Developer shall ensure that none of the funds that will be
22 provided to Developer to implement a HOME-assisted project, will be used to fund any activity
23 prohibited by HOME regulations, as outlined in §92.214.

24 **I. Project Selection and Set-up.** The Developer agrees to the following:

25 1. Site and Neighborhood Standards. The Developer will comply with the site and
26 neighborhood standards described in §92.202 when choosing a project location.

27 2. Compliance with Consolidated Plan. The Developer shall ensure that the proposed
28 project complies with the housing strategies outlined in the City's current

1 Consolidated Plan (CP).

- 2 3. Environmental Review. The Developer shall request from OCD and obtain a
3 written determination that the project has been subjected to an "environmental
4 review," in accordance with §92.352 and 24 CFR 58, and that there are no
5 environmental issues that would prohibit implementation of the project as
6 proposed. **The Developer shall not proceed with any physical development
7 without first receiving an environmental clearance notice and a Notice to
8 Proceed from OCD.**
- 9 4. Income Eligibility. The Developer will determine income eligibility for all
10 households to be assisted with HOME funds as outlined in §92.203, prior to such
11 household's occupancy of completed HOME-assisted units.
- 12 5. Subsidy Layering. The Developer further agrees to provide necessary
13 documentation and information to the City to perform any required Subsidy
14 Layering Reviews.
- 15 6. Uniform Relocation and Real Properties Acquisition Act (URA). The Developer
16 agrees to comply with the requirements of the URA.

17 **J. Projects Involving Faith-Based Organizations.** Developer shall abide by §92.257 of the
18 HOME regulations which incorporates HUD requirements for faith-based organizations found at
19 24 CFR 5.109.

20 **K. Property Standards.** The Developer acknowledges that the structures constructed or
21 rehabilitated under HOME-funded housing programs must meet all applicable local codes,
22 ordinances, and zoning requirements before occupancy can be approved. Developer hereby agrees
23 to comply with the property standards requirements outlined in §92.251.

24 **L. Lead-Based Paint Testing and Abatement.** The Developer acknowledges that housing
25 assisted with HOME funds constitutes "HUD-associated housing" for the purpose of the Lead-
26 Based Paint Poisoning Prevention Act and agrees to meet all requirements of that Act and 24 CFR
27 92.355.

28 **M. Insurance Requirements.** The Developer shall be responsible for maintaining complete

1 insurance coverage on all projects which it is undertaking under this Agreement. Insurance
2 coverage includes, but is not limited to, property, liability, flood, builder's risk, crime, and
3 workers' compensation. Developer also understands its responsibility to hold the City harmless
4 from all liability that might result from Developer implementation of housing projects under this
5 Agreement. See Articles XV and XVI for the specific insurance and indemnity requirements,
6 respectively.

7 **N. Maximum Per-Unit Subsidy Amount.** The Developer acknowledges the "per-unit
8 subsidy" limitations placed on HOME-assisted properties and hereby agrees to limit the use of
9 HOME funds to the "per unit subsidy" limitations found in §92.250 when implementing HOME-
10 assisted projects.

11 **O. Affirmative Marketing Requirements.** The Developer acknowledges its responsibility to
12 employ affirmative marketing procedures and requirements in all HOME-assisted housing
13 containing 5 or more housing units. Affirmative marketing steps consist of actions to provide
14 information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the
15 housing market area identified with available housing assisted with HOME-funds and are outlined
16 below. [See §92.351]. For Rental Projects of 5 or more units, the Developer shall inform the
17 general rental public about the availability of housing units rehabilitated and comply with the
18 affirmative marketing of vacant units under a HOME funded program as follows:

- 19 1. Developer shall inform the City of any units that become vacant throughout the
20 duration of the affordability period associated with the property.
- 21 2. The owner may use commercial media and other community organizations to solicit
22 tenants. If the general circulation print medium is used to advertise rental unit
23 vacancies, at least one advertisement must also be placed in the Louisiana Weekly,
24 which has a significant circulation in the minority community.
- 25 3. Copies of placed ads or other types of documentation outlining activities that
26 increase general public awareness of the availability of rental housing units are to
27 be forwarded to OCD within 30 days after such activities are undertaken. If
28 violations of the City's Affirmative Marketing Policies are discovered, corrective
29 actions will be required immediately.

- 1 4. Developer is to complete A Notice of Rental Unit Vacancy with a copy forwarded
2 to OCD at least 30 days in advance of anticipated vacancy or as soon as the vacancy
3 is known.
- 4 5. A Tenant Survey Form is to be completed for each existing and each new tenant
5 and a copy forwarded to OCD. For new tenants the form should be transmitted
6 within 30 days after occupancy. For existing tenants, the form must be submitted
7 with the Application for Financial Assistance. OCD will in turn inform existing
8 tenants of relocation benefits available to them in the event that they are temporarily
9 relocated or permanently displaced.
- 10 6. The Fair Housing Equal Opportunity (FHEO) logo is to be used in all
11 advertisements for solicitation of tenants.
- 12 7. The FHEO sign is to be posted conspicuously on properties during the rehabilitation
13 phase of a HOME funded project and remain in place until all required
14 rehabilitation is completed and for a period of 30 days thereafter.

15 **P. Project Completion.** The Developer shall notify the City in writing of the substantial
16 completion of each project. This notification must also document all HOME Match contributions,
17 if not previously documented at the time of project set-up or any time prior to completion. Upon
18 receipt of a notice of substantial completion, the City will conduct an inspection of the property
19 and provide the Developer with any conditions to receipt of final payment of HOME funds.

20 **Q. Maintenance of Records.** Developer agrees to maintain records of all expenditures of
21 HOME funds provided to it by the City in accordance with §92.508, for the time periods
22 specifically enumerated in §92.508(c). Records are to be maintained separately for each project
23 undertaken by Developer, and the records for each project will be maintained by Developer in such
24 a manner so that the funding sources used in each project will be accounted for separately [e.g.
25 HOME, CDBG, NHIF, etc.] The aforementioned classification of funds expended will be further
26 itemized by the "funding year" associated with the funds. Developer hereby agrees to maintain,
27 for the City's review, all records relating to the creation, development and set-up of HOME
28 projects, and the expenditure of HOME funds, itemized for each HOME-funded project
29 undertaken.

1 **R. Monitoring of Records and Developer’s Performance.** The Developer acknowledges
2 the responsibility of the City to monitor its performance and all records relating to projects
3 implemented by Developer with HOME funds. Developer hereby acknowledges its responsibility
4 to provide the City, upon reasonable demand, with all records relating to HOME-funded projects
5 implemented by Developer, and hereby agrees to assist the City in reviewing projects undertaken
6 by Developer with HOME funds. The aforementioned records will be made available at times
7 reasonable to both Developer and the City, and Developer's records will be reviewed by the City
8 no less than annually.

9 **S. Duration of Developer’s Obligations.** The Developer acknowledge its obligation to
10 ensure the continued compliance with Federal regulations related to HOME-funded projects for a
11 period of no less than the "period of affordability" assigned to each HOME-funded project
12 implemented by Developer. The Developer therefore agrees to continually monitor each of its
13 HOME-funded projects for a period of no less than the project's assigned affordability period.
14 Monitoring responsibilities include, but are not limited to, on-site inspections of HOME-assisted
15 properties as well as certifications and recertification of the incomes of occupants of the HOME-
16 assisted properties.

17 **T. Breach of Contract.** In the event Developer or a Program Beneficiary who benefits from
18 a HOME-assisted project does not comply with Federal Regulations governing HOME-assisted
19 projects, or the terms of this Agreement, Developer acknowledges its obligation to repay the City
20 HOME funds that are identified with the period of noncompliance. Developer further
21 acknowledges its obligation to maintain compliance by Project Beneficiaries of HOME regulations
22 as they relate to income limitations and HOME rents. Developer agrees to protect the integrity of
23 the HOME funds provided to it for housing programs by ensuring that all contracts between
24 Developer and Program Beneficiaries include applicable provisions relating to the requirements
25 imposed on the expenditure of HOME funds. All of the aforementioned contracts will also contain
26 provisions for penalties associated with breaches of contracts. Any notice to the Borrower
27 regarding any Breach of Contract pursuant to this paragraph T, shall also be provided to
28 Borrower’s investor member, at:

29 RAH Investor 456 LLC

1 c/o Regions Affordable Housing
2 111 Great Neck Road, Suite 500
3 Great Neck, New York 11021
4 Attention: Kevin Smith
5

6 With copies to:

7 Jones Walker LLP
8 420 20th Street North, Suite 1100
9 Birmingham, Alabama 35203
10 Attention: Kelly R. Lewis and Brandon D. Hughey

11 **U. Other Responsibilities.** Developer hereby acknowledges its responsibility to comply with
12 all of the Federal Regulations governing the development of HOME projects, as outlined in
13 §92.504, which include:

- 14 1. Guaranteeing the affordability of housing assisted with HOME funds and the
15 responsibility to see that HOME funds are repaid in the event that HOME assisted
16 housing does not meet the affordability requirements for the specified time period.
- 17 2. Repaying HOME funds to the City in the event that Developer does not implement
18 approved HOME-funded housing programs in accordance with the requirements of
19 this Agreement and the HOME regulations, or does not complete HOME-funded
20 projects [see §92.205(e)].
- 21 3. Complying with applicable "Uniform Administrative Requirements" as described
22 in §92.505.
- 23 4. For each HOME-funded project, set up a system of record keeping that conforms
24 to the financial accountability standards required by the Federal Government, such
25 as the requirements of 2 CFR 200 and the financial accountability standards found
26 at 24 CFR 84.21 [See §92.505].
- 27 5. Complying with the project requirements outlined in 24 CFR 92, Subpart H as they
28 apply to:

- a. The "Equal Opportunity" for all persons to participate in programs or activities assisted with HOME funds, except for the income restrictions placed on participants by Federal Regulations governing HOME-assisted projects.
- b. The prohibitions against discrimination on the basis of age under the Age Discrimination Act.
- c. The responsibility to employ "Fair Housing" strategies that will affirmatively further fair housing practices with the City.
- d. The responsibility to comply with other program implementation requirements outlined in §92.350 and §92.351.
- e. Complying with the Federal Regulations found at §92.354 as they relate to labor practices employed by Developer during the implementation of HOME-funded projects.
- f. Complying with the Federal Regulations found at §92.356 as they relate to "Conflict of Interest" practices during the implementation of HOME-funded projects.
- g. Complying with Federal Regulations governing insurance requirements, as they relate to properties assisted with federal funds.
- h. Complying with federal regulations on any displacement, relocation, and acquisition requirements required by the City consistent with §92.353.

V. Prohibited Fees. The Developer is prohibited from charging fees that are not customarily charged in rental housing in the neighborhood such as laundry room access fees and other similar type fees. However, Developer may charge reasonable application fees to prospective tenants; may charge parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and may charge fees for services such as bus transportation or meals, as long as such services are voluntary.

W. Invoices.

- 1. The Developer must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or

1 services provided under this Agreement no later than 10 calendar days following the end of
2 the period covered by the invoice. Untimely invoices may result in delayed payment for
3 which the City is not liable. Each invoice must include, at a minimum, the following
4 information:

- 5 a. Name of Developer;
- 6 b. Date of Invoice;
- 7 c. Invoice Number;
- 8 d. Contract or BRASS Number issued by the City (i.e. K#);
- 9 e. Name of the City Department to be invoiced (e.g. PDU);
- 10 f. Description of the Services completed;

11 2. Invoices will be processed in accordance with the Agreement.

12 3. All invoices must be signed by an authorized representative of the Developer under
13 penalty of perjury attesting to the validity and accuracy of the invoice.

14 4. The City may require changes to the form of the invoice and may require additional
15 supporting documentation to be submitted with invoices.

16 17 **ARTICLE III - REPRESENTATIONS AND WARRANTIES**

18 **A.** The Developer represents and warrants to the City that:

19 1. The Developer, through its duly authorized representative, has the full power and
20 authority to enter into and execute this Agreement;

21 2. The Developer has and will maintain the requisite expertise, qualifications, staff,
22 materials, equipment, licenses, permits, consents, registrations, and certifications in place and
23 available for the performance of all work required under this Agreement;

24 3. The Developer is bonded, if required by law, and fully and adequately insured for any
25 injury or loss to its employees and any other person resulting from the actions or omissions
26 of the Developer, its employees, or its sub-Developers in the performance of this Agreement;

27 4. The Developer is not under any obligation to any other person that is inconsistent or
28 in conflict with this Agreement, or that could prevent, limit, or impair the Developer's
29 performance of this Agreement;

1 (OHPCD) Loan. The Developer must own the Property for the duration of the HOME affordability
2 period and the subsequent City of New Orleans affordability period. The HOME affordability
3 period is 20 years. The City of New Orleans affordability period is 25 years and begins
4 immediately once the HOME affordability period ends. Should the property transfer ownership to
5 an entity that does not assume the rights, responsibilities, and obligations in this Agreement, the
6 entire Loan must be repaid immediately to the City, provided, however, that a transfer or
7 refinancing permitted pursuant to Section 20 of the Mortgage shall not require immediate payment
8 of the Loan. The property cannot be sold for less than the appraisal value as of the date of sale.
9 **The funds will be allocated to a rental housing activity project.** The full anticipated budget
10 breakdown is incorporated into this Agreement, and marked as **Attachment VI**.

11 **B. Monitoring of Projects.** The City will undertake continuous monitoring of the HOME-
12 funded projects being implemented by Developer during the development phases, to ensure
13 compliance with HOME Regulations governing the expenditure of HOME funds and the income
14 eligibility of persons who will reside in HOME-assisted housing units. Monitoring by the City will
15 also include Developer’s compliance with the organizational and operational requirements. The
16 City will also conduct periodic monitoring in accordance with §92.504(d).

17 **C. Provision of Technical Assistance.** The City agrees to provide technical assistance or
18 assist Developer to obtain technical assistance, as requested and necessary, which will aid
19 Developer in performing its functions under this Agreement.

20 **D. Provision of Forms and Documents.** The City will provide forms and documents for use
21 in carrying out activities under this Agreement. Review and certify, as applicable, all documents
22 regarding program assistance that shall be provided by the Developer.

23 **E. Facilitate Payment Requests.** The City will process payment requests for eligible costs
24 for all HOME-funded projects approved under the terms of this Agreement as per the individual
25 project budgets set up in accordance with Article VI, above.

26 **F. Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon
27 providing that goods and/or services described under this Agreement have been delivered, installed
28 (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice
29 via the City’s supplier portal.

1
2 **ARTICLE V - SOURCES OF FUNDS**

3 **A. Contract Amount.** The funds provided to Developer under this Agreement are
4 contingent upon HUD approval and are for the implementation of the HOME-funded housing
5 program or project described above in Article VI and elsewhere herein. **No payments, however,**
6 **will be made prior to the completion of an Environmental Review.** The Developer understands
7 that the Sources and Uses is a generalized, estimate of the cost(s) of one or more projects to be
8 subsequently set-up in accordance with this Agreement. The Developer understands that the cost
9 of all individually set-up projects shall not exceed the above contract amount, and that each project
10 shall not exceed the HOME subsidy limits discussed in Section I(N), above, and that the individual
11 project cost line items on each set-up may not be in complete Agreement with the allocation of
12 line item costs indicated on Attachment VI.

13 **1. Request for Disbursement of Funds.** In accordance with §92.504(c)(3)(viii), Developer
14 will not request disbursement of funds in connection with the implementation of a HOME-funded
15 project until the funds are needed for payment of eligible costs. Furthermore, the amount of each
16 request must be limited to the amount needed for the actual eligible project cost expended or
17 anticipated. All pay requests must be submitted on the OCD Payment Request Invoice form
18 available from OCD, and properly supported with documentation.

19 **2. Extension.** This Agreement may be extended with additional funding for the activities
20 described in the NOFA provided that the Developer has met or exceeded the requirements of this
21 Agreement.

22 **3. Reversion of Funds.** Developer agrees that the funding provided hereunder must be
23 committed to specific projects and expended within the time periods established by the HOME
24 regulations or said funding may be withdrawn by the City.

25
26 **ARTICLE VI – USES OF HOME FUNDS**

27 **A. Address.** The municipal address of the property is: 3401 Erato Street, New Orleans, LA
28 70125. If the municipal address(es) are not known as of the Effective Date of this Agreement, then
29 the Developer must provide them to the City no later than the initial tenancy. See Attachment VIII

1 for a Legal Description of the Property, which is attached herein and incorporated into the
2 Agreement.

3
4 **B. Schedule of Work.** The Schedule of Work for the completion of the Tasks above is
5 incorporated into this Agreement, and attached as Attachment VII.

6
7 **ARTICLE VII - DURATION**

8 **A. Term.** The term of this Agreement shall begin on the Effective Date and expire at the
9 completion of the Period of Affordability, as defined in that Regulatory Agreement executed
10 between the Parties, effective as of the __ of _____, 2025.

11 **B. Extensions.** The City shall have the option to extend the term of this Agreement by giving
12 written notification to the Developer stating such intentions at least thirty calendar days prior to
13 the termination of the Agreement.

14 **C. Requirement to Remain in Effect.** This Agreement must remain in effect or be extended
15 as necessary, prior to its termination, until such time as a Regulatory Agreement effecting
16 compliance with the HOME affordability requirements is executed by the owner of the rental
17 project, whether the owner is the Developer or another entity. The Regulatory Agreement shall be
18 provided by the City, and shall be recorded as a deed restriction for the “Period of Affordability”
19 applicable to each project. The City retains all rights relative to the exercise of any and all of these
20 remedies.

21
22 **ARTICLE VIII - TERMINATION**

23 **A. Termination for Convenience.** [Intentionally Omitted.]

24 **B. Termination for Cause.** In the event the Developer fails to cure or remedy any act or
25 omission constituting “Cause” for termination of this Agreement within thirty (30) days following
26 receipt of written notice from the City specifying the nature of such default, and such default
27 remains uncured after the expiration of the cure period, the City shall have the right, in its sole
28 discretion and without further notice, to terminate this Agreement immediately. “Cause” includes
29 without limitation any failure to perform any obligation or abide by any condition of this

1 Agreement or the failure of any representation or warranty in this Agreement, including without
2 limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office
3 of Inspector General. The Investor, as defined in the Regulatory Agreement, has the right, but not
4 the obligation, to cure a default if it is possible. If a termination for cause is subsequently
5 challenged in a court of law and the challenging party prevails, the termination will be deemed to
6 be a termination for convenience effective 30 days from the date of the original written notice of
7 termination for cause was sent to the challenging party; no further notice will be required.

8 **C. Termination for Non-Appropriation.** This Agreement will terminate immediately in the
9 event of non-appropriation of funds sufficient to maintain this Agreement. The City will not be
10 liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

11 **D. Notice.** The City shall promptly notify the Developer and Investor, in writing, of its
12 determination and the reasons for the termination together with the date on which the termination
13 shall take effect. Upon termination, the City retains the right to recover any improper expenditures
14 from the Developer and the Developer shall return to the City any improper expenditures no later
15 than thirty (30) days after the date of termination. The City may, at its sole discretion, allow
16 Developer to retain or be reimbursed for costs reasonably incurred prior to termination, that were
17 not made in anticipation of termination and cannot be canceled provided that said costs meet the
18 provisions of this agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable
19 state or Federal statutes, regulations or requirements.

20 **E. Remedies for Non-Compliance.** If the Developer fails to comply with federal statutes,
21 regulations or the terms and conditions of a Federal award, the HUD or the City may impose
22 additional conditions, as described in § 200.207 Specific conditions. If HUD or the
23 City determines that noncompliance cannot be remedied by imposing additional conditions, then
24 either may take one or more of the following actions, as appropriate in the circumstances:

- 25 1. Temporarily withhold cash payments pending correction of the deficiency by the non-
26 Federal entity or more severe enforcement action by the Federal awarding agency or pass-
27 through entity.
- 28 2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part
29 of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the Federal award.
4. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).
5. Withhold further Federal awards for the project or program.
6. Take other remedies that may be legally available.

ARTICLE IX - AGREEMENT IS BINDING

This Agreement shall serve as a binding agreement and commitment to fund between the City and the Developer.

ARTICLE X - PROGRAM INCOME PROVISIONS

The Developer understands that after completion of the Agreement, any funds derived from the sale of HOME-assisted property, shall be considered program income. Determination of program income shall be made in accordance with §92.503, and with HUD CPD Notice 97-09. No Program income shall be spent without the City’s prior approval and must be placed in a segregated account and not be comingled with any other funds. Upon receipt of the funds a report shall be submitted to the City setting forth the source of the income, the amounts collected and the balance on hand. The Developer shall remit the Program Income to the City immediately upon request.

ARTICLE XI - RECOGNITION OF MATCHING REQUIREMENTS

In accordance with §92.218 through §92.222, Developer hereby acknowledges that the City’s obligation to match HOME funds with permanently-contributed, non-federal funds at a specific ratio (12.5 percent, in accordance with CPD Notice 98-08), as outlined in §92.218 and CPD Notice 97-03 issued March 27, 1997, and in accordance with matching contribution guidelines found at §92.219. This program obligation, in turn, requires that the Developer make every effort to develop, acquire, and provide eligible HOME Matching Contributions consistent with the funding amount provided hereunder. For each project set-up submitted to the City for

1 funding approval, Developer agrees to submit written documentation of all Match Contributions.

2
3 **ARTICLE XII – ACCOUNTING AND FINANCIAL TERMS AND CONDITIONS**

4 The Developer agrees to comply with the **Accounting and Financial Conditions of**
5 **Agreement**, marked **Attachment I**.

6
7 **ARTICLE XIII - REPORTING REQUIREMENTS**

8 The Developer agrees to provide to OCD Affordable Housing Bureau by the fifth working
9 day of each month, two copies of the **Monthly Reporting Requirements**, marked **Attachment**
10 **V**. The Developer also agrees to comply with the **Compliance Unit Reporting Requirements**, as
11 applicable, marked **Attachment II**, in accordance with the processes, procedures and schedules
12 set forth by the OCD Compliance Unit.

13
14 **ARTICLE XIV - JURISDICTION**

15 The undersigned Developer does further hereby consent and yield to jurisdiction of the
16 State Civil Courts of the Parish of Orleans and does hereby formally waive any pleas of jurisdiction
17 on account of the residence elsewhere of the undersigned Developer.

18
19 **ARTICLE XV - AUDIT AND OTHER OVERSIGHT**

20 It is agreed that the Developer or applicant will abide by all provisions of City Code §2-
21 1120, including but not limited to City Code §2-1120(12), which requires the Developer to provide
22 the Office of Inspector General with documents and information as requested. Failure to comply
23 with such requests shall constitute a material breach of the contract. In signing this contract, the
24 Developer agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for
25 purposes of challenging a subpoena.

26
27 **ARTICLE – XVI INSURANCE**

28 **A. In general.** Except as otherwise noted, at all times during this Contract or the performance
29 of work required by this Contract, the Developer will maintain the following insurance in
30 full force and effect for the duration of the work under this Contract. Evidence of coverage

1 shall be provided prior to the start of any activities/work, in conjunction with the
2 Developer’s obligations and/or scope of work under the Contract. If the Developer
3 maintains broader coverage and/or higher limits than the minimums shown below, the City
4 requires and shall be entitled to the broader coverage and/or the higher limits maintained
5 by the Developer. Any available insurance proceeds in excess of the specified minimum
6 limits of insurance and coverage shall be available to the City.
7

8 **B. Minimum Requirements.**
9

10 **1. Workers' Compensation & Employers Liability**

11 a. Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and
12 Employers Liability Insurance with limits of not less than \$1,000,000.

13 **2. Commercial General Liability**

14 a. Insurance including contractual liability insurance, products and completed operations,
15 personal & advertising injury, bodily injury, property damage, products/completed
16 operations and any other type of liability for which this Contract applies with limits of
17 liability of not less than \$2,000,000 each occurrence / \$4,000,000 policy aggregate.
18

19 **3. Automobile Liability (Where applicable)**

20 a. Insurance with a combined single limit of liability of not less than \$1,000,000 per accident
21 for bodily injury and property damage. Insurance shall include all owned, non-owned
22 and hired vehicles. If transporting any pollutants, as defined by the policy, the policy
23 is to include applicable Pollution coverage.
24

25 **4. Professional (Errors & Omission) Liability (Where applicable)**

26 As professional services are required under the contract, insurance appropriate to the
27 Developers profession with limits of liability of not less than \$2,000,000 per
28 occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently
29 broad to respond to the duties and obligations as is undertaken by Developer in this
30 agreement. Policy shall be kept in force and uninterrupted for a period of three (3)
31 years beyond policy expiration. If coverage is discontinued for any reason during this
32 three (3) year term, Developer must procure and evidence full extended reporting
33 period (ERP) coverage.
34

35 **5. Developers' Pollution Liability (Where applicable)**

36 a. If the construction project involves environmental hazards and/or pollutants of any kind,
37 Developer shall maintain Developers' Pollution Liability Insurance (or equivalent
38 coverage) applicable to the work being performed with limits of not less than
39 \$1,000,000 per occurrence or claim / \$2000,000 policy aggregate, covering losses
40 caused by pollution conditions that arise from the operations of the Developer.
41 b. Insurance shall apply to bodily injury, property damage, including loss of use of damaged
42 property that has not been physical impacted and defense, including cost and expenses
43 incurred in the investigation, defense or settlement of claims.

- 1 c. Coverage shall include but not be limited to Fines, Penalties, Punitive Damages and Clean-
2 up cost.
- 3 d. Asbestos Coverage – (where applicable) Whereas the project involves contact with and/or
4 removal/abatement of asbestos, Developer shall maintain an Asbestos Liability
5 Insurance policy (or equivalent Developers’ pollution coverage) that shall include or
6 be endorsed to include coverage for bodily injury and property damage arising out of
7 asbestos abatement or removal operations by or on behalf of Developer with limits of
8 not less than \$5,000,000 per occurrence or claim / \$10,000,000 policy aggregate.
9

10
11 **6. Property Insurance**

- 12 a. Property insurance shall be maintained in compliance with all laws, regulations or
13 ordinances affecting such property or properties associated with this agreement for the
14 duration of the agreement. Coverage must be written on an “all risks” replacement
15 cost basis (including flood and named storm) in such amounts as City may require, but
16 in any event, for not less than 100 percent of the full replacement cost value of the
17 property.
- 18 b. Such coverage shall name the City of New Orleans as Loss Payee as their interest may
19 appear.
20

21 **7. Umbrella Liability**

- 22 a. Umbrella/Excess policies must “Follow form” of the underlying policies and scheduling.
23

24 **8. Builders Risk**

- 25 a. Builder’s Risk (Course of Construction) Insurance utilizing an “All Risk” (Special Perils)
26 coverage form, on a replacement cost basis, including coverage on the entire Work, to
27 include but not limited to **coverage for Flood and Named Storm**, Fire, Theft,
28 Mysterious Disappearance (if available), Damages due to Changes or Extremes of
29 Temperature, Property of others in the care, custody or control, Debris Removal,
30 Vandalism and Soft Cost (i.e. professional services, permits, etc.), with limits equal to
31 the completed value of the project and no coinsurance penalty provisions.
- 32 b. Policy shall include coverage during transit, installation and while materials are being
33 stored off site. Such coverage shall name the City of New Orleans as a Loss Payee as
34 their interest may appear.
- 35 c. If not covered under the “all-risk” insurance or otherwise provided in the Contract, the
36 Developer shall affect and maintain similar insurance on portions of the work stored
37 off the site when such portions of the work are to be included in any applications for
38 payment and such procedures have been approved by the City.
- 39 d. Builders’ Risk Insurance shall be written and provide such that any portions of a building
40 or site vacated by the City to accommodate the work are protected and covered by the
41 terms of the policy. The insurance shall not be cancelled or permitted to lapse due to
42 such vacancy.
- 43 e. Developer shall obtain consent of the insurance carrier that no action will be taken with
44 respect to partial occupancy or use that would cause cancellation, lapse of reduction
45 of insurance.

1
2 **9. Crime Insurance (Fidelity Bond)**

3 To include but not limited to employee dishonesty, computer crime, misappropriation of
4 funds, forgery, or alteration with limits of not less than the maximum amount funded
5 by the City under the Grant Agreement.
6

7 **10. General Provision and Requirements**

- 8 a. Developer shall be able to meet the above referenced specific policy limits of liability
9 through a combination of primary and umbrella /excess coverage.
10 b. The obligations for the Developer to procure and maintain insurance shall not be
11 constructed to waive or restrict other obligations. It is understood that neither failure
12 to comply nor full compliance with the foregoing insurance requirements shall limit
13 of relieve the Developer from any liability incurred as a result of their
14 activities/operations in conjunction with the Developer’s obligations and/or Scope of
15 Work. Developer shall be responsible for any losses, expenses, damages, claims
16 and/or suits and cost of any kind which exceed the Developer’s limits of liability that
17 arise from the performance of work under the Contract.

18 Certificates of Insurance Additional Insured Status:

- 19 i. *The Developer and all its contractors (where applicable) will provide, and maintain*
20 *current, a Certificate of Insurance naming the City of New Orleans, its departments,*
21 *political subdivisions, officers, officials, employees, and volunteers as “Additional*
22 *Insureds” on the CGL and AL policies with respect to liability arising out of the*
23 *performance of this Contract.*
24 ii. Additional Insured status can be provided in the form of an endorsement to the
25 Developers insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20
26 10 and CG 20 37 forms if later revisions used).
27 iii. Developer shall require and verify that all its contractors maintain insurance and
28 coverage limits meeting all the requirements stated herein or its contractors’ liability
29 shall be covered by the Developer. The Certificate of Insurance, as evidence of all
30 required coverage, should name the City of New Orleans - Risk Manager as
31 Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 –
32 City Hall, New Orleans LA 70112.
33 iv. The Additional Insured box shall be marked “Y” or Commercial General Liability
34 coverage. The Subrogation Waiver Box must be marked “Y” for Workers
35 Compensation/Employers and Liability.
36

37 **C. Miscellaneous Requirements.**

- 38
39 1. Primary Coverage: For any claims, liability, demands and/or suits related to this
40 contract or Developer’s performance and furnishing or the work, whether it is
41 performed by the Developer, its contractor, partner, supplier or by anyone directly or
42 indirectly employed by any of them to perform or furnish any of the work. Developer’s

1 insurance coverage shall be primary insurance as respects the City, its departments,
2 political subdivisions, officers, officials, employees, and volunteers. Any insurance or
3 self-insurance maintained by the City shall be non-contributing to the Developer's
4 coverage. At no time shall the Developer allow any if its contractors to perform work
5 without the required types and limits of required insurance coverage.
6

7 2. The carriers/companies issuing the policies of insurance shall not have any recourse
8 against the City for payment of any premiums, deductibles, and retentions or for
9 assessments under any form of policy. These shall be borne by and be the sole
10 responsibility of the Developer.
11

12 3. Claims Made Policies: If applicable, the retroactive date must be shown and must be
13 before the date of the Contract or the beginning of work. If the coverage is canceled or
14 non-renewed, and not replaced with another claims-made policy, Developer must
15 purchase "extended reporting" coverage for minimum of 3 years after the termination
16 of this Contract.

17 4. Waiver of Subrogation: The Developer and its insurers agree to waive any right of
18 subrogation which any insurer may acquire against the City by virtue of the payment
19 of any loss under insurance required by this Contract.
20

21 5. Notice of Cancellation: Each insurance policy shall not be canceled, expire or altered
22 except without prior notice to the City of no less than 30 days.
23

24 6. Acceptability of Insurers: Insurance is to be placed with insurers licensed and
25 authorized to do business in the State of Louisiana with a current A.M. Best's rating of
26 no less than A: VII, unless otherwise acceptable to the City.
27

28 7. If the City has any objection to the coverage afforded by or any other provisions of the
29 insurance required to be purchased and maintained by the Developer in accordance
30 with the insurance requirements, the City shall notify the Developer in writing within
31 thirty (30) days after receipt of the Certificates. The Developer shall provide a written
32 response to the objection within ten (10) days from the date of the notice.
33

34 8. Upon failure of the Contractor or its Developer to purchase, furnish, deliver or maintain
35 such insurance as provided herein, the Contract, at the discretion of the City may be
36 forthwith declared suspended, discontinued, or terminated. Failure of the Developer to
37 purchase and maintain insurance shall not relieve the Developer from any liability
38 under the Contract, nor shall the insurance requirements be constructed to conflict with
39 the obligations of the Developer concerning indemnification.

- 1
- 2 9. Notice: The Developer will provide the City’s Risk Manager (at City of New Orleans
- 3 Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.:
4 CEA) the following documents, within 10 calendar days of the City’s request - Copies
5 of all policies of insurance, including all policies, forms, and endorsements.
6
- 7 10. Without notice from the City, the Developer will:
- 8 a) Replenish any policy aggregate limit that is impaired before commencement of any
9 work or continuation of any work under this Contract.
- 10 b) Substitute insurance coverage acceptable to the City within 30 calendar days if any
11 insurance company providing any insurance with respect to this Contract is
12 declared bankrupt, becomes insolvent, loses the right to do business in Louisiana,
13 or ceases to meet the requirements of this Contract.
14
- 15 11. Special Risks or Circumstances.
- 16 a) The City of New Orleans shall reserve the right to modify these requirements, including
17 limits, based on the nature of the risk, prior experience, insurer coverage, or other
18 circumstances.
19

20 **ARTICLE XVII- INDEMNITY**

21 **A.** To the fullest extent permitted by law, the Developer will indemnify, defend, and hold
22 harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns
23 (collectively, the “**Indemnified Parties**”) from and against any and all claims, demands, suits, and
24 judgments of sums of money actually accruing against the Indemnified Parties: for loss of life or
25 injury or damage to persons or property arising from or relating to any act or omission or the
26 operation of the Developer, its agents or employees while engaged in or in connection with the
27 discharge or performance of any Services under this Agreement; and for any and all claims and/or
28 liens for labor, services, or materials furnished to the Developer in connection with the
29 performance of work under this Agreement

30 **B. Limitation.** The Developer's indemnity does not extend to any loss arising from the
31 negligence or willful misconduct of any of the Indemnified Parties, provided that neither the
32 Developer nor any of its agents or employees contributed to such negligence or willful misconduct.

33 **C. Independent Duty.** The Developer has an immediate and independent obligation to, at
34 the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the

1 defense of any claim that actually or potentially falls within this indemnity, even if: (1) the
2 allegations are or may be groundless, false, or fraudulent; or (2) the Developer is ultimately
3 absolved from liability.

4 **D. Expenses.** Notwithstanding any provision to the contrary, the Developer shall bear the
5 expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred
6 by the City in enforcing this indemnity.

7
8 **ARTICLE XVIII - NON-DISCRIMINATION**

9 **A. Equal Employment Opportunity.** In all hiring or employment made possible by, or
10 resulting from this Agreement, the Developer (1) will not be discriminate against any employee or
11 applicant for employment because of race, color, religion, sex, gender, age, physical or mental
12 disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable,
13 will take affirmative action to ensure that the Developer's employees are treated during
14 employment without regard to their race, color, religion, sex, gender, age, physical or mental
15 disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall
16 apply to, but not be limited to the following: employment, upgrading, demotion or transfer,
17 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of
18 compensation, and selection for training, including apprenticeship. All solicitations or
19 advertisements for employees shall state that all qualified applicants will receive consideration for
20 employment without regard to race, color, religion, sex, gender, age, physical or mental disability,
21 national origin, sexual orientation, creed, culture, or ancestry.

22 **B. Non-Discrimination.** In the performance of this Agreement, the Developer will not
23 discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion,
24 national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner
25 status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any
26 employee of the City working with the Developer in any of Developer's operations within Orleans
27 Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or
28 membership in all business, social, or other establishments or organizations operated by the
29 Developer. The Developer agrees to comply with and abide by all applicable federal, state and
30 local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights

1 Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act
2 of 1990.

3 **C. Incorporation into Subcontracts.** The Developer will incorporate the terms and
4 conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-
5 developers to comply with those provisions.

6 **D. Termination for Breach.** After providing the Developer and the Investor (as defined in
7 the Regulatory Agreement) with written notice of the Developer’s action or omission constituting
8 “Cause” for the termination of this Agreement and a period of thirty (30) days from the time such
9 notice was given by the City to the Developer to cure or correct such action or omission, only if
10 such action or omission constituting “Cause” for the termination of this Agreement remains, the
11 City may terminate this Agreement for cause if the Developer fails to comply with any obligation
12 in this Article, which failure is a material breach of this Agreement. The Investor has the right, but
13 not the obligation to cure any action, omission, or default, if it is possible.

14 15 **ARTICLE XIX – LIVING WAGES**

16 **A. Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms
17 used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-
18 802 of the City Code.

19 **B. Compliance.** To the fullest extent permitted by law, the Developer agrees to abide by
20 City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

- 21 1. Payment of an hourly wage to Covered Employees equal to the amounts defined in
22 the City Code (“**Living Wage**”);
- 23 2. Receipt of at least seven (7) days per year of compensated leave for Covered
24 Employees, as required by Section 70-807 of the City Code; and
- 25 3. Post notice in a prominent place regarding the applicability of the Living Wage
26 Ordinance in every workplace in which Covered Employees are working that is
27 within the Covered Employer's custody and control, as required by Section 70-810
28 of the City Code.

29 **C. Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall
30 be \$16.01 per hour plus any adjustment provided in subsection D below for any work performed
31 during calendar year 2025 or thereafter.

32 **D. Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the
33 Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index
34 calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no
35 instance shall the Living Wage be adjusted downward. The first adjustment shall become effective

1 on January 1, 2025 using the Consumer Price Index figures provided for the preceding year, and
2 thereafter on an annual basis.

3 **E. Sub-Developer Requirements.** As required by Section 70-804 of the City Code, the
4 Developer, beneficiary, or other Covered Employer, prior to entering into a subcontract,
5 shall notify sub-Developers in writing of the requirements and applicability of Article VIII
6 – The Living Wage Ordinance (“**Article**”). The Developer and its beneficiaries shall be
7 deemed responsible for violations of this Article by their sub-Developers.

8 **F. Reporting.** On or before January 31st and upon request by the City, the Developer shall
9 identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of
10 days of compensated leave received by Covered Employees earning less than 130% of the then-
11 prevailing wage during the current term of the Agreement, and provide the identified information
12 to the following:

13 Office of Workforce Development
14 Living Wage - Compliance
15 1340 Poydras Street – Suite 1800
16 New Orleans, Louisiana 70112

17 **G. Compliance Monitoring.** Covered Employers under this Agreement are subject to
18 compliance monitoring and enforcement of the Living Wage requirements by the Office of
19 Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”).
20 Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees
21 and agents authorized to assist in the administration and enforcement of the Living Wage
22 requirements. Steps and actions include, but are not limited to, requirements that: (i) the Developer
23 will cooperate fully with the OWD and the CAO and other City employees and agents authorized
24 to assist in the administration and enforcement of the Living Wage requirements; (ii) the Developer
25 agrees that the OWD and the CAO and their designees, in the performance of their duties, shall
26 have the right to engage in random inspections of job sites and to have access to the employees of
27 the Developer, payroll records and employee paychecks; and (ii) that the City may audit such
28 records of the Developer as he or she reasonably deems necessary to determine compliance with
29 the Living Wage standards.

