

AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2018, by and between the City of Lawrence, Kansas, a municipal corporation, and Tenants to Homeowners, Inc, a Kansas not for profit corporation.

RECITALS

- A.** In 2015, the City of Lawrence, Kansas ("City"), a municipal corporation, established the Affordable Housing Advisory Board to make recommendations to the Governing Body regarding the Affordable Housing Trust Fund.
- B.** At its January 16, 2018, public meeting, the Governing Body authorized \$30,000 to be utilized as a match by Tenants to Homeowners, Inc. (Grantee) to leverage a pending HOME Investment Partnerships Program grant award for a three-home rental development to serve very low-income tenants transitioning out of homelessness ("the Project").
- D.** The HOME Investment Partnerships Program grant was subsequently awarded and an agreement between Tenants to Homeowners, Inc. and the HOME Investment Partnerships Program was executed on August 15, 2018 (Exhibit A).
- E.** This Agreement memorializes the terms of the Agreement and grants to Grantee the sum of \$30,000.00 from the City's Affordable Housing Trust Fund for use in the Project, subject to Grantee's execution of this Agreement and compliance with its terms.

TERMS

NOW, THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

SECTION 1. Grant of Funds. In consideration of its construction of the Project, and for other good and valuable consideration, the City hereby grants to Grantee the sum of **THIRTY THOUSAND AND NO DOLLARS** (\$30,000.00). The Project is a three-unit rental development located in Lawrence, Kansas at 1346-1350 Maple Lane. The project consists of three single family residential structures, each containing one unit. The overall unit breakdown includes one 2-bedroom unit and two 3-bedroom units. All units shall be initially rented to households at or below 60% of Area Median Income (AMI). After initial occupancy, all units may be rented to households up to 80% of AMI.

SECTION 2. Grantee's Covenants. As consideration for the receipt of the grant of funds, Grantee agrees and covenants that it will:

- (a) Comply with all applicable federal, state, and local laws.
- (b) Expend the funds in accordance with the recommendation of the Affordable Housing Advisory Board, as approved by the Governing Body, which provides that said funds shall be used solely to fund or help fund the construction of the Project.
- (c) Grantee shall be responsible for operating the Project, once completed, and agrees that the Project will serve the community's low-income population, initially rented to households at or below 60% of AMI. After initial occupancy, all units may be rented to households up to 80% of AMI.
- (d) Grantee will maintain records that the Project is serving those persons with low income as previously described and agrees to make those records available for review by the City upon the City's written request.
- (e) Grantee will maintain the Project as described and will not change its use or transfer ownership of the Project to another entity without the prior written consent of the City.
- (f) Grantee shall maintain the twenty (20)-year HOME Affordability Period as required by the HOME Investment Partnerships Program agreement in Exhibit A.
- (g) Comply with the terms of the grant agreement between Tenants to Homeowners, Inc. and the HOME Investment Partnership Program executed on August 15, 2018 and incorporated herein as Exhibit A.

SECTION 3. Disbursement of Funds.

- (a) The Grantee has provided the City with the executed copy of its HOME Investment Partnerships Program Grant Agreement, set forth in Exhibit A of this agreement. Such agreement provides for \$500,000 in HOME funds to Tenants to Homeowners, Inc. for the Project.
- (b) This executed agreement shall suffice as sufficient evidence of leveraged funding for the Project.
- (c) Upon execution of the agreement by the parties, the City shall release its grant funds for the Project.

SECTION 4. Reporting Requirements. The Grantee shall deliver a final report to the City's Governing Body at the completion of the Project, which shall include photographs

SECTION 4. Reporting Requirements. The Grantee shall deliver a final report to the City's Governing Body at the completion of the Project, which shall include photographs of the Project, shall describe in detail what was accomplished with the outlay of City funds, including the number of dwelling units created, and shall include an accounting of all funding for the Project that makes it easy to discern what was accomplished and leveraged with the City's grant. In accordance with Section 2(d), *supra*, Grantee will retain records establishing that it is complying with its covenants herein and will, upon the written request of the City, make those available for the City's review.

