

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Community and Human Development
AGENDA DATE: October 20, 2009
CONTACT PERSON/PHONE: William L. Lilly, Director
DISTRICT(S) AFFECTED: 3, 7 and 8

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

City Council is asked to approve funding commitments for the following affordable housing rental developments. The Program guidelines and RFP application were approved by City Council on February 3, 2009. The City of El Paso issued a Request for Proposals for Rental Development projects on March 4, 2009 with a submission date of May 29, 2009. Twelve applications were received, evaluated and ranked. The following four proposals received the highest rating and are recommended for funding:

1. The Evangelical Lutheran Good Samaritan District 7
Project Type: Construction of 41 one-bedroom/one-bath units for the elderly. Good Samaritan currently owns the property, which is adjacent to its existing facility for the elderly, located at 7750 Lilac Way. The new facility will be a 3-story apartment building, served by elevators and internal fire stairs. Each unit will be approximately 540 sq. ft. There will be an accessible building entrance, as well as accessible public and common use areas, usable kitchens and bathrooms, visual signage, energy star and construction efficiency features. All 41 units will be rented to persons whose income is $\leq 50\%$ Area Median Income.

Total Development Costs	\$4,435,944	
Total City Gap Financing		\$450,000
Terms = 100% Loan @ 0% interest for 15 years (first monthly payment due 90 days from project completion)		

2. Sound Preservation 205 LP – Suncrest Apartments District 8
Project Type: Acquisition and rehabilitation of 100 multi-family housing units in eleven buildings, located at 611 Rubin. The development consists of 16 one bedroom units (644 sq. ft.), 32 two-bedroom units (800 sq. ft.), 36 three-bedroom units (978 sq. ft.) and 16 four-bedroom units (1,100 sq. ft.) Five units will be converted to ADA. The rehabilitation will include replacement of furnaces, HVAC systems appliances, windows, cabinets, sinks, interior doors and carpets. The roof will be replaced, where needed, as well as the asphalt and sidewalk will be repaired. 30 units will be rented to households whose income is $\leq 50\%$ AMI and 11 units will be at $\leq 30\%$ AMI.

Total Development Costs	\$7,161,445	
Total City Gap Financing		\$350,000
Terms = 100% Loan @ 0% interest for 15 years (first monthly payment due 90 days from project completion)		

3. Investment Builders – Desert Villas, Ltd. District 3
 Project Type: Acquisition and construction of 94 multi-family units for low income households, located at approximately 0.5 miles SW of Alameda & Coronado Rd. There will be 14 one-bedroom units, 40 two-bedroom units, 36 three-bedrooms and 4 four-bedroom units, ranging from 667 sq. ft. to 1,300 sq. ft. Each unit will be equipped with microwave ovens, energy star appliances, and ceiling fixtures. Six units will be accessible, 4 units will be equipped for the visually impaired and ten units for residents with special needs. 56 units will be rented to households whose incomes are $\leq 60\%$ AMI, 33 units will be $\leq 50\%$ AMI and 5 units will be $\leq 30\%$ AMI.

Total Development Costs	\$10,197,721	
Total City Gap Financing		\$220,000
Terms = 100% Loan @ 0% interest for 15 years (first monthly payment due 90 days from project completion)		

4. Investment Builders – Canyon Square, Ltd. District 7
 Project Type: Acquisition and construction of 104 multi-family units for low income households. There will be 16 one-bedrooms, 44 two-bedrooms, 40 three-bedrooms and 4 four-bedrooms, ranging from 700 sq. ft. to 1,250 sq. ft. Six units will be accessible, 4 units will be equipped for the visually impaired. The design includes 15 residential buildings and two non-residential buildings, that include a clubhouse, laundry room and a maintenance building. There will be a swimming pool, playground area and 104 covered parking spaces. 61 units will be rented to households whose incomes are $\leq 60\%$ of AMI, 37 units will be at $\leq 50\%$ AMI, and 6 units will be at $\leq 30\%$ AMI.

Total Development Costs	\$11,702,092	
Total City Gap Financing		\$260,000
Terms = 100% loan @ 0% interest for 15 years (first monthly payment due 90 days from project completion)		

It is also requested that the City Manager of the City of El Paso be authorized to sign any contracts or other documents required to effectuate the awards and to secure and protect the City's lien interest.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City of El Paso Housing Programs Division issued a Request for Proposals for Rental Development projects on March 4, 2009. Twelve applications were received and carefully reviewed and evaluated, in compliance with the rating criteria approved by City Council on February 3, 2009. The four applications that are being recommended received the highest rating.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

City Council has approved previous funding commitments for affordable housing developments.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

These projects will be funded through FY 2007 and FY 2008 HOME funds are available in accounts: 71150036-G7107HM-09760 and 71150036-G7108HM-09761

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*******REQUIRED AUTHORIZATION*******

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the following affordable rental housing developments are approved for funding commitments, as recommended by the Director of Community and Human Development, as listed below:

1. Developer The Evangelical Lutheran Good Samaritan
 Project Type: Construction of 41 One-Bedroom Units for the Elderly
 Project Address: 7750 Lilac Way
 Project Amount: \$450,000
 District: 7

2. Developer: Sound Preservation 205 LP
 Project Type: Acquisition/Rehabilitation of 100 Multi-family units
 Project Address: 611 Rubin Drive – Suncrest Apartments
 Project Amount \$350,000
 District: 8

3. Developer: Investment Builders, Inc. – Desert Villas, Ltd.
 Project Type: Land Acquisition/Construction of 94 Multi-family units
 Project Address: Approx. 0.5 miles SW of Alameda & Coronado Road
 Project Amount: \$220,000
 District: 3

4. Developer: Investment Builders, Inc. – Canyon Square, Ltd.
 Project Type: Land Acquisition/Construction of 104 Multi-family units
 Project Address: 8622 & 8624 North Loop Road
 Project Amount: \$260,000
 District: 7

That the City Manager, on behalf of the City, be authorized to sign an Investor HOME Program Written Agreement in a form substantially similar to the form contract attached as Exhibit “A” by and between the City and each respective project developer, as well as any related contract documents necessary to effectuate the awards and to secure and protect the City’s lien interest.