30 **H. Remedies.** If the Developer fails to comply with the Living Wage requirements during
31 the term of the Agreement, said failure may result in termination of the Agreement or the pursuit
32 of other remedies by the City, including, but not limited to, the penalties and enforcement
33 mechanisms set forth in Section 70-811 of the City Code.

34
35 **ARTICLE XX - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

36 **A. In General.** The Developer agrees to abide by the City Code Sections 70-456, *et seq.*,
37 to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the
38 administration of this Agreement, as set forth in the City Code and any applicable rules adopted
39 thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and
40 assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

1 **B. Monitoring.** To ensure compliance with DBE requirements during the term of this
2 Agreement, the DBECO will monitor the Developer’s use of DBE sub-Developers (“**DBE**
3 **Entities**”) through the following actions:

- 4 1. Job site visits;
- 5 2. Electronic payment tracking via the Contract Compliance Monitoring System or
6 other means as approved by the OSD;
- 7 3. Routine audits of contract payments to all sub-Developers;
- 8 4. Reviewing of records and reports; and/or
- 9 5. Interviews of selected personnel.

10 The DBECO may schedule inspections and on-site visits with or without prior notice to the
11 Developer or DBE Entities.

12 **C. Cooperation.** The Developer shall:

- 13 1. Designate an individual as the “DBE Liaison” who will monitor the Developer’s
14 DBE participation as well as document and maintain records of “Good Faith
15 Efforts” with DBE Entities.
- 16 2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - 17 a. The Developer shall provide the DBECO with copies of said contracts
18 within 30 days from the date this Agreement is fully executed between the
19 City and the Developer.
 - 20 b. The Developer shall agree to promptly pay sub-Developers, including DBE
21 Entities, in accordance with law.
- 22 3. Establish and maintain the following records for review upon request by the OSD:
 - 23 a. Copies of written contracts with DBE Entities and purchase orders;
 - 24 b. Documentation of payments and other transactions with DBE Entities;
 - 25 c. Appropriate explanations of any changes or replacements of DBE Entities,
26 which may include a record of “Post-Award Good Faith Efforts” for each
27 certified firm that the does not use in accordance with the approved DBE
28 participation submission;
 - 29 d. Any other records required by the OSD.

30 The Developer is required to maintain such records for 5 years after completion or closeout
31 of this Agreement. Such records are necessary to determine compliance with their DBE
32 obligations.

- 33 4. Post monthly payments and submit regular reports to the DBECO as required via
34 the online “Contract Compliance Monitoring System” or other means approved by
35 the OSD.
 - 36 a. The Developer shall submit the initial report outlining DBE participation
37 within 30 days from the date of notice to proceed (or equivalent document)

1 issued by the City to the Developer. Thereafter, “DBE Utilization” reports
2 shall be due on or before the fifteenth day of each month until all DBE
3 subcontracting work is completed.

- 4 **b.** Reports are required even when no activity has occurred in a monthly
5 period.
- 6 **c.** If the established percentage is not being met, the monthly report shall
7 include a narrative description of the progress being made in DBE
8 participation.
- 9 **d.** The Developer may also be required to attach or upload copies of canceled
10 checks or bank statements that identify payer, payee, and amount of transfer
11 to verify payment information as indicated on the form.

12 **5.** Conform to the established percentage as approved by the OSD.

- 13 **a.** The total dollar amount of the Agreement shall include approved change
14 orders and amendments. For a requirements contract, the total dollar
15 amount shall be based in actual quantities ordered.
- 16 **b.** No changes to the established percentage and DBE Entities submitted on
17 DBE Compliance Form-1 shall be allowed without approval by the OSD.
- 18 **c.** The City will not adjust the contract for any increase in cost due to
19 replacement of DBE Entities.

20
21 **D. Post-Award Modification.** The OSD may grant a post-award modification request if:

- 22 **a.** for a reason beyond the Developer’s control, the Developer is unable to use
23 the certified DBE entity submitted on DBE Compliance Form-1 to perform
24 the specified work. The Developer must notify the OSD of the intent for
25 removal and substitution of a certified DBE immediately upon
26 determination of that the DBE submitted on Compliance Form -1 is unable
27 to perform the specified work. In such case, the Developer shall use and
28 document “Good Faith Efforts” to find a similarly qualified and certified
29 DBE entity to perform such specified work. The same criteria used for
30 establishing “Good Faith Efforts” in maximizing the participation of DBE
31 Entities prior to awarding the Agreement will also apply to the substitution
32 of DBE sub-Developers during the performance of the Agreement; or
- 33 **b.** the Developer reasonably believes that, due to a change of scope, execution
34 of the work in accordance with the directions from the City is unlikely to
35 meet the established percentage or terms. In such case, the Developer shall
36 use and document “Good Faith Efforts” to achieve a reasonable amount of
37 DBE participation on the remaining work on the Agreement.

1 **ARTICLE XXI – FORCE MAJEURE**

2 **A. Event.** An event of Force Majeure will include any event or occurrence not reasonably
3 foreseeable by the City at the execution of this Agreement, which will include, but not be limited
4 to, abnormally severe and unusual weather conditions or other acts of God (including tropical
5 weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor
6 or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-
7 attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other
8 cause whatsoever beyond the reasonable control of City, provided such event was not caused by
9 the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by
10 the breach of this Agreement.

11 **B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the
12 Developer stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the
13 Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement
14 is being suspended

15 **C. Effect.**

16 1. Upon the occurrence of a Force Majeure event, for which the City has provided
17 required notice, the City may, at its sole discretion:

- 18 a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days.
19 During such time of suspension, the Parties will not be liable or responsible for
20 performance of their respective obligations under this Agreement, and there will
21 be excluded from the computation of such period of time any delays directly due
22 to the occurrence of the Force Majeure event. During any such period of
23 suspension, the Developer must take all commercially reasonable actions to
24 mitigate against the effects of the Force Majeure event and to ensure the prompt
25 resumption of performance when so instructed by the City; or

26 Terminate this Agreement, either immediately or after one or more periods of
27 suspension, effective on notice to Developer and without any further compensation
28 due.

29 2. Notwithstanding Section C(1) above, the obligations relating to making payments
30 when due (for services or materials already provided) and those obligations specified
31 to survive in the Agreement will be unaffected by any suspension or termination.

32 **ARTICLE XXII - INDEPENDENT ENTITY**

33 **A. Independent Entity Status.** The Developer is an independent entity and shall not be
34 deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself
35 or any of its employees, sub-entities, or agents to be an employee, partner, or agent of the City.

36 **B. Exclusion of Worker’s Compensation Coverage.** The City will not be liable to the

1 Developer, as an independent entity as defined in La. R.S. 23:1021(6), for any benefits or coverage
2 as provided by the Workmen’s Compensation Law of the State of Louisiana. Under the provisions
3 of La. R.S. 23:1034, any person employed by the Developer will not be considered an employee
4 of the City for the purpose of Worker’s Compensation coverage.

5 **C. Exclusion of Unemployment Compensation Coverage.** The Developer, as an
6 independent Entity, is being hired by the City under this Agreement for hire and defined in La.
7 R.S. 23:1472(E) and neither the Developer nor anyone employed by it will be considered an
8 employee of the City for the purpose of unemployment compensation coverage, which coverage
9 same being hereby expressly waived and excluded by the parties, because: (a) the Developer has
10 been and will be free from any control or direction by the City over the performance of the services
11 covered by this contract; (b) the services to be performed by the Developer are outside the normal
12 course and scope of the City’s usual business; and (c) the Developer has been independently
13 engaged in performing the services required under this Agreement prior to the date of this
14 Agreement.

15 **D. Waiver of Benefits.** The Developer, as an independent entity, will not receive from the
16 City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid
17 holidays, sick leave, pension, or Social Security for any services rendered to the City under this
18 Agreement.

19 **ARTICLE XXIII - NOTICE**

20 **A. In General.** Except for any routine communication, any notice, demand, communication,
21 or request required or permitted under this Agreement will be given in writing and delivered in
22 person or by certified mail, return receipt requested as follows:

23 If to the City: Tyra Johnson Brown
24 Director of Housing Policy and Community Development
25 City of New Orleans
26 1340 Poydras Street, Suite 1000
27 New Orleans, LA 70112

28 And: City Attorney
29 City of New Orleans
30 1300 Perdido Street, 5E03
31 New Orleans, LA 70112

1 If to the Developer:

2 B.W. Cooper Senior, L.L.C.
3 2117 Ursulines Avenue
4 New Orleans, LA 70116
5 Attention: Terri B. North
6 Contact Number 504-821-7221
7 E-mail Address tnorth@providencech.org

8
9 With a copy to:

10
11 1718 Peachtree Street, N.W. Suite 684
12 Atlanta, Georgia 30309
13 Attention: Carmen Chubb
14 Email: cchubb@columbiare.com

15
16 And:

17 with a copy to the Investor: RAH Investor 456 LLC
18 c/o Regions Affordable Housing
19 111 Great Neck Road, Suite 500
20 Great Neck, New York 11021
21 Attention: Kevin Smith
22

23 **B. Effectiveness.** Notices are effective when received, except any notice that is not received
24 due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date
25 of the first attempted delivery.

26 **C. Notification of Change.** Each party is responsible for notifying the other in writing that
27 references this Agreement of any changes in its address(es) set forth above.
28

29 **ARTICLE XXIV – INCORPORATED DOCUMENTS**

30 **A. In general.** The following documents are incorporated into this Agreement:

- 31 1. Accounting and Financial Conditions of Agreement, Attachment I
- 32 2. Compliance Unit Reporting Requirements, Attachment II
- 33 3. HUD Compliance Provisions, Attachment III
- 34 4. OCD Fiscal and Compliance Unit – Policies and Procedures, Attachment IV
- 35 5. Monthly Reporting Requirements with Direct Benefit Profile, Attachment V
- 36 6. Sources and Uses Statement, Attachment VI
- 37 7. Timeline, Attachment VII
- 38 8. List of Properties, Attachment VIII

1 9. Contract Analysis Document, Attachment IX
2

3 **B. Direct Conflict.** If any Attachment directly conflicts, in whole or in part, with this
4 Agreement, the terms and conditions of the Attachment will control except as provided by law.

5 **C. Difference in Standard.** If any Attachment differs, in whole or in part, with this
6 Agreement in terms of requirements, standards, timelines, etc., then the more stringent
7 requirement, the higher standard, and the longer timeline, etc., shall prevail, unless the Parties
8 mutually agree otherwise.
9

10
11 **ARTICLE XXV- ADDITIONAL PROVISIONS**

12 **A. Assignment.** This Agreement and any part of the Developer’s interest in it are not
13 assignable or transferable without the City’s prior written consent.

14 **B. Amendment.** No amendment of or modification to this Agreement shall be valid unless
15 and until executed in writing by the duly authorized representatives of both parties to this
16 Agreement.

17 **C. Audit and Other Oversight.** The Developer will abide by all provisions of City Code §
18 2-1120, including without limitation City Code § 2-1120(12), which requires the Developer to
19 provide the Office of Inspector General with documents and information as requested. Failure to
20 comply with such requests is a material breach of the Agreement. In signing this Agreement,
21 Developer agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for
22 purposes of challenging a subpoena.

23 **D. Choice of Law.** This Agreement will be construed and enforced in accordance with the
24 laws of the State of Louisiana, without regard to its conflict of laws provisions.

25 **E. Compliance with City’s Hiring Requirements – Ban the Box.**

- 26 a. The Developer agrees to adhere to the City’s hiring requirements contained in City
27 Code Section 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Developer
28 must provide a sworn statement attesting to its compliance with the City’s hiring
29 requirements or stating why deviation from the hiring requirements is necessary.
- 30 b. Failure to maintain compliance with the City’s hiring requirements throughout the
31 term of the Agreement, or to provide sufficient written reasons for deviation. Is a
32 material breach of this Agreement. Upon learning of such breach, the City will

1 provide the Developer notice of noncompliance and allow a thirty (30) days come
2 into compliance. If after providing notice and thirty (30) days to cure, the Developer
3 remains noncompliant, the City may move to suspend payments to Developer, void
4 the Agreement, or take any such legal action permitted by law or this Agreement.

5 c. This section will not apply to any agreements excluded from the City's hiring
6 requirements by City Code Sections 2-8(d) or (g). Should a court of competent
7 jurisdiction find any part of this section to be unenforceable, the section should be
8 reformed, if possible, so that it is enforceable to the maximum extent permitted by
9 law, or if reformation is not possible, the section should be fully severable and the
10 remaining provisions of the Agreement will remain in full force and effect.

11 d. The Developer will incorporate the terms and conditions of this Article into all
12 subcontracts, by reference or otherwise, and will require all sub-Developers to
13 comply with those provisions.

14 **F. Conflicting Employment.** To ensure that the Developer's efforts do not conflict with the
15 City's interests, and in recognition of the Developer's obligations to the City, the Developer will
16 decline any offer of other employment if its performance of this Agreement is likely to be adversely
17 affected by the acceptance of the other employment. The Developer will promptly notify the City
18 in writing of its intention to accept the other employment and will disclose all possible effects of
19 the other employment on the Developer's performance of this Agreement. The City will make the
20 final determination whether the Developer may accept the other employment.

21 **G. Construction of Agreement.** Neither party will be deemed to have drafted this
22 Agreement. This Agreement has been reviewed by the Parties and shall be construed and
23 interpreted according to the ordinary meaning of the words used so as to fairly accomplish the
24 purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved
25 in favor of or against the City or the Developer on the basis of which party drafted the uncertain
26 or ambiguous language. The headings and captions of this Agreement are provided for
27 convenience only and are not intended to have effect in the construction or interpretation of this
28 Agreement. Where appropriate, the singular includes the plural and neutral words and words of
29 any gender shall include the neutral and other gender.

30 **H. Convicted Felon Statement.** The Developer complies with City Code § 2-8(c) and no

1 principal, member, or officer of the Developer has, within the preceding 5 years, been convicted
2 of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds,
3 bribery, or falsification or destruction of public records.

4 **I. Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled “Cost
5 recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent
6 permitted by law, the Developer shall reimburse the City or disgorge anything of value or
7 economic benefit received from the City if the Developer fails to meet its contractual obligations.

8 **J. Employee Verification.** The Developer swears that (i) it is in compliance with La. R.S.
9 38:2212.10, and is registered and participates in a status verification system to verify that all
10 employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii)
11 it shall continue, during the term of this Agreement, to utilize a status verification system to verify
12 the legal status of all new employees in the State of Louisiana; and (iii) it shall require all
13 subDevelopers to submit to the Developer a sworn affidavit verifying compliance with items (i)
14 and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to
15 termination, and may further result in the Developer being ineligible for any public contract for a
16 period of 3 years from the date the violation is discovered. The Developer further acknowledges
17 and agrees that it shall be liable for any additional costs incurred by the City occasioned by the
18 termination of this Agreement or the loss of any license or permit to do business in the State of
19 Louisiana resulting from a violation of La. R.S. 38:2212.10. The Developer will provide to the
20 City a sworn affidavit attesting to the above provisions if requested by the City. The City may
21 terminate this Agreement for cause if the Developer fails to provide such the requested affidavit
22 or violates any provision of this paragraph.

23 **K. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the
24 final and complete agreement and understanding between the parties. All prior and
25 contemporaneous agreements and understandings, whether oral or written, are superseded by this
26 Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

27 **L. Limitations of the City’s Obligations.** The City has no obligations not explicitly set forth
28 in this Agreement or any incorporated documents or expressly imposed by law.

29 **M. No Third-Party Beneficiaries.** This Agreement is entered into for the exclusive benefit
30 of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this

1 Agreement.

2 **N. Non-Exclusivity.** This Agreement is non-exclusive and the Developer may provide
3 services to other clients. The City may engage the services of others for the provision of some or
4 all of the work to be performed under this Agreement.

5
6 **O. Non-Solicitation Statement.** The Developer has not employed or retained any company
7 or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement.
8 The Developer has not paid or agreed to pay any person, other than a bona fide employee working
9 for it, any fee, commission, percentage, gift, or any other consideration contingent upon or
10 resulting from this Agreement.

11 **P. Ownership Interest Disclosure.** The Developer shall provide a sworn affidavit listing all
12 persons, natural or artificial, with an ownership interest in the Developer and stating that no other
13 person holds an ownership interest in the Developer via a counter letter. For the purposes hereof,
14 an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded
15 corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly
16 traded corporation. If the Developer fails to submit the required affidavits, the City may, after 30
17 days' written notice to the prime Developer, take such action as may be necessary to cause the
18 suspension of any further payments until such the required affidavits are submitted.

19 **Q. Ownership of Records.** The Developer shall maintain ownership of all data collected and
20 all products of work prepared, created or modified by the Developer in the performance of this
21 Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer
22 programs, source code, documents, records, disks, original drawings or other such material,
23 regardless of form and whether finished or unfinished, but excluding the Developer's personnel
24 and administrative records and any tools, systems, and information used by the Developer to
25 perform the services under this Agreement, including computer software (object code and source
26 code), know-how, methodologies, equipment, and processes and any related intellectual property
27 (collectively, "Work Product"). The Developer shall also maintain all right, title and interest in
28 any Work Product, including without limitation the right to secure and maintain any copyright,
29 trademark, or patent of Work Product in the Developer's name. However, the Developer
30 acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and

1 therefore the Developer shall grant the City a no-cost perpetual license to utilize all Work Product
2 in a manner to further the purpose of the Project, provided that the City takes all reasonable
3 precautions to protect the Developer’s intellectual property and proprietary interests of the
4 Developer, subject to all applicable public records laws. The Developer shall also be able present
5 or publish materials deriving from its Work Product at its sole discretion, provided that the
6 Developer provide the City with an advance copy for review and feedback at least seven (7) days
7 prior to presentation or publication.

8 **R. Prohibition of Financial Interest in Agreement.** No elected official or employee of the
9 City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this
10 provision, a financial interest held by the spouse, child, or parent of any elected official or
11 employee of the City shall be deemed to be a financial interest of such elected official or employee
12 of the City. Any willful violation of this provision, with the expressed or implied knowledge of
13 the Developer, shall render this Agreement voidable by the City and shall entitle the City to
14 recover, in addition to any other rights and remedies available to the City, all monies paid by the
15 City to the Developer pursuant to this Agreement without regard to the Developer’s otherwise
16 satisfactory performance of the Agreement.

17 **S. Prohibition on Political Activity.** None of the funds, materials, property, or services
18 provided directly or indirectly under the terms of this Agreement shall be used in the performance
19 of this Agreement for any partisan political activity, or to further the election or defeat of any
20 candidate for public office.

21 **T. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise conferred
22 upon or reserved to any party shall be considered exclusive of any other remedy available to a
23 party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be
24 exercised from time to time as often as the occasion may arise or as may be deemed expedient.

25 **U. Severability.** Should a court of competent jurisdiction find any provision of this
26 Agreement to be unenforceable as written, the unenforceable provision should be reformed, if
27 possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not
28 possible, the unenforceable provision shall be fully severable and the remaining provisions of the
29 Agreement remain in full force and effect and shall be construed and enforced as if the
30 unenforceable provision was never a part the Agreement.

1 **V. Sub-Developer Reporting.** The Developer will provide a list of all natural or artificial
2 persons who are retained by the Developer at the time of the Agreement’s execution and who are
3 expected to perform work as sub-developers in connection with the Developers’ work for the City.
4 For any sub-developer proposed to be retained by the Developer to perform work on the
5 Agreement with the City, the Developer must provide notice to the City within 30 days of retaining
6 that sub-developer. If the Developer fails to submit the required lists and notices, the City may,
7 after thirty 30 days’ written notice to the Developer, take any action it deems necessary, including,
8 without limitation, causing the suspension of any payments, until the required lists and notices are
9 submitted.

10 **W. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision
11 of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or
12 breach of the other party at such time as the initial discovery of the existence of such
13 noncompliance, right, default or breach shall not affect or constitute a waiver of either party’s right
14 to insist upon such compliance, exercise such right or seek such remedy with respect to that default
15 or breach or any prior contemporaneous or subsequent default or breach.

16 **X. Survival of Certain Provisions.** All representations and warranties and all obligations
17 concerning record retention, inspections, audits, ownership, indemnification, payment, remedies,
18 jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this
19 Agreement and continue in full force and effect.

20 **Y. Special Conditions for HUD Contracts.** The “HUD Compliance Provisions” marked as
21 Attachment III to this Agreement, are expressly incorporated in the Agreement.

22 **Z. Recordation of Regulatory Agreement.** For all rental projects, this Agreement must
23 remain in effect or be extended as necessary, prior to its termination, until such time as a
24 Regulatory Agreement is executed by the owner of the rental project, whether the owner is the
25 Developer or another entity. The Regulatory Agreement shall be provided by the City, and it shall
26 be recorded as a deed restriction for the “Period of Affordability” applicable to each project.

27 **AA. Additional Attachments.** Developer acknowledges that the Sources and Uses
28 Statement, marked as Attachment VI; the Timeline, marked as Attachment VII; and the List of
29 Properties, marked as Attachment VIII, are all attached to and made part of this Agreement.

30 **BB. Assistance to Those with Limited English Proficiency.** The Developer agrees to

1 take all reasonable actions to communicate with persons who have Limited English Proficiency
2 (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate
3 the program(s) and/or services funded under this Agreement.

4
5 **ARTICLE XXVI- ELECTRONIC SIGNATURE AND DELIVERY**

6 The Parties agree that a manually signed copy of this Agreement and any other document(s)
7 attached to this Agreement delivered by email shall be deemed to have the same legal effect as
8 delivery of an original signed copy of this Agreement. No legally binding obligation shall be
9 created with respect to a party until such party has delivered or caused to be delivered a manually
10 signed copy of this Agreement.

11
12 **[The remainder of this page is intentionally left blank]**

13
14 **[SIGNATURES CONTAINED ON NEXT PAGE]**

1 **IN WITNESS WHEREOF**, the Parties hereto, through duly authorized representatives,
2 have executed this Agreement to be effective as of the Effective Date.

3

4

CITY OF NEW ORLEANS

5

BY: _____
LATOYA CANTRELL, MAYOR

6

7

8

Executed on the ___ day of _____, 2025.

9

10

11

FORM AND LEGALITY APPROVED:

12

Law Department

13

By: .

14

Printed Name: _____

15

16

17

18

CITY OF NEW ORLEANS, CITY COUNCIL

19

BY: _____
CITY COUNCIL PRESIDENT

20

21

22

23

1 **IN WITNESS WHEREOF**, the Parties hereto, through duly authorized representatives, have
2 executed this Agreement to be effective as of the Effective Date.
3
4

5 **BW COOPER SENIOR, L.L.C.**
6

7
8 **BW COOPER SENIOR, L.L.C.**,
9 a Louisiana limited liability company
10

11 By: BW Cooper Senior Manager, L.L.C.
12 Its: Managing Member
13

14
15 By: _____
16 Name: Carmen Chubb
17 Its: Authorized Representative
18

19 By: _____
20 Name: Terri B. North
21 Its: Authorized Representative

22 _____
23 **FEDERAL TAX I.D.**
24

25 _____
26
27 **DATE**
28
29
30
31

TABLE OF ATTACHMENTS

Attachment I	Accounting and Financial Conditions of Agreement
Attachment II	Compliance Unit Reporting Requirements
Attachment III	HUD Compliance Provisions
Attachment IV	OCD Fiscal and Compliance Unit – Policies and Procedures
Attachment V	Monthly Reporting Requirements with Direct Benefit Profile
Attachment VI	Sources and Uses Statement
Attachment VII	Timeline
Attachment VIII	List of Properties
Attachment IX	Contract Analysis Document

PART III
TERMS AND CONDITIONS

ACCOUNTING AND FINANCIAL MANAGEMENT
PROCEDURES

SECTION 1 - SYSTEM EVALUATION

It is agreed and understood between the parties that prior to the disbursement of funds, the City will determine that the Contractor's fidelity bonding coverage, accounting, reporting and internal control systems meet the minimum Department of HUD and City requirements. It is further agreed and understood that the City shall monitor the operations and accounting of the Contractor to assure that it is maintaining adequate systems and that the funds furnished are being used effectively and efficiently to accomplish the purposes for which the funds were made available.

SECTION 2 - CASH ADVANCE

Any advance made to the Contractor shall be amortized as the City shall order. Payments to the City from the Contractor shall be made as scheduled by the City. In any event, the balance of advance payments shall become due and payable to the City of New Orleans upon termination of this agreement.

SECTION 3 - RECEIPTS AND DISBURSEMENTS

- A. **Receipts** - Prior to any funding the Contractor shall designate a commercial bank as the depository and establish a separate checking account for the receipt of funds under this contract and give the City the Official Title and Number of the account. Furthermore, Title of the account is to be consistent with the name of the project. It is also agreed that should the Contractor decide to change the depository to another commercial bank after funds are received, the Contractor shall provide the City the name of the new depository at least five (5) days before such change occurs. The Contractor is encouraged, but not required, to use a minority owned and/or operated depository.
- B. **Disbursements** - Disbursements for goods and services of persons and/or firms not payrolled by the Contractor shall be supported by executed purchase orders or contracts. Purchase and contract procedures shall follow the City of New Orleans practices and policies, and shall be approved by the City of New Orleans prior to implementation. Disbursements must be supported by invoices or requisitions, and made by pre-numbered checks countersigned by two authorized officials other than the accountant or bookkeeper.

SECTION 4 - BOOKS OF ACCOUNTS

The Contractor shall establish and maintain on a current basis an adequate accounting system on an accrual basis, in accordance with generally accepted accounting principles and practices. This system must be adequate to enable the monthly preparation of a Cost Control Statement of the sources and applications of funds prepared in accordance with the provisions set forth in the HUD guidelines, and any other guidelines provided by the City, to be submitted to the City on the fifth (5th) working day of each calendar month.

SECTION 5 - DESCRIPTION OF ACCOUNTS

- A. **Accounts** - The accounting system shall follow the suggested general ledger account title consistent with the name of the project, or the City may provide titles at its discretion. The Contractor shall also maintain an "Ineligible Costs" ledger to record any cost incurred which is not eligible for reimbursement for program funds.
- B. **Special Account** - Contractor agrees to establish, within its present accounting system, a special numbered cost account for identification of all funds received and disbursed under this contract. This special numbered account shall be used solely for the purpose of making payments for items of allowable cost pursuant to this agreement.

SECTION 6 - RECORDS

Records shall identify adequately the source, program year, and application of funds received under this agreement. Said records shall contain information pertaining to the funding award, authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. Records shall include the minutes of meetings of all Contractor (corporation) board meetings, pertaining to the funding received and its application.

1 **SECTION 7 - ELIGIBLE AND INELIGIBLE COSTS**

2 Contractor agrees that all costs incurred by it will be reasonable and of a nature which clearly relates to the specific
3 purposes and end products of the contract. Contractor further agrees that it will exercise due care in incurring costs
4 and will assure that expenditures conform to the general standards and criteria for cost eligibility as set forth in the
5 Office of Management and Budget Super Circular 2 CFR part 200 Subpart E, and HUD regulations and guidelines and
6 others as may be imposed by the City. Contractor agrees to refund to the City any payments or portions of payments
7 which the City and/or Department of HUD determine are not properly due to the Contractor under the terms of this
8 agreement.
9

10 **SECTION 8 - FIDELITY BONDING**

11 Prior to initial disbursement of funds to the Contractor, the Contractor shall obtain fidelity/surety bonds on all persons
12 handling funds received or disbursed under the contract in an amount and manner consistent with the coverage deemed
13 necessary and reasonable, or as the City may require. If the bond is canceled or reduced, the Contractor shall
14 immediately notify the City. In that event, the City shall not make any further disbursements to the Contractor until it is
15 assured that bonding coverage has been obtained.
16

17 **SECTION 9 - AUDITS AND INTERNAL CONTROL SYSTEMS**

18 At any time during normal business hours and as often as the City may deem necessary, the Contractor shall make
19 available to the City or its agent all records for examination and will permit the City or its agent to audit, examine and
20 make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, records
21 of personnel, conditions of improvements and other data relating to all matters covered by the contract. The Contractor
22 shall maintain a written description of its systematic method to assure timely and appropriate resolution of audit findings
23 and recommendations which shall include review of all audit findings by the Board of Directors of the Contractor's
24 corporation.
25

26 The Contractor shall perform an audit of all funds including Program Income (if applicable) received under this
27 agreement in accordance with the requirements of the Office of Management and Budget (OMB) Super Circular 2 CFR
28 part 200 Subpart F. The Contractor shall upon execution of this agreement provide the City with two (2) copies of all
29 organizational audit reports inclusive of the period of time twenty-four months prior to the date of this agreement. In the
30 event that no organizational audit meeting the minimum requirements of OMB Super Circular 2 CFR part 200 Subpart
31 (A-133 Audit) has been conducted within the last twenty-four months preceding the execution of this contract, the
32 agency shall take the necessary steps to direct an organizational audit to be implemented within 120 days of the
33 execution date of this agreement, and upon completion shall provide two (2) copies of said audit to the City. Failure to
34 implement said audit shall constitute cause for the City to withhold any and all compensation due under this agreement.
35

36 Any agency expending \$750,000 or more in total federal dollars is required to have an audit performed on the funds
37 that are allocated for the services of its specific agreement. The City shall, at the request of the Contractor, reimburse
38 the Contractor for the City's eligible portion of the audit cost, provided the contractor satisfies the audit requirements of
39 the City.
40

41 Any agency that expends less than \$750,000 of total federal dollars may be required by the City, at its option, to have
42 an audit performed on funds allocated for the services conducted under this agreement. This determination will be
43 based on "high risk" and "low risk" classification.
44

45 The Contractor further understands and agrees to maintain an internal control system in accordance with the Office of
46 Management and Budget (OMB) Circular No. A-123 Revised, Internal Control Systems.
47

48 **SECTION 10 - TECHNICAL ASSISTANCE**

49 The City agrees to make guidance and assistance available to the Contractor on request in establishing a suitable
50 accounting system. The provision of such assistance shall not relieve the Contractor of his responsibility to provide an
51 adequate accounting system as required by this agreement and as required by federal rules and regulations.
52

53 **SECTION 11 - PROPERTY RECORDS**

54 The Contractor shall maintain, and provide the City a copy of a record card of each item of non-expendable property
55 acquired for the project. Non-expendable property which will not be consumed or lose its identity by being incorporated
56 into another item of property, which cost \$100.00 or more per unit and is expected to have a useful life of one (1) year
57 or more. Grouping of like items, such as chairs with an aggregate cost in excess of \$100.00 shall also be controlled
58 and accounted for as non-expendable property even though the cost of a single item is less than \$100.00. The record
59 shall include (a) description of the item of property, including model and serial number, if applicable, (b) date of
60 acquisition, and (c) the acquisition cost of assigned value to the property.

Office of Community Development

**Accounting and Financial Management Procedures
Revised 9/15**

1
2 Said record shall also include information as to whether the item of property was new or used at time of acquisition.
3 The aggregate of the individual costs shown on the record cards shall equal the balance in the subsidiary cost account
4 for non-expendable property.
5

6 A physical inventory shall be taken and reconciled with the record semi-annually, or more frequently if necessary, by
7 the Contractor. The reconciliations are to be submitted to the City within ten (10) days after completion. Any and all
8 non-expendable property purchased shall immediately upon delivery be tagged with standard City of New Orleans I.D.
9 tags, "Property of the City of New Orleans". The title to all non-expendable property acquired under the terms of this
10 contract, or any amendments thereto, including acquisition through lease-purchase agreement, shall immediately vest
11 in the City upon delivery of such property by the vendor. At the conclusion of a project or activity, all non-expendable
12 property acquired for the project shall be returned to the City of New Orleans.
13

14 **SECTION 12 - SUSPENSION OF FUNDS**

15 If at any time the Contractor is found to be in violation of any parts or sub-parts of this contract, or should the City find
16 that the Contractor is negligent in the administration or recording of funds made available through this contract, the City
17 shall have the authority to suspend any further funding and the ability to seize such Credit Balance in any depository
18 which consists of these funds.

19 **SECTION 13 - INSURANCE ON DEPOSITS**

20 The Contractor understands that all program funds shall be placed only in institutions covered by the Federal Deposit
21 Insurance Corporation (FDIC) organization or other appropriately Federal insured institution or depository. The
22 Contractor also understands that any portion of program funds, in excess of \$100,000, in any one institution, must be
23 fully (100%) and continuously collateralized with specific and identifiable U. S. Government or Agency securities. The
24 securities used as collateral must be owned by the Depository and the manner of collateralization must provide the
25 Contractor with a continuing perfected security interest in the collateral in accordance with applicable law and Federal
26 regulations. The Contractor shall have the option of placing program funds in excess of \$100,000 in another properly
27 insured institution instead of providing collateral for any additional funds in excess of \$10

Compliance Unit Reporting Requirements

Community Development Block Grant (CDBG) funding requires the following compliance monitoring:

- Adherence to Davis-Bacon monitoring for all Public Facility construction projects in excess of \$2,000 and all Residential construction projects involving 8 or more units
- Utilization of LCPtracker, electronic online system of entering certified payrolls
 - Weekly submissions of certified payrolls include affidavits of prime contractor, statements of compliance, and payroll spreadsheets
- Timely completion of Contract and Subcontract Activity Reports (CSAR) if any portion of funding was used for construction
- Equal Employment Opportunity and Affirmative Action monitoring for all subrecipients
- Section 3 monitoring for all recipients of federal assistance exceeding \$200,000 in any one year that is expended in part for housing construction, rehabilitation, or other public construction; and for construction contracts in excess of \$100,000 (clause included if applicable)
- Total Federal Funding Inquiry report to be completed by all subrecipients to determine if an A-133 Single Audit is required
- A-133 Single Audit to be performed by any subrecipient that expends \$750,000 or more in one fiscal year, effective for fiscal years beginning on or after January 1, 2015. For fiscal years starting prior to January 1, 2015, the threshold is \$500,000.

HOME funding requires the following compliance monitoring:

- Adherence to Davis-Bacon monitoring for all Residential construction projects involving 12 or more units
- Utilization of LCPtracker, electronic online system of entering certified payrolls
 - Weekly submissions of certified payrolls include affidavits of prime contractor, statements of compliance, and payroll spreadsheets
- Equal Employment Opportunity and Affirmative Action monitoring for all subrecipients
- Section 3 monitoring for all recipients of federal assistance exceeding \$200,000 in any one year that is expended in part for housing construction, rehabilitation, or other public construction; and for construction contracts in excess of \$100,000 (clause included if applicable)
- Total Federal Funding Inquiry report to be completed by all sub-recipients to determine if an A-133 Single Audit is required
- A-133 Single Audit to be performed by any subrecipient that expends \$750,000 or more in one fiscal year, effective for fiscal years beginning on or after January 1, 2015. For fiscal years starting prior to January 1, 2015, the threshold is \$500,000.

SECTION 3 CLAUSE

All bid packages and contracts of \$100, 000 or greater stimulating construction through the use of federal funds shall include the required “Section 3 clause” (below):

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S. C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities 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.

- 1 B. The parties to the contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which
2 implement Section 3. As evidenced by their execution of this contract, the parties to this contract
3 certify that they are under no contractual or other impediment that would prevent them from
4 complying with the Part 135 regulations.
- 5 C. The contractor agrees to send to each labor organization or representative of workers with which
6 the contractor has a collective bargaining agreement or other understanding, if any, a notice
7 advising the labor organization or worker's representative of the contractor's commitments under
8 this Section 3 clause, and will post copies of the notice in conspicuous places at the work site
9 where both employees and applicants for training and employment positions can see the notice.
10 The notice shall describe the Section 3 preference, shall set forth minimum number and job titles
11 subject to hire, availability of apprenticeship and training positions, the qualifications of each;
12 and the name and location of the person(s) taking applications for each of the positions; and the
13 anticipated date the work shall begin.
- 14 D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance
15 with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an
16 applicable provision of the subcontract of in this Section 3 clause, upon a finding that a
17 subcontractor is in violation of the regulations in 24 CFR Part 135. The contract will not
18 subcontract with any subcontractor where the contractor has notice or knowledge that the
19 subcontractor is in violation of the regulations in 24 CFR Part 135.
- 20 E. The contractor will certify that any vacant employment positions, including training positions,
21 that are filled (1) after the contractor is selected but before the contract is executed, and (2) with
22 persons other than those to whom the regulations of 24 CFR Part 135 require employment
23 opportunities to be directed, were not filled to circumvent the contractor's obligations under 24
24 CFR Part 135.
- 25 F. Non compliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination
26 of this contract for default, and debarment or suspension from future HUD assisted contracts.
- 27 G. With respect to the work performed in connection with Section 3 covered Indian housing
28 assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25
29 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires
30 that to the greatest extent feasible (i) preference and opportunities for training and employment
31 shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be
32 given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract
33 are subject to Section 3 and Section 7(b) to the maximum extent feasible, but not in derogation of
34 compliance with Section 7(b).

**HUD COMPLIANCE PROVISIONS
FOR
HOME-GRANTEES**

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1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**
(applicable to contracts and subcontracts exceeding \$10,000)

27 During the performance of this contract, the Developer agrees as follows:

28 (1) The Developer will not discriminate against any employee or applicant for employment because of
29 race, color, religion, sex, sexual orientation, gender identity, or national origin. The Developer will take
30 affirmative action to ensure that applicants are employed, and that employees are treated during
31 employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or
32 national origin. Such action shall include, but not be limited to the following: Employment, upgrading,
33 demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other
34 forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post
35 in conspicuous places, available to employees and applicants for employment, notices to be provided by
36 the contracting officer setting forth the provisions of this nondiscrimination clause.

37 (2) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the
38 Developer, state that all qualified applicants will receive consideration for employment without regard to
39 race, color, religion, sex, sexual orientation, gender identity, or national origin.

40 (3) The Developer will not discharge or in any other manner discriminate against any employee or
41 applicant for employment because such employee or applicant has inquired about, discussed, or disclosed
42 the compensation of the employee or applicant or another employee or applicant. This provision shall not
43 apply to instances in which an employee who has access to the compensation information of other
44 employees or applicants as a part of such employee's essential job functions discloses the compensation of

1 such other employees or applicants to individuals who do not otherwise have access to such information,
2 unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
3 proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with
4 the Developer's legal duty to furnish information.