SECTION 5. Term. This Agreement will terminate upon Grantee's delivery of the final report or upon the joint agreement of the parties, whichever occurs earlier. The requirement that the Grantee to retain records regarding service to those persons with very low income (Section 1), maintenance of the HOME Affordability Period (Section 1), compliance with HOME Investment Partnership grant agreement (Section 1), the indemnity provisions (Section 8), and the claw-back provisions (Section 10) of this Agreement shall survive its expiration or termination.

SECTION 6. Compliance with Equal Opportunity Laws, Regulations, and Rules

- (a) Grantee agrees that it shall comply with all provisions of the Kansas Acts Against Discrimination of 1953 ("KAAD"), codified as amended at K.S.A. 44-1001 *et seq.*, and the Kansas Age Discrimination in Employment Act of 1983 ("KADEA"), codified as amended at K.S.A. 44-1111 *et seq.* and shall not discriminate against any person, in the course of performing under this Agreement, because of that person's race, religion, sex, disability, national origin, ancestry, sexual orientation, familial status, or age.
- (b) In all solicitations or advertisements for employees, Grantee shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("KHRC").
- (c) In any subcontract, grantee agrees to include the language of this Section applicable to any subcontractor hereunder.
- (d) Grantee also agrees to comply with the American with Disabilities Act of 1990 ("ADA"), codified as amended at 42 U.S.C. § 12101 *et seq.*, as well as all other federal, state, and local laws, ordinances, rules, and regulations applicable to this project and to furnish any and all certification that may be required by federal, state, or local governmental agencies in connection therewith.

- (e) If Grantee is found guilty or liable for any violation of the KAAD or the KADEA by way of a final decision or order of the KHRC, then Grantee shall be deemed to have breached the present Agreement and the City may take whatever legal action may be necessary.

SECTION 7. Insurance.

- (a) **General.** Grantee shall secure and maintain, throughout the duration of this Agreement, Insurance (on an occurrence basis) of such types and in at least such amounts as required herein.
- (b) **Insurance Required.** Grantee agrees to secure and maintain the following insurance:

- (i) **General Liability:**

- General Aggregate: \$1,000,000.00
 - Each Occurrence: \$1,000,000.00

- Additionally, the policy must include the following:

- (A) Broad Form Contractual/Contractually Assumed Liability;
 - (B) Independent Contractors
 - (C) Name the City of Lawrence, Kansas, as an additional insured.

- (ii) **Automobile Liability:**

- The Policy shall protect Grantee against claims for bodily injury and/or property damage arising out of the ownership or use of all owned, hired, or non-owned vehicles and must include protection for either (A) any automobile or (B) all owned automobiles and all hired and non-owned automobiles. (C) The Policy must also name the City of Lawrence, Kansas, as an additional insured.

- Limits:**

- Each Accident, Combined Single Limits
 - Bodily Injury and Property Damage: \$1,000,000.00

- (iii) **Workers' Compensation:**

- Bodily Injury by Accident: \$100,000.00 each accident
 - Injury by Disease: \$500,000.00
 - Bodily Injury by Disease: \$100,000.00 each employee.

SECTION 8. Indemnification. Grantee agrees to defend, indemnify, and otherwise hold harmless the City, its commissioners, officers, employees, and agents from any and all claims, actions, damages, costs, liabilities, settlements, judgments, expenses, or lawsuits, including attorneys' fees, but only to the extent that such are caused by Grantee's breach of this Agreement or by Grantee's negligence or intentional conduct in performing the Project.

SECTION 9. Entire Agreement.

- (a) This Agreement represents the entire and integrated agreement between the City and Grantee and supersedes all prior negotiations, representations, or agreements between the parties, whether written or oral. This Agreement may be amended only by a written instrument signed by both the City and the Grantee.
- (b) No oral orders, objections, claims, or notices by any party to the other shall affect or modify any of the terms or obligations set forth in this Agreement; and none of its provisions shall be deemed waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver, modification, or amendment made in writing and signed by both parties.