ADOPTED this 20th day of October 2009.

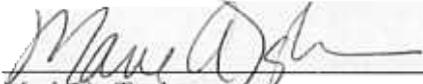
THE CITY OF EL PASO

John F. Cook,
Mayor

ATTEST:

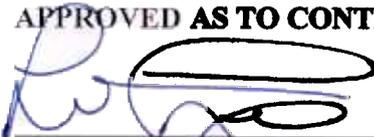
Richarda Duffy Momsen,
City Clerk

APPROVED AS TO FORM:



Marie A. Taylor,
Assistant City Attorney

APPROVED AS TO CONTENT:



William L. Lilly, Jr.
Community and Human Development

FORM CONTRACT EXHIBIT "A"

09 OCT 14 AM 11:42
CITY CLERK DEPT.

STATE OF TEXAS

COUNTY OF EL PASO

}
}
}
}

[CHDO /INVESTOR] HOME PROGRAM
WRITTEN AGREEMENT

(Rental Housing Project, 5 or More Units)

THIS [CHDO/INVESTOR] HOME PROGRAM WRITTEN AGREEMENT (the "HOME Program Written Agreement" or the "Agreement") is entered into this ____ day of _____, 20____, by and between THE CITY OF EL PASO, hereinafter referred to as "City" and _____, hereinafter referred to [collectively] as "Borrower."

WHEREAS, the City of El Paso has received a formula grant for Fiscal Year _____ in the amount of \$ _____ from the U. S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program, hereinafter referred to as "HOME", as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990); and

WHEREAS, the El Paso City Council meeting in regular session on _____, 20____, adopted a Resolution establishing a Fiscal Year _____ HOME project which allows for use of funds by Community Housing Development Organizations, hereinafter referred to as "CHDOS" or "CHDO", and Borrower is a CHDO under the program adopted [OR SELECT: establishing a Fiscal Year _____ HOME project for the City, which allows the use of funds by Borrower under the project designated]; and

WHEREAS, the City's Director of Community and Human Development has recommended approval of an amortized loan and a forgivable deferred payment loan to Borrower, subject to the terms specified hereinbelow, and the El Paso City Council, meeting in regular session on _____, 20____, by sufficient vote approved such loans to Borrower, subject to the terms specified hereinbelow; and

WHEREAS, the HOME funds having been approved for use in Borrower's [SELECT ONE OR MORE: acquisition/rehabilitation/new construction] project, subject to the conditions and terms herein, and Borrower agrees to comply with all applicable HOME Program requirements.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by Borrower from City, the parties hereto do mutually agree to be bound by all terms and conditions of this Agreement, and all documents incorporated by reference herein, as follows:

WITNESSETH:

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property is legally described as:

_____, an Addition to the City of El Paso, El Paso County, Texas, according to the plat or map thereof, recorded in Volume _____, Page _____, Real Property

Records of El Paso County, Texas; also known and numbered as _____, El Paso, Texas.

The City hereby agrees to lend Borrower funds not to exceed the total amount of AND _____ /100THS DOLLARS (\$ _____) subject to the terms hereinafter specified, to be drawn from FY _____ HOME funds.

A. Borrower agrees to fully and completely comply with all of the applicable terms and conditions of the Construction Contract, a copy of which is to be attached hereto as **Exhibit "A"** or in a form acceptable to the City, upon execution by the Borrower and the selected contractor. [If no Construction Contract- delete reference and re-letter the Exhibits] Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Agreement for the life of the Deed of Trust (With Power of Sale), attached as **Exhibit "B"** or in a form acceptable to the City. City's lien being evidenced by said Deed of Trust (With Power of Sale) so attached as **Exhibit "B,"** and Covenants and Restrictions Running with the Land, both to be recorded in the El Paso County Real Property Records. Borrower expressly acknowledges that it will be the Borrower's obligation to procure any additional private funding (in excess of the above-referenced amount) for completion of the development and construction of project and if additional private funding not originally anticipated becomes available for the project, Borrower will notify the City immediately so that the City's public financing may be reduced or cancelled.

B. City hereby agrees to provide HOME funds in the amount of \$ _____ per unit of the eligible [acquisition/rehabilitation/ and construction] costs according to all terms and conditions as specified in the Agreement, including, but not limited to, the following terms and conditions:

(1) The City hereby agrees to provide a portion of HOME funds allocated to this project as a Forgivable Deferred Payment Loan of AND _____ /100THS DOLLARS (\$ _____) using HOME Investment Partnership funds, as evidenced by a Forgivable Deferred Payment Loan Note of even date herewith, attached as **Exhibit "C"** and incorporated by reference herein. Provided Borrower complies with the terms and conditions of this Agreement, repayment of the Forgivable Deferred Payment Loan shall be deferred and the entire principal balance shall be forgiven following expiration of the HUD-mandated minimum affordability period of (_____) years, to commence on the date of project completion in described in Section IV. E herein, and the expiration of the City's extended affordability period of an additional (_____) years; i.e., following expiration of a combined affordability period of (_____) years. Notwithstanding the foregoing, following expiration of the HUD-mandated minimum affordability period and provided Borrower has fully repaid the Amortized Loan Note and has paid the entire principal amount of the Forgivable Deferred Payment Loan advanced by the City, the City's extended affordability period shall terminate automatically.

(2) The City hereby further agrees to provide the remainder of the financing required to fund the eligible [acquisition/rehabilitation/ and construction] costs as an amortized loan at zero percent (0%) interest. Such loan shall be in the amount of AND _____ /100THS DOLLARS (\$ _____) at zero percent (0%) for (_____) years with monthly

installments of _____ AND _____ /100THS DOLLARS (\$ _____), as evidenced by the Amortized Loan Note attached hereto as **Exhibit "D"**, beginning on the first day of the month as specified in the Amortized Loan Note.

(3) HOME funds shall be approved and funds shall be advanced to Borrower, subject to the terms described herein, to include but not limited to those contained in Sections III. and IV. below, and any other terms and conditions specified in the Agreement.