5 (4) The Developer will send to each labor union or representative of workers with which it has a
6 collective bargaining agreement or other contract or understanding, a notice to be provided by the agency
7 contracting officer, advising the labor union or workers' representative of the Developer's commitments
8 under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in
9 conspicuous places available to employees and applicants for employment.

10 (5) The Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and
11 of the rules, regulations, and relevant orders of the Secretary of Labor.

12 (6) The Developer will furnish all information and reports required by Executive Order 11246 of
13 September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
14 thereto, and will permit access to his books, records, and accounts by the contracting agency and the
15 Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and
16 orders.

17 (7) In the event of the Developer's non-compliance with the nondiscrimination clauses of this contract or
18 with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in
19 whole or in part and the Developer may be declared ineligible for further Government contracts in
20 accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other
21 sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24,
22 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

23 (8) The Developer will include the provisions of paragraphs (1) through (8) in every subcontract or
24 purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant
25 to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding
26 upon each subDeveloper or vendor. The Developer will take such action with respect to any subcontract
27 or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions
28 including sanctions for noncompliance: *Provided*, however, that in the event the Developer becomes
29 involved in, or is threatened with, litigation with a subDeveloper or vendor as a result of such direction,
30 the Developer may request the United States to enter into such litigation to protect the interests of the
31 United States.

32
33 2. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION**
34 **CONTRACT SPECIFICATIONS**
35 (applicable to contracts and subcontracts exceeding \$10,000)
36

37 The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for
38 construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at [41](#)
39 [CFR Chapter 60](#), which is paid for in whole or in part with funds obtained from the Federal Government
40 or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or

1 guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance,
2 or guarantee, the following equal opportunity clause:

3 During the performance of this contract, the Developer agrees as follows:

4 (1) The Developer will not discriminate against any employee or applicant for employment because of
5 race, color, religion, sex, sexual orientation, gender identity, or national origin. The Developer will take
6 affirmative action to ensure that applicants are employed, and that employees are treated during
7 employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or
8 national origin. Such action shall include, but not be limited to the following:

9 Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or
10 termination; rates of pay or other forms of compensation; and selection for training, including
11 apprenticeship. The Developer agrees to post in conspicuous places, available to employees and
12 applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination
13 clause.

14 (2) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the
15 Developer, state that all qualified applicants will receive consideration for employment without regard to
16 race, color, religion, sex, sexual orientation, gender identity, or national origin.

17 (3) The Developer will not discharge or in any other manner discriminate against any employee or
18 applicant for employment because such employee or applicant has inquired about, discussed, or disclosed
19 the compensation of the employee or applicant or another employee or applicant. This provision shall not
20 apply to instances in which an employee who has access to the compensation information of other
21 employees or applicants as a part of such employee's essential job functions discloses the compensation of
22 such other employees or applicants to individuals who do not otherwise have access to such information,
23 unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
24 proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with
25 the Developer's legal duty to furnish information.

26 (4) The Developer will send to each labor union or representative of workers with which he has a
27 collective bargaining agreement or other contract or understanding, a notice to be provided advising the
28 said labor union or workers' representatives of the Developer's commitments under this section, and shall
29 post copies of the notice in conspicuous places available to employees and applicants for employment.

30 (5) The Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and
31 of the rules, regulations, and relevant orders of the Secretary of Labor.

32 (6) The Developer will furnish all information and reports required by Executive Order 11246 of
33 September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
34 and will permit access to his books, records, and accounts by the administering agency and the Secretary
35 of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

36 (7) In the event of the Developer's noncompliance with the nondiscrimination clauses of this contract or
37 with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended
38 in whole or in part and the Developer may be declared ineligible for further Government contracts or
39 federally assisted construction contracts in accordance with procedures authorized in Executive Order

1 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as
2 provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the
3 Secretary of Labor, or as otherwise provided by law.

4 (8) The Developer will include the portion of the sentence immediately preceding paragraph (1) and the
5 provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,
6 regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246
7 of September 24, 1965, so that such provisions will be binding upon each subDeveloper or vendor. The
8 Developer will take such action with respect to any subcontract or purchase order as the administering
9 agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

10 *Provided*, however, that in the event a Developer becomes involved in, or is threatened with, litigation
11 with a subDeveloper or vendor as a result of such direction by the administering agency, the Developer
12 may request the United States to enter into such litigation to protect the interests of the United States.

13 The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its
14 own employment practices when it participates in federally assisted construction work: *Provided*, That if
15 the applicant so participating is a State or local government, the above equal opportunity clause is not
16 applicable to any agency, instrumentality or subdivision of such government which does not participate in
17 work on or under the contract.

18 The applicant agrees that it will assist and cooperate actively with the administering agency and the
19 Secretary of Labor in obtaining the compliance of Developers and subDevelopers with the equal
20 opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will
21 furnish the administering agency and the Secretary of Labor such information as they may require for the
22 supervision of such compliance, and that it will otherwise assist the administering agency in the discharge
23 of the agency's primary responsibility for securing compliance.

24 The applicant further agrees that it will refrain from entering into any contract or contract modification
25 subject to Executive Order 11246 of September 24, 1965, with a Developer debarred from, or who has not
26 demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant
27 to the Executive Order and will carry out such sanctions and penalties for violation of the equal
28 opportunity clause as may be imposed upon Developers and subDevelopers by the administering agency
29 or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant
30 agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any
31 or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan,
32 insurance, guarantee); refrain from extending any further assistance to the applicant under the program
33 with respect to which the failure or refund occurred until satisfactory assurance of future compliance has
34 been received from such applicant; and refer the case to the Department of Justice for appropriate legal
35 proceedings.

36
37
38

39 **3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION**
40 (applicable to contracts and subcontracts exceeding \$10,000)

41
42 A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard

1 Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

- 2
- 3 B. The goals and timetables for minority and female participation, expressed in percentage terms for
4 the Developer's aggregate workforce in each trade on all construction work in the covered area
5 are applicable to all the Developer's construction work (whether or not it is federal or federally
6 assisted) performed in the covered area. If the Developer performs construction work in a
7 geographic area located outside of the covered area, it shall apply the goals established for such
8 geographic area where the work is actually performed.

9

10 With regard to this second area, the Developer also is subject to the goals for both its federally
11 involved and non-federally involved construction. The Developer's compliance with the
12 Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of
13 the Equal Opportunity Clause, specific affirmative action obligations required by the
14 specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the
15 geographical area where the contract resulting from this solicitation is to be performed. The
16 hours of minority and female employment and training must be substantially uniform throughout
17 the length of the contract, and in each trade, and the Developer shall make a good faith effort to
18 employ minorities and women evenly on each of its projects. The transfer of minority or female
19 employees or trainees from Developer to Developer or from project to project for the sole
20 purpose of meeting the Developer's goals shall be a violation of the contract, the Executive Order,
21 and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the
22 total work hours performed.

- 23
- 24 C. The Developer shall provide written notification to the Director of the Office of Federal Contract
25 Compliance Programs within 10 working days of award of any construction subcontract in excess
26 of \$10,000 at any tier for construction work under the contract resulting from this solicitation.
27 The notification shall list the name, address, and telephone number of the subDeveloper;
28 employer identification number; estimated dollar amount of the subcontract; estimated starting
29 and completion dates of the sub-contract; and the geographical area in which the contract is to be
30 performed.

- 31
- 32 D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is
33 (insert description of the geographical areas where the contract is to be performed, giving the
34 State, parish, and city, if any):

35

36

37 **4. CERTIFICATION OF NONSEGREGATED FACILITIES**
38 (applicable to contracts and subcontracts exceeding \$10,000)

39

40 By the submission of this bid, the bidder, offeror, applicant or Developer certifies that he/she does
41 not maintain or provide for his/her establishments, and that he/she does not permit employees to
42 perform their services at any location, under his/her control, where segregated facilities are
43 maintained. He/she certifies further that he/she will not maintain or provide for employees any
44 segregated facilities at any of his/her establishments, and he/she will not permit employees to
45 perform their services at any location under his/her control where segregated facilities are
46 maintained. The bidder, offeror, applicant or Developer agrees that a breach of this certification
47 is a violation of the equal opportunity clause of this contract.

48

49 As used in this certification, the term "segregated facilities" means any waiting rooms, work

1 areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms,
2 and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment
3 areas, transportation and housing facilities provided for employees which are segregated by
4 explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin
5 because of habit, local custom, or any other reason.
6

7 He/she further agrees that (except where he/she has obtained for specific time periods) he/she will
8 obtain identical certification from proposed Developers prior to the award of subcontracts
9 exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that
10 he/she will retain such certifications in his/her files; and that he/she will forward the following
11 notice to such proposed Developers (except where proposed Developers have submitted identical
12 certifications for specific time periods).
13

14 **5. CIVIL RIGHTS**

15
16 The Developer shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No
17 person shall, on the grounds of race, color, or national origin, be excluded from participation in,
18 be denied the benefits of, or be subjected to discrimination under any program or activity
19 receiving federal financial assistance.
20

21 **6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPLMENT ACT**
22 **OF 1974**

23
24 The Developer shall comply with the provisions of Section 109 of the Housing and Community
25 Development Act of 1974. No person in the United States shall on the grounds of race, color,
26 national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected
27 to discrimination under any program or activity funded in whole or in part with funds made
28 available under this title. Section 109 further provides that discrimination on the basis of age
29 under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped
30 individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is
31 prohibited.
32

33 **7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968**

34 (applicable to projects with more than \$200,000 in funding from housing and community
35 development financial assistance programs, or more than \$100,000 in assistance from Lead
36 Hazard Control and Healthy Homes programs)
37

38 Title 24 Part 75 of the Code of Federal Regulations establishes the requirements to be followed to
39 ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12
40 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic
41 opportunities, most importantly employment, generated by certain HUD financial assistance shall
42 be directed to low- and very low-income persons, particularly those who are recipients of
43 government assistance for housing or residents of the community in which the Federal assistance
44 is spent.
45

46 **A. *Employment and Training***

47 (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and
48 regulations, recipients covered by this subpart shall ensure that employment and training

1 opportunities arising in connection with Section 3 projects are provided to Section 3 workers
2 within the metropolitan area (or nonmetropolitan county) in which the project is located.

3 (2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this
4 section should be given to:

5 (i) Section 3 workers residing within the service area or the neighborhood of the project,
6 and

7 (ii) Participants in YouthBuild programs.
8

9 **B. Contracting**

10 (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and
11 regulations, recipients covered by this subpart shall ensure contracts for work awarded in
12 connection with Section 3 projects are provided to business concerns that provide economic
13 opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan
14 county) in which the project is located.

15 (2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this
16 section should be given to:

17 (i) Section 3 business concerns that provide economic opportunities to Section 3 workers
18 residing within the service area or the neighborhood of the project, and

19 (ii) YouthBuild programs.
20

21 **C. Contract Provisions**

22 (1) Recipients must include language applying Section 3 requirements in any subrecipient
23 agreement or contract for a Section 3 project.

24 (2) Recipients of Section 3 funding must require subrecipients, Developers, and subDevelopers to
25 meet the requirements of § 75.19, regardless of whether Section 3 language is included in
26 recipient or subrecipient agreements, program regulatory agreements, or contracts.
27

28 **8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**

29 (applicable to contracts and subcontracts exceeding \$10,000)
30

31 A. The Developer will not discriminate against any employee or applicant for employment because
32 of physical or mental handicap in regard to any position for which the employee or applicant for
33 employment is otherwise qualified. The Developer agrees to take affirmative action to employ,
34 advance in employment and otherwise treat qualified handicapped individuals without
35 discrimination based upon their physical or mental handicap in all employment practices such as
36 the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or
37 termination, rates of pay or other forms of compensation, and selection for training, including
38 apprenticeship.
39

40 B. The Developer agrees to comply with the rules, regulations, and relevant orders of the Secretary
41 of Labor issued pursuant to the Act.
42

43 C. In the event of the Developer's noncompliance with the requirements of this clause, actions for
44 noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the
45 Secretary of Labor issued pursuant to the Act.
46

1 D. The Developer agrees to post in conspicuous places, available to employees and applicants for
2 employment, notices in a form to be prescribed by the Director, provided by or through the
3 contracting officer. Such notices shall state the Developer's obligation under the law to take
4 affirmative action to employ and advance in employment qualified handicapped employees and
5 applicants for employment, and the rights of applicants and employees.
6

7 E. The Developer will notify each labor union or representative of workers with which it has a
8 collective bargaining agreement or other contract understanding, that the Developer is bound by
9 the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative
10 action to employ and advance in employment physically and mentally handicapped individuals.
11

12 F. The Developer will include the provisions of this clause in every subcontract or purchase order of
13 \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant
14 to Section 503 of the Act, so that such provisions will be binding upon each Developer or vendor.
15 The Developer will take such action with respect to any subcontract or purchase order as the
16 Director of the Office of Federal Contract Compliance Programs may direct to enforce such
17 provisions, including action for noncompliance.
18

19 **9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

20
21 The Developer agrees that no otherwise qualified individual with disabilities shall, solely by
22 reason of his disability, be denied the benefits, or be subjected to discrimination including
23 discrimination in employment, any program or activity that receives the benefits from the federal
24 financial assistance.
25

26 **10. AGE DISCRIMINATION ACT OF 1975**

27
28 The Developer shall comply with the provisions of the Age Discrimination Act of 1975. No
29 person in the United States shall, on the basis of age, be excluded from participation in, be denied
30 the benefits of, or be subjected to discrimination under, any program or activity receiving federal
31 financial assistance.
32

33 **11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**
34 (applicable to contracts and subcontracts exceeding \$100,000)
35

36 The Developer and all Developers shall comply with the requirements of the Clean Air Act, as
37 amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC
38 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at
39 40 CFR Part 15, as amended.
40

41 In addition to the foregoing requirements, all nonexempt Developers and Developers shall furnish
42 to the owner, the following:
43

44 A. A stipulation by the Developer or Developers, that any facility to be utilized in the
45 performance of any nonexempt contract or subcontract, is not listed on the List of
46 Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40
47 CFR Part 15, as amended.
48

49 B. Agreement by the Developer to comply with all the requirements of Section 114 of the

1 Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water
2 Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring,
3 entry, reports and information, as well as all other requirements specified in said Section
4 114 and Section 308, and all regulations and guidelines issued there under.
5

6 C. A stipulation that as a condition for the award of the contract, prompt notice will be given
7 of any notification received from the Director, Office of Federal Activities, EPA,
8 indicating that a facility utilized, or to be utilized for the contract, is under consideration
9 to be listed on the EPA List of Violating Facilities.
10

11 D. Agreement by the Developer that he will include, or cause to be included, the criteria and
12 requirements in paragraph (1) through (4) of this section in every nonexempt subcontract
13 and requiring that the Developer will take such action as the government may direct as a
14 means of enforcing such provisions.
15

16
17 **12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND**
18 **ACCIDENT PREVENTION**
19

20 **A. Lead-Based Paint Hazards**
21

22 The construction or rehabilitation of residential structures is subject to the HUD Lead-Based
23 Paint regulations, 24 CFR Part 35. The Developer and Developers shall comply with the
24 provisions for the elimination of lead-based paint hazards under Subpart B of said regulations.
25 The Owner will be responsible for the inspections and certifications required under Section 35.14
26 (f) thereof.
27

28 **B. Use of Explosives**
29

30 When the use of explosives is necessary for the prosecution of the work, the Developer shall
31 observe all local, state and federal laws in purchasing and handling explosives. The Developer
32 shall take all necessary precaution to protect completed work, neighboring property, water lines,
33 or other underground structures. Where there is danger to structures or property from blasting,
34 the charges shall be reduced and the material shall be covered with suitable timber, steel or rope
35 mats.

36 The Developer shall notify all owners of public utility property of intention to use explosives at
37 least 8 hours before blasting is done close to such property. Any supervision or direction of use
38 of explosives by the engineer does not in any way reduce the responsibility of the Developer or
39 his Surety for damages that may be caused by such use.
40

41 **C. Danger Signals and Safety Devices (Modify as Required)**
42

43 The Developer shall make all necessary precautions to guard against damages to property and
44 injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights
45 at night, suitable barricades and other devices necessary to protect the public. In case the
46 Developer fails or neglects to take such precautions, the Owner may have such lights and
47 barricades installed and charge the cost of this work to the Developer. Such action by the Owner
48 does not relieve the Developer of any liability incurred under these specifications or contract.
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13. FLOOD DISASTER PROTECTION

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Developer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the final closeout of the grant.

15. INSPECTION

The authorized representative and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

16. REPORTING REQUIREMENTS

The Developer shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

17. CONFLICT OF INTEREST

- 1 A. No officer or employee of the local jurisdiction or its designees or agents, no member of
2 the governing body, and no other public official of the locality who his/her tenure or for
3 one year thereafter, shall have any interest, direct or indirect, in any contract or
4 subcontract, or the proceeds thereof, for work to be performed. Further, the Developer
5 shall cause to be incorporated in all subcontracts the language set forth in this paragraph
6 prohibiting conflict of interest.
7
- 8 B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to
9 any share or part of this contract or to any benefit that may arise there from, but this
10 provision shall not be construed to extend to this contract if made with a corporation for
11 its general benefit.
12

13 **18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS**
14 **AMENDED**
15 (applicable to contracts and subcontracts of \$10,000 and under)
16

17 During the performance of this contract, the Developer agrees as follows:
18

- 19 A. The Developer shall not discriminate against any employee or applicant for employment because
20 of race, color, religion, sex, or national origin. The Developer shall take affirmative action to
21 ensure that applicants for employment are employed, and that employees are treated during
22 employment, without regard to their race, color, religion, sex, or national origin. Such action
23 shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer;
24 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of
25 compensation; and selection for training, including apprenticeship.
26
- 27 B. The Developer shall post in conspicuous places, available to employees and applicants for
28 employment, notices to be provided by Contracting Officer setting forth the provisions of this
29 non-discrimination clause. The Developer shall state that all qualified applicants will receive
30 consideration for employment without regard to race, color, religion, sex, or national origin.
31
- 32 C. Developers shall incorporate foregoing requirements in all subcontracts.
33

34 **19. PATENTS**
35

- 36 A. The Developer shall hold and save the Owner and its officers, agents, servants, and employees
37 harmless from liability of any nature or kind, including cost and expenses for, or on account of
38 any patented or unpatented invention, process, article, or appliance manufactured or used in the
39 performance of the contract including its use by the Owner, unless otherwise specifically
40 stipulated in the Contract Document.
41
- 42 B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is
43 authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or
44 his authorized license, direct by the Owner and not by or through the Developer.
45
- 46 C. If the Developer uses any design device or materials covered by letters, patent or copyright, he
47 shall provide for such use by suitable agreement with the owner of such patented or copy-righted
48 design device or material. It is mutually agreed and understood, that without exception the
49 contract prices shall include all royalties or costs arising from the use of such design, device or

1 materials, in any way involved in the work. The Developer and/or his Sureties shall indemnify
2 and save harmless the Owner of the project from any and all claims for infringement by reason of
3 the use of such patented or copy-righted design, device or materials or any trademark or copy-
4 right in connection with work agreed to be performed under this contract, and shall indemnify the
5 Owner for any cost, expense, or damage which it may be obliged to pay by reason of such
6 infringement at any time during the prosecution of the work or after completion of the work.
7

8 **20. COPYRIGHT**
9

10 No materials, to include but not limited to reports, maps, or documents produced as a result of
11 this contract, in whole or in part, shall be available to the Developer for
12 copy-right purposes. Any such materials produced as a result of this contract that might be
13 subject to copyright shall be the property of the Owner and all such rights shall belong to the
14 Owner.

15 **21. TERMINATION FOR CAUSE**
16

17 If, through any cause, the Developer shall fail to fulfill in a timely and proper manner his
18 obligations under this contract, or if the Developer shall violate any of the covenants, agreements,
19 or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract
20 by giving written notice to the Developer of such termination and specifying the effective date
21 thereof, at least five (5) days before the effective date of such termination. In such event, all
22 finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs,
23 and reports prepared by the Developer under this contract shall, at the option of the Owner,
24 become the Owner's property and the Developer shall be entitled to receive just and equitable
25 compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the
26 Developer shall not be relieved of liability to the Owner for damages sustained by the Owner by
27 virtue of any breach of the contract by the Developer, and the Owner may withhold any payments
28 to the Developer for the purpose of set-off until such time as the exact amount of damages due the
29 Owner from the Developer is determined.
30

31 **22. TERMINATION FOR CONVENIENCE**
32

33 The Owner may terminate this contract at any time by giving at least ten (10) days notice in
34 writing to the Developer. If the contract is terminated by the Owner as provided herein, the
35 Developer will be paid for the time provided and expenses incurred up to the termination date.
36

37 **23. ENERGY EFFICIENCY**
38

39 The Developer shall comply with mandatory standards and policies relating to energy efficiency
40 which are contained in the state energy conservation plan issued in compliance with the Energy
41 Policy and Conservation Act (Public Law 94-163).
42

43 **24. SUBCONTRACTS**
44

- 45 A. The Developer shall not enter into any subcontract with any Developer who has been debarred,
46 suspended, declared ineligible, or voluntarily excluded from participating in contacting programs
47 by any agency of the United States Government or the State of Louisiana.
48

1 B. The Developer shall be as fully responsible to the Owner for the acts and omissions of the
2 Developer's Developers, and of persons either directly or indirectly employed by them, as he is
3 for the acts and omissions of persons directly employed by the Developer.
4

5 C. The Developer shall cause appropriate provisions to be inserted in all subcontracts relative to the
6 work to bind Developer to the Developer by the terms of the contract documents insofar as
7 applicable to the work of Developers and to give the Developer the same power as regards
8 terminating any subcontract that the Owner may exercise over the Developer under any provision
9 of the contract documents.
10

11 D. Nothing contained in this contract shall create any contractual relation between
12 any Developer and the Owner.
13

14
15 **25. DEBARMENT, SUSPENSION, AND INELIGIBILITY**
16

17 The Developer represents and warrants that it and its Developers are not debarred, suspended, or
18 placed in ineligibility status under the provisions of 2 CFR 200.213 (government debarment and
19 suspension regulations).
20

21 **26. PROTECTION OF LIVES AND HEALTH**
22

23 The Developer shall exercise proper precaution at all times for the protection of persons and
24 property and shall be responsible for all damages to persons or property, either on or off the
25 worksite, which occur as a result of his prosecution of the work. The safety provisions of
26 applicable laws and building and construction codes, in addition to specific safety and health
27 regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part
28 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register,
29 Volume 36, No. 75, Saturday, April 17, 1971, Title 29 - LABOR, shall be observed and the
30 Developer shall take or cause to be taken, such additional safety and health measures as the
31 Owner may determine to be reasonably necessary.
32

33
34 **27. BREACH OF CONTRACT TERMS**
35

36 Any violation or breach of terms of this contract on the part of the Developer or the Developer's
37 Developers may result in the suspension or termination of this contract or such other action
38 that may be necessary to enforce the rights of the parties of this contract. The duties and obligations
39 imposed by the contract documents and the rights and remedies available there under shall be in
40 addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed
41 or available by law.
42

43 **28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
44

45 Each and every provision of law and clause required by law to be inserted in this contract shall be
46 deemed to be inserted herein and the contract shall be read and enforced as though it were
47 included herein, and if through mistake or otherwise any such provision is not inserted, or is not
48 correctly inserted, then upon the application of either party the contract shall forthwith be
49 physically amended to make such insertion or correction.

1
2 29. **CHANGES**
3

4 The Owner may, from time to time, request changes in the scope of the services of the Developer
5 to be performed hereunder. Such changes, including any increase or decrease in the amount of
6 the Developer's compensation which are mutually agreed upon by and between the Owner and
7 the Developer, shall be incorporated in written and executed amendments to this Contract.
8

9 30. **PERSONNEL**
10

11 The Developer represents that it has, or will secure at its own expense, all personnel required in
12 performing the services under this Contract. Such personnel shall not be employees of or have
13 any contractual relationship with the Owner.
14

15 All the services required hereunder will be performed by the Developer or under its supervision,
16 and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted
17 under State and local law to perform such services.
18

19 No person who is serving sentence in a penal or correctional institution shall be employed on
20 work under this Contract.

21 31. **ANTI-KICKBACK RULES**
22

23 Salaries of personnel performing work under this Contract shall be paid unconditionally and not
24 less often than once a month without payroll deduction or rebate on any account except only such
25 payroll deductions as are mandatory by law or permitted by the applicable regulations issued by
26 the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62
27 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Developer shall
28 comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in
29 all subcontracts covering work under this contract to insure compliance by the Developers with
30 such regulations, and shall be responsible for the submission of affidavits required of Developers
31 there under except as the Secretary of Labor may specifically provide for variations of or
32 exemptions from the requirements thereof.
33

34 32. **ASSIGNABILITY**
35

36 The Developer shall not assign any interest in this Contract, and shall not transfer any interest in
37 the same (whether by assignment or novation) without prior written approval of the Owner
38 provided that claims for money due or to become due the Developer from the Owner under this
39 Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee
40 in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be
41 furnished promptly to the Owner.
42

43 33. **INTEREST OF DEVELOPER**
44

45 The Developer covenants that he presently has no interest and shall not acquire any interest direct
46 or indirect in the above described project or any parcels therein or any other interest which would
47 conflict in any manner or degree with the performance of his services hereunder. The Developer
48 further covenants that in the performance of this Contract no person having any such interest shall
49 be employed.

1
2 **34. POLITICAL ACTIVITY**

3
4 The Developer will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which
5 limits the political activity of employees.
6

7 **35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

8
9 The parties agree to comply with the regulations, policies, guidelines, and requirements of the
10 Office of Management and Budget, Circulars 2 CFR 200, as they relate to the use of Federal
11 funds under this contract.
12

13 **36. DISCRIMINATION DUE TO BELIEFS**

14
15 No person with responsibilities in operation of the project to which this grant relates will
16 discriminate with respect to any program participant or any applicant for participation in such
17 program because of political affiliation or beliefs.
18

19 **37. CONFIDENTIAL FINDINGS**

20
21 All of the reports, information, data, etc., prepared or assembled by the Developer under this
22 Contract are confidential, and the Developer agrees that they shall not be made available to any
23 individual or organization without prior written approval of the Owner.
24

25
26 **38. LOBBYING**

27
28 The Developer certifies, to the best of his or her knowledge and belief that:

- 29
- 30 1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Developer,
31 to any person for influencing or attempting to influence an officer or employee of any agency, a
32 member of Congress, an officer or employee of Congress, or an employee of a member of
33 Congress in connection with the awarding of any federal contract, the making of any federal
34 grant, the making of any federal loan, the entering into of any cooperative agreement, and the
35 extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan,
36 or cooperative agreement.
37
 - 38 2. If any funds other than federally appropriated funds have been paid or will be paid to any person
39 for influencing or attempting to influence an officer or employee of any agency, a member of
40 Congress, an officer or employee of Congress, or an employee of a member of Congress in
41 connection with this federal contract, grant, loan, or cooperative agreement, the Developer shall
42 complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance
43 with its instructions.
44

45 **39. FEDERAL LABOR STANDARDS PROVISIONS**

46
47 The Developer shall abide by the requirements of the Federal Labor Standards Provisions (form HUD-
48 4010) as follows.
49

1 **Federal Labor Standards Provisions**
2 **U.S. Department of Housing and Urban Development**
3 **Office of Labor Relations**

4
5 **Applicability**
6

7 The Project or Program to which the construction work covered by this contract pertains is being assisted
8 by the United States of America and the following Federal Labor Standards Provisions are included in
9 this Contract pursuant to the provisions applicable to such Federal assistance.
10

11 **A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work
12 will be paid unconditionally and not less often than once a week, and without subsequent deduction or
13 rebate on any account (except such payroll deductions as are permitted by regulations issued by the
14 Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide
15 fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those
16 contained in the wage determination of the Secretary of Labor which is attached hereto and made a part
17 hereof, regardless of any contractual relationship which may be alleged to exist between the Developer
18 and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe
19 benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered
20 wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular
21 contributions made or costs incurred for more than a weekly period (but not less often than quarterly)
22 under plans, funds, or programs, which cover the particular weekly period, are deemed to be
23 constructively made or incurred during such weekly period.
24

25 Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage
26 determination for the classification of work actually performed, without regard to skill, except as provided
27 in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be
28 compensated at the rate specified for each classification for the time actually worked therein: Provided
29 That the employer's payroll records accurately set forth the time spent in each classification in which
30 work is performed. The wage determination (including any additional classification and wage rates
31 conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times
32 by the Developer and its Developers at the site of the work in a prominent and accessible, place where it
33 can be easily seen by the workers.
34

35 **(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to
36 be employed under the contract shall be classified in conformance with the wage determination. HUD
37 shall approve an additional classification and wage rate and fringe benefits therefor only when the
38 following criteria have been met:
39

40 **(1)** The work to be performed by the classification requested is not performed by a classification in the
41 wage determination; and
42

43 **(2)** The classification is utilized in the area by the construction industry; and
44

45 **(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the
46 wage rates contained in the wage determination.
47

48 **(b)** If the Developer and the laborers and mechanics to be employed in the classification (if known), or
49 their representatives, and HUD or its designee agree on the classification and wage rate (including the

1 amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by
2 HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards
3 Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within
4 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day
5 period that additional time is necessary. (Approved by the Office of Management and Budget under OMB
6 control number 1215-0140.)
7

8 **(c)** In the event the Developer, the laborers or mechanics to be employed in the classification or their
9 representatives, and HUD or its designee do not agree on the proposed classification and wage rate
10 (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer
11 the questions, including the views of all interested parties and the recommendation of HUD or its
12 designee, to the Administrator for determination. The Administrator, or an authorized representative, will
13 issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or
14 its designee within the 30-day period that additional time is necessary. (Approved by the Office of
15 Management and Budget under OMB Control Number 1215-0140.)
16

17 **(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)
18 (ii) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under
19 this contract from the first day on which work is performed in the classification.
20

21 **(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics
22 includes a fringe benefit which is not expressed as an hourly rate, the Developer shall either pay the
23 benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash
24 equivalent thereof.
25

26 **(iv)** If the Developer does not make payments to a trustee or other third person, the Developer may
27 consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated
28 in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has
29 found, upon the written request of the Developer, that the applicable standards of the Davis-Bacon Act
30 have been met. The Secretary of Labor may require the Developer to set aside in a separate account assets
31 for the meeting of obligations under the plan or program. (Approved by the Office of Management and
32 Budget under OMB Control Number 1215-0140.)
33

34 **2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized
35 representative of the Department of Labor withhold or cause to be withheld from the Developer under this
36 contract or any other Federal contract with the same prime Developer, or any other Federally-assisted
37 contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime
38 Developer so much of the accrued payments or advances as may be considered necessary to pay laborers
39 and mechanics, including apprentices, trainees and helpers, employed by the Developer or any Developer
40 the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic,
41 including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the
42 wages required by the contract, HUD or its designee may, after written notice to the Developer, sponsor,
43 applicant, or owner, take such action as may be necessary to cause the suspension of any further payment,
44 advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written
45 notice to the Developer, disburse such amounts withheld for and on account of the Developer or
46 Developer to the respective employees to whom they are due. The Comptroller General shall make such
47 disbursements in the case of direct Davis-Bacon Act contracts.
48

49 **3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the

1 Developer during the course of the work preserved for a period of three years thereafter for all laborers
2 and mechanics working at the site of the work. Such records shall contain the name, address, and social
3 security number of each such worker, his or her correct classification, hourly rates of wages paid
4 (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents
5 thereof of the types described in Section l (b) (2) (B) of the Davis-bacon Act), daily and weekly number
6 of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found
7 under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs
8 reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of
9 the Davis-Bacon Act, the Developer shall maintain records which show that the commitment to provide
10 such benefits is enforceable, that the plan or program is financially responsible, and that the plan or
11 program has been communicated in writing to the laborers or mechanics affected, and records which
12 show the costs anticipated or the actual cost incurred in providing such benefits. Developers employing
13 apprentices or trainees under approved programs shall maintain written evidence of the registration of
14 apprenticeship programs and certification of trainee programs, the registration of the apprentices and
15 trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of
16 Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)
17

18 **(ii) (a)** The Developer shall submit weekly for each week in which any contract work is performed a copy
19 of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such
20 a party, the Developer will submit the payrolls to the applicant sponsor, or owner, as the case may be, for
21 transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of
22 the information required to be maintained under 29 CFR 5.5(a) (3) (i). This information may be submitted
23 in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the
24 Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing
25 Office, Washington, DC 20402. The prime Developer is responsible for the submission of copies of
26 payrolls by all Developers. (Approved by the Office of Management and Budget under OMB Control
27 Number 1215-0149.)
28

29 **(b)** Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the
30 Developer or Developer or his or her agent who pays or supervises the payment of the persons employed
31 under the contract and shall certify the following:
32

33 **(1)** That the payroll for the payroll period contains the information required to be maintained under 29
34 CFR 5.5 (a)(3)(i) and that such information is correct and complete;
35

36 **(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the
37 contract during the payroll period has been paid the full weekly wages earned, without rebate, either
38 directly or indirectly, and that no deductions have been made either directly or indirectly from the full
39 wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
40

41 **(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe
42 benefits or cash equivalents for the classification of work performed, as specified in the applicable wage
43 determination incorporated into the contract.
44

45 **(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional
46 Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by
47 subparagraph A.3.(ii)(b).
48

49 **(d)** The falsification of any of the above certifications may subject the Developer or Developer to civil or

1 criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States
2 Code.

3
4 **(iii)** The Developer or Developer shall make the records required under subparagraph A.3.(i) available for
5 inspection, copying, or transcription by authorized representatives of HUD or its designee or the
6 Department of Labor, and shall permit such representatives to interview employees during working hours
7 on the job. If the Developer or Developer fails to submit the required records or to make them available,
8 HUD or its designee may, after written notice to the Developer, sponsor, applicant or owner, take such
9 action as may be necessary to cause the suspension of any further payment, advance, or guarantee of
10 funds. Furthermore, failure to submit the required records upon request or to make such records available
11 may be grounds for debarment action pursuant to 29 CFR 5.12.

12 13 **4. Apprentices and Trainees.**

14
15 **(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work
16 they performed when they are employed pursuant to and individually registered in a bona fide
17 apprenticeship program registered with the U.S. Department of Labor, Employment and Training
18 Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State
19 Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of
20 probationary employment as an apprentice in such an apprenticeship program, who is not individually
21 registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer
22 and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary
23 employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any
24 craft classification shall not be greater than the ratio permitted to the Developer as to the entire work force
25 under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not
26 registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on
27 the wage determination for the classification of work actually performed. In addition, any apprentice
28 performing work on the job site in excess of the ratio permitted under the registered program shall be paid
29 not less than the applicable wage rate on the wage determination for the work actually performed. Where
30 a Developer is performing construction on a project in a locality other than that in which its program is
31 registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified
32 in the Developer's or Developer's registered program shall be observed. Every apprentice must be paid at
33 not less than the rate specified in the registered program for the apprentice's level of progress, expressed
34 as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices
35 shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the
36 apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of
37 fringe benefits listed on the wage determination for the applicable classification. If the Administrator
38 determines that a different practice prevails for the applicable apprentice classification, fringes shall be
39 paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer
40 and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of
41 an apprenticeship program, the Developer will no longer be permitted to utilize apprentices at less than
42 the applicable predetermined rate for the work performed until an acceptable program is approved.

43
44 **(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the
45 predetermined rate for the work performed unless they are employed pursuant to and individually
46 registered in a program which has received prior approval, evidenced by formal certification by the U.S.
47 Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on
48 the job site shall not be greater than permitted under the plan approved by the Employment and Training
49 Administration. Every trainee must be paid at not less than the rate specified in the approved program for

1 the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the
2 applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of
3 the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full
4 amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and
5 Hour Division determines that there is an apprenticeship program associated with the corresponding
6 journeyman wage rate on the wage determination which provides for less than full fringe benefits for
7 apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in
8 a training plan approved by the Employment and Training Administration shall be paid not less than the
9 applicable wage rate on the wage determination for the work actually performed. In addition, any trainee
10 performing work on the job site in excess of the ratio permitted under the registered program shall be paid
11 not less than the applicable wage rate on the wage determination for the work actually performed. In the
12 event the Employment and Training Administration withdraws approval of a training program, the
13 Developer will no longer be permitted to utilize trainees at less than the applicable predetermined rate for
14 the work performed until an acceptable program is approved.

15
16 **(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29
17 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive
18 Order 11246, as amended, and 29 CFR Part 30.

19
20 **5. Compliance with Copeland Act requirements.** The Developer shall comply with the requirements of
21 29 CFR Part 3 which are incorporated by reference in this contract

22
23 **6. Subcontracts.** The Developer or Developer will insert in any subcontracts the clauses contained in
24 subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by
25 appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause
26 requiring the Developers to include these clauses in any lower tier subcontracts. The prime Developer
27 shall be responsible for the compliance by any Developer or lower tier Developer with all the contract
28 clauses in this paragraph.

29
30 **7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds
31 for termination of the contract and for debarment as a Developer and a Developer as provided in 29 CFR
32 5.12.

33
34 **8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the
35 Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference
36 in this contract.

37
38 **9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this
39 contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved
40 in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7.
41 Disputes within the meaning of this clause include disputes between the Developer (or any of its
42 Developers) and HUD or its designee, the U.S. Department of Labor, or the employees or their
43 representatives.

44
45 **10. (i) Certification of Eligibility.** By entering into this contract the Developer certifies that neither it
46 (nor he or she) nor any person or firm who has an interest in the Developer's firm is a person or firm
47 ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29
48 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part
49 24.

1
2 **(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a
3 Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be
4 awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
5

6 **(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
7 Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., “Federal Housing Administration
8 transactions”, provides in part: “Whoever, for the purpose of . . . influencing in any way the action of such
9 Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined
10 not more than \$5,000 or imprisoned not more than two years, or both.”
11

12 **11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage,
13 salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any
14 other manner discriminated against by the Developer or any Developer because such employee has filed
15 any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify
16 in any proceeding under or relating to the labor standards applicable under this Contract to his employer.
17

18 **B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable
19 only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms
20 “laborers” and “mechanics” include watchmen and guards.
21

22 **(1) Overtime requirements.** No Developer or Developer contracting for any part of the contract work
23 which may require or involve the employment of laborers or mechanics shall require or permit any such
24 laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of
25 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than
26 one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
27

28 **(2) Violation;** liability for unpaid wages; liquidated damages. In the event of any violation of the clause
29 set forth in subparagraph (1) of this paragraph, the Developer and any Developer responsible therefore
30 shall be liable for the unpaid wages. In addition, such Developer and Developer shall be liable to the
31 United States (in the case of work done under contract for the District of Columbia or a territory, to such
32 District or to such territory), for liquidated damages. Such liquidated damages shall be computed with
33 respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of
34 the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on
35 which such individual was required or permitted to work in excess of the standard workweek of 40 hours
36 without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this
37 paragraph.
38

39 **(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own
40 action or upon written request of an authorized representative of the Department of Labor withhold or
41 cause to be withheld, from any moneys payable on account of work performed by the Developer or
42 Developer under any such contract or any other Federal contract with the same prime contract, or any
43 other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is
44 held by the same prime Developer such sums as may be determined to be necessary to satisfy any
45 liabilities of such Developer or Developer for unpaid wages and liquidated damages as provided in the
46 clause set forth in subparagraph (2) of this paragraph.
47

48 **(4) Subcontracts.** The Developer or Developer shall insert in any subcontracts the clauses set forth in
49 subparagraph (1) through (4) of this paragraph and also a clause requiring the Developers to include these

1 clauses in any lower tier subcontracts. The prime Developer shall be responsible for compliance by any
2 Developer or lower tier Developer with the clauses set forth in subparagraphs (1) through (4) of this
3 paragraph.