SECTION 10. Claw-back Provision. Notwithstanding any provision herein to the contrary, in the event that, within two years of this contract, Grantee has not commenced construction of the Project, or that, within five years after the date of this Agreement, the City discovers that Grantee has violated any terms of this Agreement or that the Project is no longer being used in accordance herewith, then the City shall have the right to claw back, and Grantee shall be obligated to return, the amount granted herein.

SECTION 11. Assignment. This Agreement is non-assignable by the Grantee or by the City.

SECTION 12. Authorizations. Each person executing this Agreement in behalf of the City and Grantee hereby represents and warrants that he or she has the authority to bind his or her respective party hereto and that all acts requisite to confer authorization to enter into this Agreement have been taken and completed.

SECTION 13. Independent Contractor. In no event, while performing under this Agreement, shall Grantee, its officers or principal, its employees, its agents, its subcontractors, or its vendors be deemed to be acting as an employee or as employees of the City; rather, Grantee, its officers or principal, its employees, its agents, its subcontractors, and its vendors shall be deemed to be an independent contractor or independent contractors. Nothing expressed herein or implied herein shall be construed as creating between Grantee and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.

SECTION 14. Captions. The Captions of this Agreement are for convenience only and are not meant by the parties to define, limit, or enlarge the scope of this Agreement or its terms.

SECTION 15. Recitals. The recitals set forth at the beginning of this Agreement are adopted and incorporated herein by reference as if set forth in full and shall be effective as if repeated *verbatim*.

SECTION 16. Governing Law. This Agreement, the rights and obligations of the parties, and any claim or dispute arising hereunder shall be construed in accordance with the laws of the State of Kansas.

SECTION 17. Severability. In the event that any provision of this Agreement shall be held invalid and unenforceable, the remaining portions of this contract shall remain valid and binding upon the parties.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the date noted above.

CITY:
**City of Lawrence, Kansas, a
municipal corporation**

THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) SS:

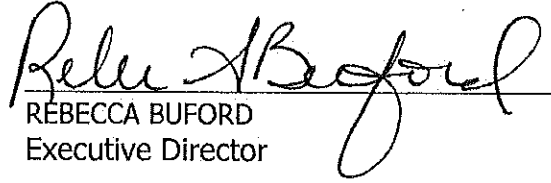
BE IT REMEMBERED, that on this ____ day of _____, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My Appointment Expires:

GRANTEE:
Tenants to Homeowners, Inc., a
Kansas not for profit corporation

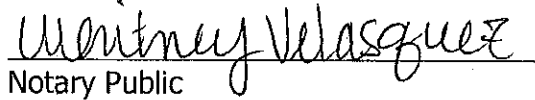

REBECCA BUFORD
Executive Director

ACKNOWLEDGMENT

THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this 28th day of November, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Rebecca Buford as Executive Director of Tenants to Homeowners, Inc., a Kansas not for profit corporation, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.


Notary Public

My Appointment Expires: 8/1/21

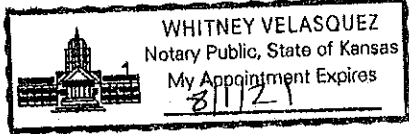


Exhibit A

HOME WRITTEN AGREEMENT
HOME Loan No. CH-17/18-20
HOME Investment Partnerships Program
CFDA No. 14.239
DUNS: 829600469

This HOME Written Agreement (the "Agreement") is made and entered into this ^{15th} day of August, 2018, by and between the KANSAS HOUSING RESOURCE CORPORATION, a body corporate and politic of the State of Kansas, 611 S. Kansas Avenue, Suite 300, Topeka, Kansas 66603 (the "Corporation"), and Tenants to Homeowners, Inc., a Kansas not-for-profit organization having its principal office at 2518 Ridge Court, Lawrence, Kansas (the "Owner").