(4)(a) Disbursement of public funds shall be made within ten (10) business days upon Receipt by City of Borrower's written request for such, the documentation as required herein has been provided and upon the approval of the Director of the Department of Community and Human Development of the City (the "Director"). Borrower shall not request disbursement of HOME funds until they are needed to pay eligible costs and each disbursement request shall be limited to the amount needed. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, the Borrower has failed to fulfill the requirements of this Agreement. Disbursements shall be made on a pro rata basis with Borrower's private financing and in accordance with Borrower's Project Budget, attached hereto as **Exhibit "E"**, which may be updated and revised upon prior approval of the Director, provided however, the revised Project Budget for the _____ HOME-assisted units may not exceed \$ _____.

(b) Loan payments on the Amortized Loan Note in the face amount of _____ AND _____ /100THS DOLLARS (\$ _____) shall be due on the first day of the month with the first payment due on the first day of the month as specified in the Amortized Loan Note. The monthly payments shall be in monthly installments of \$ _____. Interest on the loan shall accrue at the rate of zero percent (0%) per annum from the date of disbursement. Borrower shall make monthly payments and such payments shall be calculated over _____ monthly installments.

(c) Borrower shall have not more than _____ (_____) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loans, in accordance with the terms and conditions of the Loan Note.

(d) The purpose of the loan(s) is to provide Borrower with funds to [acquire/rehabilitate and construct] _____ (_____) rental units on Borrower's property located at _____, as more fully described in the Deed of Trust (With Power of Sale), attached hereto as **Exhibit "B"**, and incorporated by reference herein. Borrower agrees that within _____ (_____) months from the date of this Agreement the _____ (_____) rental units will be completed and occupied by tenant households with incomes that do not exceed sixty percent (60%) of the area median income and paying no more than the High HOME rent. There is no other use of said funds authorized by City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which City may pursue any and all remedies, whether at law or equity, which are available to City.

(5) No HOME funds will be advanced and no reimbursable costs can be incurred until the City has conducted an environmental review of the property sites as required under Title 24 of the Code of Federal Regulations ("24 CFR") Part 58. Notwithstanding any provision in this Agreement, the parties hereto agree and acknowledge that the commitment of

HOME funds is contingent upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58.

C. Borrower may prepay at any time all or part of the current balance of the Amortized Loan Note. Such prepayment, if any is made, will be applied first to any interest due or late payment fees and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Agreement. Prepayment will not release Borrower from fulfilling the HOME covenants described in Section IV of this Agreement, including but not limited to the HUD-mandated minimum affordability period.

D. Any proceeds from the project will be considered CHDO proceeds that may be retained by the Borrower and must be used in conformance with 24 CFR §92.300(a)(2), for other housing activities to benefit low-income families. [CHDO provision-subject to deletion for non-CHDO projects]

E. For the term of this Agreement, Borrower shall establish and maintain a segregated and escrowed account in a financial institution as a Replacement Reserve Account for payment of costs related to capital replacement work on the Property. Borrower shall make withdrawals from this Replacement Reserve Account subject to written approval by the Director, acting on behalf of the City. On an annual basis, Borrower shall deposit funds in the amount of \$ _____ into the Replacement Reserve Account. Prior to any withdrawal of funds from the Replacement Reserve Account, Borrower must first obtain the Director's approval for the use of the funds, which will be limited to capital replacement improvements. Upon the City's request, Borrower shall submit documentation to ensure that the Replacement Reserve Account is being appropriately funded. [CHDO provision-subject to deletion for non-CHDO projects]

F. It is expressly understood and agreed by the parties hereto that City's obligations under this Section are contingent upon the actual receipt of adequate federal funds to meet the City's obligations under this Agreement. The City anticipates that it will receive adequate federal funds to meet City 's obligations under the Agreement, however, if adequate funds are not available to make payments under this Agreement, The City shall notify Borrower in writing as soon as practicable after such fact is determined. The City shall thereupon terminate this Agreement and will not be liable for failure to make payments to Borrower under this Agreement.

II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to City upon which City relied to make this loan(s) is correct and true. Borrower hereby represents that each of said Borrower's representatives have the authority and capacity to commit to a financial obligation on behalf of Borrower. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations to construct the aforementioned building located at _____, El Paso, El Paso County, Texas as more fully described in **Exhibit "B"** attached hereto and incorporated by reference herein [or

SELECT: located at the property described herein]. Borrower further represents that it will own any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

B. Borrower agrees and understands that approval of this loan(s) has been made by consideration of and in reliance upon various data furnished by Borrower, and agrees that should any of said data prove to be false or materially misleading in any way, the City shall have the right to unilaterally terminate this Agreement for unremedied breach thereof and demand repayment in full the entire principal amount of the Forgivable Deferred Payment Loan, as evidenced by **Exhibit "C"**, and all principal advanced and all accrued interest under the terms of the Amortized Loan, as evidenced by **Exhibit "D"**, plus all costs of collection.

C. This Agreement is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

III. CONDITIONS PRECEDENT

Borrower agrees to fully comply with the following terms and conditions, as a condition precedent to Borrower's receipt of any and all public financing described herein:

A. Borrower will execute all documents necessary to impose the Covenants and Restrictions Running with the Land required by the HOME program described in the Code of Federal Regulations; a copy of the Declaration Concerning Covenants and Restrictions Running with the Land to be recorded in the El Paso County Real Property Records is attached hereto as **Exhibit "F"** and incorporated herein by reference. The restrictions shall run with the Property and shall inure to the benefit of the City. If the City succeeds in enforcing or enjoining the violation of any Restriction, the City shall be reimbursed for its court costs and reasonable attorneys' fees incurred in such action.

B. Borrower agrees to grant to City the following collateral as security for the City loan and secured grant as agreed thereto:

(1) A **[first or second/third]** lien on the following described real property:

, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume _____, Page _____, Plat Records of El Paso County, Texas; also known and numbered as _____, El Paso, Texas.

This lien shall be subservient only to the following described liens on the above described property:

NONE

[OR: This lien shall be subservient only to the lien positions of _____ and _____ identified in the Deed of Trust (With Power of Sale), attached as Exhibit "B".