4
5 **C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the
6 prime contract exceeds \$100,000.

7
8 **(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which
9 are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety
10 and health standards promulgated by the Secretary of Labor by regulation.

11
12 **(2)** The Developer shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29
13 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work
14 Hours and Safety Standards Act, 40 USC 3701 et seq.

15
16 **(3)** The Developer shall include the provisions of this paragraph in every subcontract so that such
17 provisions will be binding on each Developer. The Developer shall take such action with respect to any
18 subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as
19 a means of enforcing such provisions.

20 21 22 **40. SOLID WASTE DISPOSAL ACT**

23
24 The Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the
25 Resource Conservation and Recovery Act. The requirements listed below include procuring only items
26 designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing
27 the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level
28 of competition.

29
30 **Applicability.**(a)(1) This guideline applies to all procurement actions using federal funding and involving
31 items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of
32 the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all
33 solid waste management services procurements are conducted in a manner that maximizes energy and
34 resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to
35 procure designated items, and to persons contracting with any such agencies with respect to work
36 performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather
37 than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

38 (b) The term *procurement actions* includes:

39 (1) Purchases made directly by a procuring agency or purchases made directly by any person

40 (e.g., a Developer) in support of work being performed for a procuring agency using federal funds

41 (2) Any purchases of designated items made “indirectly” by a procuring agency, as in the case of
42 procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

43 (c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental
44 to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds
45 disbursement to, a procuring agency.

46 47 **41. CONFIDENTIALITY**

48
49 The Developer shall comply with the Confidentiality regulations, per 24 CFR 574.440. Per 24 CFR

1 574.440, “the [grantee](#) shall agree, and shall ensure that each [project sponsor](#) agrees, to ensure the
2 confidentiality of the name of any individual assisted under this part and any other information regarding
3 individuals receiving assistance.” The Developer shall ensure all documentation and written agreements
4 protect the confidentiality of all individuals/agencies funded or receiving any assistance under this grant.

5 **42. REPAYMENT OF FUNDS**

6 The Developer acknowledges that funds provided through this Agreement are Federal funds administered
7 by HUD and that all funds provided by this Agreement are subject to audit, disallowance, and repayment.
8 Any disagreement with adverse findings by HUD may be challenged pursuant to Federal regulations,
9 however, the Developer shall promptly return to Grantee any and all funds that are found to be ineligible,
10 unallowable, unreasonable, a duplication of benefits, or non-compliance, no matter the cause. This clause
11 shall survive indefinitely the termination of this Agreement for any reason.

12 13 **43. DUPLICATION OF BENEFITS**

14
15 The Developer shall not carry out any of the activities under this Agreement in a manner that results in a
16 prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and
17 Emergency Assistance Act (42 USC §5155). The Developer must comply with HUD’s requirements for
18 duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal
19 Register notice requires compliance with the following HUD guidance documents: (1) the guidance
20 published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the
21 guidance document entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of
22 CDBG Disaster Recover (DR) Assistance,” issued on July 25, 2013.

23 24 **44. LIMITED ENGLISH PROFICIENCY (LEP)**

25
26 **Assistance to Those with Limited English Proficiency.** The Developer agrees to take all reasonable
27 actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such
28 persons have meaningful access and an equal opportunity to participate in the program(s) and/or services
29 funded under this Agreement.

30 31 **45. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

32
33 If the Federal award meets the definition of “funding agreement” under [37 CFR § 401.2 \(a\)](#) and the
34 recipient or Developer wishes to enter into a contract with a small business firm or nonprofit organization
35 regarding the substitution of parties, assignment or performance of experimental, developmental, or
36 research work under that “funding agreement,” the recipient or Developer must comply with the
37 requirements of [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small
38 Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any
39 implementing regulations issued by the awarding agency.

40 41 42 **46. BYRD ANTI-LOBBYING AMENDMENT**

43
44 Developers that apply or bid for an award exceeding \$100,000 must file the required certification. Each
45 tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any
46 person or organization for influencing or attempting to influence an officer or employee of any agency, a
47 member of Congress, officer or employee of Congress, or an employee of a member of Congress in

1 connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#).
2 Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with
3 obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal
4 award.

6 **47. PROCUREMENT OF RECOVERED MATERIALS.**

8 A non-Federal entity that is a state agency or agency of a political subdivision of a state and its
9 Developers must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource
10 Conservation and Recovery Act. The requirements of Section 6002 include procuring only items
11 designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain
12 the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level
13 of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity
14 acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services
15 in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement
16 program for procurement of recovered materials identified in the EPA guidelines. 2 CFR § 200.323

18 **48. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE 19 SERVICES OR EQUIPMENT.**

20 Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

21 (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a
22 contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that
23 uses covered telecommunications equipment or services as a substantial or essential component
24 of any system, or as critical technology as part of any system. As described in [Public Law 115-
25 232](#), section 889, covered telecommunications equipment is telecommunications equipment
26 produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate
27 of such entities).

28 (i) For the purpose of public safety, security of government facilities, physical security
29 surveillance of critical infrastructure, and other national security purposes, video
30 surveillance and telecommunications equipment produced by Hytera Communications
31 Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology
32 Company (or any subsidiary or affiliate of such entities).

33 (ii) Telecommunications or video surveillance services provided by such entities or using
34 such equipment.

35 (iii) Telecommunications or video surveillance equipment or services produced or provided
36 by an entity that the Secretary of Defense, in consultation with the Director of the National
37 Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to
38 be an entity owned or controlled by, or otherwise connected to, the government of a
39 covered foreign country. 2 CFR § 200.216.

40 **49. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

1 As appropriate and to the extent consistent with law, the non-Federal entity should, to the
2 greatest extent practicable under a Federal award, provide a preference for the purchase,
3 acquisition, or use of goods, products, or materials produced in the United States (including but
4 not limited to iron, aluminum, steel, cement, and other manufactured products). The
5 requirements of this section must be included in all subawards including all contracts and
6 purchase orders for work or products under this award.

7 (b) For purposes of this section:

8 (1) “Produced in the United States” means, for iron and steel products, that all manufacturing
9 processes, from the initial melting stage through the application of coatings, occurred in the
10 United States.

11 (2) “Manufactured products” means items and construction materials composed in whole or
12 in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as
13 polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and
14 lumber. 2 CFR § 200.322.

15 **50. REMEDIES FOR NON-COMPLIANCE**

16 If the Developer fails to comply with federal statutes, regulations or the terms and conditions of a Federal award,
17 the Department or the City may impose additional conditions, as described in [200.208](#) Specific conditions. If the
18 Department or the City determines that noncompliance cannot be remedied by imposing additional conditions, then
19 either may take one or more of the following actions, as appropriate in the circumstances:
20

21 II. a. Temporarily withhold cash payments pending correction of the deficiency by the [non-](#)
22 [Federal entity](#) or more severe enforcement action by the [Federal awarding](#)
23 [agency](#) or [pass-through entity](#).

24 III. b. Disallow (that is, deny both use of funds and any applicable matching credit
25 for) all or part of the cost of the activity or action not in compliance.

26 IV. c. Wholly or partly suspend or terminate the Federal award.

27 V. d. Initiate suspension or debarment proceedings as authorized under [2 CFR part](#)
28 [180](#) and [Federal awarding agency](#) regulations (or in the case of a [pass-through entity](#),
29 recommend such a proceeding be initiated by a Federal awarding agency).

30 VI. e. Withhold further Federal awards for the project or program.

31 VII. f. Take other remedies that may be legally available.

32 **51. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**

33 This is an acknowledgement that federal financial assistance will be used to fund all or a portion of the contract. The
34 Developer will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures,
35 and directives.
36

37 **52. NO OBLIGATION BY FEDERAL GOVERNMENT**

38 The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-
39

1 Federal entity, Developer, or any other party pertaining to any matter resulting from the contract.

2

3 **53. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

4 The Developer acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements)
5 applies to the Developer's actions pertaining to this contract.

ATTACHMENT IV

OFFICE OF COMMUNITY DEVELOPMENT (OCD) – FISCAL and COMPLIANCE UNIT

An overview of Policies and Procedures

I. Purpose

The following procedures are to assist staff members assigned to the Office of Community Development for the purpose of monitoring sub-grantee agencies for compliance with federal and state regulations regarding the use of funds awarded by these governmental agencies and to reduce and/or eliminate ineligible costs incurred by programs administered by the City of New Orleans.

II. Authorization

The Office of Community Development is authorized to monitor sub-grantee agencies which receive federal and/or state funding via the granting agencies (Office of Criminal Justice, New Orleans Police Department, Mayor's Office, Divisions of Federal and State Programs, Intergovernmental Relations...) The Office of Community Development and other monitors will review the fiscal and programmatic records of all agencies receiving grant funding through city departments and agencies. The review of these sub-grantees will be conducted by two teams of monitors, the City's Compliance Monitors and Contracted Monitors. OCD Fiscal and Compliance Unit will conduct monthly fiscal desk reviews and some site reviews based on a risk. Contracted Monitors will conduct programmatic and fiscal reviews based on risk.

III. Guidelines

A. Contract Compliance Guidelines

1. A copy of all agency award letters to sub-grantees must be submitted to the OCD Fiscal and Compliance Unit by the granting agency. Also, all new, renewed and amended contractual agreements must be forwarded to the OCD Fiscal and Compliance Unit upon execution.
2. All contractual agreements must include a copy of the OCD – Fiscal and Compliance Unit Policies and Procedures and authorizing federal legislation and thereby made a part of the documents.
3. Measurable goals, objectives and performance indicators must be specifically stated in the verbiage of the contract document for meaningful monitoring purposes.
4. All contractual agreements, meeting the expenditure requirement, must include a statement requiring sub-recipients to provide an engagement letter from a certified public accounting firm to conduct an audit of federal funding. A copy of the engagement letter must be submitted to the director of the granting agency within a month of the agencies ending fiscal year. The director of the granting agency will forward a copy to OCD – Fiscal and Compliance Unit. The audit must be completed within nine (9) months after the project fiscal year ends. A copy of the completed audit should be received within nine months of the agencies fiscal year as outlined in OMB Circular 2 CFR 200.

B. Monitoring Responsibilities of the Office of Community Development

The Office of Community Development monitoring responsibilities are conducted by the Fiscal and Compliance Unit. The fiscal unit will perform monthly fiscal desk reviews of Cost Control Statements and the compliance unit will conduct site reviews of sub-recipient agencies receiving grant or loan funding from the City.

Fiscal Unit Payment Processing Procedures:

The Subrecipients will prepare the following for submission to OCD's front desk:

1. The original cost control statement with supporting backup documentations.

- 1
2 2. The submission of cost control statements should occur at least by the fifth (5) working day of every month.
3 OCD receptionist will clock-in the cost control statement(s) and forward the original to the Program Analyst.
4 The Program Analyst will review the documents for proper documentation and then forward the cost control
5 statement(s) to the fiscal unit for processing. The Fiscal Accountant will verify costs documented in column
6 two (2) on the original cost control statement(s) with the backup documents submitted by the Subrecipients.
7 If costs submitted for reimbursement are questionable the Fiscal Accountant will email the Program Analyst
8 and the subrecipient. It is the responsibility of the Subrecipient to recoup any questionable costs on the next
9 period cost control statement(s). After total review, the Fiscal Accountant will forward all cost control
10 statements to the Accounting/Finance Department for payment processing and filing. Subrecipients should
11 expect to receive payment in approximately twenty (20) days after submitting cost control statement(s) to
12 OCD – Fiscal Unit. All checks are mailed to the subrecipients.
13

14 **The following documents are required for payment review and processing, which will include but is**
15 **not limited to such items as:**

- 16 1. Invoices
17 2. Payroll journal
18 3. General ledgers
19 4. Letters of approval and subcontract agreement for professional services
20 5. Bid information for supplies, materials and equipment when required
21 6. Letter of approval from Granting Agency if indirect cost is being requested
22 7. Lease agreements
23

24 **Compliance Monitor Site Review Responsibility**

25 Compliance Monitors will conduct site reviews in accordance with the schedule devised by the Team Leader,
26 based on risk and need.
27

28 Site visits responsibilities for Compliance Monitors will include the review of the following documented
29 records:
30

- 31 1. Personal Services
32 a. Personnel policy
33 b. Time Sheets
34 c. Leave records
35 d. Payroll register
36 e. Federal and State withholding records for each employee
37 f. State unemployment tax forms
38 g. Convention and travel expense reports
39 h. Mileage reimbursement reports
40 I. Quarterly federal and state tax reports
41 j. Yearly 1099 and W2 forms
42
- 43 2. Accounting Journals
44 a. Cash Disbursements journal
45 b. Cash Receipts journal
46 c. General journal
47 d. General ledger
48 e. Subsidiary accounts payable ledgers
49
- 50 3. Bank Accounts
51 a. Signature cards
52 b. Separate bank account. Separate program income bank account
53 d. Monthly reconciled bank statements
54

- 1 4. Fidelity or Surety Bond
- 2 5. Contractual Services
- 3 a. Professional Services
- 4 Three (3) "request for Proposal" (Bid's)
- 5 Letter of Approval from the granting agency
- 6 b. Subcontract agreement
- 7 c. Cost allocation plans for utilities, if necessary, and pre-approved by the Granting Agency.
- 8 d. Rent and lease agreements (Land and Building)
- 9 e. Rent and lease agreement (Equipment)
- 10 f. Long-distance telephone logs
- 11 g. Indirect cost rate pre-approved by the Granting Agency
- 12 h. An automobile mileage log
- 13 6. Supplies and Materials
- 14 a. Invoices
- 15 b. Bids required for purchase as follows:
- 16 1. Purchases less than \$250.00, no solicitation of bids is required
- 17 2. \$ 250.01 to \$1000.00 - needs three (3) telephone bids from vendors
- 18 3. \$1000.01 to \$5000.00 - need three (3) Request for Quotations (RFQ's) from
- 19 vendors
- 20 4. \$5,000.01 up - need prior approval from Granting Agency
- 21
- 22 c. Verification of Invoices must include:
- 23 1. Approval of payment;
- 24 2. Marked paid; and,
- 25 3. Indicate check number
- 26
- 27 7. Equipment
- 28 a. Bids required for purchase as follows:
- 29 1. Purchases less than \$250.00, no solicitation of bids is required
- 30 2. \$ 250.01 to \$1000.00 - needs three (3) telephone bids from vendors
- 31 3. \$1000.01 to \$5000.00 - need three (3) Request for Quotations (RFQ's) from
- 32 vendors
- 33 4. \$5,000.01 up - need prior approval from Granting Agency
- 34
- 35 8. Signed Corporate minutes to the Board of Directors regular meetings
- 36
- 37 9. Obtain and read copies of the pertinent documents from City of New Orleans personnel
- 38
- 39 10. Review of fiscal documentation
- 40
- 41 11. Review the independent audit report
- 42

43 **D Compliance Team Leader**

44
45 Compliance Team Leader - responsibilities of review and distribution of assignments, documents and
46 reimbursements are as follows:

- 47
- 48 1. The Team Leader will generate and distribute a schedule of all programs to be monitored.
- 49
- 50 2. The Team Leader and Compliance Monitors will collect, review, and distribute reports to both the
- 51 sub-grantee agencies and the granting agencies. Any findings in the monitoring report which would
- 52 prevent reimbursement will be noted and reported to the Bureau of Accounting for the necessary
- 53 action;
- 54

- 1 3. The Team Leader will be responsible for all personnel supervision of staff members assigned to
2 the OCD – Compliance Unit. These responsibilities include monitoring reported work time, the
3 signing of all time sheets, disciplinary actions and annual evaluations;
4

5 Note: All employees assigned to the OCD – Fiscal and Compliance Unit will abide by the personnel
6 policies and procedures of the Office of Community Development. An employee handbook will be
7 provided to each assigned employee, delineating items such as dress code requirements, work hours,
8 office conduct, etc.
9

10 **E. Granting Agencies**

11
12 The Health Department, the Mayor’s Office, OCD, the Police Department and any other department receiving
13 grant or loan funding:
14

- 15 1. The Granting agencies must submit to the OCD Fiscal and Compliance a copy of all new, renewed
16 and amended sub-grantee contracts for review.
17
18 2. The Granting agencies will be responsible for contract development consistent with the guidelines
19 and regulations of the respective grantor agency (federal or state government). Contracts must
20 include measurable performance criteria for sub-grantee adherence and effective monitoring. Also,
21 contracts must include the engagement letter for the services of a certified public accounting firm to
22 conduct an audit of subrecipients funding for agencies meeting the expenditure requirements.
23
24 3. The granting agencies will provide for certified public accounting firm reviews through grant or
25 loan funding.
26

27 **IV. Reimbursement Schedule**

28
29 The Accounting/Finance Department will generate a check twenty (20) days after the final backup document
30 is received in the OCD – Fiscal and Compliance Unit’s office. The check will be mailed to the subrecipients.
31

32 **V. Inquiries**

33 Detailed questions on any section of these policies and procedures should be directed to the team leader at
34 658-4200.
35
36
37

Revised-06.30.15

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ATTACHMENT V

**MONTHLY REPORTING REQUIREMENTS
Rental Housing Activity**

Project Name: _____
Project Address: _____
Activity Type: Rehab Only ___ New Construction Only ___ Acquisition Only ___
Acquisition & Rehab ___ Acquisition & New Construction ___
Property Type: Condominium ___ Cooperative ___ SRO ___ Apartment ___
FHA Insured: Yes ___ No ___ Mixed Use: Yes ___ No ___ Mixed Income: Yes ___ No ___
Total Units: _____
Total HOME-assisted Units: _____
Total 504 Units: Mobility-impaired _____ % of Total Units _____
 Sensory-impaired _____ % of Total Units _____
Projected Start Date: _____
Projected Completion Date: _____

Reporting Month: _____

1. CONSTRUCTION ACTIVITY

◆ **UNITS UNDERWAY**

Total Non-504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total 504 HOME-assisted units under construction

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total HOME-assisted units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

◆ **UNITS COMPLETE (with Certificates of Occupancy)**

Total Non-504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

Total 504 HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

◆ **UNITS COMPLETE (with Certificates of Occupancy) (continued)**

Total HOME-assisted Units

	<u>This Month</u>	<u>To Date</u>
How Many?	_____	_____
Percentage	_____	_____

2. OFFICE OF COMMUNITY DEVELOPMENT (OCD) CERTIFICATIONS

Total Non-504 HOME-assisted Unit Certifications Received

This Month	_____	To Date	_____
-------------------	-------	----------------	-------

Total 504 HOME-assisted Unit Certifications Received

	<u>This Month</u>	<u>To Date</u>
Mobility-impaired	_____	_____
Sensory-impaired	_____	_____

Total HOME-assisted Unit Certifications Received

This Month	_____	To Date	_____
-------------------	-------	----------------	-------

3. LEASE EXECUTIONS

Total Non-504 HOME-assisted Unit Lease Executions

This Month	_____	To Date	_____
-------------------	-------	----------------	-------

Total 504 HOME-assisted Unit Lease Executions

This Month _____

To Date _____

Total HOME-assisted Unit Lease Executions

This Month _____

To Date _____

Describe any problems that are delaying the completion or occupancy of the project by the targeted completion date.

Describe your organization's outreach strategies for reaching your targeted Section 504 population.

List outreach activities your organization conducted this month. (Provide documentation to OCD.)

Describe the results of those activities.

DIRECT BENEFIT PROFILE

(For Compliance with 24CFR 570.506 and Section 109, Housing and Community Development Act of 1974, as Amended, and Section 217 (b)(1) Of Title II, the National Affordable Housing Act, as amended, Title VI, Civil Rights Act of 1964)

Project Name: _____

Project Number: _____

Name of Organization: _____

Name & Title of Reporting Officer: _____

Signature of Reporting Officer: _____

Note: This report is due on the 5th working day of each month along with the Monthly Reporting Requirements.

Report Period	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
	Total # of Persons Assisted	White	Black/African American	Asian	American Indian/Alaskan Native	Native Hawaiian/Other Pacific Islander	American Indian/Alaskan Native & White	Asian & White	Black/African American & White	American Indian/Alaskan Native & African American	Other Multi Racial	Hispanic	Female Headed Household	Extremely Low Income 0%-30%	Very Low Income 31%-50%	Low/Mod Income 51%-80%
(a) Month of: _____ New Clients Only	#	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %
(b) Cumulative from effective date of contract through this report period	#	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %	# %

1 **Column 9:** Of the total number of clients entered in Column 1, enter the number and percentage of
2 Black/African-American & White people receiving direct benefits.

- 1 **Column 10:** Of the total number of clients entered in Column 1, enter the number and percentage of American
2 Indian/Alaskan Native & Black/African-American people receiving direct benefits.
3
- 4 **Column 11:** Of the total number of clients entered in Column 1, enter the number and percentage of Other Multi-
5 racial people receiving direct benefits.
6
- 7 **Column 12:** Of the total number of clients entered in Column 1, enter the number and percentage of Hispanics
8 receiving direct benefits (a person of Mexican, Puerto Rican, Cuban, Central or South American or
9 other Spanish culture or origin, regardless of race).
10
- 11 **Column 13:** Of the total number of clients entered in Column 1, enter the number and percentage of Female-
12 headed households receiving direct benefits.
13
- 14 **Column 14:** Of the total number of clients entered in Column 1, enter the number and percentage of Extremely
15 Low Income persons receiving direct benefits (0% - 30% MFI).
16
- 17 **Column 15:** Of the total number of clients entered in Column 1, enter the number and percentage of Very Low
18 Income persons receiving direct benefits (31% - 50% MFI).
19
- 20 **Column 16:** Of the total number of clients entered in Column 1, enter the number and percentage of Low Income
21 persons receiving direct benefits (51% - 80% MFI).

ATTACHMENT VI

**CITY OF NEW ORLEANS
OFFICE OF COMMUNITY DEVELOPMENT
SOURCES AND USES STATEMENT**

Date:

Project Name: BW Cooper Senior

Project Address: 3401 Erato Street, New Orleans, LA 70125

Line Item & Number	TOTALS	City of New Orleans General Obligation Bond Funds 2020-21	City of New Orleans General Obligation Bond Funds 2023	Regions Fannie Loan	LHC CDBG	Deferred Developer Fee	Section 45L Tax Credits	Low Income Housing Tax Equity	B2B Grant Funds
A1 Acquisition Cost (Land & Improvements) [§206(c)]	884,623.00	0.00	0.00	0.00	0.00	0.00	0.00	884,623.00	0.00
A2 Appraisal [§206(d)(2)]	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	10,000.00	0.00
A3 Legal, Recordation, Title Examination, etc. [§206(d)(2)]	230,000.00	0.00	0.00	0.00	0.00	0.00	0.00	230,000.00	0.00
A4 Total Acquisition Costs (A1 - A4)	1,124,623.00	0.00	0.00	0.00	0.00	0.00	0.00	1,124,623.00	0.00
B Construction (104,715 sq.ft. @ \$249.91) [§206(a)]	26,168,998.00	2,500,000.00	1,565,000.00	10,639,000.00	6,866,000.00	0.00	224,025.00	4,374,973.00	0.00
C1 Architect Fee [§206(d)(1)]	720,300.00	0.00	0.00	0.00	0.00	0.00	0.00	670,300.00	50,000.00
C2 Financing Fees (i.e. Commitments) [§206(d)(2)]	327,945.00	0.00	0.00	0.00	0.00	0.00	0.00	327,945.00	0.00
C3 Related Finance (Closing) Costs (≠ A5) [§206(d)(2)]	245,280.00	0.00	0.00	0.00	0.00	0.00	0.00	245,280.00	0.00
C4 Building Permits [§206(d)(2)]	290,684.00	0.00	0.00	0.00	0.00	0.00	0.00	290,684.00	0.00
C5 Audit [§206(d)(3)]	20,000.00	0.00	0.00	0.00	0.00	0.00	0.00	20,000.00	0.00
C6 Affirmative Marketing/Fair Housing [§206(d)(4)]	1,340,624.00	0.00	0.00	0.00	0.00	0.00	0.00	1,340,624.00	0.00
C7 Initial Operating Deficit Reserve [§206(d)(5)]	709,334.00	0.00	0.00	0.00	0.00	0.00	0.00	709,334.00	0.00
C8 Work Write-up Preparation [§206(d)(6)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C9 Rehab Inspection [§206(d)(6)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C10 Housing Counseling [§206(d)(6)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C11 CHDO Project-Specific Costs (Loan Only) [§301]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C12 Relocation Costs [§206(f)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C13 Interim Financing Costs Appraisal [§206(g)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
C14 Other: Attach Complete Explanation & Justification	2,732,400.00	0.00	0.00	0.00	0.00	0.00	0.00	2,732,400.00	0.00
C15 Total Soft Costs	6,386,567.00	0.00	0.00	0.00	0.00	0.00	0.00	6,386,567.00	50,000.00
D TOTAL DEVELOPMENT COST (A4+B+C15)	33,680,188.00	2,500,000.00	1,565,000.00	10,639,000.00	6,866,000.00	0.00	224,025.00	11,886,163.00	50,000.00
E Developer's Fee [§206(d)(2)]	4,041,540.00	0.00	0.00	0.00	0.00	499,703.00	0.00	3,541,837.00	0.00
F Homebuyer Assistance [§205(a)]	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
G GRAND TOTAL PROJECT COST (D+E+F)	37,721,728.00	2,500,000.00	1,565,000.00	10,639,000.00	6,866,000.00	499,703.00	224,025.00	15,428,000.00	50,000.00

Line Item & Number		TOTALS	LIHTC Equity
C14	Other: Attach Complete Explanation & Justification		
	Market Study	\$ 10,800.00	\$ 10,800.00
	Environmental Reports	\$ 55,000.00	\$ 55,000.00
	Survey (Boundary/Topo/As-Built)	\$ 40,000.00	\$ 40,000.00
	Construction Period Real Estate Tax	\$ 100,906.00	\$ 100,906.00
	Construction Insurance	\$ 50,000.00	\$ 50,000.00
	Green Building/Accessibility Consultants	\$ 55,000.00	\$ 55,000.00
	Rent Up Reserves	\$ 115,674.00	\$ 115,674.00
	Construction Loan Interest	\$ 2,007,424.00	\$ 2,007,424.00
	Tax Credit Costs	\$ 55,875.00	\$ 55,875.00
	Engineering fee	\$ 101,090.00	\$ 101,090.00
	Soft Cost Contingency	\$ 140,631.00	\$ 140,631.00
	Total C14 Soft Costs	2,732,400.00	2,732,400.00

1

1
2

ATTACHMENT VII

Enter Project Schedule		Scheduled Date (mm/dd/yyyy)										
A. SITE	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">Option/Contract</td><td style="padding: 2px;">29-Oct-21</td></tr> <tr><td style="padding: 2px;">Site Acquisition</td><td style="padding: 2px;">1-Mar-23</td></tr> <tr><td style="padding: 2px;">Zoning Approval</td><td style="padding: 2px;">31-Dec-22</td></tr> <tr><td style="padding: 2px;">Site Analysis</td><td style="padding: 2px;">10-Sep-21</td></tr> <tr><td style="padding: 2px;">Environmental Clearance</td><td style="padding: 2px;">30-Sep-22</td></tr> </table>	Option/Contract	29-Oct-21	Site Acquisition	1-Mar-23	Zoning Approval	31-Dec-22	Site Analysis	10-Sep-21	Environmental Clearance	30-Sep-22	
Option/Contract	29-Oct-21											
Site Acquisition	1-Mar-23											
Zoning Approval	31-Dec-22											
Site Analysis	10-Sep-21											
Environmental Clearance	30-Sep-22											
B. FINANCING												
1. Construction Loan/Interim Financing	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">Loan Application</td><td style="padding: 2px;">26-Oct-21</td></tr> <tr><td style="padding: 2px;">Conditional Commitment</td><td style="padding: 2px;">1-May-22</td></tr> <tr><td style="padding: 2px;">Firm Commitment</td><td style="padding: 2px;">1-Feb-23</td></tr> </table>	Loan Application	26-Oct-21	Conditional Commitment	1-May-22	Firm Commitment	1-Feb-23					
Loan Application	26-Oct-21											
Conditional Commitment	1-May-22											
Firm Commitment	1-Feb-23											
2. Permanent Loan	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">Loan Application</td><td style="padding: 2px;">26-Oct-21</td></tr> <tr><td style="padding: 2px;">Conditional Commitment</td><td style="padding: 2px;">1-May-22</td></tr> <tr><td style="padding: 2px;">Firm Commitment</td><td style="padding: 2px;">1-Feb-23</td></tr> </table>	Loan Application	26-Oct-21	Conditional Commitment	1-May-22	Firm Commitment	1-Feb-23					
Loan Application	26-Oct-21											
Conditional Commitment	1-May-22											
Firm Commitment	1-Feb-23											
3. Other Loans and Grants	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">Type & Source</td><td style="padding: 2px;">LHC CDBG</td></tr> <tr><td style="padding: 2px;">Application</td><td style="padding: 2px;">1-Mar-22</td></tr> <tr><td style="padding: 2px;">Award</td><td style="padding: 2px;">1-May-22</td></tr> </table>	Type & Source	LHC CDBG	Application	1-Mar-22	Award	1-May-22					
Type & Source	LHC CDBG											
Application	1-Mar-22											
Award	1-May-22											
4. Other Loans and Grants	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="padding: 2px;">Type & Source</td><td style="padding: 2px;"></td></tr> <tr><td style="padding: 2px;">Application</td><td style="padding: 2px;"></td></tr> <tr><td style="padding: 2px;">Award</td><td style="padding: 2px;"></td></tr> </table>	Type & Source		Application		Award						
Type & Source												
Application												
Award												
C. PLANS AND SPECIFICATIONS,		20-Dec-24										

WORKING DRAWINGS							
D.	CLOSING AND TRANSFER OF PROPERTY 19-Nov-25						
E.	CONSTRUCTION START 17-Nov-25						
	<table border="1"> <tr> <td>10% Construction complete</td> <td>27-Dec-25</td> </tr> <tr> <td>50% Construction complete</td> <td>7-Jun-25</td> </tr> <tr> <td>90% Construction complete</td> <td>15-Nov-26</td> </tr> </table>	10% Construction complete	27-Dec-25	50% Construction complete	7-Jun-25	90% Construction complete	15-Nov-26
10% Construction complete	27-Dec-25						
50% Construction complete	7-Jun-25						
90% Construction complete	15-Nov-26						
F.	COMPLETION DATE 15-Nov-26						
G.	CERTIFICATE OF OCCUPANCY DATE 15-Nov-26						
H.	DATE FIRST UNIT RENTED 15-Nov-26						
I.	DATE LAST ASSISTED UNIT RENTED IN SERVICE 14-May-27						
J.	100% OF UNIT OCCUPANCY ACHIEVED 14-May-27						

Attachment VIII

1 SQUARE 536, LOT 1-A

2
3 A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA,
4 CITY OF NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED
5 BY EARHART BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH
6 TONTI STREET, DESIGNATED AS LOT 1-A AND MORE FULLY DESCRIBED AS FOLLOWS:
7

8 BEGIN AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF SOUTH
9 GALVEZ STREET AND THE NORTHERLY RIGHT OF WAY LINE OF ERATO STREET,
10 MEASURE THENCE IN A WESTERLY DIRECTION ALONG SAID NORTHERLY LINE ON AN
11 INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 306 FEET 9 INCHES AND 5 LINES TO A
12 POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF
13 90°00'00" A DISTANCE OF 75 FEET 8 INCHES AND 1 LINE TO A POINT; MEASURE
14 THENCE IN A NORTHWESTERLY DIRECTION ON AN INTERIOR ANGLE OF 238°14'43" A
15 DISTANCE OF 124 FEET 9 INCHES AND 3 LINES TO A POINT; MEASURE THENCE IN A
16 NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 121°43'30" A DISTANCE OF 160
17 FEET 11 INCHES AND 6 LINES TO A POINT; MEASURE THENCE IN AN EASTERLY
18 DIRECTION ON AN INTERIOR ANGLE OF 90°01'47" A DISTANCE OF 412 FEET 9 INCHES
19 AND 7 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ
20 STREET; MEASURE THENCE ALONG SAID WESTERLY LINE IN A SOUTHERLY
21 DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 302 FEET 4 INCHES
22 AND 0 LINES TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ERATO
23 STREET, THE POINT OF BEGINNING.
24

25 ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND
26 SURVEYING, LLC DATED AUGUST 3, 2023, JOB #231394.
27

28 SQUARE 536, LOT 2

29
30 A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA, CITY OF
31 NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED BY EARHART
32 BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH TONTI STREET,
33 DESIGNATED AS LOT 2 AND MORE FULLY DESCRIBED AS FOLLOWS:
34

35 COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF EARHART
36 BOULEVARD AND THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, MEASURE
37 THENCE IN A SOUTHERLY DIRECTION ALONG SAID WESTERLY LINE A DISTANCE OF 269 FEET 1
38 INCH AND 6 LINES TO A POINT, THE POINT OF BEGINNING.
39

40 MEASURE THENCE FROM THE POINT OF BEGINNING ALONG SAID WESTERLY LINE IN A
41 SOUTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 44 FEET 9
42 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN A WESTERLY DIRECTION ON AN
43 INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 412 FEET 9 INCHES AND 7 LINES TO A POINT;
44 MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 89°58'36" A
45 DISTANCE OF 44 FEET 9 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN AN EASTERLY
46 DIRECTION ON AN INTERIOR ANGLE OF 90°01'24" A DISTANCE OF 412 FEET 9 INCHES AND 5
47 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, THE

1 POINT OF BEGINNING.

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3 ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND SURVEYING,
4 LLC DATED AUGUST 3, 2023, JOB #231394.

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1
2 **ATTACHMENT IX**

3
4 **CONTRACT ANALYSIS DOCUMENT**

5
6 **PROJECT DESCRIPTION**

7
8 **AND**

9
10 **BUDGET FORMS**

11
12 **FOR**

13
14 **HOME RENTAL PROJECTS**
15



16
17
18
19 ***FOR OCD USE ONLY:***

20
21 **DATE: September 17, 2025**

22
23 **CONTRACT NAME: BW Cooper Senior, L.L.C.**
24

1 CONTRACT NUMBER: GOBONDFUNDS2023-007

2
3 **PROJECT INFORMATION SHEET**

4
5 **1. Project**

6 Name: BW Cooper Senior

7
8 Program Category: HOME/Gap Financing

9
10 Type of Service: Rental Housing Development

11
12
13 **2. Awarded Agency**

14 Name: *BW Cooper Senior, L.L.C.*

15 Address: 2117 Ursulines Ave

16
17 City, State, Zip: New Orleans, LA 70116

18
19 Telephone: 504-821-7071 Fax: 501-821-7213

20
21
22
23 **3. Contact Person**

24 Name: Wesley Gillen

25 Address: 2117 Ursulines Ave

26
27 City, State, Zip: New Orleans, LA 70116

28
29 Telephone: 504-821-7071 Fax: 501-821-7213

30
31 Email address: wgillen@providencech.org

32
33
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36
37 **4. Executive Officer Name(s)**

38 Name: Terri North

39 Address: 2117 Ursulines Ave

40
41 City, State, Zip: New Orleans, LA 70116

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Telephone: 504-821-7222 Fax: 501-821-7213
Email address: Terri North <tnorth@providencech.org>

5. Bookkeeper or Accountant

Name/Firm: Lisa Samons

Address: 2117 Ursulines Ave

City, State, Zip: New Orleans, LA 70116

Telephone: 504-821-7222 Fax: 501-821-7213

Email address: Lisa Sammons <lsammons@providencech.org>

6. Agency Type (Check One)

- Non-Profit Corporation _____
- For Profit Corporation _____
- Public Agency _____
- City of New Orleans Department _____
- Other (please specify) _____

1 **7. Address(es) of Project:**

2

Address		Number of Units
	3401 Erato Street, New Orleans, LA 70125	103

3

4

5 **8. Program Funding**

6

a. Program Income:

*Identify and list amounts of projected/current program income (if applicable):
(As a result of HUD/Office of Community Development funds)*

<i>SOURCE</i>	<i>AMOUNT</i>	<i>TIME PERIOD</i>
1. N/A		
2.		
3.		

-
- ***Program Income: Please note that funds generated by a Developer and not returned to the City are not considered PI. Examples of PI for a Developer would include loan interest or loan repayments made to the City.**

7

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b. Recommended/Anticipated Funding:

(Includes all other federal, state, and private funding to be used in the Development. If the funding is a loan, please provide us with the interest rate, loan type, and loan period.)

SOURCE	AMOUNT	LOAN/GRANT
LHC CDBG	\$ 6,866,000	0%, Surplus Cash Loan, 35 years
CNO HOME	\$4,065,000	Loan
Regions	\$10,639,000	Loan (5.5%, Fannie, 40 years)
Deferred Developer Fee	\$499,703	Loan, 0%, 35 years
LIHTC	\$15,378,000	Equity
45-L	\$224,025	Federal Equity
B2B Grant Funds through PCH	\$50,000	Equity

2

3

1 **PROFESSIONAL/CONTRACTUAL SERVICES**

2 Fill in the table below listing the following:

- 3 • name of person/firm providing professional/contractual services through this grant
4 • type of service rendered (e.g., accounting, legal, evaluation, etc.)
5 • the cost of the service to be provided.

NAME/FIRM	TYPE OF SERVICE	COST
N/A		

6
7 Please refer to the Bureau of Purchasing’s Website
8 <http://www.nola.gov/purchasing/> which outline all required procedures for
9 compliance with the City of New Orleans’s Federal Grant Procurement
10 Policy for the formal procurement of any federally-funded goods, services,
11 non-professional services, professional services or public works for the City
12 of New Orleans. All procurements in which federal funds are contemplated
13 or used must be conducted in accordance with federal procurement
14 requirements.