WHEREAS, the Corporation is the administrator of HOME Investment Partnerships Program funds ("HOME Funds") received from the U.S. Department of Housing and Urban Development ("HUD") under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (the "Act"); and

WHEREAS, the purpose of the HOME Investment Partnerships Program (the "HOME Program") is to increase the supply of decent, safe, sanitary, and affordable housing for very low-income and low-income households; and

WHEREAS, the Corporation, acting pursuant to the Act, heretofore adopted a Consolidated Plan and a HOME Allocation Plan to carry out housing activities eligible under the HOME Program; and

WHEREAS, Owner submitted an application to the Corporation for the new construction of a three (3) unit housing project in Lawrence, Douglas County, Kansas, to be known as Maple Family Homes (the "Project"), in furtherance of the goals of the Corporation's Consolidated Plan and HOME Allocation Plan; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, the Corporation and the Owner do agree, for themselves and for their respective successors and assigns, as follows:

SECTION 1. The Project

1.1 Project Description

The Project is a three (3)-unit rental development located in Lawrence, Kansas, at 1346-1350 Maple Lane, and more particularly described in Exhibit A (the "Property"). The Project consists of three single family residential structures, each containing one unit. The overall unit breakdown includes one 2-bedroom unit and two 3-bedroom units. All units will be initially rented to households at or below 60% of AMI. After initial occupancy, all units may be rented to household up to 80% of AMI.

In addition to the Corporation HOME funds, permanent financing for the Project also comes from a grant in the amount of \$30,000 from the Lawrence Housing Trust Fund, an owner contribution of \$35,000, and in-kind sources totaling \$35,000. Construction financing will be from Corporation HOME funds.

A summary of the Project, including unit breakdowns and unit and on-site amenities is attached as **Exhibit B**.

1.2 Term

The term of this Agreement shall begin on the date represented by the date of the last signature of either party executing the Agreement and shall expire upon completion of the HOME Affordability Period, as such term is defined below.

NOTICE: Owner's failure to properly execute this Agreement within 30 days of the signature of the Corporation's authorized signatory will result in the revocation and cancellation of this Agreement.

The HOME Affordability Period and the Covenant Running with the Land, as outlined in Section 2.1.4 below, shall continue irrespective of any pre-payment of the HOME Loan. Failure of the Project to meet all applicable HOME requirements for the entire HOME Affordability Period will result in a requirement that all HOME funds be repaid.

- 1.2.1 **HOME Affordability Period:** As a new construction project, the HOME Affordability Period during which Owner must maintain compliance with all applicable HOME rules shall begin with initial occupancy of the project and shall run for **twenty (20) years** following the date on which the Project has met the requirements for Project Completion outlined in 24 CFR 92.2, which will require that construction be complete, all HOME funds have been disbursed by the Corporation and drawn from the US Treasury, and required completion data has been entered in HUD's IDIS system.
- 1.2.2 **Establishment of Project Completion and Affordability Period:** Upon entering all required information in HUD's IDIS system, the Corporation will notify Owner of the actual date of Project Completion and the exact date of the expiration of the HOME Affordability Period, which shall be calculated based on the date of Project Completion. If necessary, Owner shall execute an amendment to this Agreement and/or the Covenant Running with the Land identifying the exact date of expiration of the HOME Affordability Period.

1.3 Tasks and Schedule

To ensure that the Project progresses adequately toward completion, Owner must achieve the following benchmarks.

- 1.3.1 **Final Plans and Specifications:** No later than November 30, 2018 and prior to initiating construction activity, Owner must provide final plans and specification demonstrating that all applicable property standards will be met (see Section 4 below) for Corporation approval.
- 1.3.2 **Construction:** Per the requirements of 24 CFR 92.2, Owner must begin construction no later than twelve (12) months from the date of execution of this Agreement. However, unless otherwise extended by the Corporation, Owner must begin construction on the Project no later than **December 1, 2018**, and substantially complete construction within **twelve (12) months** of that date.