(2) The City will execute a Subordination Agreement in a form approved by the City's Counsel at closing to subordinate its second lien position, provided that under the Subordination Agreement Borrower's primary lender is obligated to provide the City the right to 60-day notice of default , right to cure the default, and the right to pay the entire debt.

[Subject to deletion if City will be in first lien position or after project cost analysis -if so, re-letter the sections]:

C. Borrower agrees to grant to City a first refusal right to purchase the Property during the HUD-mandated minimum affordability period, more fully described in Section IV. of this Agreement and in the Purchase Option and Right of First Refusal Agreement, attached hereto as **Exhibit "G"** and incorporated herein by reference.]

D. Borrower agrees to take any and all necessary action to perfect such lien(s) and to protect City's [**first/second/third**] lien position in the property described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Agreement.

E. Borrower agrees to provide sufficient documentation to satisfy all [**ADD IF NEW CONSTRUCTION: new construction**] HOME requirements.

F. Borrower shall furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the Borrower's indebtedness on the aforementioned property. This insurance coverage shall name the City as an additional insured.

G. Borrower agrees to obtain all necessary permits, licenses and special privileges that may be required by City prior to conducting the construction work on the property subject to this Agreement. In the event Borrower must pay any fees for obtaining any of the above items, Borrower agrees to pay such to City. Borrower shall also comply with any County, State or Federal requirements that apply to its construction activities.

H. Borrower agrees to ensure that the City is named in both the performance and payment bonds, if such bonds are required under the terms of the contract between Borrower and the selected contractor(s) for the construction of the Property described herein.

If Borrower breaches any term or condition of this Section III., entitled "Conditions Precedent," the entire principal amount of the Forgivable Deferred Payment Loan, as evidenced by **Exhibit "C"**, and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan, as evidenced by **Exhibit "D"**, shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

IV. COVENANTS

The following covenants in Subsections A-Y of this Section IV. shall apply as long as any amounts are outstanding under the Forgivable Deferred Payment Loan and Amortized Loan Notes, unless a longer period is specified:

A. Borrower agrees that HOME funds shall be used only for eligible acquisition and construction costs. Borrower hereby acknowledges and agrees that the HOME funds may not be used for any other purpose. Borrower shall maintain a project schedule for completing tasks, attached as **Exhibit "H"**, which may be updated and revised upon prior approval of the Director.

B. "Eligible construction cost(s)" as the term is used herein shall include the actual acquisition and construction cost, required appraisals, title searches, insurance, attorney's fees, architectural fees, escrow charges, tax recordation costs and credit reports, all in the amounts associated directly with the construction of the structure, as well as relocation payments made by the property owners, in accordance with the City's Tenant Assistance Policy, to tenants who are displaced or temporarily relocated as a result of HOME projects.

C. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City's Tenant Assistance Policy has been provided to Borrower during the application process and Borrower hereby acknowledges receipt therewith. Borrower further agrees to comply with 24 CFR §92.353 regarding displacement, relocation and acquisition; the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4201 et seq.), as applicable; and the implementing regulations at Title 49 CFR Part 24 (Relocation).

D. Borrower agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. Borrower agrees to comply with 24 CFR §92.252, specifically to include, but not limited to subsection (d) "Non discrimination against rental assistance subsidy holders".

E. Borrower hereby further agrees that for the entire HUD-mandated minimum affordability period of () years from the date of project completion and for as long as the City's extended affordability period of an additional () years is in effect, the newly [ADD IF ACQUISITION: acquired and] constructed property will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnership Program. Borrower further agrees to continuously comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR §92.252 regarding Qualification as Affordable Housing: Rental Housing, 24 CFR §92.203 regarding Tenant Income, 24 CFR §92.355 regarding lead based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;

- c) increases in tenant income;
- d) adjustments of qualifying rent

Borrower shall fulfill the HOME occupancy requirements by reserving _____ of the HOME units that are identified as "High" HOME rent units for tenants whose income is no more than 60% of the City's median income for their household size and _____ of the HOME units that are identified as "Low" HOME rent units for tenants whose income is no more than 50% of the City's median income for their household size. The current HOME rent limitations are outlined in **Exhibit "I"**, attached hereto and incorporated by reference, subject to periodic adjustments by HUD. The terms and conditions regarding subsequent rent increases and HUD median income adjustments are specified in **Addendum B**, "HOME Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein.

For purposes of this Agreement, "project completion" means that all necessary title transfer requirements to the Borrower have been performed; construction has been completed; the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR §92.251); the final drawdown has been disbursed for the project; the Borrower has submitted all necessary demographic and financial information to the City for initial occupancy of all HOME-assisted units; and the project completion information (which includes the demographic and financial information) has been entered into the Integrated Disbursement and Information System (IDIS) established by HUD. Once the requisite information is provided, the City agrees to use its best efforts to enter that information into IDIS within 30 days of receipt.

Borrower agrees to comply with 24 CFR §92.216 regarding Income Targeting:

1. Initial Occupancy - at least _____ percent (_____ %) of the HOME-assisted rental units in this project must be occupied by tenants with annual incomes at sixty percent (60%) or less of median income and at least _____ percent (_____ %) of the HOME-assisted rental units in this project must be occupied by tenants with annual incomes at fifty percent (50%) or less of median income.
2. Annual reexamination.
3. It is the further intention of this Agreement that all applicable HOME requirements and conditions be fulfilled in order to assist Low and Very Low- Income persons in obtaining suitable housing.

Borrower agrees to comply with 24 CFR §92.253 regarding Tenant and Participant Protections regarding the leases, prohibited lease terms, and adoption of written tenant selection policies and criteria that conform to HUD requirements.

4. In a project containing HOME-assisted and other units, the City may designate fixed or floating HOME units at the time of project commitment. The City hereby designates the

HOME-assisted rental housing units in this project as FLOATING HOME units. As floating units, the units are changed to maintain conformity with the requirements of 24 CFR §92.252 during the HUD-mandated minimum affordability period and the City's extended affordability period so that the total number of housing units meeting the requirements of 24 CFR §92.252 remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

F. In order to assure compliance with the Project Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Borrower agrees to submit annually the following documentation to City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that Borrower will utilize to verify tenant incomes.