PROJECT DESCRIPTION AND HISTORY

In the space provided below, describe the project to be implemented with HOME funds. Describe the entire project and identify the specific component/components funded through HOME.

Providence Community Housing and Columbia Residential, as co-owners and co-developers of BW Cooper Senior, L.L.C., have secured the rights to develop and lease a portion of land of the former Calliope Projects, also previously known as B. W. Cooper Public Housing Development, owned by the Housing Authority of New Orleans (HANO). The portion of the land includes Clio Street which is currently owned by HANO and planned to be developed then dedicated to the City of New Orleans as a public street. The project, known as BW Cooper Senior, will be a three-story new construction project consisting of 103 one-bedroom high quality units for senior residents. The project will be reserved entirely for seniors aged 62 and older making at or below 50% of area median income. The project will incorporate one existing building repurposed as an administrative headquarters and primary entry for the new construction project. The lush and green campus surrounding mature oak trees and congregation areas will include on-site laundry (one washer and one dryer per every 10 units) and tenant gathering space. Additionally, each unit will be equipped with standard amenities available to tenants at no charge including HVAC system, range/oven, refrigerator, microwave, dishwasher, blinds, and access to secure off-street parking with a gated fence. Management services will be provided by Columbia Residential Properties, LLC. The development team has secured an option to lease and Project Based Section 8 vouchers for 100% of the 103 units from HANO. Should the market study, LHC, or investor require, the unit size and AMI/rental support can be rearranged.

Committed Federal financial resources include \$6,866,000 from the Louisiana Housing Corporation's (LHC's) PRIME 3 Program, \$4,065,000 total in funding through the City of New Orleans's Affordable Rental Housing Gap Program (\$2,500,000 from 2020-2021 NOFO and \$1,565,000 from 2023-2024 NOFO).

The City of New Orleans (CNO) funds will be used to pay for all construction related hard costs

**CITY OF NEW ORLEANS
HOME INVESTMENT PARTNERSHIP PROGRAM**

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

This HOME Affordable Rental Housing Program (hereinafter referred to as “HOME”) Regulatory Agreement (hereinafter referred to as the “Agreement”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “City”) and BW Cooper Senior, L.L.C., a Louisiana limited liability company (hereinafter referred to as the “Owner”), represented by BW Cooper Senior Manager, L.L.C., a Louisiana limited liability company, represented herein by Terri B. North and Carmen Chubb, its authorized representatives; and is hereby promulgated to mandate, under penalty of repayment of GO Bond Funds invested in the project named herein, the Owner’s compliance that units assisted in the Project with GO Bond Funds awarded by the City of New Orleans will remain affordable to the targeted income population for the applicable Period of Affordability as cited elsewhere in this Agreement. This Agreement is effective upon the ____ of _____, 2025 (the “Effective Date”).

WITNESSETH

WHEREAS, the Owner acknowledges that the City is an entitlement recipient of HOME Investment Partnership Program (“**HOME Program**”) funds authorized under Title II of the *Cranston-Gonzalez National Affordable Housing Act*, as amended;

WHEREAS, the Owner acknowledges that the City provided General Obligation Bond Funds (“**GO Bond Funds**”), authorized under the Series 2021B Bonds, as a loan for the purposes of (a) making capital improvement, including constructing, renovating, acquiring and/or improving capital improvements in the City permitted by the Charter, including constructing, renovating, acquiring, and/or improving affordable housing facilities, and (b) paying the cost of issuance of the Series 2021B Bonds, as amended;

WHEREAS, the Owner acknowledges that the City administers said GO Bond Funds in accordance with regulations promulgated thereunder by the United States Department of Housing and Urban Development (“**HUD**”) and contained in Volume 24, Part 92 of the *Code of Federal Regulations* (CFR Part 92) and treats the funds in terms of use as HOME Program funds; and

WHEREAS, the Owner acknowledges that City has provided a grant of said funds in the amount of \$4,065,000.00 to Owner, pursuant to a Loan Agreement between the City of New Orleans and the Owner, dated the ____ of _____, 2025, to acquire and/or construct the Project, as defined herein below, in accordance with HOME Regulations;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the Owner, intending to be legally bound, agrees as follows:

ARTICLE I

PROJECT DESCRIPTION

SECTION 1.1 Project-Specific Provisions

Project Description

(1) Name of Project: BW Cooper Senior

(2) Address: 3401 Erato Street

City/State: New Orleans, Louisiana 70125

(3) Percentage of Commercial Space 0

Project's Gross Floor Area (GFA) 104,715 Square Feet (SQ)

Net Rentable Area 74,110 (SQ) Lease Square Feet

(c) Commercial As Percent of GFA 0%

Maximum GO Bond Funds Assistance \$4,065,000.00

GO Bond Funds Period of Affordability from Completion Date: 20 Years.

City Period of Affordability from Termination of HOME Period of Affordability 25 Years.

Total Period of Affordability: 45 years

- Acquisition Only
- New Construction or Conversion to Rental Property
- Moderate/Substantial Rehabilitation
- Acquisition and Rehabilitation

(F) Income Classes:

HOME financed rental projects require that certain percentages of the HOME-assisted units in the Project be occupied by specific income classes as follows:

•A minimum of 20% of the HOME-assisted units should be occupied by households whose incomes do not exceed 50% of the area median adjusted by family size.

•A minimum of 90% of the HOME-assisted units should be occupied by

households whose incomes do not exceed 60% of the area median income adjusted by family size at initial occupancy.

•No units may be occupied by households whose incomes exceed 80% of the area median income adjusted by family size.

Specify the number of HOME/City units in the project occupied by the designated income classes.

Unit Type	Total No. of Units in Project	Affordable Units Controlled by this Regulatory Agreement				Market Units
		Total HOME/City Units	Tenants ≤ 50%	Tenants > 50% ≤ 60%	Tenants > 60 < 80%	Tenants >80
EFF						
1BR	103	103	103			
2BR						
3BR						
4BR						
Market 1BR						
TOTAL	103	103	103			

(I) Estimated Project Construction/Rehabilitation Start Date: November 2025

(J) Estimated or Actual Completion Date: February 2027

SECTION 1.2 Definitions

The definitions of terms in this section shall apply throughout this Agreement unless their context clearly requires otherwise:

Act means the Cranston-Gonzalez National Affordable Housing Act, as amended.

Agreement means this HOME Regulatory Agreement.

Application means the Owner’s or Sponsor’s, application to the City, along with all submissions, documents and correspondence related thereto, for funding to develop the Project. This includes the approved Activity Budget and Payment Invoices for the Project.

City means the City of New Orleans, a Home Rule municipal corporation.

City Period of Affordability means the minimum number of years that the City is requiring rental housing affordability requirements apply to the Project after completion of HOME Period of Affordability

Completion Date means the date the activity is completed in the disbursement and information system established by HUD.

Loan Agreement means the Loan Agreement between Owner and the City of New Orleans, dated the ___ of _____, 2025, which will provide or has provided the General Obligation Bond Funds used to develop the Project.

General Obligation Bond Funds means those funds provided or to be provided by the City to the Owner or Sponsor pursuant to the terms of this Agreement, as specified in Section 1.1(B) of this Agreement.

HOME Program means the HOME Investment Partnerships Program established by HUD pursuant to Title II of the Act.

HOME Period of Affordability means the minimum number of years that the HOME rental housing affordability requirements, as stipulated in 24 CFR 92.252(e), apply to the Project.

HOME Regulations means the regulations contained at 24 CFR Part 92.

Housing Quality Standards means, at a minimum, standards specified at 24 CFR 882.109 and the cost-effective energy and conservation and effectiveness standards in 24 CFR Part 39.

HUD means the U. S. Department of Housing and Urban Development.

Investor means collectively, RAH Investor 456 LLC, a Mississippi limited liability company, as the investor member, and Sterling Corporate Services LLC, a New York limited liability company, as the special member.

Low Income Units means units identified in Section 1.1 of this Agreement with rents, determined in accordance with 24 CFR Part 92.252.

Owner means one or more individuals, corporations, partnerships or other legal entities that hold valid title to, or have a long-term leasehold interest in, the Project developed or to be developed pursuant to this Agreement.

Participating Party means any person, firm, corporation, or public or private entity that has agreed to provide financial or other resources to carry out the Project, and is identified below:

City: City of New Orleans,
through the Office of Community Development
1340 Poydras Street, Suite 1000
New Orleans, Louisiana 70112
(504) 658-4200; (504) 658-4247 (FAX)

Owner: B.W. Cooper Senior, L.L.C.

2117 Ursulines Avenue
New Orleans, LA 70116
Attention: Terri B. North
Contact Number 504-821-7221 E-mail Address
tnorth@providencech.org

With a copy to:

1718 Peachtree Street, N.W. Suite 684
Atlanta, Georgia 30309
Attention: Carmen Chubb
Email: cchubb@columbiars.com

Investor: RAH Investor 456 LLC
c/o Regions Affordable Housing
111 Great Neck Road, Suite 500
Great Neck, New York 11021
Attention: Kevin Smith

Lender: By mail or hand:
Regions Bank
1900 5th Avenue North, 15th Floor
Birmingham, Alabama 35203
Attn: Chase M. Simpson

With copies to: Jones Walker LLP
420 North 20th Street, Suite 1100
Birmingham, Alabama 35203
Attention: Kelly B. Lewis and Brandon D. Hughey

Identification as a "Participating Party" means that the City, in selecting the Owner or Sponsor for the award of HOME Funds, relied in material part upon a representation by the Owner or Sponsor that the parties so identified have completed or will complete a specified portion of the Project or a specific activity necessary for the completion of the Project.

Project means one or more buildings containing residential units, the site(s) on which the building or buildings is/are located, and any functionally related facilities, as more specifically described in Section 1.1(A) of this Agreement.

Project Site means the legal description of the land described in Attachment A.

Project Term means sum of the HOME Period of Affordability described in Section 1.1(C) of this Agreement and the City Period of Affordability described in Section 1.1(D).

Security Agreement means a mortgage or other security device.

Substantive Violation means a breach of the Owner's obligations under Article II of this Agreement.

SECTION 1.3 Incorporation by Reference

The provisions of the Application, including the certifications and sources and uses and all representations made therein, and all correspondence related thereto, are hereby incorporated by reference into this Agreement, and the contents of the Application and the certifications contained therein shall constitute a material part of this Agreement and shall be deemed to have served as the inducement to the City to award the HOME Funds referred to herein and shall have the same effect as they would otherwise have had if fully set forth herein.

SECTION 1.4 Supplemental Provisions

The City and the Owner may include in this Agreement provisions (such as a description of any compliance with other federal requirements at 24 CFR Part 92, Subpart H) in addition to those stated herein in Articles I, II, III and IV, provided that such supplemental provisions are not in conflict with HOME Program requirements. Such supplemental provisions shall be included as Attachment G of this Agreement.

SECTION 1.5 Schedule of Attachments

The following attachments are appended to this Agreement and are hereto incorporated by reference:

- Attachment A. Property Legal Description
- Attachment B. Tenant Eligibility
- Attachment C. Affirmative Fair Housing Marketing Plan
- Attachment D. HOME Covenants
- Attachment E. Rental Housing Completion Report
- Attachment F. Landlord – Tenant Lease Provisions

ARTICLE II

PROJECT DEVELOPMENT AND MANAGEMENT

SECTION 2.1 General Provisions

- (A) The Owner's obligations shall be enforced through, among other things, this Agreement and the HOME Covenants set forth in Attachment D as covenants running with the land. The covenants shall be in effect for at least the Project Term and shall be binding upon the Owner and its successors, assigns, heirs, grantees or lessees to the land or the Project for the Project Term, unless earlier terminated in accordance with the provisions set forth in the HOME Covenants as Attachment D of this Agreement.
- (B) The Owner shall execute a Secured Promissory Note and Mortgage which shall secure the Owner's compliance with its obligations under this Agreement, the Sponsor or Owner's compliance with the Loan Agreement, and the HOME Program Regulations (the "Security Instruments"). The terms of the Security Instruments shall be set by the City, and at a minimum the Security Instruments shall evidence that the HOME Funds may become a debt which must be repaid in the event of Substantive Violations of this Agreement or any other contract, security instrument or such other document incorporated herein by reference or attached hereto. All of the terms, conditions, and provisions of the Security Instruments are, by reference thereto, incorporated herein as part of this Agreement.
- (C) The Owner's performance will be monitored by the City which, if necessary, will take legal action, as appropriate, to enforce the HOME Covenants and compliance with the Owner's responsibilities under this Agreement.
- (D) Any duly authorized representative of the City shall, at all reasonable times and with twenty-four (24) hours' advance written notice, be granted access by the Owner to any portion of the Project.
- (E) Within 30 days of the execution of this Agreement or within 60 days of requesting the final disbursement of HOME Funds, whichever is later, the Owner shall complete and submit to the City the Rental Housing Completion Report attached as Attachment E to this Agreement.
- (F) Consistent with Executive Orders 11625, 12432 and 12138, the Owner has prepared, and shall implement and maintain a minority and women-owned business development plan which contains specific measurable goals and an affirmative strategy to promote awareness and participation by such businesses in the contracting and procurement activities generated by the Project.
- (G) The Owner shall comply with Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 (Public Law 90-284) and implementing regulations; Executive Order 11063 and regulations at 24 CFR Part 107; Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and regulations at 24 CFR Part 1; the Age Discrimination

Act of 1975 (42 U.S.C. 6101-07); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 and implementing regulations at 24 CFR Part 8; Executive Order 11246 and regulations at 41 CFR Chapter 60; and the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations at 24 CFR Part 135.

SECTION 2.2 Development Phase

- (A) The Owner shall carry out its obligations in accordance with HOME Program regulations and the Subrecipient Agreement.
- (B) Development of the Project shall commence at the time specified in Section 1.1(I) of this Agreement and shall be completed by the time specified in Section 1.1(J) of this Agreement.
- (C) The Project shall be developed in accordance with the Housing Quality Standards and applicable State and local building codes, rehabilitation standards, ordinances and zoning ordinances or, in the absence of these codes, with the Southern Building Code.
- (D) No activity having potential environmental effects shall be undertaken until the City has completed an environmental assessment of the Project in accordance with 24 CFR Part 58.

SECTION 2.3 Management Phase

- (A) During the Project Term, units in the Project shall not be converted to condominium ownership or to a form of cooperative ownership that is not eligible to receive HOME Funds for rental projects.
- (B) During the Project Term, the Owner shall not discriminate against prospective tenants on the basis of their receipt of or eligibility for housing assistance under any Federal, State, or local housing assistance program or, except for an elderly housing project or units specifically identified in Section 1.1 of this Agreement as designated for the elderly, on the basis that they have a minor child or children who will be living with them.
- (C) The number of HOME-assisted units by bedroom distribution specified in Section 1.1 of this Agreement shall be occupied or available, through the Owner's best efforts, for occupancy by households whose incomes do not exceed the percentage limitations specified in Section 1.1 during the Project Term.
- (D) Low Income Units shall be leased only to tenants at or below 60% AMI at the time of initial occupancy.
- (E) Rents and tenant income shall be determined in accordance with HUD regulations at 24 CFR Part 92, Subpart F.
- (F) In the event that reexamination of household income indicates that the tenant no

longer qualifies as a lower income household, the Owner shall take appropriate action in accordance with HUD regulations at 24 CFR Part 92.252(c), Subpart F.

- (G) The Owner has established a Rent Schedule, which has been approved by the City to assure that the type and number of HOME-assisted units specified in Section 1.1 of this Agreement are occupied or available for occupancy by low income households during the Project Term. The Rent Schedule may be revised upon request by Owner provided that: (1) the City shall review and approve any schedule or rents proposed by the Owner for low income units; (2) the City and the Owner acknowledge that any rent schedule, which shall include utility allowances, if utilities are tenant paid, submitted by the Owner (within the permissible maximum allowed by the HOME Regulations) will be deemed approved unless the City informs the Owner within 60 days after receiving the schedule and that it is disapproved if the schedule is not consistent with HOME Regulations; and (3) the initial monthly allowance for utilities and services to be paid by low income households shall be as part of the Rent Schedule, with subsequent calculations of this allowance approved by the City in connection with its review and approval of rent schedules.
- (H) Procedures to be followed by the Owner to determine tenant eligibility and actions to be taken in the event a tenant is determined to be over income have been established and are included in this Agreement as Attachment B.
- (I) Marketing shall be done in accordance with the Affirmative Fair Housing Marketing Plan, Form HUD-935.2, and all fair housing and equal opportunity requirements. The Affirmative Fair Housing Marketing Plan is included in this Agreement as Attachment C. Local residency preferences will be allowed to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Owner's Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.
- (J) The Project shall be maintained in accordance with the Housing Quality Standards and applicable State and local building codes, rehabilitation standards, ordinances and zoning ordinance or, in the absence of the codes, the Southern Building Code.
- (K) All management and maintenance functions shall be performed in compliance with applicable equal opportunity requirements, as specified in Section 2.1(F) and (G) of this Agreement.
- (L) The City and the Owner agree that nothing contained in this Agreement shall preclude enforcement by the Federal Government of the Act, civil rights statutes, or other provisions of law that apply to the HOME Program.
- (M) Upon completion of the Project and resolution of any findings of the final audit, the Owner shall submit to the City a written certification, in the format prescribed by the City, executed by an authorized representative of the Owner, stating that all development-related activities required to be completed by the Owner will be completed as prescribed, and specifying the date of completion and the actual cost

to the Owner of labor, materials and necessary services for the construction of physical improvements for the Project.

- (N) The Owner shall keep and maintain books, accounts, reports, files, records and other documents relating to the receipt and disbursement of HOME Funds. Any duly authorized representative of the City, at all reasonable times and with twenty-four (24) hours' advance written notice, shall have access to and the right to inspect, copy, audit and examine all such books, records and other documents of the Owner, until completion of all close-out procedures respecting this award of HOME Funds and the final settlement and conclusion of all HOME Program issues.

ARTICLE III

THIRD PARTY CONTRACTS

SECTION 3.1 Labor Standards

If required by 24 CFR §92.354, all laborers and mechanics (except laborers and mechanics employed by a State and local government acting as the principal contractor on the Project) employed in the development of a Project assisted under the HOME Program shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a-5, inclusive, and contracts involving their employment shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, inclusive. The Owner shall comply with regulations issued under said Act and with other Federal laws and regulations pertaining to labor standards.

SECTION 3.2 Assurance of Governmental Approvals

- (A) The Owner warrants that it has obtained, or has reasonable assurance that it will obtain all Federal, State, and local governmental approvals and reviews required by law to be obtained by the Owner for the Project. Any such approvals which have not been obtained shall be specified in Attachment F of this Agreement.
- (B) The Owner warrants that it has not and shall not take any action which might have an adverse environmental effect, would limit the choices among competing environmental alternatives or might alter environmental premises on which the City's environmental findings were based.

SECTION 3.3 Completion of the Project

If the construction of the Project has not yet been completed, the Owner acknowledges that the City, in selecting the Owner or Sponsor for the award of HOME Funds relied in material part upon the assured completion of the Project and that the Owner assures the City that activities to be completed by the Owner shall be completed as prescribed in the Subrecipient Agreement.

SECTION 3.4 Maintaining Records, Right to Inspect and Copy

- (A) The Owner shall keep and maintain books, accounts, reports, files, records and other documents relating to the receipt and disbursement of HOME Funds; and
- (B) Any duly authorized representative of the City, at all reasonable times, shall have access to and the right to inspect, copy, audit, and examine all such books, records and other documents of the Owner, until the completion of all close-out procedures respecting this award of HOME Funds and the final settlement and conclusion of all HOME Program issues.

SECTION 3.5 No Assignment or Succession

The Owner acknowledges that a transfer of HOME Funds by the City to the Owner shall not be or be deemed to be an assignment of HOME Funds.

SECTION 3.6 Approval of Amendments

This Agreement shall not be amended in any material respect after its approval and acceptance, without the prior written approval of the City. "Material" shall be defined as anything, in the control of any Participating Party, which cancels or reduces any developmental or financial obligation of any Participating Party by more than ten (10) percent, changes the sites or character of any development activity, or increases any time for performance by a party by more than thirty (30) days.

SECTION 3.7 Disclaimer of Relationships

Nothing contained in this Agreement or in the contract between the parties, nor any act of the City or any of the parties, shall be deemed or construed by any of the parties, or by third persons, to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving the City.

SECTION 3.8 Conflict of Interest

No person who is an employee, agent, consultant, officer or elected official or appointed official of the City of New Orleans, State recipient, or subrecipient which are receiving HOME Funds and (i) who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or (ii) who is in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or Agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

SECTION 3.9 Scope of Article III Provisions

The City and the Owner shall include each of the provisions of this Article in their contracts

both with Participating Parties and with other persons, firms, corporations, or public or private entities, including contractors and subcontractors that have agreed to provide financial or other resources to carry out the Project.

ARTICLE IV

MISCELLANEOUS

SECTION 4.1 Successors Bound

All provisions of this Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties.

SECTION 4.2 Remedies Not Impaired

No delay or omission by the City in exercising any right or remedy available under this Agreement shall impair any such right or remedy or constitute a waiver of any default or Substantive Violation.

SECTION 4.3 Severability

The invalidity of any article, section, subsection, clause or provision of this Agreement, including its exhibits, shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof.

SECTION 4.4 Entire Agreement

This Agreement constitutes the entire Agreement between the City and the Owner with respect to the matters contained herein and supersedes all prior oral and written Agreements and all subsequent oral Agreements between the Owner and City with respect to such matters.

SECTION 4.5 Execution in Counterparts

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

SECTION 4.6 Table of Contents, Titles and Headings

Any table of contents, the title of any Articles, and headings of the sections and subsections set forth herein are not a part of this Agreement and shall not be deemed to affect the meaning or construction of any of its provisions.

SECTION 4.7 Rules of Interpretation

- (A) This Agreement shall be interpreted in accordance with and governed by the laws of the State of Louisiana.
- (B) The words "herein" and "hereof" and words of similar import, without reference

to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

- (C) Any amendment to this Agreement executed in accordance with Section 3.6 of this Agreement shall have the same force and effect upon the Owner and the City as does this Agreement.

SECTION 4.8. Consideration

The City has allocated HOME Funds to the Project, all for the purpose, among others, of inducing the Owner to construct or acquire, renovate, equip and operate the Project. In consideration of the HOME Funds awarded by the City, the Owner has entered into this Agreement and has agreed to restrict the uses to which the Project can be put for the Project Term.

SECTION 4.9 Reliance.

The Owner hereby recognizes and agrees that the representations and covenants set forth herein by the Owner may be relied upon by all persons interested in the Project under the Act. In performing its duties and obligations hereunder, the City may rely upon statements and certificates of the Owner and low income tenants, and upon audits, provided by others, of the books and records of the Owner pertaining to occupancy of the Project. In addition, the City may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the City hereunder in good faith and in conformity with such opinion.

SECTION 4.10 Sale or Transfer of the Project.

The Owner hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof without obtaining the prior written consent of the City, except as otherwise contemplated in that certain First Amended and Restated Operating Agreement of the Owner dated on or about the date hereof, which consent shall be not be unreasonably withheld and shall be conditioned solely upon receipt by the City of (i) evidence reasonably satisfactory to the City that the Owner's purchaser or transferee has assumed in writing and in full, and is reasonably capable of performing and complying with, the Owner's duties and obligations under this Agreement and (ii) an opinion of counsel of the transferee that the transferee has duly assumed the obligations of the Owner under this Agreement and that such obligations and this Agreement are binding on the transferee. It is hereby expressly stipulated and agreed that any sale, transfer, or other disposition of the Project in violation of this Section 4.10 shall be null, void, and without effect, shall cause a reversion of title to the Owner, and shall be ineffective to relieve the Owner of its obligations under this Agreement, provided, however, that nothing contained herein shall prohibit a Permitted Transfer as defined in the Mortgage.

SECTION 4.11 Period of Affordability.

The total Period of Affordability is 45 years. This Agreement shall become effective as of the date of execution recited above. This Agreement shall remain in full force and effect for a term and period equal to the Project Term.

SECTION 4.12 Covenants to Run with the Land.

The Owner hereby subjects the Project (including the Project Site) to the covenants, reservations and restrictions set forth in this Agreement. The City and the Owner hereby declare their express intent that the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the land to the extent permitted by law and shall pass to and be binding upon the Owners' successors in title to the Project throughout the term of this Agreement. Each and every contract, deed, mortgage or other instrument hereafter executed affecting or conveying the Project or any portion thereof shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

SECTION 4.13 Burden and Benefit.

The Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Owner's legal interest in the Project is rendered less valuable thereby. The Owner hereby further declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by low income tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the HOME Fund allocation was made by the City.

SECTION 4.14 Uniformity; Common Plan.

The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Project Site.

SECTION 4.15 Enforcement.

If the Owner defaults in the performance or observation of any covenant, agreement, or obligation of the Owner set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the City to the Owner and the Investor, then the City, acting on the Owner's behalf or on behalf of the City, shall declare an "Event of Default" to have occurred hereunder, and, at its option, may take any one or more of the following steps:

- (a) By mandamus or other suit, action or proceeding at law, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the City hereunder;
- (b) Have access to and inspect, examine, and make copies of all the books and records of the Owner pertaining to the Project; or
- (c) Take any such other action(s) at law as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Owner hereunder,

including but not limited to foreclosure, and/or recoup the funds provided by the City discussed in the aforementioned Grant Agreement

All fees, costs, and expenses of the City incurred in taking any action pursuant to this Section 4.15 shall be the sole responsibility of the Owner, and the Owner, as security for the payment of any such fees, costs and expenses, hereby grants, loans, bargains, sells and conveys to the City, a lien on the Project.

Notwithstanding anything to the contrary herein, City shall accept any cure by Investor as if such cure has been performed by Borrower, provided, however that Investor shall have no obligation to cure. City agrees that the removal and/or replacement of the managing member of Borrower shall constitute a cure of a non-curable Event of Default.

SECTION 4.16 Recording and Filing.

The Owner shall cause this Agreement, all amendments and supplements hereto and thereto, to be recorded and filed in the Orleans Parish Land Records office (or similarly named mortgage and conveyance offices) and in such other places as the City may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

SECTION 4.17 Governing Law.

This Agreement shall be governed by the laws of the State of Louisiana and such Federal laws and regulations as may be applicable to the enforcement of this Agreement under the Act and HOME Regulations, including the enforcement of this Agreement by tenants and/or former or prospective tenants of the Project.

SECTION 4.18 Non-Solicitation Statement

The Owner acknowledges and agrees that he/she has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the Subrecipient Agreement that funded the subject rental activity. The Owner has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the subject contract.

SECTION 4.19 Audits and Other Oversight

The Owner understands and will abide by all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-1120, as adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations and authority of the City Inspector General), incorporated herein by reference.

SECTION 4.20 Convicted Felon Statement

The Owner swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. No principal, member, or officer has, within the preceding five years, been

convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

[END OF DOCUMENT – SIGNATURES PAGE FOLLOW]

WHEREAS, this HOME Affordable Rental Housing Program Regulatory Agreement has been executed and is effective as of the Effective Date:

STATE OF _____

COUNTY/PARISH OF _____

On the ___ day of _____, 2025, Terri B. North and Carmen Chubb, Authorized Representatives for and on behalf of BW Cooper Senior Manager, L.L.C., a Louisiana limited liability company, the managing member of BW Cooper Senior L.L.C., a Louisiana limited liability company, hereunto subscribes their names, together with the said competent witnesses, and me, said Notary.

BW COOPER SENIOR, L.L.C.,
a Louisiana limited liability company

By: BW Cooper Senior Manager, L.L.C.
Its: Managing Member

By: _____
Name: Carmen Chubb
Its: Authorized Representative

By: _____
Name: Terri B. North
Its: Authorized Representative

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC

IN WITNESS WHEREOF, the Parties hereto, through duly authorized representatives,
have executed this Agreement to be effective as of the Effective Date.

CITY OF NEW ORLEANS

BY: LATOYA CANTRELL, MAYOR

WITNESSES:

1. _____

Print Name: _____

2. _____

Print Name: _____

NOTARY PUBLIC

Executed on the ___ day of _____, 2025.

FORM AND LEGALITY APPROVED:

Law Department

By: .

Printed Name: _____

IN WITNESS WHEREOF, the Parties hereto, through duly authorized representatives, have executed this Agreement to be effective as of the Effective Date.

CITY OF NEW ORLEANS, CITY COUNCIL

By: _____
CITY COUNCIL PRESIDENT

WITNESSES:

By: _____

Print Name: _____

WITNESSES:

By: _____

Print Name: _____

NOTARY PUBLIC

TABLE OF ATTACHMENTS

Attachment A	Legal Property Description
Attachment B	Tenant Eligibility
Attachment C	Affirmative Fair Housing Marketing Plan
Attachment D	HOME Covenants
Attachment E	Project Completion Report
Attachment F	Landlord – Tenant Lease Provisions

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

ATTACHMENT A

LEGAL PROPERTY DESCRIPTION (PROJECT SITE)

SQUARE 536, LOT 1-A

A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA, CITY OF NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED BY EARHART BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH TONTI STREET, DESIGNATED AS LOT 1-A AND MORE FULLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET AND THE NORTHERLY RIGHT OF WAY LINE OF ERATO STREET, MEASURE THENCE IN A WESTERLY DIRECTION ALONG SAID NORTHERLY LINE ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 306 FEET 9 INCHES AND 5 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 75 FEET 8 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN A NORTHWESTERLY DIRECTION ON AN INTERIOR ANGLE OF 238°14'43" A DISTANCE OF 124 FEET 9 INCHES AND 3 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 121°43'30" A DISTANCE OF 160 FEET 11 INCHES AND 6 LINES TO A POINT; MEASURE THENCE IN AN EASTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°01'47" A DISTANCE OF 412 FEET 9 INCHES AND 7 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET; MEASURE THENCE ALONG SAID WESTERLY LINE IN A SOUTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 302 FEET 4 INCHES AND 0 LINES TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ERATO STREET, THE POINT OF BEGINNING.

ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND SURVEYING, LLC DATED AUGUST 3, 2023, JOB #231394.

SQUARE 536, LOT 2

A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA, CITY OF NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED BY EARHART BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH TONTI STREET, DESIGNATED AS LOT 2 AND MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF EARHART BOULEVARD AND THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, MEASURE THENCE IN A SOUTHERLY DIRECTION ALONG SAID WESTERLY LINE A DISTANCE OF 269 FEET 1 INCH AND 6 LINES TO A POINT, THE POINT OF BEGINNING.

MEASURE THENCE FROM THE POINT OF BEGINNING ALONG SAID WESTERLY LINE IN A SOUTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 44 FEET 9 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN A WESTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 412 FEET 9 INCHES AND 7 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF

89°58'36" A DISTANCE OF 44 FEET 9 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN AN EASTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°01'24" A DISTANCE OF 412 FEET 9 INCHES AND 5 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, THE POINT OF BEGINNING.

ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND SURVEYING, LLC DATED AUGUST 3, 2023, JOB #231394.

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

ATTACHMENT B

TENANT ELIGIBILITY

The Owner hereby represents, warrants and covenants as follows:

(a) The dwelling units in the Project will be leased or rented, or available for lease or rental, to Low Income Tenants on a continuous basis. A tenant's status as a Low Income Tenant will be determined as of the date of such tenant's initial occupancy of a dwelling unit in the Project and will be redetermined annually on the basis of the current income of the resident.

(b) The Owner will obtain and maintain on file income certifications from each Low Income Tenant, dated immediately prior to the initial occupancy of such Low Income Tenant in the Project and thereafter on an annual basis, and containing such information as may be required by the Act and the HOME Regulations, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, HOME Regulations or other official statements now or hereafter promulgated, proposed or made by HUD, and a copy of each such certificate will be filed with the City.

(c) The Owner will maintain complete and accurate records pertaining to dwelling units leased or rented to Low Income Tenants and will permit any duly authorized representative of the City and HUD to inspect, during normal business hours, the books and records of the Owner pertaining to the incomes of Low Income Tenants residing in the Project.

(d) For purposes of satisfying the requirement that the residential units be occupied by Low Income Tenants, no Low Income Tenant shall be denied continued occupancy because, after admission, the Low Income Tenant's family income exceeds the applicable qualifying income level set forth in the definition of "Low Income Tenant"; provided that tenants who no longer qualify as Low Income Tenants pay as rent the lesser of the amount payable by the tenant under State or local law or 30% of the family's adjusted monthly income as re certified annually. The preceding sentence shall not apply with respect to HOME Funds made available for units that have been allocated low-income housing tax credits by the Louisiana Housing Finance Agency, pursuant to Section 42 of the Internal Revenue Code of 1986, 26 U. S. C. 42. If, as of the most recent annual Certification of Tenant Eligibility, it is determined that the adjusted income of a person or family occupying a Qualified Unit exceeds the then-current maximum allowable adjusted income for persons of Low Income and subsequent to such determination the next available vacant unit in the Project is rented to persons or families qualified as persons or families of Low Income, then the Project shall be deemed in compliance with the requirements of 24 CFR 92.252(a)(2) or (3).

(e) The Owner shall obtain from the Office of Community Development (OCD), such forms as it may require, to record, verify and document Tenant household and income characteristics, both for initial occupancy and for annual tenant income re-verification.

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

ATTACHMENT C

AFFIRMATIVE FAIR HOUSING MARKETING PLAN

Statement of Policy

This Affirmative Marketing Plan will be used by the City of New Orleans in conjunction with the implementation of Programs funded under the HOME Investment Partnership Act. In furtherance of the City of New Orleans' commitment to non-discrimination and equal opportunity in housing, the City of New Orleans establishes procedures to affirmatively market residential housing units and rental assistance that are made available under programs created in accordance with the Federal Regulations which govern the HOME Investment Partnership Act. These procedures are intended to further the objectives of Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and the City of New Orleans' local Fair Housing Act.

The City of New Orleans believes that individuals of similar economic levels in the same housing market area should have available to them a like range of housing choices regardless of their race, color, religion, sex and national origin.

The City of New Orleans is committed to the goals of affirmative marketing which will be implemented in HOME Investment Partnership Act Programs through a specific set of steps that the City and participating owners/developers must follow. These goals will be reached through the following procedures:

Informational Procedures

The City will utilize the following procedures for informing the general public, potential tenants and owners about Federal Fair Housing Laws and its Affirmative Marketing Policies and Procedures:

1. The City of New Orleans has an Office of Fair Housing which provides general information to the public and to housing and other groups about Fair Housing laws. This office will provide resources and assistance to participants in HOME funded projects.
2. The City requires the use of HUD's Equal Housing Opportunity logo in all press releases and on all informational brochures that are used to solicit applications from owners and posts Federal Fair Housing information in conspicuous areas of the office.
3. The City will distribute written Fair Housing information to participating developers, owners and tenants who are involved in or affected by HOME funded projects.
4. Copies of the City's Tenant Assistance Policy will be distributed to tenants in buildings scheduled for rehabilitation under a HOME funded program.

Owner's Requirements

Participating Owners are required to inform the general rental public about the availability of housing units rehabilitated under a HOME funded program as follows:

1. The City of New Orleans will require property owners/developers selected for participation in a HOME funded program to comply with affirmative marketing of vacant units by means of incorporating the affirmative marketing requirements, outlined herein in a written agreement, which must be signed by a participating owner/developer.
2. The agreement requires owners to maintain records of any units that become vacant throughout the duration of the affordability period associated with the property. The City will monitor the marketing of the vacated property to insure that it is done in compliance with the City's Affirmative Marketing Policies, as outlined herein.
3. The owner may also use commercial media and other community organizations to solicit tenants. If the general circulation print medium is used to advertise rental unit vacancies, at least one advertisement must also be placed in *The Louisiana Weekly*, which has a significant circulation in the minority community.
4. Copies of placed ads or other types of documentation outlining activities that increase general public awareness of the availability of rental housing units are to be forwarded to the Office of Community Development (OCD) within 30 days after such activities are undertaken. If violations of the City's Affirmative Marketing Policies are discovered, corrective actions will be required immediately.
5. The Fair Housing Equal Opportunity (FHEO) logo is to be used in all advertisements for solicitation of tenants.
6. The FHEO sign is to be posted conspicuously on properties during the rehabilitation phase of a HOME funded project and remain in place until all required rehabilitation is completed and for a periods of 30 days thereafter.
7. With reasonable notice, the owner will make his/her records regarding tenant solicitation and occupancy available for review by OCD, in accordance with U.S. Department of Housing and Urban Development monitoring procedures.

Special Outreach

Should special outreach be necessary, owners will be required to seek assistance from the City. The City will develop procedures for special outreach on a case by case basis.

Record Keeping

Participating developers and owners of properties being rehabilitated under a HOME funded project will be required to keep the following records:

1. Activities they undertake to inform the general public and activities they undertake for special outreach. This may include copies of newspaper advertisements, correspondence with the City, the Housing Authority of New Orleans or other organizations, such as churches and community organizations.
2. Maintain a listing of all tenants as to age, sex, race, family size, income, dates of occupancy and referral source.

3. The owner shall provide a written statement outlining his efforts taken to solicit tenants from targeted income groups.

This information shall be submitted to the City annually and will be used to assess the success of the Affirmative Marketing effort.

Assessment and Corrective Action

The City will maintain a record of all referrals, public hearings, announcements and solicitations. An annual assessment will be prepared using tenant information furnished by the owner and verified by the City and the results will be reported in the Annual Performance Report. The information developed will be used to determine the effectiveness of these procedures. Any deficiencies observed will be addressed with revised procedures or corrective measures specific to the deficiency.

All obligations and requirements of the aforementioned Affirmative Marketing Procedures will be included in a written document signed by owners/developers of properties under a HOME funded program. The written agreement will contain provisions sufficiently strong to bring about compliance with all requirements. The agreement will be for the affordability period required for the specific HOME funded project.

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

ATTACHMENT D

HOME COVENANTS

CERTIFICATE OF OWNER

The undersigned, duly authorized representative of the Owner, hereby certifies that the Other Federal Requirements enumerated as Exhibit A hereto have been reviewed and that the Owner has complied with or will comply with all said requirements by executing this certification. The Owner further certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by HUD in transactions such as the Project.

BW COOPER SENIOR, L.L.C.,
a Louisiana limited liability company

By: BW Cooper Senior Manager, L.L.C.
Its: Managing Member

By: _____
Name: Carmen Chubb
Its: Authorized Representative

By: _____
Name: Terri B. North
Its: Authorized Representative

OTHER FEDERAL REQUIREMENTS

A. Equal Opportunity and Fair Housing

(a) *Equal Opportunity* . No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME Funds. In addition, the Project must be operated and managed in accordance with the following:

- (1) The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958-1963 Comp., p. 652 and 3 CFR, 2980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1;
- (2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;
- (3) The requirements of Executive Order 11246 (3 CFR 1964-65, Comp. p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60;
- (4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) the purpose of which is to ensure that the employment and other economic opportunities generated by Federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed

toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

(5) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, the Owner must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. The Owner must prescribe procedures acceptable to the City to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the Owner with such persons or entities, public and private, in order to facilitate the activities of the Owner to provide affordable housing authorized under the Housing Act or any other federal housing law applicable to such jurisdiction.