- 1.3.3 **Cost Certification:** Within ninety (90) days of completing construction, Owner must provide a cost certification outlining the final sources and uses of all funds as required by Section 2.2.4 below.
- 1.3.4 **Completion Report:** Prior to final disbursement of funds, Owner shall provide the Corporation with a HOME Rental Completion Report and requested documents for closeout, including demographic data on the initial occupants of all HOME-assisted units to be recorded in HUD's IDIS system. Unless extended in writing by the Corporation, if the Project is not completed in HUD's IDIS system within **twenty-four (24) months** of the date of execution of this Agreement, the Corporation may cancel its commitment of funding, and the Owner shall repay any HOME funds previously advanced for the Project. In any case, if the Project is not completed in HUD's IDIS system within four years of the date of this Agreement, the Project will be considered terminated prior to completion and, per the requirements of 24 CFR 92.205(e), all HOME funds must be repaid by the Owner.
- 1.3.5 **Absolute Lease-Up Deadline:** Notwithstanding the requirements above, all HOME units must be initially occupied within **eighteen (18) months** of Project Completion, as described at 24 CFR 92.252 and as defined in Section 1.2.2 herein. Any HOME unit that is not initially occupied within eighteen (18) months will be deemed ineligible pursuant to 24 CFR 92.252, and the Owner will repay any HOME funds attributable to those units based upon a revised cost allocation analysis completed by the Corporation.

1.4 Project Budget

- 1.4.1 **HOME Investment:** Conditioned upon the availability of HOME Program funds and Owner's compliance with the conditions set out herein, the Corporation intends to provide up to **\$500,000** in HOME funds to Owner toward eligible project costs. In no case will the Corporation's funding of the Project be less than \$1,000 per HOME-assisted unit or more than the maximum per-unit subsidy allowed under 24 CFR 92.250(a). The maximum subsidy for 2-bedroom units is currently **\$196,694**, and the maximum subsidy for 3-bedroom units is **\$254,362**.
- 1.4.2 **Reserved**
- 1.4.3 **Project Budget:** Attached as **Exhibit C** is the project budget (the "**Project Budget**"). Owner agrees to promptly notify the Corporation of any changes to the Project Budget, including but not limited to increases in Project costs, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of revenue or operating expenses. The Corporation must approve changes to the Project Budget and reserves the right to reduce its HOME commitment, modify the number of HOME-assisted units in the Project, or require Owner to contribute additional funds needed to complete the Project if the changes to the Project Budget are material and result in either the over-subsidization or under-funding of the Project based on the Corporation's underwriting analysis.

SECTION 2. Form of Financing and Disbursements

2.1 Form and Terms of Assistance

- 2.1.1 **HOME Loan:** The Corporation will provide HOME funding as a construction and permanent loan to the Project. The term of the HOME Loan will commence at execution of the Mortgage and Note and continue for **twenty (20)** years after the date of Project Completion.

The HOME Loan will carry **3% interest** (provided there is no default). An amount equal to **\$500,000**, or the exact amount advanced to or for the account of the Owner will be deferred during the HOME affordability period, provided the project remains in compliance with the requirements of this Agreement and the HOME Final Rule at 24 CFR Part 92 for the duration of that period.

- 2.1.2 **Security:** During construction, the HOME Loan must be secured by a promissory note, a mortgage on the Property, and appropriate UCC financing statements. Should construction or permanent financing be required from a private lender, the Corporation HOME mortgage may be subordinated to the financial interests of such lender. After construction is complete, the mortgage securing the HOME Loan may be in lien position.

Together, this Agreement, the Mortgage, the Note, the UCC financing statements, the Assignment of Leases and Rents, the Completion Guaranty, the Performance and Repayment Guaranty, the Replacement Reserve Guaranty, and a Declaration of Restrictive Covenants shall constitute the Loan Documents.