2. A copy of the lease agreement form that will be utilized for the subject residential property at _____, **El Paso, Texas**. Borrower agrees to attach to its standard lease agreement form, the Mandatory Lease Addendum concerning prohibited lease terms, a copy of which is attached hereto as **Exhibit "J"**, which must be completed by Borrower and every tenant household at lease-up and upon the City's request.

3. Borrower hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in **Addendum B**, "HOME Program Rents and Tenant Eligibility," and incorporated by reference. Further, Borrower shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").

G. Borrower agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed structure. Borrower further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures).

H. Furthermore, Borrower understands and agrees that for the entire HUD-mandated minimum affordability period of _____ () years commencing on the date of project completion of the newly constructed property ("HUD- mandated minimum affordability period") and for as long as the City's extended affordability period of _____ () years is in effect that the property shall remain affordable to Low and Very Low-income individuals and/or households without regard to term of any loan or mortgage or transfer of ownership pursuant to 24 CFR §92.252, as evidenced by and enforced through the Declaration Concerning Covenants and Restrictions Running with the Land, attached as **Exhibit "F"**. A definition of Low and Very low Income individuals and/or households is attached as **Exhibit "I"**, which are adjusted by

HUD on a periodic basis. Failure to meet the affordability requirements for the HUD-mandated minimum affordability period or the City's extended affordability period (if still in effect), shall constitute an event of default requiring immediate repayment to the City of the entire principal amount of the Forgivable Deferred Payment Loan and the entire outstanding principal advanced and all accrued interest thereon of the amortized loan (collectively, "HOME funds"), and additionally, the City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

I. Borrower agrees that within **ninety (90)** days after the date the City of El Paso, Housing Programs Division, approves the Owner's Acceptance Form for the newly constructed property, as described herein, Borrower will furnish to City data on the demographic characteristics of tenants occupying the newly constructed structure initially after construction. Such data must be of a quality acceptable to the Director.

J. Borrower further agrees to comply with subpart H - "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, and the federal regulations at 24 CFR Part 87, related to lobbying. Borrower hereby agrees to sign the Certifications, attached hereto and made a part of this Agreement as **Addendum A**, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City. Borrower shall require the language of the Certification and disclosure be included in all construction contracts and subcontracts and that all contractor(s) and subcontractor(s) shall certify and disclose accordingly.

K. Borrower agrees to comply with the Federal Fair Housing Act and other Federal Rules, regulations and policies applicable to the performance of this Agreement. Further, Borrower agrees to assist in the City's compliance with the requirements of 24 CFR §92.202 Site and Neighborhood Standards.

L. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Borrower pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8.

M. Borrower hereby agrees that in all solicitations for employment applications, Borrower shall hold itself out as an equal opportunity employer. Furthermore, Borrower shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105, the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Chapter 60. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with

Davis-Bacon Act (40 U.S.C. §276a-276a-5) compensation requirements, if applicable, to Borrower, pursuant to 24 CFR §92.354. More specifically, Borrower agrees to comply with the following project requirements, as applicable:

1. Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds (for any eligible project costs under 24 CFR §92.206) must contain a provision requiring the payment of not less than the prevailing wages for El Paso County, as pre-determined by the Secretary of Labor pursuant to the Davis Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S. §327-332). If this subsection applies, Borrower shall stipulate in all construction contracts with its general contractor(s) engaged in furtherance of the execution of this Agreement that said general contractor(s) pay and cause its subcontractor(s) to pay not less than the prevailing wage rate for its workers and shall comply with all 24 CFR §92.354 requirements. Borrower's contractors and subcontractors shall submit required payroll certification documentation to the City for inspection, review and certification prior to making any disbursement for the construction work. Borrower is expressly prohibited from arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions herein.

2. It is agreed that the work to be performed under this Agreement is subject to employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135 and all applicable rules and orders of the Department issued thereunder. Section 3 requires that, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, opportunities for training and employment, contracting and other economic opportunities generated by the expenditure of this assistance be given to low and very low income persons and to business concerns that provide economic opportunities for these persons. The requirements of Section 3 apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000. Every Section 3 covered contract and subcontract must include the City's **Exhibit "K"** attached hereto, entitled "Section 3-Area Business and Workforce Agreement", incorporated by reference herein, and also comply with all terms and conditions of **Exhibit "L"**, attached hereto and incorporated by reference herein, entitled "Affirmative Action." When applicable, **Exhibits "K"** and **"L"** will be completed and submitted to the City prior to commencement of any construction.

N. Borrower shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records demonstrating compliance with the labor requirements of 24 CFR §92.354; records demonstrating compliance with the lead-based paint requirements of 24 CFR §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other

records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME funds.

Pursuant to 24 CFR §92.508, Borrower shall keep and maintain adequate records to demonstrate compliance with HOME requirements:

1. Borrower shall maintain project records to verify at a minimum: the source and application of HOME funds, including supporting documentation; the minimum per-unit subsidy amount and maximum per-unit subsidy amount for the project; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. Borrower shall maintain tenant records to verify at a minimum that: the project is satisfying the affordability and income targeting requirements for the required period; tenants are income eligible; the project is in compliance with tenant and participant protections of 24 CFR §92.253. Such documentation must be kept for each household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

3. For general rental housing projects, records must be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period, until five years after the HUD-mandated minimum affordability period terminates or after the City's extended affordability period terminates, whichever date is later.

Borrower further agrees to allow City to conduct periodic project monitoring and evaluation activities as determined necessary by City and HUD. Borrower agrees that it will make its premises and records available for such inspection and monitoring.

O. Borrower agrees to execute any and all notes, security agreements, financing statements, affordability covenants, builder's and mechanic's liens and deeds of trust (With Power of Sale) and any other documents or amendments that are consistent with this Agreement and are reasonably necessary for perfection of City's lien or lien interests in the form submitted by Counsel for the City. Borrower further agrees to cooperate with the City in re-signing any documents to correct errors or omissions, if any, in any form or legal document required by the City or HUD.