(b) *Fair housing* . In accordance with the certification made with its housing strategy, the Owner must affirmatively further fair housing.

B. Affirmative Marketing

(a) The Owner must adopt affirmative marketing procedures and requirements for HOME-assisted housing containing 5 or more housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. (The affirmative marketing procedures do not apply to families with housing assistance provided by the PHA). The Owner must annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions.

(b) The affirmative marketing requirements and procedures adopted must include:

(1) Methods for informing the public and potential tenants about federal fair housing laws and the Owner's affirmative marketing policy (e.g., the use of the Equal Housing

Opportunity logotype or slogan in press releases and solicitations, and written communication to fair housing and other groups);

- (2) Requirements and practices each owner must adhere to in order to carry out the Owner's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of Equal Housing Opportunity logotype or slogan, and display of fair housing poster);
- (3) Procedures to be used by the Owner to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);
- (4) Records that will be kept describing actions taken by the Owner to affirmatively market units and records to assess the results of these actions; and
- (5) A description of how the Owner will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

C. Displacement, Relocation, and Acquisition

- (a) *Minimizing displacement* . The Owner must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME Funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the Project.
- (b) *Temporary relocation* . The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the Project. Such tenants must be provided:

- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
- (2) Appropriate advisory services, including reasonable advance written notice of
 - (i) The date and approximate duration of the temporary relocation;
 - (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the Project; and
 - (iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons* .

- (1) *General* . A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person* .

- (i) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm, including

any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the Owner to move permanently from the property, if the move occurs on or after:

(1) The date of submission of an application to the City or HUD, if the applicant has site control and the application is later approved; or

(2) The date the City approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the City or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the Project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following situations occurs:

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the Project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of

(i) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

- (ii) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or
 - (2) The tenant is required to relocate temporarily, does not return to the building/complex, and either
 - (i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
 - (ii) Other conditions of the temporary relocation are not reasonable; or
 - (3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a *displaced person* if:
- (A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, state or local law, or other good cause, and the Owner determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.
 - (B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the Project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that

the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the Project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The City may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations*. For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation or demolition.

(d) *Optional relocation assistance* . The Owner may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME Funds where the displacement is not subject to paragraph (c) of this section. The Owner may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by state or local law, the Owner must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Block Grant funds* . If Community Development Block Grant funds are used to pay part of the cost of a HOME project other than the general planning and administrative costs eligible under 24 CFR 570.205 and 570.206, or optional relocation costs eligible under 24 CFR 570.201(i)(2), the project is subject to the requirements of the Housing and Community Development Act of 1974. (This includes the section 104(d) requirements to provide relocation assistance and replace low/moderate income housing as described at 24 CFR

570.606(c) (Entitlement Program and HUD-Administered Small Cities Program) and 24 CFR 570.496a(c) (State CDBG Program).)

- (f) *Real property acquisition requirements* . The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

- (g) *Appeals* . A person who disagrees with the Owner's or City's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the City. A low-income person who is dissatisfied with the City's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

- (h) *Responsibility of Owner* .
 - (1) The Owner must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply.

 - (2) The cost of required relocation assistance is an Eligible Project Cost. This cost also may be paid from state or local funds, or funds available from other sources.

D. Labor

- (a) *General* . Any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under this part must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a-5), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332). Owners, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing

and Community Development Programs), as applicable. The Owner certifies or will certify to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers* . The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(c) *Sweat equity* . The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

E. Lead-based paint

Housing assisted with HOME Funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et. seq.) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, the Owners is responsible for testing and abatement activities.

F. Conflict of interest

(a) *Applicability* .

(1) In the procurement of property and services by the Owner, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 for grants funded before December 26, 2014 or 2 CFR 200 for grants funded on December 26, 2014, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110 or 2 CFR 200, the provisions of this section apply. These cases include the acquisition and disposition of real property and the provision of assistance by the Owner, by subrecipients, or to

individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).¹

¹ See §92.505 concerning the applicability of OMB Circulars.

- (b) *Conflicts prohibited* . No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME Funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (c) *Persons covered* . The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or subrecipient which are receiving HOME Funds.
- (d) *Exceptions: Threshold requirements* . Upon the written request of the City, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the City's program or project. An exception may be considered only after the City has provided the following:
- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (2) An opinion of the City's attorney that the interest for which the exception is sought would not violate state or local law.

(e) *Factors to be considered for exceptions* . In determining whether to grant a requested exception after the City has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific affected activity in question.
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
- (5) Whether undue hardship will result either to the Owner or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (6) Any other relevant considerations.

G. Flood insurance

(a) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), HOME Funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

- (1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the commitment.

(b) The Owner of a Project located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

HOME AFFORDABLE RENTAL HOUSING PROGRAM REGULATORY AGREEMENT

ATTACHMENT E

PROJECT COMPLETION REPORT

The Owner shall use Rental Housing Project Completion Report, form HUD-40097, or other similar such form, as may be substituted by the City, with proper notice to the Owner. Form HUD-40097 may be obtained by request from the City or through the internet from <http://portal.hud.gov/hudportal/documents/huddoc?id=40097.pdf>

The Project Completion Report (PCR) shall be submitted to the City not later than 60 days after receipt of all payments due the Owner under the Subrecipient Agreement. In the event that all HOME-assisted units are not leased by the PCR due date, the Owner shall continue to report tenant characteristics to the City until all such units are initially rented to HOME-eligible tenants.

ATTACHMENT F

To the Regulatory Agreement

By and Between

City of New Orleans

And

BW Cooper Senior, L.L.C.

LANDLORD - TENANT LEASE PROVISIONS

- Required Provisions. The following provisions must be included in all residential leases (or as an addendum) for rental units that are funded in any part with HOME or City dollars.

- Termination of Periodic Tenancy.
 - (a) A periodic tenancy continues until the landlord or tenant gives the other the notice under subsection (b).
 - (b) Except as otherwise provided, either the landlord or tenant may terminate a periodic tenancy:
 - (1) for week to week, by giving the other at least five days' notice in a record of the party's intent to terminate the tenancy on a specified date; and
 - (2) for month to month, by giving the other at least one month's notice in a record of the party's intent to terminate the tenancy at the end of the monthly period.

- Just Cause Eviction Protections.

The landlord cannot elect to terminate or not renew a lease with the tenant unless there is good cause. *Good cause* is defined as a "serious or repeated violation of the lease," or

“material noncompliance with the lease.”

- **Retaliation prohibited.**

(a) The landlord may not engage in conduct described in subsection (b) if landlord’s purpose is to retaliate against a tenant that:

- (1) complained to a governmental agency responsible for enforcement of a building, housing, fire, or health code or other law, alleging a violation applicable to the premises materially affecting the health or safety of the tenant or immediate family member;
- (2) complained to a governmental agency responsible for enforcement of laws prohibiting discrimination in rental housing;
- (3) complained to the landlord of noncompliance with the lease;
- (4) organized or became a member of a tenant’s union or similar organization;
- (5) exercised or attempted to exercise a right or remedy under the lease; or
- (6) pursued an action or administrative remedy against the landlord or testified against the landlord in court or an administrative proceeding.

(b) Conduct that may be retaliatory under subsection (a) includes doing or threatening to do any of the following:

- (1) increasing the rent or fees;
- (2) decreasing services, increasing the tenant’s obligations, imposing different rules on, or selectively enforcing the landlord’s rules against, the tenant or immediate family member, or otherwise materially altering the terms of the lease;
- (3) bringing an action for possession on a ground other than nonpayment of rent;
- (4) refusing to renew a tenancy for a fixed term under a lease containing a renewal option that is exercisable by the tenant without negotiation with the landlord, for any

period after the lease would otherwise terminate;

(5) terminating a periodic tenancy; or

(6) committing a criminal act against the tenant, immediate family member, or guest.

(c) The landlord is not liable for retaliation under subsection (a) if:

(1) the violation of which the tenant complained under subsection (a)(1) or (2) was caused primarily by the tenant, immediate family member, or guest;

(2) the tenant's conduct described in subsection (a) was in an unreasonable manner or at an unreasonable time or was repeated in a manner harassing the landlord;

(3) the tenant was in default in the payment of rent at the time notice of the action described in subsection (b)(3) was sent;

(4) the tenant, immediate family member, or guest engaged in conduct that threatened the health or safety of another tenant on the premises;

(5) the tenant, immediate family member, or guest engaged in a criminal act;

(6) the landlord is seeking to recover possession based on a notice to terminate the lease and the notice was given to the tenant before the tenant engaged in conduct described in subsection (a); or

(7) the landlord is complying or complied with a building, housing, fire, or health code or other law by making a required repair, alteration, remodeling, or demolition that effectively deprives the tenant of the use and enjoyment of the premises.

• Tenant Failure to Pay Rent or Other Noncompliance with Lease and Right to Cure.

(a) Except as otherwise provided by law and subject to subsection (b):

(1) The landlord may terminate a lease for nonpayment of rent when the rent is unpaid when due by giving the tenant notice in a record stating that if the rent remains unpaid

14 days after the notice is given, the lease will terminate on expiration of the 14-day period or a later specified date; or

(2) If there is a material noncompliance with a lease by the tenant, other than nonpayment of rent, the landlord may give the tenant notice in a record specifying the act or omission constituting the noncompliance and stating that if the noncompliance is not remedied not later than 14 days after the landlord gives the notice, the lease will terminate on a specified date which must be at least 30 days after the landlord gives the notice.

(b) A landlord may terminate the lease without giving the tenant an opportunity to remedy a noncompliance by giving the tenant the notice described in subsection (c) if:

(1) the tenant failed to pay rent in a timely manner on at least [two] occasions within the four-month period preceding the notice to terminate the lease;

(2) the tenant committed substantially the same act or omission for which notice under subsection (a)(2) was given within six months preceding the latest noncompliance;

(3) the noncompliance by the tenant, immediate family member, or guest poses an actual and imminent threat to the health or safety of any individual on the premises or the landlord or landlord's agent; or

(4) subject to subsection (d), the tenant, immediate family member, or guest has committed a criminal act.

(c) Notice in a record terminating a lease under subsection (b) must specify the reason for the termination and state that:

(1) for a termination under subsection (b)(1) or (2), the lease will terminate on a specified date, which must be at least 14 days after the landlord gave the notice; or

(2) for a termination under subsection (b)(3) or (4), the lease will terminate immediately or on a later specified date.

(d) The landlord may not terminate a lease under subsection (b)(4) if the criminal act was the act of an immediate family member or guest, and the tenant: (1) neither knew nor should

have known the act was going to be committed; and (2) took reasonable steps to ensure that there will not be a repeated criminal act on the premises by the immediate family member or guest.

- The following is expressly prohibited from appearing in any form in all residential leases (or as an addendum) for units that are partially funded with CDBG dollars.
- Waiver of Five-day Notice. The lease may not require or permit the tenant to waive the tenant's right to five-days notice before the landlord files for eviction.
 - Safe and Fair Criminal Background Proceedings in the Application Process.
- In its tenant application process, the Landlord agrees that:
 - Arrests, juvenile records, or any expunged, vacated, or sealed convictions will be excluded from consideration.
 - b. It will make its screening policy available publicly and provide a copy of any completed background check report available to the applicant.
 - c. It will only consider felony and misdemeanor sex offense convictions that have taken place within the past five years, calculated from the date of arrest.
 - d. It will perform an individualized assessment that involves the consideration of mitigating circumstances.

[End of the Agreement.]

**CITY OF NEW ORLEANS
GO BOND FUNDS PROGRAM
LEASEHOLD MORTGAGE, PLEDGE OF LEASES AND RENTS
AND SECURITY AGREEMENT**

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**LEASEHOLD MORTGAGE, PLEDGE OF LEASES AND RENTS
AND SECURITY AGREEMENT**

BE IT KNOWN on this ____ day of _____, 2025, before me the undersigned Notary Public, and in the presence of the undersigned competent witnesses, personally came and appeared Carmen Chubb and Terri B. North, authorized representatives of BW Cooper Senior Manager, L.L.C., a Louisiana limited liability company and the Managing Member of BW Cooper Senior, L.L.C., a Louisiana limited liability company, whose address is 2117 Ursulines Avenue, New Orleans, Louisiana 70116, Taxpayer Identification No. XX-XXX, 4427 (“**Borrower**”), who by me duly sworn did declare and acknowledge that Borrower is indebted in favor of **CITY OF NEW ORLEANS** (the “**City**”) whose permanent mailing address is 1300 Perdido Street, New Orleans, LA 70112 (together with its successors and assigns and any subsequent holders, collectively the “**Lender**”), under Borrower’s GO Bond Funds 1 and 2 Program Promissory Note, dated the date of this Mortgage, in principal amount of **Four Million Sixty-Five Thousand Dollars Even (\$4,065,000.00)** which note is payable to the order of the above-named Lender, and has a stated maturity date of 45 years from completion (also known as the period of affordability) (the “**Note**”), and, together with and as a part of the Indebtedness, is secured by this Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement (the “**Mortgage**”).

TO SECURE TO LENDER the repayment of the Indebtedness (including the payment of reasonable attorneys’ fees), and all renewals, extensions, modifications and refinancings of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower hereby mortgages, hypothecates and assigns to Lender the Mortgaged Property, including the Land located in the Parish of Orleans, State of Louisiana and described in **Exhibit A – Property Description** attached to this Mortgage. The maximum amount of the Indebtedness outstanding at any time and from time to time that is secured by this Mortgage shall be limited to an amount equal to the original principal balance of the Note multiplied by eight, inclusive of principal, interest, late charges, default interest, prepayment premiums, additional advances pursuant to this Mortgage, costs, expenses and attorneys’ fees.

Borrower represents and warrants that Borrower is the full leasehold owner and lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, loan, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered, except for the mortgage liens securing the Senior Loan (as defined in the Loan Agreement) and those matters set forth on **Exhibit B – Permitted Encumbrances** attached hereto (“**Permitted Encumbrances**”). Borrower covenants that Borrower will warrant and defend generally the title to, and the ownership and possession of, the Mortgaged Property against all claims and demands, subject to any servitudes, easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy issued to Lender contemporaneously with the execution and recordation of this Mortgage and insuring Lender’s interest in the Mortgaged Property.

Covenants. Borrower and Lender covenant and agree as follows:

1. DEFINITIONS.

The following terms, when used in this Mortgage (including when used in the above recitals), shall have the following meanings:

(a) “**Borrower**” means all persons or entities identified as “**Borrower**” in the first paragraph of this Mortgage, together with their successors and assigns.

(b) “**Environmental Permit**” means any permit, license, or other authorization issued under any Hazardous Materials Law with respect to any activities or businesses conducted on or in relation to the Mortgaged Property.

(c) “**Event of Default**” means, subject to Section 21 (i), the occurrence of any event listed in Section 21.

(d) “**Fixtures**” means all property which is so attached to the Land or the Improvements as to constitute an integral or component part, or a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors;

cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

(e) “**Governmental Authority**” means any board, commission, department or body of any municipal, parish, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

(f) “**Guarantor**” means the natural person(s) or entity identified as such at the foot of this Mortgage, and any person or entity that becomes a Guarantor after the date of this Mortgage and that is identified as such in an amendment or supplement to this Mortgage.

(g) “**Hazardous Materials**” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law.

(h) “**Hazardous Materials Laws**” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.*, the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, *et seq.*, and their state analogs, and any other environmental laws or hazardous materials laws under the State of Louisiana.

(i) “**Impositions**” is defined in Section 7(a).

(j) “**Improvements**” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.

(k) “**Indebtedness**” means the principal of, interest on, and all other amounts due at any time under the Loan Agreement, the Note, this Mortgage or any other Loan Document, including prepayment premiums, late charges, default interest, attorneys’ fees, keeper fees, collection and foreclosure expenses, advances as provided in Section 11 to protect the security of this Mortgage, and any other sums that Lender may advance or incur with respect to the Mortgaged Property, or as otherwise provided in this Mortgage or any other Loan Document.

(l) “**Intercreditor Agreement**” means that certain Subordination and Standstill Agreement dated on even date herewith by and between Regions Bank, an Alabama banking corporation, the City, Louisiana Housing Corporation, and Borrower.

(m) “**Investor**” means collectively, RAH Investor 456 LLC, a Mississippi limited liability company, and its successors and assigns, and Sterling Corporate Services, LLC, a New York, limited liability company and its successors and assigns.

(n) “**Land**” means the immovable property described in **Exhibit A**. The immovable property is located in Orleans Parish, State of Louisiana.

(o) “**Leases**” means all present and future leases, subleases, licenses, concessions or grants or loans or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

(p) “**Loan Agreement**” means the Loan Agreement between Borrower and the City, dated as of the date of this Mortgage, as modified, amended, and supplemented in accordance with its terms.

(q) “**Lender**” means the entity identified as “**Lender**” in the first paragraph of this Mortgage and its successors and assigns, or any subsequent holder of the Note.

(r) “**Loan Documents**” means for the purposes of this Mortgage, the Note, this Mortgage, the Loan Agreement, and the CDBG Regulatory Agreement required by the Loan Agreement, as such documents may be amended from time to time.

(s) “**Loan Servicer**” means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, this Mortgage and any other Loan Document, and otherwise to service the loan evidenced by the Note for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer is the entity identified as “**Lender**” in the first paragraph of this Mortgage.

(t) “**Mortgaged Property**” means all of Borrower’s present and future leasehold right, title and interest in and to all of the following:

(i) the Land;

(ii) the Improvements;

(iii) the Fixtures;

(iv) the Personalty;

(v) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, servitudes, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(vi) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement;

(vii) all awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(viii) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(ix) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(x) all Rents and Leases;

(xi) all earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Mortgage and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(xii) [reserved];

(xiii) all refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Mortgage is dated);

(xiv) all tenant security deposits which have not been forfeited by any tenant under any Lease;

(xv) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property; and

(u) “**Note**” means the Note described in the first paragraph of this Mortgage, including the Acknowledgment and Agreement of Guarantor to Personal Liability for Exceptions to Non-Recourse Liability (if any), and all schedules, riders, allonges and addenda, as such Note may be amended from time to time.

(v) **“Permitted Transfer”** has the meaning set forth in Section 20(b). A Permitted Transfer shall not require the consent of the Lender and shall not constitute an Event of Default hereunder or under the Loan Documents.

(w) **“Personalty”** means all equipment, inventory, general intangibles which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, including furniture, furnishings, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible (corporeal) personal (movable) property (other than Fixtures) which are used now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements and all other intangible (incorporeal) property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

(x) **“Rents”** means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, including subsidy payments received from any sources, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

(y) **“Senior Lender”** Senior Lender shall have the meaning ascribed to same in the Intercreditor Agreement.

(z) **“Senior Loan”** Senior Loan shall have the meaning ascribed to same in the Intercreditor Agreement.

(aa) **“Senior Loan Documents”** means any and all documents executed by and between Borrower and Senior Lender in connection with the Senior Loan.

(bb) **“Senior Loan Mortgage”** Senior Loan Mortgage shall have the meaning ascribed to same in the Intercreditor Agreement.

(cc) **“Taxes”** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a lien, on the Land or the Improvements.

(dd) **“Transfer”** means: (A) a sale, assignment, transfer or other disposition (whether voluntary, involuntary or by operation of law, and whether on a bond for deed basis or otherwise); (B) the granting, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law, and whether on a bond for deed basis or otherwise); (C) the issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock; (D) the withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or manager in a limited liability company; or (E) the merger, dissolution, liquidation, or consolidation of a legal entity. “Transfer” shall include the dispositions described in Section 15 below, but does not include (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under this Mortgage, or (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code, or (iii) a Permitted Transfer. For purposes of defining the term “Transfer,” the term “partnership” shall mean a general partnership, a limited partnership or partnership in commendam, a joint venture and a registered limited liability partnership, and the term “partner” shall mean a general partner, a limited partner and a joint venturer.

(ee) **“Uniform Commercial Code”** or **“UCC”** means the Louisiana Commercial Laws, Louisiana Revised Statutes Title 10, Sections 1-101, *et seq.*

2. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.

This Mortgage is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, **“UCC Collateral”**), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing

statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that Lender may require. Except with respect to the Senior Loan and other loans contemplated by the Intercreditor Agreement, without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Mortgage or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Mortgage constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

3. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(r). However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Mortgage create and perfect a security interest on Rents in favor of Lender, which security interest shall be effective as of the date of this Mortgage.

(b) After the occurrence of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to the Lender. However, until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Senior Loan, the Note and the other amounts then due and payable under the other Loan Documents and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Mortgage. From and after the occurrence of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents shall automatically terminate and Lender shall, subject to the rights of the Senior Lender, without notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower shall pay to Lender upon demand all Rents to which Lender is entitled. At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, subject to the rights of the Senior Lender, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender, no tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower shall not interfere with and shall cooperate with Lender's collection of such Rents.

(c) Borrower represents and warrants to Lender that except in connection with the Senior Loan, Borrower has not executed any prior assignment of Rents and that Borrower has not performed, and Borrower covenants and agrees that it will not perform, any acts and has not executed, and shall not execute, any Mortgage (other than to such entities as may be stated in this paragraph) which would prevent Lender from exercising its rights under this Section 3, and that at the time of execution of this Mortgage there has been no anticipation or prepayment of any Rents for more than two months prior to the due dates of such Rents. Borrower shall not collect or accept payment of any Rents more than two months prior to the due dates of such Rents.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to

Section 3(a), protecting the Mortgaged Property or the security of this Mortgage, or for such other purposes as Lender in its discretion may deem necessary or desirable. Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Mortgage, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law. Lender or the receiver, as the case may be, shall be entitled to receive a reasonable fee for managing the Mortgaged Property. Immediately upon appointment of a receiver or immediately upon the Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower shall surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and shall deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents. In the event Lender takes possession and control of the Mortgaged Property, Lender may exclude Borrower and its representatives from the Mortgaged Property. Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

(e) If Lender enters the Mortgaged Property, Lender shall be liable to account only to Borrower and only for those Rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under this Section 3, and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

(f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall become an additional part of the Indebtedness as provided in Section 11.

(g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Mortgage shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Mortgage.

4. ASSIGNMENT OF LEASES; LEASES AFFECTING THE MORTGAGED PROPERTY.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease. It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only. For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases shall not be deemed to be a part of the "Mortgaged Property," as that term is defined in Section 1(r). However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases shall be included as a part of the Mortgaged Property and it is the intention of the Borrower that in this circumstance this Mortgage create and perfect a security interest on the Leases in favor of Lender, which security interest shall be effective as of the date of this Mortgage.

(b) Until Lender gives notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower shall have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Mortgage), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence and during the continuance of an Event of Default beyond the applicable cure period, the permission given to Borrower pursuant to the preceding sentence to exercise all rights, power and authority under Leases shall automatically terminate. Borrower shall comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

(c) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements. The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) shall not at any time or in any event obligate Lender to take any action under this Mortgage or to expend any money or to incur any expenses. Lender shall not be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Mortgaged Property.

Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender shall not: (i) be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease); (ii) be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property; or (iii) be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Mortgage by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking of possession.

(d) Upon delivery of notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of and during the continuance of an Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately shall have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.

(e) Borrower shall, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units shall be on forms approved by Lender, shall be for initial terms of at least six months and not more than two years, and shall not include options to purchase. If customary in the applicable market, residential Leases with terms of less than six months may be permitted with Lender's prior written consent.

(f) Borrower shall not lease any portion of the Mortgaged Property for non-residential use or otherwise with the prior written consent of Lender and Lender's prior written approval of the Lease agreement. Borrower shall not modify the terms of, or extend or terminate, any Lease for non-residential use (including any Lease in existence on the date of this Mortgage) without the prior written consent of Lender. Borrower shall, without request by Lender, deliver an executed copy of each non-residential Lease to Lender promptly after such Lease is signed. All non-residential Leases, including renewals or extensions of existing Leases, shall specifically provide that (1) such Leases are subordinate to the lien of this Mortgage (unless waived in writing by Lender); (2) the tenant shall attorn to Lender and any purchaser at a foreclosure sale, such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a foreclosure sale or by Lender in any manner; (3) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a foreclosure sale may from time to time request; (4) the Lease shall not be terminated by foreclosure or any other transfer of the Mortgaged Property; (5) after a foreclosure sale of the Mortgaged Property, Lender or any other purchaser at such foreclosure sale may, at Lender's or such purchaser's option, accept or terminate such Lease; and (6) the tenant shall, upon receipt after the occurrence of an Event of Default of a written request from Lender, pay all Rents payable under the Lease to Lender.

(g) Borrower shall not receive or accept Rent under any Lease (whether residential or non-residential) for more than two months in advance.

(h) If required to give effect to Sections 3 and 4 of this Mortgage, the assignment of Leases and Rents granted in Sections 3 and 4 of this Mortgage shall constitute a pledge in accordance with Articles 3168 et seq. of the Louisiana Civil Code, La. R.S. 9:4401, et seq., and other applicable law and shall secure all Indebtedness including, without limitation, the Indebtedness and the Loan, now existing or hereafter arising up to the maximum amount secured by this Mortgage. Upon the occurrence of an Event of Default hereunder, then the pledge of Leases and Rents granted in this Mortgage shall automatically become absolute, and Lender, without in any way waiving such default, at its option, upon notice and without regard to the adequacy of the security for the Indebtedness or to whether it has exercised any of its other rights or remedies hereunder, shall have the right to directly collect and receive all Rents and any other proceeds and/or payments arising under or in any way accruing under the Leases assigned herein, as such amounts become due and payable and to apply the same to the Indebtedness as provided herein. Nothing herein shall be construed to limit the exercise of any remedies otherwise granted to Lender in this Mortgage. All rights and remedies of Louisiana Civil Code article 3141 et seq., as supplemented by La. R.S. 9:4401, et seq., shall inure to the benefit of the Lender.

5. PAYMENT OF INDEBTEDNESS; PERFORMANCE UNDER LOAN DOCUMENTS.

Borrower shall pay the Indebtedness when due in accordance with the terms of the Note and the other Loan Documents and shall perform, observe, and comply with all other provisions of the Note and the other Loan Documents.

6. NON-RECOURSE LANGUAGE.

Neither Borrower nor any officer, employee, member or partner of Borrower shall be personally liable for the payment of the indebtedness evidenced by this Note, the Mortgage, the Loan Agreement or any other loan documents, and any judgment or decree in any action brought to enforce the obligation of Borrower to pay the indebtedness will be enforceable against Borrower and the officers, employees or partners of

Borrower, if any, only to the extent of Borrower's interest in the Property and any improvements thereon or any other collateral pledged, encumbered, or otherwise covered by the loan documents. Any judgment or decree will not be subject to execution, or be a lien, on the assets of the Borrower and the partners in Borrower, if any, other than Borrower's interest in the Project and any other collateral pledged, encumbered, or otherwise covered by the loan documents.

7. TAXES, UTILITIES, INSURANCE; DEPOSITS FOR RESERVES AND OTHER CHARGES.

(a) Except as otherwise provided in the Senior Loan Documents and until the Indebtedness is paid in full, Borrower shall pay when due (1) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property, (2) the premiums for fire and other hazard insurance, rent loss insurance and such other insurance as Lender may require under Section 18, and (3) Taxes. Failure to pay all such amounts as and when due shall be a default hereunder. The amounts under the preceding sentence are collectively referred to in this Mortgage as the "**Impositions**". Borrower shall provide Lender with evidence that all Impositions have been paid upon request.

(b) Borrower shall deposit in an account or accounts established for the purpose of replacement reserves as set forth in the Senior Loan Agreement. The amounts deposited under this subsection are collectively referred to in this Mortgage as "**Reserves**". Borrower shall provide Lender with the bank, account number and such other information as may be necessary to identify the account holding the Reserves, and shall provide the City with statements from such account within ten (10) days of receiving a request from the City for such statements. Borrower shall maintain records indicating how much of the monthly Reserves and how much of the aggregate Reserves held are held for the purpose of paying amounts for which the Reserves are being held.

(c) Reserves shall be held in an institution whose deposits or accounts are insured or guaranteed by a federal agency. Borrower hereby pledges and grants to Lender a subordinate security interest in the Reserves as additional security for all of Borrower's obligations under this Mortgage and the other Loan Documents.

(d) Reserves shall be used in accordance with the terms of the Loan Documents.

(e) If the Senior Loan is no longer in effect, no withdrawals from any account holding Reserves shall be made without the prior written approval of the City, or its designated representative, such approval not to be unreasonably withheld or delayed.

8. APPLICATION OF PAYMENTS.

If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount which is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Mortgage and the Note shall remain unchanged.

9. COMPLIANCE WITH LAWS.

Borrower shall comply with all applicable laws, ordinances, regulations and requirements of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property (including the CDBG Regulatory Agreement), including all laws, ordinances, regulations, requirements and covenants pertaining to health and safety, construction of improvements on the Mortgaged Property, fair housing, zoning and land use, and Leases. Borrower also shall comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits. Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 9. Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise materially impair the lien created by this Mortgage or Lender's interest in the Mortgaged Property. Borrower represents and warrants to Lender that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

10. USE OF PROPERTY.

Unless required by applicable law, Borrower shall not (a) except for any change in use approved by Lender, allow changes in the use for which all or any part of the Mortgaged Property is intended to be used

when constructed in accordance with the plans and specifications for the Project (as defined in the Loan Agreement), (b) convert any individual dwelling units or common areas to commercial use, (c) initiate or acquiesce in a change in the zoning classification of the Mortgaged Property, or (d) establish any condominium or cooperative regime with respect to the Mortgaged Property.

11. PROTECTION OF LENDER'S SECURITY.

(a) If Borrower fails to perform any of its obligations under this Mortgage or any other Loan Document after written notice of the same, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Mortgage, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including (1) payment of fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants, (2) entry upon the Mortgaged Property to make repairs or secure the Mortgaged Property, (3) procurement of the insurance required by Section 18, and (4) payment of amounts which Borrower has failed to pay under Sections 14 and 16.

(b) Any amounts disbursed by Lender under this Section 11, or under any other provision of this Mortgage that treats such disbursement as being made under this Section 11, shall be added to, and become part of, the principal component of the Indebtedness, shall be immediately due and payable and shall bear interest from the date of disbursement until paid at the "**Default Rate**", as defined in the Note.

(c) Nothing in this Section 11 shall require Lender to incur any expense or take any action.

12. INSPECTION.

Lender, its agents, representatives, and designees may make or cause to be made entries upon and inspections of the Mortgaged Property (including environmental inspections and tests) during normal business hours, or at any other reasonable time subject to the rights of tenants.

13. BOOKS AND RECORDS; FINANCIAL REPORTING.

(a) Borrower shall keep and maintain at all times at the Mortgaged Property or the management agent's offices, and upon Lender's request shall make available at the Mortgaged Property, complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property, and copies of all written contracts, Leases, and other Mortgages which affect the Mortgaged Property. The books, records, contracts, Leases and other Mortgages shall be subject to examination and inspection at any reasonable time by Lender.

(b) If an Event of Default has occurred and is continuing, Borrower shall deliver to the City upon written demand all books and records relating to the Project or its operation. If the City has not previously required Borrower to furnish a quarterly statement of income and expenses for the Project, the City may require Borrower to furnish such a statement within sixty (60) days after the end of each fiscal quarter of Borrower following such Event of Default. In such event, the City shall have the right to have an audit conducted pursuant to subsection (d) hereof.

(c) Borrower authorizes the City to obtain a credit report on Borrower at any time.

14. TAXES; OPERATING EXPENSES.

(a) Subject to the provisions of Section 14(c), Borrower shall pay, or cause to be paid, all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.

(b) Subject to the provisions of Section 14(c), Borrower shall pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including insurance premiums, utilities, repairs and replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added.

(c) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than insurance premiums, if (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (2) the Mortgaged Property is not in danger of being sold or forfeited, (3) Borrower deposits reserves sufficient to pay the contested Imposition, if requested by Lender, and (4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of the reserves established by Borrower to pay the contested Imposition.

(d) Borrower shall promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments.

15. LIENS; ENCUMBRANCES.

Borrower acknowledges that, except to the extent provided in Section 20 and except for the mortgages securing the Senior Loan and the other loans contemplated Intercreditor Agreement, the grant, creation or existence of any mortgage, deed of trust, deed to secure debt, security interest or other lien, privilege or encumbrance (a “**Lien**”) on the Mortgaged Property (other than the lien of this Mortgage or the liens described in Section 3(c) above, or the Permitted Encumbrances) or on certain ownership interests in Borrower, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the lien of this Mortgage, is a “**Transfer**” which constitutes an Event of Default.

16. PRESERVATION, MANAGEMENT AND MAINTENANCE OF MORTGAGED PROPERTY.

(a) Borrower (1) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, (2) shall not abandon the Mortgaged Property, (3) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, (4) shall keep the Mortgaged Property in good repair, reasonable wear and tear excepted, including the replacement of Personalty and Fixtures with items of equal or better function and quality, (5) shall provide for professional management of the Mortgaged Property by a residential rental property manager reasonably satisfactory to Lender under a contract approved by Lender in writing, and (6) shall give notice to Lender of and, unless otherwise directed in writing by Lender, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender’s security or Lender’s rights under this Mortgage. Except in connection with the initial development of the Mortgaged Property, Borrower shall not (and shall not permit any tenant or other person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property except in connection with the replacement of tangible Personalty.

(b) If, in connection with the making of the loan evidenced by the Note or at any later date, Lender waives in writing the requirement of Section 16(a)(5) above that Borrower enter into a written contract for management of the Mortgaged Property and if, after the date of this Mortgage, Borrower intends to change the management of the Mortgaged Property, Lender shall have the right to approve such new property manager and the written contract for the management of the Mortgaged Property, which such approval shall not be unreasonably withheld or delayed, and require that Borrower and such new property manager enter into an Assignment of Management Agreement on a form approved by Lender. If required by Lender (whether before or after an Event of Default), Borrower will cause any Affiliate of Borrower to whom fees are payable for the management of the Mortgaged Property to enter into an agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require. “**Affiliate**” means, with respect to any entity, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which has a Controlling Interest in, such entity (the term “**control**” “**controlled by**”, “**under common control with**”, or “**controlling interest**” means (i) the direct or indirect power (under contract, equity ownership, the right to vote or determine a vote, or otherwise) to direct the financial, legal, beneficial or other interests of a company (or other entity) and includes the definition of “control” in 24 CFR 401.310(a)(2); or (ii) the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; or (iii) the ability to direct in any manner the election of a majority of a company’s (or other entity’s) directors, trustees or members; or (iv) the ability to exercise a controlling influence over the company’s or entity’s management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership, and a managing member of a limited liability company is presumed to be in control of that limited liability company).

17. ENVIRONMENTAL HAZARDS.

(a) Except for matters described in Section 17(b), Borrower shall not cause or permit any of the following:

(i) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials on or under the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property in violation of Hazardous Materials Laws;

(ii) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property in violation of Hazardous Materials Laws;

(iii) any occurrence or condition on the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws; or

(iv) any violation of or noncompliance with the terms of any Environmental Permit with respect to the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property.

The matters described in clauses (i) through (iv) above are referred to collectively in this Section 17 as “**Prohibited Activities or Conditions**”.

(b) Prohibited Activities and Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Borrower shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Mortgage) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Borrower shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activity or Condition.

(d) Borrower represents and warrants to Lender that, except as previously disclosed by Borrower to Lender in writing:

(i) Borrower has not at any time engaged in, caused or permitted any Prohibited Activities or Conditions;

(ii) to the best of Borrower’s knowledge after reasonable and diligent inquiry, no Prohibited Activities or Conditions exist or have existed;

(iii) except to the extent previously disclosed by Borrower to Lender in writing, the Mortgaged Property does not now contain any underground storage tanks, and, to the best of Borrower’s knowledge after reasonable and diligent inquiry, the Mortgaged Property has not contained any underground storage tanks in the past. If there is an underground storage tank located on the Mortgaged Property which has been previously disclosed by Borrower to Lender in writing, that tank complies with all requirements of Hazardous Materials Laws;

(iv) Borrower has complied with all Hazardous Materials Laws, including all requirements for notification regarding releases of Hazardous Materials. Without limiting the generality of the foregoing, Borrower has obtained all Environmental Permits required for the operation of the Mortgaged Property in accordance with Hazardous Materials Laws now in effect and all such Environmental Permits are in full force and effect;

(v) no event has occurred with respect to the Mortgaged Property that constitutes, or with the passing of time or the giving of notice would constitute, noncompliance with the terms of any Environmental Permit;

(vi) there are no actions, suits, claims or proceedings pending or, to the best of Borrower’s knowledge after reasonable and diligent inquiry, threatened that involve the Mortgaged Property and allege, arise out of, or relate to any Prohibited Activity or Condition; and

(vii) Borrower has not received any complaint, order, notice of violation or other communication from any Governmental Authority with regard to air emissions, water discharges, noise emissions or Hazardous Materials, or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property.

The representations and warranties in this Section 17 shall be continuing representations and warranties that shall be deemed to be made by Borrower throughout the term of the loan evidenced by the Note, until the Indebtedness has been paid in full.

(e) Borrower shall promptly notify Lender in writing upon the occurrence of any of the following events:

(i) Borrower's discovery of any Prohibited Activity or Condition;

(ii) Borrower's receipt of or knowledge of any complaint, order, notice of violation or other communication from any Governmental Authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Borrower that is adjacent to the Mortgaged Property; and

(iii) any representation or warranty in this Section 17 becomes untrue after the date of this Agreement.

Any such notice given by Borrower shall not relieve Borrower of, or result in a waiver of, any obligation under this Mortgage, the Note, or any other Loan Document.

(f) Borrower shall pay promptly the costs of any environmental inspections, tests or audits ("**Environmental Inspections**") required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any Transfer under Section 20, or required by Lender following a reasonable determination by Lender that Prohibited Activities or Conditions may exist. Any such costs incurred by Lender (including the reasonable fees and out-of-pocket costs of attorneys and technical consultants whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become an additional part of the Indebtedness as provided in Section 11. The results of all Environmental Inspections made by Lender shall at all times remain the property of Lender but Lender shall provide copies of all Environmental Inspection reports to Borrower. Lender hereby reserves the right, and Borrower hereby expressly authorizes Lender, to make available to any party, including any prospective bidder at a foreclosure sale of the Mortgaged Property, the results of any Environmental Inspections made by Lender with respect to the Mortgaged Property. Borrower consents to Lender notifying any party (either as part of a notice of sale or otherwise) of the results of any of Lender's Environmental Inspections. Borrower acknowledges that Lender cannot control or otherwise assure the truthfulness or accuracy of the results of any of its Environmental Inspections and that the release of such results to prospective bidders at a foreclosure sale of the Mortgaged Property may have a material and adverse effect upon the amount which a party may bid at such sale. Borrower agrees that Lender shall have no liability whatsoever as a result of delivering the results of any of its Environmental Inspections to any third party, and Borrower hereby releases and forever discharges Lender from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the results of, the delivery of any of Lender's Environmental Inspections.