- 2.1.3 **Title Insurance:** Prior to the making of any advance under the HOME Loan by the Corporation, Owner shall provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of Kansas and acceptable to the Corporation. The name of the insured shall be Kansas Housing Resource Corporation. The policy shall show fee simple title to the Property in Owner, subject only to such exceptions as the Corporation may approve, be in the full amount of the Corporation's loan, contain a comprehensive coverage endorsement and such other endorsements as the Corporation may require and shall insure that the mortgage constitutes a valid second-position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to the Corporation.
- 2.1.4 **Covenant Running with the Land:** Owner must record a covenant running with the land, in form satisfactory to the Corporation, that provides a means for enforcement of the affordability restrictions of 24 CFR 92.252. The Corporation's covenant running with the land must be senior to all other financing liens, including the Corporation's mortgage referenced above, and enforceable against all successors in interest to Owner.
- 2.1.5 **Guarantees:** Owner shall provide a completion guarantee, a performance and repayment guarantee, and a replacement reserve guarantee. These are in addition to any standard environmental or general indemnifications that may be required by the Loan Documents.

Guarantees shall include, at a minimum, the following terms:

- a) **Completion Guarantee:** A guarantee of completion, ensuring that Owner will construct, equip, and complete the Project free and clear of liens substantially in accordance with the plans and specifications by the date called for in Section 1.3.2. Failure to complete the Project under these terms will result in Owner's and Guarantors' obligation to (i) pay all costs and expenses incurred in completing any unfulfilled obligations and (ii) pay to or reimburse the Corporation for all expenses incurred by the Corporation with respect to its carrying out any of Owner's unfulfilled obligations. This guarantee will expire upon the Corporation's final inspection and approval of the Project's construction.
- b) **Performance and Repayment Guarantee:** An ongoing guarantee of performance, ensuring that the Project will be operated in compliance with all applicable federal, state, and local laws or ordinances or regulations, including but not limited to HOME regulations and fair housing laws. During the HOME Affordability Period, failure to maintain the Project in compliance with all applicable laws, or the inability to correct instances of noncompliance, will result in a requirement that the Owner and Guarantors satisfy any repayment obligation to HUD incurred by the Corporation under 24 CFR 92.503(b) or 24 CFR 92.551.
- c) **Replacement Reserve Guarantee:** A guarantee of annual deposits to a Replacement Reserve for the Project in an amount consistent with this Agreement and the Loan Documents.

2.1.6 **Loan Closing:** Owner shall be responsible for all closing costs in connection with the loan contemplated herein including, but not limited to, title insurance, surveys, financing fees, recording fees, and attorney fees.

2.1.7 **Ownership Entity:** The Corporation's willingness to make the HOME Loan as anticipated herein is contingent upon and made with specific reliance on the evaluation of the specific individuals and entities making up the Owner.

Owner agrees that no sale or transfer of controlling interest in the Project will be made without the prior written consent of the Corporation.

2.1.8 **Property Management:** The Corporation's willingness to make the HOME Loan as anticipated herein is also contingent upon and made with specific reliance on the evaluation of the planned property manager for the Project. Initially, and throughout the term of this Agreement, the Corporation must approve of any property management company, or another similar agent, employed by the Owner. The Corporation's approval of a specific property management company or agent may be withdrawn at any time, and upon notice of same the Owner will identify and contract with a property manager otherwise acceptable to the Corporation.

Initially, the Corporation has approved **Tenants to Homeowners, Inc.** as the property manager for the Project.

2.2 Disbursement

The Corporation's HOME Loan is intended as construction and permanent financing. Owner may request disbursements as needed from the Corporation during the construction period in accordance with the terms set forth in this section.

Except for costs for design, engineering, or other professional services required to prepare plans, drawings, specifications, or work write-ups incurred not more than 24 months prior to the execution of this Agreement, HOME funds may not be disbursed for costs that were incurred prior to the execution of this Agreement. Costs incurred prior to this Agreement and contained with the Project Budget approved by the Corporation may be paid with other sources of financing.