P. Borrower agrees use all best good faith efforts to close on the Loan(s) advanced herein within () consecutive calendar days from the date of approval by the City Council. Where justified, the anticipated closing date may be extended for a reasonable time period, as determined by the Director and at the Director's sole discretion.

Q. Upon reasonable request, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to employment. Borrower agrees that it will make its premises and records available for such inspection by City. Borrower

further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Borrower for the purpose of making an audit, examination, excerpts, and transcriptions.

R. Borrower is prohibited from assigning this Agreement in whole or in part in any manner without the written consent of the City. Borrower hereby understands and agrees that if the [newly constructed/rehabilitated] property, as described herein, is voluntarily or involuntarily sold or transferred in whole or in part within the HUD-mandated minimum affordability period or within the City's extended affordability period (if still in effect), as further described hereinabove the City shall declare the entire balance of outstanding principal advanced and all accrued interest on the Amortized Loan Note, **Exhibit "D"**, and the entire principal amount of the Forgivable Deferred Payment Loan Note, **Exhibit "C"**, immediately due and payable.

S. Borrower hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan(s).

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

U. TO THE EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY SUITS, ACTIONS, DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE AGREEMENT, OR THE ACTIVITIES CARRIED OUT HEREUNDER, WHETHER OR NOT BASED IN WHOLE OR IN PART ON THE CITY'S NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

V. No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Agreement during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Agreement. Borrower further agrees to comply with all provisions contained in 24 CFR §92.356 "Conflict of Interest". Unless expressly permitted by the City, no developer, officer, employee, agent or consultant of the Borrower, may occupy a HOME-assisted affordable housing unit in the project.

W. Borrower certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Borrower shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the nonprocurement debarment and suspension standard. Borrower will verify and document that none of its contractors are debarred, suspended or otherwise excluded from participation through the effective use of the List of Parties Excluded from Federal Procurement or Nonprocurement programs ("List"). Borrower may request assistance from the City to access the List and document results.

X. Borrower and City agree that the anticipated construction will involve () HOME-assisted units. No HOME-assisted units constructed under this Agreement will be exempt from the requirements and conditions noted herein. City agrees that notwithstanding anything in this Agreement to the contrary, including without limitation, the covenants of this Section IV., Borrower shall be entitled to operate () units (the "Exempt Units") without regard to the covenants herein. Without limitation on the foregoing, City agrees that the Exempt Units shall be exempt from all of the above referenced rental and other restrictions. [This subsection is subject to deletion if all units will be HOME-assisted units]

Y. If applicable, Borrower must meet conditions and limitations for use of HOME funds involving faith-based activities, as specified in 24 CFR §92.257.

If Borrower breaches any term or condition of this Section entitled "Covenants", the entire principal amount of the Forgivable Deferred Payment Loan Note as evidenced by **Exhibit "C"**, and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan, as evidenced by **Exhibit "D"**, may immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement, entitled "Events of Default."

V. EVENTS OF DEFAULT

A. City has the right to accelerate the payment of the loans, as evidenced by **Exhibits "C"** and **"D"**, respectively, upon breach of this Agreement by Borrower, and City further has the right to declare that the entire principal amount of the Forgivable Deferred Payment Loan, and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan are immediately due and payable by Borrower to City at the time of the contract breach. City's right to accelerate the loans shall apply to all events as specifically designated in Sections III. and IV. of this Agreement, and to the following events, but shall not be limited to these events:

(1) material errors in the representations and warranties given to City by Borrower;

(2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Agreement;

(3) any new or unstayed judgment or unsatisfied lien against Borrower in an amount which, in the City's judgment, may impair its security or perfection of its security status regarding the collateral subject to this Agreement;

(4) failure to pay principal on time;

(5) Borrower's timely payment of principal, interest or any other amount due by check or automatic check withdrawal for which insufficient funds exist;

(6) Borrower's failure to comply with the timelines required for completion of the construction of the units, specified in **Exhibit "A"** and in **Exhibit "H"**; or

(7) Borrower's failure to comply with the Declaration Concerning Covenants and Restrictions Running with the Land, the HUD-mandated minimum affordability period, and the City's extended affordability period, so long as such affordability periods are in effect.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Borrower's breach. It is hereby understood and agreed that in the event City agrees to a settlement of any breach of contract by Borrower, this shall not preclude the City from exercising its rights for any further or additional breaches of this Agreement. This shall also apply to any instances in which the City allows a period of time to pass so that Borrower has an opportunity to remedy any breach of this Agreement.

VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled "Covenants", any other term or condition of this Agreement, or any other term or condition of any document incorporated by reference herein, such that City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Agreement. Borrower will bear sole liability for all obligations in any way related to the [acquisition/rehabilitation/and construction] of the Property described herein and City shall be entitled to all rights and remedies reserved herein.

VIII. NOTICES

Any communications or notices regarding this Agreement shall be effective only if sent postage prepaid, certified mail, return receipt requested to the following addresses, unless either party notifies the other in writing of a change of address:

CITY: City of El Paso
Attn: Director, Dept. of Community and Human Development
2 Civic Center Plaza
El Paso, TX 79901-1196

BORROWER:

Attn:

El Paso, Texas

IX. DURATION OF AGREEMENT

This agreement shall be effective on the date first above written and shall remain in effect for the HUD-mandated minimum affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following project completion and for the entire City's extended affordability period until terminated, and for five years thereafter or until full repayment of the Loan Notes under the terms of the particular notes, whichever date is later.

X. COLLATERAL DOCUMENTS

The following Exhibits "A" - "L", Addendum A, and Addendum B are attached and incorporated by reference for all purposes.