(g) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property under any Hazardous Materials Law, Borrower shall, by the earlier of (1) the applicable deadline required by Hazardous Materials Law or (2) 30 days after notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and shall in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower shall reimburse Lender on demand for the reasonable cost of doing so. Any reimbursement due from Borrower to Lender shall become part of the Indebtedness as provided in Section 11.

(h) Borrower shall cooperate with any inquiry by any Governmental Authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activity or Condition.

(i) Borrower shall indemnify, hold harmless and defend (i) Lender, (ii) any prior owner or holder of the Note, (iii) the Loan Servicer, (iv) any prior Loan Servicer, (v) the officers, directors, shareholders, partners, employees and trustees of any of the foregoing, and (vi) the heirs, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Indemnitees**") from and against all proceedings, claims, damages, penalties and costs (whether initiated or sought by Governmental Authorities or private parties), including reasonable fees and reasonable out-of-pocket expenses of attorneys and expert witnesses, investigatory fees, and remediation costs, whether incurred in connection with any judicial or administrative process or otherwise, arising directly or indirectly from any of the following:

(i) any breach of any representation or warranty of Borrower in this Section 17;

(ii) any failure by Borrower to perform any of its obligations under this Section 17;

(iii) the existence or alleged existence of any Prohibited Activity or Condition;

(iv) the presence or alleged presence of Hazardous Materials on or under the Mortgaged Property or any property of Borrower that is adjacent to the Mortgaged Property; and

(v) the actual or alleged violation of any Hazardous Materials Law by Borrower or its agents or at the Mortgaged Property.

(j) Counsel selected by Borrower to defend Indemnitees shall be subject to the approval of those Indemnitees. However, any Indemnitee may elect to defend any claim or legal or administrative proceeding at the Borrower's expense.

(k) Borrower shall not, without the prior written consent of those Indemnitees who are named as parties to a claim or legal or administrative proceeding (a "Claim"), settle or compromise the Claim if the settlement (1) results in the entry of any judgment that does not include as an unconditional term the delivery by the claimant or plaintiff to Lender of a written release of those Indemnitees, satisfactory in form and substance to Lender; or (2) may materially and adversely affect Lender, as determined by Lender in its discretion.

(l) Lender agrees that the indemnity under this Section 17 shall be limited to the assets of Borrower and Lender shall not seek to recover any deficiency from any natural persons who are managing members or investor members of Borrower.

(m) Borrower shall, at its own cost and expense, do all of the following:

(i) pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Section 17;

(ii) reimburse Indemnitees for any reasonable expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Section 17; and

(iii) reimburse Indemnitees for any and all reasonable expenses, including fees and out-of-pocket expenses of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Section 17, or in monitoring and participating in any legal or administrative proceeding.

(n) In any circumstances in which the indemnity under this Section 17 applies, Lender may employ its own legal counsel and consultants to prosecute, defend or negotiate any claim or legal or administrative proceeding and Lender, with the prior written consent of Borrower (which shall not be unreasonably withheld, delayed or conditioned), may settle or compromise any action or legal or administrative proceeding. Borrower shall reimburse Lender upon demand for all reasonable costs and expenses incurred by Lender, including all costs of settlements entered into in good faith, and reasonable the fees and out-of-pocket expenses of such attorneys and consultants.

(o) The provisions of this Section 17 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law or under other Loan Documents, and each Indemnitee shall be entitled to indemnification under this Section 17 without regard to whether Lender or that Indemnitee has exercised any rights against the Mortgaged Property or any other security, pursued any rights against any guarantor, or pursued any other rights available under the Loan Documents or applicable law. If Borrower consists of more than one person or entity, the obligation of those persons or entities to indemnify the Indemnitees under this Section 17 shall be solidary. The obligation of Borrower to indemnify the Indemnitees under this Section 17 shall survive any repayment or discharge of the Indebtedness, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Mortgage provided that the event giving rise to such liability occurred solely before Borrower is or was dispossessed of the Mortgaged Property following any foreclosure or deed in lieu proceeding.

18. PROPERTY AND LIABILITY INSURANCE.

(a) Borrower shall keep the Improvements insured at all times against such hazards as Lender may from time to time require, which insurance shall include but not be limited to coverage against loss by fire and allied perils, general boiler and machinery coverage, and business income coverage. Lender's insurance requirements may change from time to time throughout the term of the Indebtedness. If Lender so requires, such insurance shall also include sinkhole insurance, mine subsidence insurance, earthquake insurance, and, if the Mortgaged Property does not conform to applicable zoning or land use laws, building ordinance or law coverage. If any of the Improvements is located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as an area having special flood hazards, and if flood insurance is available in that area, Borrower shall insure such Improvements against loss by flood.

(b) All premiums on insurance policies required under Section 18(a) shall be paid in the manner provided in Section 7, unless Lender has designated in writing another method of payment. All such policies shall also be in a form approved by Lender. All policies of property damage insurance shall include a non-contributing, non-reporting mortgage clause in favor of, and in a form approved by, Lender. Lender shall have the right to hold the original policies or duplicate original policies of all insurance required by Section 18(a). Borrower shall promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums. At least 30 days prior to the expiration date of a policy, Borrower shall deliver to Lender the original (or a duplicate original) of a renewal policy in form satisfactory to Lender.

(c) Borrower shall maintain at all times commercial general liability insurance, workers' compensation insurance and such other liability, errors and omissions and fidelity insurance coverages as Lender may from time to time require.

(d) All insurance policies and renewals of insurance policies required by this Section 18 shall be in such amounts and for such periods as Lender may from time to time require, and shall be issued by insurance companies satisfactory to Lender.

(e) Borrower shall comply with all insurance requirements and shall not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage that this Mortgage requires Borrower to maintain.

(f) In the event of loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Subject to the rights of the Senior Lender, Borrower hereby authorizes and appoints Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such property damage insurance policies, to collect and receive the proceeds of property damage insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 18 shall require Lender to incur any expense or take any action. Lender may, at Lender's option, (1) hold the balance of such proceeds to be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender (the "**Restoration**"), or (2) apply the balance of such proceeds to the payment of the Indebtedness, whether or not then due. To the extent Lender determines to apply insurance proceeds to Restoration, Lender shall do so in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily properties.

(g) Lender shall not exercise its option to apply insurance proceeds to the payment of the Indebtedness if all of the following conditions are met: (1) no Event of Default (or any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing; (2) Lender determines, in its reasonable discretion, that there will be sufficient funds to complete the Restoration; (3) Lender determines, in its discretion, that the rental income from the Mortgaged Property after completion of the Restoration will be sufficient to meet all operating costs and other expenses, deposits to reserves and loan repayment obligations relating to the Mortgaged Property; (4) Lender determines, in its discretion, that the Restoration will be completed before the earlier of (A) one year before the maturity date of the Note or (B) one year after the date of the loss or casualty, provided that Borrower shall have such longer period as reasonably determined by Lender so long as Borrower, its partners, or any affiliate of its partners is diligently pursuing Restoration; and (5) upon Lender's request, Borrower provides Lender evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Section 18.

(h) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.

(i) The foregoing notwithstanding, all rights of Lender under this Section 18 shall be subject to the rights of the Senior Lender.

19. CONDEMNATION.

(a) Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect (a “**Condemnation**”). Borrower shall appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney-in-fact for Borrower to commence, appear in and prosecute, in Lender’s or Borrower’s name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 19 shall require Lender to incur any expense or take any action. Borrower hereby transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.

(b) Lender may apply such awards or proceeds, after the deduction of Lender’s expenses incurred in the collection of such amounts, at Lender’s option, to the restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower; provided however, that Lender shall not apply such proceeds to the payment of the Indebtedness if the conditions listed in Section 18(g) above have been met. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness shall not extend or postpone the due date of any installments referred to in the Note, Section 5 of this Mortgage or any Collateral Agreement, or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards or proceeds as Lender may require.

(c) The foregoing notwithstanding, all rights of Lender under this Section 19 shall be subject to the rights of the Senior Lender.

20. TRANSFERS OF THE MORTGAGED PROPERTY OR INTERESTS IN BORROWER.

(a) Borrower hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project, or any portion thereof, without obtaining the prior written consent of the City, which consent shall be in the City’s sole and reasonable discretion. Absent the City’s written consent and subject to the terms of this Section 20, 100% of the Indebtedness, including without limitation, payment of all principal and accrued and unpaid interest, is due upon any sale or refinancing of the Project, (other than for the purpose of refinancing all or any part of any loan secured by a mortgage which is senior to this Mortgage, including reasonable and necessary costs associated with the closing and/or the refinancing, as long as (1) such refinancing of all or any part of such senior loan does not require the City to modify the terms of its Loan Documents or otherwise extend the term of the Indebtedness, and (2) the aggregate principal amount of the senior loan is not increased beyond the amount necessary to cover reasonable and necessary costs associated with the closing and/or refinancing). The City may, in its sole and reasonable discretion, allow the transferee to assume the remaining Indebtedness, and/or may accept less than 100% of the amounts then due, but such waiver will not constitute forgiveness of any Indebtedness.

(b) Notwithstanding the foregoing to the contrary, provided that Borrower shall use commercially reasonable efforts to deliver notice to the City of any such change:

i. the pledge to an investor member by a managing member of the managing member’s interest in the Organizational Documents as security for the performance of all of the managing member’s obligations under the Organizational Documents shall not constitute a refinancing for purposes of this Mortgage or the Loan Documents;

ii. a sale, transfer, pledge, encumbrance or other disposition of any Investor interests in Borrower shall not require the City’s consent nor constitute a sale of the Project for the purposes of this Section; and

iii. the change in the managing member of Borrower as managing member of Borrower in accordance with the terms of the Organizational Documents shall not require the City’s consent nor constitute a sale of the Project for the purposes of this Section 20.

Notwithstanding the foregoing provisions in this Section 20(b), a transfer by the Investor of its Investor interests in Borrower is hereby expressly permitted and accepted by the City and shall not constitute a prohibited transfer hereunder or under any other Loan Document.

21. EVENTS OF DEFAULT.

The occurrence of any one or more of the following shall constitute an Event of Default under this Mortgage:

- (a) any failure by Borrower to pay or deposit when due any amount required by the Note(s), this Mortgage or any other Loan Document;
- (b) any failure by Borrower to maintain the insurance coverage required by Section 18;
- (c) any failure by Borrower to comply with the provisions of Section 32;
- (d) fraud or material misrepresentation or material omission by Borrower, or any of its officers, directors, trustees, general partners or managers, or Guarantor in connection with (A) the application for or creation of the Indebtedness, (B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Indebtedness, or (C) any request for Lender's consent to any proposed action;
- (e) the commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Mortgage or Lender's interest in the Mortgaged Property and the failure to have same dismissed within 90 days;
- (f) any failure by Borrower to perform any of its obligations under this Mortgage (other than those specified in Sections 21(a) through (e)), as and when required, which continues for a period of 30 days after notice of such failure by Lender to Borrower, but no such notice or grace period shall apply in the case of any such failure which could, in Lender's judgment, absent immediate exercise by Lender of a right or remedy under this Mortgage, result in harm to Lender, impairment of the Note(s) or this Mortgage or any other security given under any other Loan Document;
- (g) any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Mortgage which continues beyond the applicable cure period, if any, specified in that Loan Document; and
- (h) any exercise by the holder of any other debt mortgage secured by a mortgage, deed of trust or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt mortgage immediately due and payable.
- (i) Right to Cure:
 - (i) Borrower shall have fifteen (15) days after the receipt of written notice to cure any monetary default herein, and thirty (30) days after the receipt of written notice to cure any non-monetary default herein; provided however, that (except to the extent that Lender's security becomes or is about to become materially jeopardized) if such default is not reasonably capable of being cured within thirty (30) days, and if the Borrower (a) initiates corrective action within said period, and (b) diligently, continually, and in good faith works to effect a cure within such period, then Borrower shall have such additional time as is reasonably necessary, such time not to exceed an additional sixty (60) days, to cure the default prior to exercise of any remedies by Lender.
 - (ii) Lender agrees to provide written notice of an Event of Default to any investor member listed in Section 30 of this Mortgage and to allow said investor member the opportunity, but not the obligation to cure any default of Borrower on behalf of Borrower to the same extent as Borrower. Borrower agrees that Lender shall be entitled to rely upon and to accept any offer of cure made by any such investor member. Notwithstanding any of the forgoing provisions to the contrary, if Borrower has failed to cure any default within five (5) days prior to the expiration of any applicable cure period, Lender may, at its sole option, cure such default, provided, however, that Lender shall be under no duty or obligation to do so.
 - (iii) Notwithstanding anything to the contrary contained in this Mortgage or the Note being secured hereby, Borrower's Investor Member shall have the right, but not the obligation, to cure defaults of Borrower. Removal of the managing member of the Borrower shall constitute a cure for an otherwise non-curable Event of Default.

22. REMEDIES CUMULATIVE.

Each right and remedy provided in this Mortgage is distinct from all other rights or remedies under this Mortgage or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

23. FORBEARANCE.

(a) Lender may (but shall not be obligated to) agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, any guarantor or other third party obligor, to take any of the following actions: extend the time for payment of all or any part of the Indebtedness; reduce the payments due under this Mortgage, the Note, or any other Loan Document; release anyone liable for the payment of any amounts under this Mortgage, the Note, or any other Loan Document; accept a renewal of the Note; modify the terms and time of payment of the Indebtedness; join in any extension or subordination agreement; release any Mortgaged Property; take or release other or additional security; modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable under the Note; and otherwise modify this Mortgage, the Note, or any other Loan Document.

(b) Any forbearance by Lender in exercising any right or remedy under the Note, this Mortgage, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right available to Lender. Lender's receipt of any awards or proceeds under Sections 18 and 19 shall not operate to cure or waive any Event of Default.

24. LOAN CHARGES.

If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in any Loan Document, whether considered separately or together with other charges levied in connection with any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the principal of the Indebtedness. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness which constitutes interest, as well as all other charges levied in connection with the Indebtedness which constitute interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Note.

25. WAIVER OF PRESCRIPTION.

To the maximum extent allowed under applicable law, Borrower hereby waives the right to assert any prescriptive period as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce any Loan Document.

26. WAIVER OF MARSHALLING.

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Mortgage, the Note, any other Loan Document or applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Mortgage waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Mortgage.

27. FURTHER ASSURANCES.

Borrower shall execute, acknowledge, and deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements, transfers and assurances as Lender may require from time to time in order to confirm the rights granted under this Mortgage and the Loan Documents.

28. ESTOPPEL CERTIFICATE.

Within 10 business days after a request from Lender, Borrower shall deliver to Lender a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement, (i) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications); (ii) the unpaid principal balance of the Note; (iii) the date to which interest under the Note has been paid; (iv) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Mortgage or any of the other Loan Documents (or, if the Borrower is in default, describing such default in reasonable detail); (v) whether or not there are then existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and (vi) any additional facts reasonably requested by Lender.

29. GOVERNING LAW; CONSENT TO JURISDICTION AND VENUE.

(a) This Mortgage, and any Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of Louisiana.

(b) Borrower agrees that any controversy arising under or in relation to the Note, this Mortgage, or any other Loan Document shall be litigated exclusively in the courts located in Orleans Parish, State of Louisiana. The state and federal courts and authorities with jurisdiction in Orleans Parish shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Note, any security for the Indebtedness, or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

30. NOTICE.

(a) All notices, demands and other communications (“**notice**”) under or concerning this Mortgage shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth in this Mortgage and/or Loan Agreement, and shall be deemed given on the earliest to occur of (1) the date when the notice is received by the addressee; (2) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (3) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested. As used in this Section 30, the term “Business Day” means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

(b) Any party to this Mortgage may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 30. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 30, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 30 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

(c) Any notice under the Note and any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 30.

(d) Notwithstanding the foregoing, Lender agrees to provide written notice of an Event of Default under the Loan Documents to the following member:

RAH Investor 456 LLC
c/o Regions Affordable Housing
111 Great Neck Road, Suite 500
Great Neck, New York 11021
Attention: Kevin Smith

With copies to:

Jones Walker LLP
420 20th Street North, Suite 1100
Birmingham, Alabama 35203

GO Bond Funds Mortgage
BW Cooper Senior, LLC to City of New Orleans
K25-882; BRASS No. 7563

Attention: Kelly R. Lewis and Brandon D. Hughey

(e) Lender shall use best efforts to provide a courtesy copy of all notices sent to Borrower to BW Cooper Senior, L.L.C. at 2117 Ursulines Avenue, New Orleans LA 70116 Attention: Terri B. North; 1718 Peachtree Street, N.W. Suite 684 Atlanta, GA 30309 Attention: Carmen Chubb; and Longwell Riess, L.L.C., 650 Poydras Street, Suite 2600, New Orleans, LA 70130 Attention: Kelly Longwell. Any failure to deliver such courtesy copies shall be deemed a failure to provide notice to the Borrower.

31. SALE OF NOTE; CHANGE IN SERVICER.

The Note or a partial interest in the Note (together with this Mortgage and the other Loan Documents) may be sold one or more times without prior notice to Borrower. A sale may result in a change of the Loan Servicer. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given notice of the change. Borrower shall not incur or be responsible for any expenses associated with a sale of the Note or change in the Loan Servicer.

32. SINGLE ASSET BORROWER.

Until the Indebtedness is paid in full, Borrower (a) shall not acquire any real or personal property other than the Mortgaged Property and personal property related to the operation and maintenance of the Mortgaged Property; (b) shall not operate any business other than the management and operation of the Mortgaged Property; and (c) shall not maintain its assets in a way difficult to segregate and identify.

33. SUCCESSORS AND ASSIGNS BOUND.

This Mortgage shall bind, and the rights granted by this Mortgage shall inure to, the respective successors and assigns of Lender and Borrower. However, a Transfer not permitted by Section 20 shall be an Event of Default.

34. SOLIDARY LIABILITY.

If more than one person or entity signs this Mortgage as Borrower, the obligations of such persons and entities shall be solidary.

35. RELATIONSHIP OF PARTIES; NO THIRD PARTY BENEFICIARY.

(a) The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Mortgage shall create any other relationship between Lender and Borrower.

(b) No creditor of any party to this Mortgage and no other person shall be a third party beneficiary of this Mortgage or any other Loan Document. Without limiting the generality of the preceding sentence, (1) any arrangement (a “**Servicing Arrangement**”) between the Lender and any Loan Servicer for loss sharing or interim advancement of funds shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness, (2) Borrower shall not be a third party beneficiary of any Servicing Arrangement, and (3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

36. SEVERABILITY; AMENDMENTS.

The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of any other provision, and all other provisions shall remain in full force and effect. This Mortgage contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Mortgage. This Mortgage may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

37. CONSTRUCTION.

The captions and headings of the sections of this Mortgage are for convenience only and shall be disregarded in construing this Mortgage. Any reference in this Mortgage to an “Exhibit” or a “Section” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit attached to this Mortgage or to a Section of this Mortgage. All Exhibits attached to or referred to in this Mortgage are incorporated by reference into this Mortgage. Any reference in this Mortgage to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. Use of the singular in this

Agreement includes the plural and use of the plural includes the singular. As used in this Mortgage, the term “including” means “including, but not limited to.”

38. LOAN SERVICING.

All actions regarding the servicing of the loan evidenced by the Note, including the collection of payments, the giving and receipt of notice, inspections of the Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such notice from Lender shall govern.

39. DISCLOSURE OF INFORMATION.

Lender may furnish information regarding Borrower or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase or securitization of the Indebtedness, including trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

40. NO CHANGE IN FACTS OR CIRCUMSTANCES.

All information in the application for the loan submitted to Lender (the “**Application**”) and in all financial statements, rent rolls, reports, certificates and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

41. SUBROGATION.

If, and to the extent that, the proceeds of the loan evidenced by the Note are used to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust or other lien encumbering the Mortgaged Property (a “**Prior Lien**”), such loan proceeds shall be deemed to have been advanced by Lender at Borrower’s request, and Lender shall automatically, and without further action on its part, be subrogated to the rights, including lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

42. ACCELERATION; FORECLOSURE; CONFESSION OF JUDGMENT.

(a) At any time during the existence of an Event of Default, Lender, at Lender’s option, may accelerate the maturity of and declare the Indebtedness to be immediately due and payable, and may cause the Mortgaged Property and UCC Collateral to be immediately seized and sold, in whole, in part, or separately, whether in term of court or in vacation, under ordinary or executory process, in accordance with applicable Louisiana law, to the highest bidder for cash, with or without appraisal, and without the necessity of making additional demand upon or notifying Borrower or placing Borrower in default, all of which are expressly waived.

(b) For purposes of foreclosure under the Louisiana executory process procedures, Borrower confesses judgment and acknowledges to be indebted to and in favor of Lender up to the full amount of the Indebtedness, including principal, interest, prepayment premiums, late charges, default interest, costs, expenses, collection attorneys’ fees, and any additional sums that Lender may advance as provided under this Mortgage.

(c) To the extent permitted under applicable Louisiana law, Borrower additionally waives: (i) the benefit of appraisal as provided in Articles 2332, 2336, 2723 and 2724 of the Louisiana Code of Civil Procedure, and all other laws with regard to appraisal upon judicial sale; (ii) the demand and three (3) days’ delay as provided under Article 2721 of the Louisiana Code of Civil Procedure; (iii) the notice of seizure as provided under Articles 2293 and 2721 of the Louisiana Code of Civil Procedure; (iv) the three (3) days’ delay provided under Articles 2331 and 2722 of the Louisiana Code of Civil Procedure; and (v) all other benefits provided under Articles 2331, 2722 and 2723 of the Louisiana Code of Civil Procedure and all other articles not specifically mentioned above. Borrower agrees that Lender shall have all of the additional enforcement rights and remedies of a secured party under the Louisiana Commercial Laws (Louisiana Revised Statutes, Title 10) and under the Uniform Commercial Code of any applicable state with respect to the UCC Collateral wherever located. Borrower further agrees that any declarations of fact made under an authentic act before a Notary Public in the presence of two witnesses, by a person declaring such facts to lie within his or her

knowledge, shall constitute authentic evidence for purposes of executory process and also for purposes of Louisiana Revised Statutes, Title 9, Sections 3509.1 and 3504(b)(6), and Title 10, Section 9-508.

(d) However, notwithstanding anything to the contrary in this Mortgage or in the Loan Documents, the obligations under this Mortgage or the Loan Documents are and are intended to be nonrecourse to Borrower, except for the express exceptions included within said documents.

43. RELEASE.

Upon payment of the Indebtedness in full, Borrower may request Lender in writing to provide Borrower with the Note marked "Canceled," or alternatively, at Lender's option, with a certificate sufficient to permit Borrower to cancel this Mortgage from the public records. Borrower agrees that Lender may delay providing the foregoing to Borrower for up to 30 days following receipt of Borrower's written request. If Borrower requests Lender to perform the necessary services to cancel this Mortgage from the public records, Borrower agrees to pay Lender's reasonable costs incurred in connection with such cancellation.

44. WAIVER OF HOMESTEAD.

Borrower and Borrower's spouse, if any, waive all homestead and other exemptions from seizure with respect to the Mortgaged Property and the UCC Collateral.

45. ATTORNEYS' FEES.

Whenever referred to in this Mortgage, other than in Section 42, "attorneys' fees" shall mean reasonable attorneys' fees under Louisiana law.

46. MORTGAGE AND CONVEYANCE CERTIFICATES.

The production of Mortgage and conveyance certificates is waived by Lender and Borrower, who release me, Notary, from all liability for nonproduction.

47. KEEPER OF MORTGAGED PROPERTY.

Pursuant to the provisions of Louisiana Revised Statutes, Title 9, Section 5136, Borrower and Lender covenant and agree that Lender shall have the right to designate a keeper of the Mortgaged Property at the time any seizure of the Mortgaged Property is affected and that Lender may designate itself or its employees, agents or independent contractors as such keeper. Borrower agrees that the reasonable fees of such a keeper shall be treated as a disbursement made under Section 11 and shall be secured by this Mortgage. At no time has or will Borrower occupy the Mortgaged Property, or any portion of the Mortgaged Property, as its home.

48. WAIVER OF TRIAL BY JURY.

[Intentionally deleted.]

49. COUNTERPARTS.

This Mortgage may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

ATTACHED EXHIBITS. The following Exhibits are attached to this Mortgage:

- | | | |
|-------------------------------------|-----------|-------------------------------------|
| <input checked="" type="checkbox"/> | Exhibit A | Description of the Land (required). |
| <input checked="" type="checkbox"/> | Exhibit B | Permitted Encumbrances |

[END OF DOCUMENT - SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Borrower has signed and delivered this Mortgage or has caused this Mortgage to be signed and delivered by its duly authorized representative, in the presence of the undersigned witnesses and Notary Public after due reading of the whole.

WITNESSES:

By: _____

Print Name: _____

By: _____

Print Name: _____

BW COOPER SENIOR, L.L.C.,
a Louisiana limited liability company

By: BW Cooper Senior Manager, L.L.C.
Its: Managing Member

By: _____
Name: Carmen Chubb
Its: Authorized Representative

By: _____
Name: Terri B. North
Its: Authorized Representative

NOTARY PUBLIC

Print Name: _____

Bar Roll/Notary No.: _____

My Commission Expires: _____

IN WITNESS WHEREOF, the City appears herein to acknowledge and agree to the provisions of this Mortgage, in the presence of the undersigned witnesses and Notary Public.

WITNESSES:

CITY OF NEW ORLEANS

By: _____
Print Name: _____

By: _____

LATOYA CANTRELL, MAYOR

By: _____
Print Name: _____

Executed on the ___ day of _____, 2025.

Notary Public
Print Name: _____
Bar Roll/Notary No. _____
My Commission Expires: _____

FORM AND LEGALITY APPROVED:

Law Department

By: .

Printed Name: _____

IN WITNESS WHEREOF, the City appears herein to acknowledge and agree to the provisions of this Mortgage, in the presence of the undersigned witnesses and Notary Public.

WITNESSES:

CITY OF NEW ORLEANS

By: _____
Print Name: _____

By: _____

CITY COUNCIL PRESIDENT

By: _____
Print Name: _____

Executed on the ___ day of _____, 2025.

Notary Public
Print Name: _____
Bar Roll/Notary No. _____
My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTIONS

BW COOPER SENIOR, LLC Listing of Property

SQUARE 536, LOT 1-A

A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA, CITY OF NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED BY EARHART BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH TONTI STREET, DESIGNATED AS LOT 1-A AND MORE FULLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET AND THE NORTHERLY RIGHT OF WAY LINE OF ERATO STREET, MEASURE THENCE IN A WESTERLY DIRECTION ALONG SAID NORTHERLY LINE ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 306 FEET 9 INCHES AND 5 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 75 FEET 8 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN A NORTHWESTERLY DIRECTION ON AN INTERIOR ANGLE OF 238°14'43" A DISTANCE OF 124 FEET 9 INCHES AND 3 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 121°43'30" A DISTANCE OF 160 FEET 11 INCHES AND 6 LINES TO A POINT; MEASURE THENCE IN AN EASTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°01'47" A DISTANCE OF 412 FEET 9 INCHES AND 7 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET; MEASURE THENCE ALONG SAID WESTERLY LINE IN A SOUTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 302 FEET 4 INCHES AND 0 LINES TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF ERATO STREET, THE POINT OF BEGINNING.

ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND SURVEYING, LLC DATED AUGUST 3, 2023, JOB #231394.

SQUARE 536, LOT 2

A CERTAIN PIECE OR PORTION OF GROUND SITUATED IN THE STATE OF LOUISIANA, CITY OF NEW ORLEANS, ORLEANS PARISH, FIRST DISTRICT, SQUARE 536, BOUNDED BY EARHART BOULEVARD, SOUTH GALVEZ STREET, ERATO STREET AND SOUTH TONTI STREET, DESIGNATED AS LOT 2 AND MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF EARHART BOULEVARD AND THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, MEASURE THENCE IN A SOUTHERLY DIRECTION ALONG SAID WESTERLY LINE A DISTANCE OF 269 FEET 1 INCH AND 6 LINES TO A POINT, THE POINT OF BEGINNING.

MEASURE THENCE FROM THE POINT OF BEGINNING ALONG SAID WESTERLY LINE IN A SOUTHERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 44 FEET 9 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN A WESTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°00'00" A DISTANCE OF 412 FEET 9 INCHES AND 7 LINES TO A POINT; MEASURE THENCE IN A NORTHERLY DIRECTION ON AN INTERIOR ANGLE OF 89°58'36" A DISTANCE OF 44 FEET 9 INCHES AND 1 LINE TO A POINT; MEASURE THENCE IN AN EASTERLY DIRECTION ON AN INTERIOR ANGLE OF 90°01'24" A DISTANCE OF 412 FEET 9 INCHES AND 5 LINES TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SOUTH GALVEZ STREET, THE POINT OF BEGINNING.

ALL AS MORE FULLY SHOWN ON A SURVEY BY R.W. KREBS PROFESSIONAL LAND SURVEYING, LLC DATED AUGUST 3, 2023, JOB #231394.

EXHIBIT B
PERMITTED ENCUMBRANCES

1. Agreement Not to Alienate
2. Notice of Ground Lease BW Cooper II by and between Housing Authority of New Orleans and BW Cooper Senior, L.L.C.
3. Act of Transfer of Property and Improvements by BW Cooper Senior, L.L.C. to Industrial Development Board of The City of New Orleans, Louisiana, Inc.
4. Notice of Lease by and between the Industrial Development Board of the City of New Orleans, Louisiana, Inc. and BW Cooper Senior, L.L.C
5. Tax Regulatory Agreement by and between BW Cooper Senior, L.L.C., Louisiana Housing Corporation, and Regions Bank
6. 2023 CDBG-DR IDA PRIME-3 Regulatory Agreement of the Louisiana Housing Corporation
7. Home Affordable Rental Housing Program Regulatory Agreement by and between the City of New Orleans and BW Cooper Senior, L.L.C.
8. Multifamily Mortgage, Pledge of Leases and Rents and Security Agreement by BW Cooper Senior, L.L.C., a Louisiana limited liability company in favor of Regions Bank
9. Act of Mortgage by BW Cooper Senior, L.L.C in favor of Louisiana Housing Corporation
10. City of New Orleans Go Bond Funds Program Mortgage, Pledge of Leases and Rents and Security Agreement
11. Mortgage and Security Agreement by BW Cooper Senior, L.L.C in favor of Providence Community Housing
12. Subordination and Standstill Agreement by and among Regions Bank, Louisiana Housing Corporation, City of New Orleans and BW Cooper Senior, L.L.C.
13. Subordination Agreement by and among Regions Bank and BW Cooper Senior, L.L.C.
14. No Work Affidavit
15. Notice of Construction Contract

SUBORDINATION AND STANDSTILL AGREEMENT

This Subordination and Standstill Agreement (this “Agreement”) is entered as of [_____] 2025, by and among Regions Bank, an Alabama banking corporation (the “Senior Lender”), Louisiana Housing Corporation, a public body corporate and politic constituting an instrumentality of the State of Louisiana (“LHC”), the City of New Orleans (the “City”), and together with LHC and the City where no distinction is required, the “Subordinate Lender”) and BW Cooper Senior, L.L.C., a Louisiana limited liability company (the “Company”).

RECITALS

WHEREAS, the Senior Lender has made or is making a construction mortgage loan to the Company in the original principal amount of \$10,239,000 and a bridge loan in the original principal amount of \$12,564,500 (together, the “Construction Mortgage Loan”) pursuant to the terms of a Credit Agreement between the Company and the Senior Lender dated as of _____ (the “Credit Agreement”). The Construction Mortgage Loan is secured by a first mortgage lien (the “Construction Mortgage”) on a multifamily housing project located in New Orleans, Orleans Parish, Louisiana (the “Property”). The Property is more fully described in Exhibit A attached hereto. The Company’s obligation to repay the Construction Mortgage Loan is evidenced by two (2) Promissory Notes dated as of _____ (together, the “Construction Mortgage Loan Note”); and

WHEREAS, the Company has requested the Senior Lender to permit LHC to make a second priority, subordinate loan to the Company in the amount of \$6,866,000 (the “LHC Subordinate Loan”) and to secure the LHC Subordinate Loan by, among other things, placing a mortgage lien against the Property; and

WHEREAS, the Company has requested the Senior Lender to permit the City to make a third priority, subordinate loan to the Company in the amount of \$4,065,000 (the “City Subordinate Loan”) and to secure the City Subordinate Loan by, among other things, placing a mortgage lien against the Property; and

WHEREAS, the Senior Lender has agreed to permit the Subordinate Lender to make the Subordinate Loan and to place the respective subordinate mortgage liens against the Property subject to all of the conditions contained in this Agreement.

NOW, THEREFORE, in order to induce the Senior Lender to permit the Subordinate Lender to make the Subordinate Loan to the Company and to place the respective subordinate mortgage liens against the Property, and in consideration thereof, the Senior Lender, the Subordinate Lender and the Company agree as follows:

ARTICLE I
Definitions

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

Affiliate means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual controlled by, under common control with, or which controls such Person (the term “control” for these purposes shall mean the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity, and control shall be conclusively presumed in the case of the ownership of 50% or more of the equity interests).

Business Day means any day other than Saturday, Sunday or a day on which the Senior Lender is not open for business.

CDBG Regulatory Agreement means the 2023 CDBG-DR Ida PRIME-3 Regulatory Agreement of the Louisiana Housing Corporation, which shall be and remain senior to any mortgage lien on the Property.

Collateral Payments has the meaning set forth in the Indenture.

Company means the Person named as such in the first paragraph of this Agreement and any other Person (other than the Senior Lender) who acquires title to the Property after the date of this Agreement.

Construction Mortgage Loan Default means the occurrence of a default by the Company in performing or observing any of the terms, covenants or conditions in the Financing Documents to be performed or observed by it, which continues beyond any applicable cure period provided in the Financing Documents for curing the default.

Default Notice means: (a) a copy of the written notice from the Senior Lender to the Company stating that a Construction Mortgage Loan Default has occurred under the Construction Mortgage Loan; or (b) a copy of the written notice from the Subordinate Lender to the Company stating that a Subordinate Loan Default has occurred under the Subordinate Loan. Each Default Notice shall specify the default upon which such Default Notice is based.

Financing Agreement means the Financing Agreement dated as of [_____], 2025 between the Company, LHC, as issuer, and the Trustee.

Financing Documents means the Credit Agreement, Construction Mortgage Loan Note, Construction Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Construction Mortgage Loan, including those identified on Exhibit B hereto.

HANO Ground Lease means that certain ground lease dated as of [_____], 2025 between the Company and the Housing Authority of New Orleans (“HANO”).

Indenture means the Trust Indenture dated as of [_____], 2025 between LHC, as issuer, and the Trustee.

Person means an individual, estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

Senior Lender means the Person named as such in the first paragraph on page 1 of this Agreement.

Subordinate Lender means the Person named as such in the first paragraph on page 1 of this Agreement and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

Subordinate Loan Default means a default by the Company in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

Subordinate Loan Documents means the Subordinate Note, the Subordinate Mortgage, and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

Subordinate Mortgage means the mortgages or deeds of trust encumbering the Property as security for the Subordinate Loan, which will have been recorded among the applicable land records immediately before this Agreement.

Subordinate Note means the respective promissory notes of even date herewith issued by the Company to the Subordinate Lender, or order, to evidence the Subordinate Loan.

Trustee means Regions Bank, an Alabama banking corporation.

ARTICLE II

Permission to Place Mortgage Lien Against Property and Acknowledgment of Cash Collateral Securing Bond Loan

The Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Property contained in the Financing Documents and subject to the provisions of this Agreement, to permit the recordation of each Subordinate Mortgage and other recordable Subordinate Loan Documents against the Property (which, except the CDBG Regulatory Agreement, are subordinate in all respects to the lien of the Construction Mortgage) to secure the Company's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of the Company to the Subordinate Lender under and in connection with the Subordinate Loan. Such permission is subject to the condition that each of the representations and warranties made by the Company and by each Subordinate Lender on its own behalf in Section 3 is true and correct on the date of this Agreement and on the date on which the proceeds of each Subordinate Loan are disbursed to the Company. If any of the representations and warranties made by the Company and by any Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Financing Documents applicable to unpermitted liens on the Property shall apply.

The Senior Lender acknowledges and agrees that the Bond Loan and the bonds issued to fund the Bond Loan (the "Bonds") will be secured primarily by the proceeds of the Bonds and Collateral Payments made to the Trustee under the Indenture, the source of which may be proceeds of the Construction Mortgage Loan, the Subordinate Loans and/or other amounts deposited under the Indenture in order for the Bonds to be fully cash collateralized as to principal and interest (collectively, the "Bond Cash Collateral"). The Senior Lender further acknowledges and agrees that the Senior Lender shall have no interest in the Bond Cash Collateral and that such Bond Cash Collateral shall be exclusively for the benefit of the holders of the Bonds (the "Bondholders"), and that, notwithstanding any contrary provision contained herein, the terms of this Agreement shall not subordinate, constrain or curtail the Issuer's, Trustee's and Bondholders' rights to enforce the terms of the Indenture with respect to the Bond Cash Collateral and the application of the Bond Cash Collateral to Debt Service Requirements for the benefit of Bondholders at any time and in any manner subject only to the terms of the Indenture.

ARTICLE III

Company's and Subordinate Lender's Representations and Warranties

The Company, the City, (on behalf of itself only) each makes the following representations and warranties, and LHC makes the following representations only, to the Senior Lender:

(a) **Subordinate Note.** Each Subordinate Note shall be deemed to contain the following provision:

The indebtedness evidenced by this Note (the "Subordinate Note") is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by the Promissory Note of even date herewith in the original principal amount of \$10,239,000 and the Promissory Note of even date herewith in the original principal amount of \$12,564,500 (together the "Senior Note") issued by BW Cooper Senior, L.L.C. and payable to Regions Bank, an Alabama banking corporation ("Senior Lender"), or order, to the extent and in the manner provided in

that certain Subordination and Standstill Agreement of even date herewith between the payee of this Subordinate Note, and the Senior Lender and BW Cooper Senior, L.L.C. (the “Subordination and Standstill Agreement”). The mortgage (“Subordinate Mortgage”) securing this Subordinate Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the mortgage securing the Senior Note as more fully set forth in the Subordination and Standstill Agreement. The rights and remedies of the payee and each subsequent holder of this Subordinate Note under the Subordinate Mortgage are subject to the restrictions and limitations set forth in the Subordination and Standstill Agreement. Each subsequent holder of this Subordinate Note shall be deemed, by virtue of such holder’s acquisition of the Subordinate 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 and Standstill Agreement.