Exhibit "A": Community Development Construction Contract [Subject to deletion]

Exhibit "B": Builder's and Mechanic's Lien Contract/Deed of Trust (With Power of Sale)/Deed of Trust (with Power of Sale)

Exhibit "C": Forgivable Deferred Payment Loan Note

Exhibit "D": Amortized Loan Note

Exhibit "E": Project Budget

Exhibit "F": Declaration Concerning Covenants and Restrictions Running with the Land

Exhibit "G": Purchase Option and Right of First Refusal Agreement [Subject to deletion]

Exhibit "H": Project Schedule

Exhibit "I": HOME rent limitations

Exhibit "J": Mandatory Lease Addendum

Exhibit "K": Section 3- Area Business and Workforce Agreement

Exhibit "L": Affirmative Action Plan

Addendum A: Certifications - Including Grant Certifications

Addendum B: HOME Program Rents and Tenant Eligibility

[NOTE: Double-check all Exhibit references in the document for re-lettering if any Exhibit is deleted]

XI. ENTIRE AGREEMENT

This Agreement embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties. This Agreement may only be amended by written instrument signed by duly authorized representatives of the parties. If any term, covenant or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms, covenants and provisions shall not be

<NAME>

<Property Address>

affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, covenant, or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO

Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Marie A. Taylor
Assistant City Attorney

William L. Lilly, Director
Community and Human Development

(Signatures Continue on Following Page)

BORROWER(S):

By: _____
,

(The foregoing representative(s) of Borrower expressly represents that the Borrower has lawfully authorized execution of this Agreement).

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by JOYCE A. WILSON as City Manager of **THE CITY OF EL PASO**, on behalf of said municipal corporation.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

(Acknowledgment)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ as _____ of _____, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

GRANTEE:

By: _____
Title: _____

(Taken from) §130.15 Equal Opportunity clause.

(a) Government contracts. Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

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

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

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(sic)

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

(e) Incorporation by operation of the order and departmental regulations. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

ADDENDUM B

HOME PROGRAM RENTS & TENANT ELIGIBILITY

I. HOME Rent Limitations and the Affordability Period

A. One to Four HOME-Assisted Unit(s) Rental Housing Project

For Projects with 1 to 4 HOME-assisted units, all the HOME-assisted units must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI). 24 CFR §92.252(a).

The HOME-assisted units must meet the HUD minimum affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum Period of Affordability in Years
Rehab/Acquisition:	
<\$15,000 per unit	5
\$15,000 to \$40,000 per unit	10
>\$40,000 per unit	15
New Construction, any amount	20

24 CFR §92.252(e).

B. Five or More HOME-Assisted Units- 80% Amortized Loan/20% Forgivable Deferred Payment Loan combination:

For Projects with 5 or more HOME-assisted units for which the Applicant has received a loan combination of 80% amortized loan and 20% forgivable loan, 20% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 80% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI). 24 CFR §92.252(b).

The HOME-assisted units must meet the HUD minimum affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum Period of Affordability in Years
Rehab/Acquisition:	
<\$15,000 per unit	5
\$15,000 to \$40,000 per unit	10
>\$40,000 per unit	15
New Construction, any amount	20

24 CFR §92.252(e).

C. Five or More HOME-Assisted Units- 70% Amortized Loan/30% Forgivable Deferred Payment Loan combination:

For Projects with 5 or more HOME-assisted units for which the Applicant has received a loan combination of 70% amortized loan and 30% forgivable loan, 30% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 70% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI).

The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum period of affordability in years	Additional years of affordability required by City (extended affordability)	Total Affordability Period*
Rehab/Acquisition:			
<\$15,000 per unit	5	15	20
\$15,000 to \$40,000 per unit	10	10	20
>\$40,000 per unit	15	5	20
New Construction, any amount	20	0	20

24 CFR §92.252(e); City of El Paso Rental Housing Program, Chapter Five

*If the amortized loan is paid off early and the full balance of the forgivable loan is paid, the City's extended affordability will be extinguished. However, the HUD minimum affordability period remains in effect until met.

D. Five or More HOME-Assisted Units- 60% Amortized Loan/40% Forgivable Deferred Payment Loan combination:

For Projects with 5 or more HOME-assisted units for which the Applicant has received a loan combination of 60% amortized loan and 40% forgivable loan, 40% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 60% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI).

The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum period of affordability in years	Additional years of affordability required by City (extended affordability)	Total Affordability Period*
Rehab/Acquisition:			
<\$15,000 per unit	5	20	25
\$15,000 to \$40,000 per unit	10	15	25
>\$40,000 per unit	15	10	25
New Construction, any amount	20	5	25

24 CFR §92.252(e); City of El Paso Rental Housing Program, Chapter Five.

*If the amortized loan is paid off early and the full balance of the forgivable loan is paid, the City's extended affordability will be extinguished. However, the HUD minimum affordability period remains in effect until met.

E. Five or More HOME-Assisted Units- 50% Amortized Loan/50% Forgivable Deferred Payment Loan combination:

For Projects with 5 or more HOME-assisted units for which the Applicant has received a loan combination of 50% amortized loan and 50% forgivable loan, 50% of the HOME-assisted units must be offered at rents at the "Low" HOME rent to Very Low Income households, as defined by HUD ($\leq 50\%$ AMI). The remaining 50% must be offered at rents the lesser of: (1) "Fair Market" or (2) "High" HOME rent level, to low income households, as defined by HUD ($\leq 60\%$ AMI).

The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion:

Rental Housing Activity	HUD Minimum period of affordability in years	Additional years of affordability required by City (extended affordability)	Total Affordability Period*
Rehab/Acquisition:			
<\$15,000 per unit	5	25	30
\$15,000 to \$40,000 per unit	10	20	30
>\$40,000 per unit	15	15	30
New Construction, any amount	20	10	30

24 CFR §92.252(e); City of El Paso Rental Housing Program, Chapter Five.

*If the amortized loan is paid off early and the full balance of the forgivable loan is paid, the City's extended affordability will be extinguished. However, the HUD minimum affordability period remains in effect until met.

II. Initial Rent Schedule and Subsequent Rental Increases During the Affordability Period

A. Initial Rent Schedule (24 CFR §92.252(c))

The City must review and approve rents proposed by the owner for the HOME-assisted units (the maximum rent limitations). For all units subject to the maximum rent limitations for which the tenant is paying utilities and services, the City must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services (excluding telephone). The initial rent schedule for the Project shall be as contained in the parties' HOME Program Written Agreement for the Project and any amendments thereto.

The HOME rent limits provided by HUD include average occupancy per unit and adjusted income assumptions. 24 CFR §92.252(b)(1).

B. Subsequent Rent Increases During the Affordability Period (24 CFR §92.252(f))

The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. The City will provide the Borrower with information on updated HOME rent limits on an annual basis or whenever HUD revises the limits, so that rents may be adjusted (not to exceed the updated maximum HOME rent limits). Annually and upon request, the City will review any Borrower's request to adjust project rents. The City must review and approve all increases in rents. It is the Borrower's responsibility to request an annual increase in rent in accordance with the following procedures and requirements:

(1) Recalculation: The Borrower shall recalculate and submit to the City for review such recalculations and the monthly rent to be charged for each unit, twelve (12) months from the date of the first rental by the Borrower, and once annually thereafter for the entire affordability period in effect for the project. Said calculations are to be sent to the attention of and for the approval of the Housing Programs Division of the City's Community and Human Development Department ninety (90) days prior to the date the Borrower expects to have the rent increase to take effect. The recalculation shall be based upon the most recent HUD determination of federal HOME Program Rents for the City of El Paso.

(2) Approval Process: The City will review the Borrower's calculations and determine whether the calculations are correct, and the Borrower shall be so notified. In the event that the Borrower is notified of the City's disapproval, the adjusted rent schedule may not be used for the Project's HOME-assisted units. The Borrower shall promptly meet with the City to resolve the monthly rent to be charged for each HOME-assisted unit in the Project.

All rents increases are subject to the provisions of outstanding leases and no unit's rent in the Project may be increased until one year has passed since the last increase for that unit. The Borrower must provide each tenant not less than 30 days prior written notice before implementing any increase in rents.

The Borrower must annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance.

II. HOME Program Tenant Income Limitations/Tenant Eligibility

A. Maximum Tenant Income (24 CFR §§92.203, 92.252(h))

There are income targeting requirements for the HOME Program and for all HOME-assisted Projects. Tenant income limits for Very Low and Low-Income households are determined in accordance with the HUD HOME Rental Housing Income Guidelines, which are periodically adjusted by HUD.

The household income of each tenant must be determined initially and in addition, each year during the affordability period for the Project, the Borrower must re-examine each tenant's annual household income. The Borrower acknowledges receipt of the City's "Income and Asset Verification Guidelines" (effective May 15, 2007) and agrees to abide by the income and asset verification procedures contained therein and incorporated by reference, in addition to the following income examination and verification requirements:

(1) In order to determine whether a prospective tenant or a tenant is a Very Low and Low-Income Household, the Borrower shall ascertain the annual gross income of all members of the household. Annual income is the anticipated total gross income from all sources to be received by each of the household members, including all income derived from assets. The Borrower will acquire all required income documentation and will submit the same to the City's Housing Programs Division for review and approval prior to occupancy. The Borrower is required to verify income annually after initial occupancy to determine income eligibility prior to lease renewal. The Borrower shall consult with the City's Housing Programs Division to obtain advice and guidance with respect to income determinations.

(2) The Borrower must verify all income, assets, household characteristics, and circumstances that affect tenant income/asset eligibility in accordance with 24 CFR Part 5 and the City's Income and Asset Verification Guidelines, as may be amended from time to time. Written verification directly from the source must be obtained when possible. The Borrower must maintain documentation of all verification efforts for at least three (3) years from the effective date of determination.

(3) In verifying income, the Borrower shall to the extent feasible:

(a) Maintain tenant files to include the unit lease with income and assets verification documentation.

(b) Maintain required Part 5 income/assets worksheets and cover sheet in each tenant file with required income/asset documentation to include: (1) as appropriate, an explanation of the information being requested; (2) contain the tenant's authorization to release information; and (3) Record of Oral Verification of specific information required.

(c) 24 CFR Part 5 Verification Forms

(1) Third party verification forms will be provided for income documentation and must be signed by the appropriate household member to authorize Borrower to solicit income/asset information.

(2) The Borrower will include a self-addressed, stamped envelope with mailed requests for verification.

- (3) The Borrower may make personal contacts with employers and public agencies if authorization to do so has been provided by the applicant/tenant by execution of an appropriate verification form.
- (d) Give the household an opportunity to explain any significant differences between the amounts they reported on their application and amounts reported on third-party verifications.

(4) The Borrower shall reexamine the income of each tenant household living in the units at least once a year for lease renewal and the City shall monitor the Borrower's verification to determine whether eligible households are occupying the units.

(5) In the event a tenant is determined over-income (by HUD's standards), the Borrower shall notify the tenant that Borrower must recalculate the tenant's monthly rent to be charged for the unit when tenant's current lease expires. If the tenant who is determined over-income (by HUD's standards) elects not to renew the tenant lease, the tenant shall be replaced by Borrower with a new tenant meeting the income eligibility requirements specified herein. During any period of time in which the Borrower is not in compliance with the income or rent guidelines for any unit(s), the Borrower shall either (1) repay the subsidy provided by the City under the parties' HOME Program Written Agreement for the unit not in compliance; or (2) extend the affordability period of the unit(s) for the length of time they are not in compliance.

(6) Temporary non-compliance with the project income targeting requirements is permissible when the non-compliance is caused by an increase in a tenant's income. The Borrower must adjust the tenant's rent according to 24 CFR Part 5 and must rent the next available comparable unit in a manner that complies with the required Floating Unit ratio of "High" Home rental units and "Low" Home rental units for the Project. If the tenant's income is over 80% AMI the rent will be 30% of the tenant's income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. §42) must pay rent governed by Section 42.

BORROWER: _____

Date: _____

By: _____

Date: _____

By: _____

(Acknowledgment)

STATE OF TEXAS)
)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, on behalf of said entity.

Notary's commission expires:

Notary Public, State of Texas
Notary's Name (Printed):

(Acknowledgment)

STATE OF TEXAS)

)

COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____, as _____ of _____, on behalf of said entity.

Notary's commission expires:

Notary Public, State of Texas
Notary's Name (Printed):