(b) **Term.** The term of each Subordinate Note does not end before the term of the Construction Mortgage Loan Note.

(c) **Subordinate Loan Documents.** The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, the Senior Lender prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, the Company shall deliver to the Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

ARTICLE IV Terms of Subordination

(a) **Agreement to Subordinate.** The Senior Lender and each Subordinate Lender (with respect to its Subordinate Loan Documents only) agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Subordination Agreement to the prior payment in full of the indebtedness evidenced by the Financing Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents (other than the CDBG Regulatory Agreement) are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Construction Mortgage and the other Financing Documents and to all advances heretofore made or which may hereafter be made pursuant to the Construction Mortgage and the other Financing Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Construction Mortgage, curing defaults by the Company under the Financing Documents or for any other purpose expressly permitted by the Construction Mortgage, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the Property). **The CDBG Regulatory Agreement shall remain senior to the Senior Mortgage.**

(b) **Subordination of Subrogation Rights.** Each Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of the Company, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Property which (but for this subsection) would be senior to the lien of the Construction Mortgage, then, in that event, such lien shall be subject and subordinate to the lien of the Construction Mortgage.

(c) **Payments Before Construction Mortgage Loan Default.** Until a Subordinate Lender receives a Default Notice of a Construction Mortgage Loan Default from the Senior Lender, each Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to its Subordinate Loan Documents.

(d) **Payments After Construction Mortgage Loan Default.** The Company agrees that, after it receives notice (or otherwise acquires knowledge) of a Construction Mortgage Loan Default, it will not make any payments under or pursuant to any of the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney’s fees, or any other sums

secured by any Subordinate Mortgage) without the Senior Lender's prior written consent. Each Subordinate Lender agrees that, after it receives a Default Notice from the Senior Lender with written instructions directing the Subordinate Lender not to accept payments from the Company on account of a Subordinate Loan, it will not accept any payments under or pursuant to its Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by its Subordinate Mortgage) without the Senior Lender's prior written consent. If a Subordinate Lender receives written notice from the Senior Lender that the Construction Mortgage Loan Default which gave rise to a Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by the Senior Lender, the restrictions on payment to each Subordinate Lender in this Section 4 shall terminate, and the Senior Lender shall have no right to any subsequent payments made to a Subordinate Lender by the Company prior to each Subordinate Lender's receipt of a new Default Notice from the Senior Lender in accordance with the provisions of this Section 4(d).

(e) **Remitting Subordinate Loan Payments to Senior Lender.** If, after a Subordinate Lender receives a Default Notice from the Senior Lender in accordance with subsection (d) above, the Subordinate Lender receives any payments under the Subordinate Loan Documents, such Subordinate Lender agrees that such payment or other distribution will be received and held in trust for the Senior Lender and unless the Senior Lender otherwise notifies such Subordinate Lender in writing, will be promptly remitted, in kind, to the Senior Lender, properly endorsed to the Senior Lender, to be applied to the principal of, interest on and other amounts due under the Financing Documents in accordance with the provisions of the Financing Documents. By executing this Agreement, the Company specifically authorizes each Subordinate Lender to endorse and remit any such payments to the Senior Lender, and specifically waives any and all rights to have such payments returned to the Company or credited against its Subordinate Loan. The Company and the Senior Lender acknowledge and agree that payments received by a Subordinate Lender, and remitted to the Senior Lender under this Section 4, shall not be applied or otherwise credited against the applicable Subordinate Loan, nor shall the tender of such payment to the Senior Lender waive any Subordinate Loan Default which may arise from the inability of a Subordinate Lender to retain such payment or apply such payment to its Subordinate Loan.

(f) **Agreement Not to Commence Bankruptcy Proceeding.** Each Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any foreclosure, bankruptcy reorganization, arrangement, insolvency or liquidation proceedings with respect to the Company, without the Senior Lender's prior written consent.

ARTICLE V

Default Under Subordinate Loan Documents

(a) **Notice of Default.** Each Subordinate Lender shall deliver to the Senior Lender a Default Notice within five Business Days in each case where such Subordinate Lender has given a Default Notice to the Company.

(b) **Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.** If a Subordinate Loan Default occurs and is continuing, the Subordinate Lender asserting such Subordinate Loan Default agrees that, without the Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Property under its Subordinate Loan Documents or exercise any other rights or remedies it may have under its Subordinate Loan Documents, including, but not limited to accelerating its Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given the Senior Lender at least 60 days' prior written notice.

(c) **Cross Default.** The Company and each Subordinate Lender agree that a Subordinate Loan Default shall constitute a Construction Mortgage Loan Default under the Financing Documents and the Senior Lender shall have the right to exercise all rights or remedies under the Financing Documents in the same manner as in the case of any other Construction Mortgage Loan Default. If a Subordinate Lender notifies the Senior Lender in writing that any Subordinate Loan Default of which the Senior Lender has received a Default Notice

has been cured or waived, as determined by the Subordinate Lender that sent such Default Notice in its sole discretion, then provided that Senior Lender has not conducted a sale of the Property pursuant to its rights under the Financing Documents, any Construction Mortgage Loan Default under the Financing Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Construction Mortgage Loan shall be reinstated, provided, however, that the Senior Lender shall not be required to return or otherwise credit for the benefit of the Company any default rate interest or other default related charges or payments received by the Senior Lender during such Construction Mortgage Loan Default.

ARTICLE VI

Default Under Financing Documents

(a) **Notice of Default and Cure Rights.** The Senior Lender shall deliver to each Subordinate Lender a Default Notice within five Business Days in each case where the Senior Lender has given a Default Notice to the Company. Failure of the Senior Lender to send a Default Notice to each Subordinate Lender shall not prevent the exercise of the Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Each Subordinate Lender shall have the right, but not the obligation, to cure any monetary Construction Mortgage Loan Default within 60 days following the date of such notice; provided, however, that the Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the Financing Documents. Each Subordinate Lender may have up to 90 days from the date of the Default Notice to cure a non-monetary default if during such 90-day period Subordinate Lender keeps current all payments required by the Financing Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Property, or Senior Lender's secured position relative to the Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such 90-day period all available rights and remedies to protect and preserve the Property and the rents, revenues and other proceeds from the Property. All amounts paid by a Subordinate Lender to the Senior Lender to cure a Construction Mortgage Loan Default shall be deemed to have been advanced by such Subordinate Lender pursuant to, and shall be secured by the lien of, its Subordinate Mortgage.

(b) **Cross Default.** Each Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Construction Mortgage Loan Default shall not constitute a default under their respective Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents until either (i) the Senior Lender has accelerated the maturity of the Construction Mortgage Loan, or (ii) the Senior Lender has taken affirmative action to exercise its rights under the Construction Mortgage to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Construction Mortgage. At any time after a Construction Mortgage Loan Default is determined to constitute a default under the Subordinate Loan Documents, each Subordinate Lender shall be permitted to pursue its remedies for default under its respective Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time the Company cures any Construction Mortgage Loan Default to the satisfaction of the Senior Lender, as evidenced by written notice from the Senior Lender to the Subordinate Lender, any default under the Subordinate Loan Documents arising from such Construction Mortgage Loan Default shall be deemed cured and each Subordinate Loan shall be retroactively reinstated as if such Construction Mortgage Loan Default had never occurred.

ARTICLE VII

Conflict

The Company, the Senior Lender and the Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Financing Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of the Senior Lender and the Subordinate Lender in the Property; (b) the timing of the exercise of remedies by the Senior Lender and the Subordinate Lender under the Construction Mortgage and each Subordinate Mortgage, respectively; and (c) solely as between the Senior Lender and the Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which the Senior

Lender and the Subordinate Lender have agreed to as expressly provided in this Agreement. The Company acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to (i) extend the Company's time to cure any Construction Mortgage Loan Default or Subordinate Loan Default, as the case may be; (ii) give the Company the right to notice of any Construction Mortgage Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Financing Documents or the Subordinate Loan Documents; or (iii) create any other right or benefit for the Company as against the Senior Lender or any Subordinate Lender.

ARTICLE VIII

Rights and Obligations of the Subordinate Lender and the Senior Lender

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) **Protection of Security Interest.** The Subordinate Lender shall not, without the prior written consent of the Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that any Subordinate Lender shall have the right to advance funds to cure Construction Mortgage Loan Defaults pursuant to Section 6(a) above and advance funds pursuant to its Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Property and curing other defaults by the Company under its Subordinate Loan Documents.

(b) **Condemnation or Casualty.** In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a "Casualty"), at any time or times when the Construction Mortgage remains a lien on the Property the following provisions shall apply:

(1) Each Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to the Senior Lender's rights under the Financing Documents with respect thereto, and each Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by the Senior Lender; provided, however, this subsection and/or anything contained in this Agreement shall not limit the rights of any Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Taking and/or Casualty; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Construction Mortgage Loan) in the manner determined by the Senior Lender in its sole discretion; provided, however, that if the Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Construction Mortgage Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Construction Mortgage Loan shall be paid to, and may be applied by, each Subordinate Lender in order of their respective lien priorities in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, the Senior Lender agrees to consult with each Subordinate Lender in determining the application of Casualty proceeds, provided further however that in the event of any disagreement between the Senior Lender and the Subordinate Lender over the application of Casualty proceeds, the decision of the Senior Lender, in its sole discretion, shall prevail.

(c) **No Modification of Subordinate Loan Documents.** The Company and the Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Financing

Documents have been paid in full, it will not, without the prior written consent of the Senior Lender in each instance, increase the amount of any Subordinate Loan, increase the required payments due under any Subordinate Loan, decrease the term of any Subordinate Loan, increase the interest rate on any Subordinate Loan, or otherwise amend any Subordinate Loan terms in a manner that creates an adverse effect upon the Senior Lender under the Financing Documents. Any unauthorized amendment of any Subordinate Loan Documents or assignment of any Subordinate Lender's interest in any Subordinate Loan without the Senior Lender's consent shall be void ab initio and of no effect whatsoever.

Permanent Financing Cashflow. After the Borrower has converted the Senior Loan to permanent financing, it shall apply all Net Cash Flow from the Project, defined as the gross rents, revenues, and other proceeds from the operation of the Project, less (i) the debt service payments on the Senior Loan; (ii) the reasonable operating expenses of the Project (iii) the reserves required by the Senior Loan; (iv) tax credit adjustment and tax liability payment due to the Investor Member; (v) the investor services fee payable to the Investor Member and (vi) the deferred developer fee in the order established in the Amended and Restated Operating Agreement of the Company.

ARTICLE IX

Modification or Refinancing of Construction Mortgage Loan

Each Subordinate Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Financing Documents, including any provision requiring the payment of money. Each Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Construction Mortgage Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); provided however, that no refinancing shall, without the prior written consent of LHC so long as LHC holds the second priority mortgage lien on the Property, increase the amount or interest rate of the Senior Loan beyond the reasonable costs noted above, modify the maturity date, or otherwise materially modify the Senior Loan to the detriment of LHC's interest in surplus cash (as defined in the LHC Loan Agreement. All the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and all references to the Construction Mortgage Loan, the Construction Mortgage Loan Note, the Construction Mortgage, the Financing Documents and the Senior Lender shall mean, respectively, the refinance loan, the refinance note, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

ARTICLE X

Default by Subordinate Lender or Senior Lender

If any Subordinate Lender or the Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

ARTICLE XI

Notices

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the Senior Lender or the Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any

notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Regions Bank, an Alabama banking corporation
1900 5th Avenue North, 15th F
Birmingham, Alabama 35203
Attention: Chase M. Simpson

With a copy to:

Jones Walker LLP
420 20th Street North, Suite 1100
Birmingham, Alabama 35203
Attention: Kelly R. Lewis and Brandon D. Hughey

LHC SUBORDINATE LENDER:

Louisiana Housing Corporation
2415 Quail Drive
Baton Rouge, Louisiana 70808
Attn: Piggyback Program

With a copy to:

Baker Donelson
450 Laurel Street, 21st Floor
Baton Rouge, Louisiana 70802
Attention: Amanda Spain

CITY SUBORDINATE LENDER:

Tyra Johnson Brown
Director of Housing Policy and Community Development
City of New Orleans
1340 Poydras Street, Suite 1000
New Orleans, LA 70112

With a copy to:

City Attorney
City of New Orleans
1300 Perdido Street, 5E03
New Orleans, LA 70112

BW Cooper Senior, L.L.C.
2117 Ursulines Avenue
New Orleans, Louisiana 70116
Attn: **Terri North**

With a copy to:

1718 Peachtree Street NE #684
Atlanta, Georgia 30309
Attn: Carmen Chubb

With a copy to:

Longwell Riess, L.L.C.
650 Poydras Street, Suite 2600
New Orleans, Louisiana 70130
Attn: A. Kelton Longwell

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

ARTICLE XII

General

(a) **Assignment/Successors.** This Agreement shall be binding upon the Company, the Senior Lender and each Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of the Senior Lender and each Subordinate Lender.

(b) **No Partnership or Joint Venture.** The Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute the Senior Lender as a joint venturer or partner of any Subordinate Lender. Neither the Senior Lender nor any Subordinate Lender shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) **Senior Lender's and Subordinate Lender's Consent.** Wherever the Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by the Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever a Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by such Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) **Further Assurances.** The Subordinate Lender, the Senior Lender and the Company each agree, at the Company's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Construction Mortgage, or to further evidence the intent of this Agreement.

(e) **Amendment.** This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) **Governing Law.** This Agreement shall be governed by the laws of the State in which the Property is located.

(g) **Severable Provisions.** If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) **Term.** The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Financing Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under any of the Subordinate Loan Documents, other than by reason of payments which each Subordinate Lender is obligated to remit to the Senior Lender pursuant to Section 4 hereof; (iii) the acquisition by the Senior Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Construction Mortgage; or (iv) the acquisition by any Subordinate Lender of title to the Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in any Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

SENIOR LENDER:

Regions Bank, an Alabama banking corporation

By: _____
Name: Chase M. Simpson
Its: Vice President

STATE OF ALABAMA)
 : ss
COUNTY OF JEFFERSON)

Before me, the undersigned Notary Public in and for the aforesaid County and State, personally appeared Chase M. Simpson, in his capacity as Vice President of Regions Bank, an Alabama banking corporation, the Senior Lender of the Company, and being duly sworn, acknowledged the execution of the foregoing Agreement.

Witness my hand and notarial seal this ___ day of _____, 2025.

Notary Public
My Commission expires: _____

STATE OF _____)
PARISH OF _____)

THUS DONE AND PASSED, before me, Notary, and in the presence of the undersigned competent witnesses, after a due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC
My Commission Expires: _____
Date: _____

SUBORDINATE LENDER:

Louisiana Housing Corporation,
a body corporate and politic and an instrumentality
of the State of Louisiana, as agent for the State of
Louisiana, Division of Administration, Office of
Community Development

By: _____
Name: Kevin J. Delahoussaye
Its: LHC Executive Director

STATE OF _____)
PARISH OF _____)

SUBORDINATE LENDER:

City of New Orleans

THUS DONE AND PASSED, before me, Notary, and in the presence of the undersigned competent witnesses, after a due reading of the whole.

By: _____
Name: Latoya Cantrell
Its: Mayor

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC
My Commission Expires: _____
Date: _____

STATE OF _____)
PARISH OF _____)

SUBORDINATE LENDER:

City of New Orleans, City Council

THUS DONE AND PASSED, before me, Notary, and in the presence of the undersigned competent witnesses, after a due reading of the whole.

By: _____
Name:
Its: City Council President

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC
My Commission Expires: _____
Date: _____

STATE OF _____)
PARISH OF _____)

THUS DONE AND PASSED, before me, Notary, and in the presence of the undersigned competent witnesses, after a due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC
My Commission Expires: _____
Date: _____

SUBORDINATE LENDER:

Providence Community Housing,
a Louisiana nonprofit corporation

•

By: _____
Name: Terri B. North
Its: President & CEO

By: _____
Name: **Carmen Chubb**
Its: **Authorized Representative**

STATE OF _____)
PARISH OF _____)

THUS DONE AND PASSED, before me, Notary, and in the presence of the undersigned competent witnesses, after a due reading of the whole.

WITNESSES:

Print Name: _____

Print Name: _____

NOTARY PUBLIC
My Commission Expires: _____
Date: _____

COMPANY :

BW Cooper Senior, L.L.C., a Louisiana limited partnership

By: BW Cooper Senior Manager, L.L.C., a Louisiana limited liability company
Its: Managing Member

By: _____
Name: **Carmen Chubb**
Its: **Authorized Representative**

By: _____

By: _____
Name: Terri B. North
Its: **Authorized Representative**

EXHIBIT A
LEGAL DESCRIPTION

----- [Space Above This Line For Recording Data] -----

**SUBORDINATION AGREEMENT
(Affordable)**

This SUBORDINATION AGREEMENT (this “**Agreement**”) dated as of _____, _____, is executed by and among (i) **REGIONS BANK**, an Alabama banking corporation (“**Senior Lender**”), (ii) **CITY OF NEW ORLEANS** (“**Subordinate Lender**”), and (iii) **BW COOPER SENIOR, L.L.C.**, a Louisiana limited liability company (“**Borrower**”).

RECITALS:

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), Senior Lender has agreed to make a loan to Borrower in the original principal amount of \$10,239,000 (the “**Senior Loan**”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Senior Lender in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Multifamily Mortgage, Deed of Trust or Deed to Secure Debt dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to

time, the “**Senior Security Instrument**”), encumbering the property described in the Senior Security Instrument as the “**Mortgaged Property**.”

C. Borrower has requested Senior Lender to permit that certain subordinate loan in the amount of \$4,065,000.00 (the “**Subordinate Loan**”) from Subordinate Lender to Borrower and to allow the Subordinate Loan to be secured by a mortgage lien against the Mortgaged Property.

D. Senior Lender has agreed to permit the Subordinate Loan and to allow the subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Loan to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Recitals.

The recitals set forth above are incorporated herein by reference.

2. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

“**Borrower**” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

“**Business Day**” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Control**” (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such

entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

“Default Notice” means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Loan Default has occurred under the Subordinate Loan Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

“Person” means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

“Senior Lender” means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

“Senior Loan Default” means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

“Senior Loan Documents” means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

“Subordinate Lender” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Note after the date of this Agreement.

“Subordinate Loan Agreement” means the Loan and Security Agreement of even date herewith by and between Borrower and Subordinate Lender.

“Subordinate Loan Default” means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Loan Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Loan Documents for curing the default.

“Subordinate Loan Documents” means the Subordinate Note, the Subordinate Mortgage, the Subordinate Loan Agreement, the Subordinate Regulatory Agreement and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Loan.

“Subordinate Mortgage” means the mortgage, deed of trust or deed to secure debt encumbering the Mortgaged Property as security for the Subordinate Loan, which Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

“**Subordinate Note**” means the promissory note of even date herewith issued by Borrower to Subordinate Lender, or order, to evidence the Subordinate Loan.

“**Subordinate Regulatory Agreement**” means that certain Home Affordable Rental Housing Program Regulatory Agreement dated _____, 2025 and recorded in the Recorder’s Office of the city of New Orleans.

“**Surplus Cash**” means, with respect to any period, any revenues of Borrower remaining after paying, or setting aside funds for paying, all of the following:

- (i) All sums due or currently required to be paid under the Senior Loan.
- (ii) All sums due or currently required to be paid under the Senior Loan Documents, including but not limited to any Imposition Deposits.
- (iii) All deposits to any replacement reserve, repair reserve or other reserve or escrow required by the Senior Loan Documents that are due or currently payable.
- (iv) All reasonable operating expenses of the Mortgaged Property, including but not limited to real estate taxes, insurance premiums, utilities, building maintenance, painting and repairs, management fees, payroll, administrative expenses, legal expenses and audit expenses (excluding any developer fees payable with respect to the Mortgaged Property).

3. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property to secure Borrower’s obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan.

4. Borrower’s and Subordinate Lender’s Representations and Warranties.

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents.

The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage, the Subordinate Loan Agreement and the Subordinate Loan Documents.

(b) Subordinate Note.

The Subordinate Note contains the following provision:

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 a Multifamily Note (and any schedules) dated as of even date herewith in the original principal amount of \$10,239,000, executed by BW COOPER SENIOR, L.L.C., a Louisiana limited liability company and payable to the order of REGIONS BANK, an Alabama banking corporation (“**Senior Lender**”), to the extent and in the manner provided in that certain Subordination Agreement dated as of even date herewith between the payee of this Note, and Senior Lender and BW COOPER SENIOR, L.L.C., a Louisiana limited liability company (the “**Subordination Agreement**”). The Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Multifamily Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) securing the Multifamily Note and the terms, covenants and conditions of the Multifamily Loan and Security Agreement evidencing the terms of the Multifamily 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 Mortgage, Deed of Trust or Deed to Secure Debt (and any exhibits) 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 Subordinate Lender under the Subordination Agreement.

(c) Relationship of Borrower to Subordinate Lender and Senior Lender.

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

(d) Term.

The term of the Subordinate Note does not end before the stated term of the Senior Note.

(e) Subordinate Loan Documents.

The executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

5. Deliveries.

Subordinate Lender shall submit the following items to Senior Lender the later of (a) ten (10) Business Days after the date on which the proceeds of the Subordinate Loan are disbursed to Borrower, and (b) the effective date of the Senior Loan Documents:

(1) **Title Policy Endorsement.**

An endorsement to the policy of title insurance insuring the lien of the Senior Security Instrument which insures that (A) there are no liens or other encumbrances affecting the Mortgaged Property, other than “Permitted Encumbrances” (as defined in the Senior Security Instrument), the Subordinate Mortgage, and other Subordinate Loan Documents filed or recorded against the Mortgaged Property, (B) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Security Instrument, and (C) this Agreement has been recorded among the applicable land records.

(2) **Certification.**

A certification from Borrower and Subordinate Lender to Senior Lender that the Subordinate Loan Documents do not contain any changes from the Subordinate Loan Documents submitted to, and approved by, Senior Lender prior to the date of this Agreement.

(3) **Subordinate Loan Documents.**

A complete set of the fully executed Subordinate Loan Documents, certified by Borrower to be true, correct and complete.

(4) **Senior Loan Documents.**

An executed copy of each of the Senior Loan Documents, certified by Borrower to be true, correct and complete.

6. Terms of Subordination.

(a) **Agreement to Subordinate.**

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage, the Subordinate Regulatory Agreement and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property). Subordinate Lender hereby agrees that the Subordinate Loan, together with the Other Subordinate Loans, will be payable solely from 75% of Surplus Cash while the Senior Loan remains outstanding.

(b) Subordination of Subrogation Rights.

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Loan Default.

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents, provided that no such payment exceeds 75% of then available Surplus Cash. Notwithstanding the foregoing, the Borrower shall not prepay, and Subordinate Lender shall not accept prepayment of, the Subordinate Loan without the Senior Lender's prior written consent, provided that no such payment, together with payments on the Other Subordinate Loans, shall exceed 75% of then available Surplus Cash. Notwithstanding the foregoing, the Borrower shall not prepay, and Subordinate Lender shall not accept prepayment of, the Subordinate Loan without the Senior Lender's prior written consent.

(d) Payments After Senior Loan Default.

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Loan Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

(e) Remitting Subordinate Loan Payments to Senior Lender.

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Loan

Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Loan Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Notice of Payment from Other Persons.

Subordinate Lender agrees to notify (telephonically or via email, followed by written notice) Senior Lender of Subordinate Lender's receipt from any Person other than Borrower of a payment with respect to Borrower's obligations under the Subordinate Loan Documents, promptly after Subordinate Lender obtains knowledge of such payment.

(g) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

7. Default Under Subordinate Loan Documents.

(a) Notice of Subordinate Loan Default and Cure Rights.

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Loan Default within sixty (60) days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Loan Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

(b) Subordinate Lender’s Exercise of Remedies After Notice to Senior Lender.

If a Subordinate Loan Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender’s prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to accelerating the Subordinate Loan (and enforcing any “due on sale” provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder unless and until it has given Senior Lender at least sixty (60) days prior written notice; during such sixty (60) day period, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

(c) Cross Default.

Borrower and Subordinate Lender agree that a Subordinate Loan Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Loan Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Loan Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

8. Default Under Senior Loan Documents.

(a) Notice of Senior Loan Default and Cure Rights.

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender’s rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan

Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Loan Agreement and the Subordinate Mortgage.

(b) Cross Default.

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Loan Default shall not constitute a default under the Subordinate Loan Documents (if no other default has occurred under the Subordinate Loan Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan, or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Loan Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Loan Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Loan Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Loan shall be retroactively reinstated as if such Senior Loan Default had never occurred.

9. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Loan Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Loan Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Loan Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

10. Rights and Obligations of Subordinate Lender Under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest.

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Loan Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty.

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a “**Casualty**”), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents, provided however, Senior Lender agrees to consult

with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

(c) Insurance.

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

(d) No Modification of Subordinate Loan Documents.

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any amendment of the Subordinate Loan Documents or assignment of Subordinate Lender's interest in the Subordinate Loan without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

11. Modification or Refinancing of Senior Loan.

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

12. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

13. Reinstatement.

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

14. Notices.

(a) Process of Serving Notice.

All notices under this Agreement shall be:

- (1) in writing and shall be:
 - (A) delivered, in person;
 - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
 - (C) sent by overnight courier; or
 - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and
- (3) deemed given on the earlier to occur of:
 - (A) the date when the notice is received by the addressee; or
 - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

(b) Change of Address.

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

(c) Receipt of Notices.

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

15. General.

(a) Assignment/Successors.

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.

(b) No Partnership or Joint Venture.

Senior Lender's permission for the placement of the Subordinate Loan does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent.

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances.

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

(e) Amendment.

This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law.

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions.

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(h) Term.

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Loan Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

(i) Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

(j) Sale of Senior Loan.

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

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IN WITNESS WHEREOF, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

SENIOR LENDER:

REGIONS BANK, an Alabama banking corporation

By: _____ (SEAL)
Name:
Title:

Witnesses:

Name: _____

Name: _____

Address: 1180 West Peachtree Street NW, Suite 1400
Atlanta, Georgia 30309

With a copy to:

Fannie Mae (Multifamily)
Certification and Custody
Document Delivery Facility (DDF)
21240 Ridgetop Circle
Sterling, VA 20166

Notary Public

Print Name: _____

Notary ID No. _____

Commission Expires: _____

SUBORDINATE LENDER:

CITY OF NEW ORLEANS

BY: LATOYA CANTRELL, MAYOR

WITNESSES:

1. _____

Print Name: _____

2. _____

Print Name: _____

NOTARY PUBLIC

**FORM AND LEGALITY APPROVED:
LAW DEPARTMENT**

BY: _____

PRINTED NAME: _____

SUBORDINATE LENDER:

**CITY OF NEW ORLEANS, CITY
COUNCIL**

BY: CITY COUNCIL PRESIDENT

WITNESSES:

1. _____

Print Name: _____

2. _____

Print Name: _____

NOTARY PUBLIC

BORROWER:

BW COOPER SENIOR, L.L.C., a Louisiana limited liability company

By: **BW COOPER SENIOR MANAGER, L.L.C.**, a Louisiana limited liability company, its Managing Member

By: _____

Name: Carmen Chubb

Its: Authorized Representative

By: _____

Name: Terri B. North

Its: Authorized Representative

Witnesses:

Name: _____

Name: _____

Address:

2117 Ursulines Avenue
New Orleans, LA 70116
Terri B. North

Notary Public

Print Name: _____

Notary ID No. _____

Commission Expires: _____

**CITY OF NEW ORLEANS
GO BOND FUNDS PROGRAM
PROMISSORY NOTE**

US \$4,065,000.00

Date: _____, 2025

FOR VALUE RECEIVED, the undersigned (the “**Borrower**”) promises to pay to the order of **City of New Orleans** (the “**City**” or “**Lender**”) or any future holder, the principal sum of **Four Million Sixty-Five Thousand Dollars Even (\$4,065,000.00)**, together with interest thereon accruing at the Interest Rate (defined below) on the unpaid principal balance from the date hereof until fully paid in accordance with the terms of this HOME Program Promissory Note (this “**Note**”) and the Loan Agreement (defined below).

1. **Defined Terms.** In addition to the defined terms found elsewhere in this Note, as used herein, the following definitions shall apply. Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Loan Agreement.

(a) **Business Day:** Any day other than a Saturday, Sunday or any other day on which Lender is not open for business.

(b) **Default Rate:** A rate of ten percent (10%) per annum, compounded monthly.

(c) **Guarantor:** A person or entity, acceptable to the City, which has an economic interest in Borrower or which will otherwise obtain a material financial benefit from the Loan, and which agrees to guaranty certain obligations of Borrower under this Note, including _____ and its approved successors and assigns.

(d) **Indebtedness:** The principal of, interest on, or any other amounts due at any time under the Loan (including that evidenced by this Note), the Loan Agreement, the Mortgage or any other Loan Document, late charges, default interest, and advances to protect the security of the Mortgage under the terms of the Mortgage, reasonable attorney’s fees and court costs, and other fees and costs due and payable under the Loan Documents.

(e) **Intercreditor Agreement:** That certain Intercreditor and Subordination and Standstill Agreement dated on even date herewith by and between Regions Bank, an Alabama banking corporation, the City, Louisiana Housing Corporation, and Borrower.

(f) **Interest Rate:** Prior to the occurrence of an Event of Default, the Interest Rate shall be 0.0% per annum and from and after the occurrence of an Event of Default, the principal amount shall bear interest at the Default Rate.

(g) **Lender:** The holder of this Note, including without limitation, initially, the City.

(h) **Loan:** the HOME Program loan from the City to Borrower, as evidenced by this Note.

(i) **Loan Agreement:** The Loan Agreement between Borrower and the City dated the ____ of _____, 2025 governing the terms and conditions of the Loan, as modified, amended, or supplemented from time to time in accordance with its terms.

Note – GO Bond Funds Program
BW Cooper Senior, L.L.C. to City of New Orleans
K25-885; BRASS No. 7563

(j) **Maturity Date:** the earliest to occur of (i) sale or refinancing of the Project not expressly permitted in the Loan Agreement; (ii) acceleration following an Event of Default under the Loan Documents that is not cured within any applicable grace or cure period; or (iii) 45-year project term from completion (also known as the period of affordability), and in all events no later than December 31, 2070.

(k) **Mortgage:** The Act of Leasehold Mortgage, Pledge of Leases and Rents, and Security Agreement by the Borrower in favor of the City.

(l) **Property Jurisdiction:** The State of Louisiana.

(m) **Surplus Cash:** any cash (excluding tenant security deposits) remaining at the end of each fiscal year of the Borrower after: (A) payment of all reasonable operating expenses for the Project for such fiscal year and (B) payment of all amounts required to be deposited into any reserve fund for the payment of operating expenses, any reserve for replacements to the Project, or any other special reserve funds required to be maintained by Borrower under the Senior Loan Documents (as such term is defined in the Intercreditor Agreement), the Loan Documents or Borrower's operating agreement; (C) payment of all sums due or currently required to be paid under the terms of any Senior Loan; and (D) payment of asset management fees to investor member in an amount equal to \$7,725 plus 2% annual increases. Surplus Cash will be computed by the Borrower's accountant (or such other representative of Borrower tasked with such computation), generally in accordance with HUD's requirements for calculating Surplus Cash in HUD's multifamily programs. The accountant's computation of Surplus Cash shall be included in the annual audited financial statements of the Project and will be subject to the City's review and concurrence. Repayment of operating deficit loans/advances made to the Borrower as required under the Senior Loan Documents or Borrower's amended and restated operating agreement shall be repaid from Surplus Cash after all required payments to the City have been made. Repayment of all other voluntary operating deficit loans/advances shall not be considered as reasonable operating expenses for the purpose of calculating Surplus Cash unless Borrower shall have received approval from the City of (1) the amount and terms of the voluntary operating deficit loan/advance prior to the time made, and (2) treatment of the repayment of voluntary operating deficit loan/advance as reasonable operating expenses for the purpose of calculating Surplus Cash.

Permanent Financing Cashflow. After the Borrower has converted the Senior Loan to permanent financing, it shall apply all Net Cash Flow from the Project, defined as the gross rents, revenues, and other proceeds from the operation of the Project, less (i) the debt service payments on the Senior Loan; (ii) the reasonable operating expenses of the Project (iii) the reserves required by the Senior Loan; (iv) tax credit adjustment and tax liability payment due to the Investor Member; (v) the investor services fee payable to the Investor Member and (vi) the deferred developer fee in the order established in the Amended and Restated Operating Agreement of the Company.

2. **Address for Payment.** All payments due under this Note shall be payable to the order of the City at the Office of Community Development, 1340 Poydras Street, Suite 1000, New Orleans, LA 70112, or such other place as may be designated by written notice to Borrower from the City, or such other place as may be designated by written notice to Borrower from or on behalf of Lender.

3. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) **Interest Computation.** Interest under this Note shall be computed on the basis of a 360 day year consisting of twelve 30-day months.

(b) **Annual Installments; Place of Payment.** The Loan shall be repaid in annual installments (each, an “**Annual Installment**”) on or before April 1 (the “**Payment Date**”) of each calendar year of the Project Term (the “**Payment Date**”) in an amount equal to the second 50% of Surplus Cash. Loan will become due upon the earlier of (a) the Maturity Date of the senior loan; (b) sale or refinancing of the property; or (c) acceleration as the result of material noncompliance with the terms of the Loan. Payments shall be made in immediately available US funds to the order of the City at the Office of Community Development, 1340 Poydras Street, Suite 1000, New Orleans, LA 70112, or such other place as may be designated by written notice to Borrower from or on behalf of the City.

(c) **Payment from Surplus Cash.** Each Annual Installment shall be paid solely from Surplus Cash to the extent Surplus Cash is generated from the operation of the Project. The amount of each Annual Installment shall be equal to the second 50% of Surplus Cash, in accordance with the Payment Schedule. Notwithstanding the requirement of repayment from Surplus Cash, the Loan shall not be construed as a joint venture, partnership or other association between Borrower and the City, other than a debtor/creditor relationship. The City’s right to be paid from Surplus Cash shall terminate at such time as the lesser of 15 years or until principal and interest amounts due on the Note are paid in full. If Surplus Cash is negative in any year during the Project Term of the Loan, no Annual Installment shall be due for that year, but interest, if any, shall continue to accrue at the Interest Rate on the principal balance of the Note.

4. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender’s discretion. Borrower agrees that neither Lender’s acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender’s application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is also evidenced by the Loan Agreement, and secured, among other things, by the Mortgage, and reference is made to the Mortgage for other rights of Lender concerning the collateral for the Indebtedness. All of the terms, covenants and conditions contained in the Loan Agreement, the Mortgage and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest and all other amounts payable under this Note and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior notice to Borrower. Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Late Charge.** If any amount payable under this Note or under the Mortgage or any other Loan Document is not received by Lender within ten (10) days after the date such amount is due, counting from and including the date such amount is due, Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such amount due. Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Paragraph represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses

Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Paragraph 8.

8. **Default Rate.** From and after the date of an occurrence of an Event of Default, the principal amount of this Note shall bear interest at the Default Rate. Not in limitation of the foregoing, if the unpaid principal balance and all accrued interest are not paid in full upon demand after an Event of Default, the unpaid principal balance and all accrued interest shall bear interest from the date of demand at the Default Rate. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. **Prepayments.** Borrower may prepay this Note in whole or in part with or without notice to Lender and without prepayment penalty.

10. **Costs and Expenses.** Borrower shall pay on demand all reasonable expenses and costs, including reasonable fees and out-of-pocket expenses of attorneys and expert witnesses and costs of investigation, actually incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those actually incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

11. **Forbearance.** Any forbearance by Lender in exercising any right or remedy under this Note, the Mortgage, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

12. **Waivers.** Presentment, demand for payment, notice of nonpayment, notice of dishonor, notice of protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower, for and on behalf of itself and each Guarantor, and all endorsers and guarantors of this Note and all other third party obligors or others who may become liable for the payment of all or any part of the Indebtedness.

13. **Loan Charges.** Borrower agrees to pay an effective rate of interest equal to the sum of the interest rate provided for in this Note and any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the loan evidenced by this Note and any other fees or amounts to be paid by Borrower pursuant to any of the other Loan Documents. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together

with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the term of the Note.

14. **Commercial Purpose.** Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise, and not for agricultural, personal, family, or household purposes.

15. **Counting of Days.** Except where otherwise specifically provided, any reference in this Note to a period of “days” means calendar days, not Business Days.

16. **Governing Law.** This Note shall be governed by the law of the Property Jurisdiction.

17. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

18. **Notices.** All notices, demands, and other communications required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with the notice section of the Loan Agreement.

19. **Consent to Jurisdiction and Venue.** Borrower and each Guarantor each agree that any controversy arising under or in relation to this Note shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. Borrower and each Guarantor each irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

20. **Solidary Liability.** If more than one person or entity executes this note as borrower, the obligations and liabilities of each such person and entity hereunder shall be solidary and in solido.

21. **Receipt of Loan Documents.** Borrower acknowledges receipt of a copy of each of the Loan Documents.

22. **Non-Recourse Language.** Neither Borrower nor any officer, employee, member or partner of Borrower shall be personally liable for the payment of the indebtedness evidenced by this Note, the Mortgage, the Loan Agreement or any other loan documents, and any judgment or decree in any action brought to enforce the obligation of Borrower to pay the indebtedness will be enforceable against Borrower and the officers, employees or partners of Borrower, if any, only to the extent of Borrower’s interest in the Property and any improvements thereon or any other collateral pledged, encumbered, or otherwise covered by the loan documents. Any judgment or decree will not be subject to execution, or be a lien, on the assets

of the Borrower and the partners in Borrower, if any, other than Borrower's interest in the Project and any other collateral pledged, encumbered, or otherwise covered by the loan documents

23. **Right to Cure.** Notwithstanding anything to the contrary contained in this Note or the Mortgage securing it, Borrower's Investor Member shall have the right, but not the obligation, to cure defaults of Borrower.

24. **Intercreditor Agreement; Subordination.** Notwithstanding anything contained in this Note, Lender acknowledges and agrees that its rights and any and all exercise of its remedies pursuant to this Note shall be subject to the terms and conditions of the Intercreditor Agreement. Further, the indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the Senior Lender as more fully described in the Intercreditor Agreement. The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Loan Mortgage as more fully described in the Intercreditor Agreement.

[END OF DOCUMENT - SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Borrower has signed and delivered this Note or has caused this Note to be signed and delivered by its duly authorized representative.

BORROWER:

BW COOPER SENIOR, L.L.C.,
a Louisiana limited liability company

By: BW Cooper Senior Manager, L.L.C.
Its: Managing Member

By: _____
Name: Carmen Chubb
Its: Authorized Representative

By: _____
Name: Terri B. North
Its: Authorized Representative