The Corporation shall retain the right to review and approve all draws for the Project, regardless of whether the HOME Loan will be used to fund any given draw. For draws being funded by other construction or permanent funding sources, the Corporation shall be provided with the draw not less than ten (10) days prior to any monthly inspection and provided with the opportunity to approve or object to the draw prior to payment by any funding source. While the Corporation may object to any given draw by providing notice to the Owner and/or other funding sources, this provision shall not limit another funding source's ability to release its funding in spite of objections by the Corporation.

2.2.1 Conditions of Construction Draws: Proceeds of the HOME Loan will only be released to Owner for actually incurred HOME-eligible project costs. The obligation of the Corporation to approve any draw or to make any disbursement of HOME funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- a) Owner shall not be in default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement or any of the Loan Documents.
- b) The Project shall not have been materially damaged by fire or other casualty.
- c) The Corporation shall have received evidence satisfactory to the Corporation that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- d) Owner shall have submitted at least seven (7) days prior to the date a disbursement is desired a completed disbursement request using the Corporation's approved HOME Payment Request Form, and such other appropriate source documentation as may be required by the Corporation including, without limitation, the following:
 - i) Current Contractor Tracking Form and lien waivers, which are to be dated no less than twenty (20) days precedent to the date of the requested disbursement.
 - ii) Evidence satisfactory to the Corporation that:
 - The Project and the contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction;

- The required building permits and other permits have been obtained as required; and
 - No environmental impact statement is required or that such environmental impact statement has been properly filed and approved.
- iii) Appropriate certifications of compliance in all respects with applicable labor standards and prevailing wage requirements.
 - iv) Such other supporting evidence as may be requested by the Corporation or its agent to substantiate all payments that are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
 - e) The Corporation shall have determined that all HOME requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of Davis-Bacon compliance.
 - f) The Corporation's inspector or designee shall issue a current, approved inspection report, or, for interim payments, shall certify that acceptable evidence has been obtained to verify satisfactory progress commensurate with the funds being requested.
 - g) No determination shall have been made by the Corporation that the undisbursed amount of the HOME Loan or other project sources is less than the amount needed to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

2.2.2 **Conditions of Final Disbursement:** In addition to the requirements set forth in Section 2.2.1, the Corporation shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and offsite utilities and streets and corrections of defects in workmanship and/or materials:

- a) A certificate of occupancy, if applicable, or a final construction report approved by the Corporation's construction inspector (who may be an employee of the Corporation or an individual or firm contracted to perform that task) for the Project;
- b) Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME units;
- c) Evidence satisfactory to the Corporation that the Project has been completed lien free and substantially in accordance with the plans and specifications;
- d) Review and final settlement of the cost certification described in Section 2.2.4 below; and
- e) Such other supporting evidence as may be requested by the Corporation or its agent to substantiate all payments that are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.

2.2.3 **Limitation on Draw Requests:**

- a) In all cases, Owner may not request disbursement of HOME funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.

- b) Notwithstanding anything herein to the contrary, no disbursements for materials stored will be made by the Corporation unless Owner shall advise the Corporation of its intention to so store materials prior to their delivery. It is specifically agreed that the propriety of disbursements for materials stored shall be determined in the Corporation's sole discretion.
- c) The parties covenant and agree that:
 - i) In the event that the Corporation discovers a misstatement in any affidavit, statement, or certificate furnished pursuant to this Agreement, it shall make no further disbursements until such misstatement has been corrected;
 - ii) The Corporation assumes no liability to the Owner for mechanic's lien claims;
 - iii) If, at any time during the course of construction, the total of the unpaid disclosed cost of construction, as indicated by the column totals on the general contractor's sworn statement, exceeds the amount of the undisbursed development sources, the Corporation shall not be under obligation to make further disbursement under the terms of the Agreement until the Owner has demonstrated to the Corporation the availability of funds equal to the unpaid disclosed cost of construction;
 - iv) If, after the first disbursement, a further title search reveals a subsequently arising exception over which the title insurance company is unwilling to insure, the Corporation shall discontinue disbursement until the exception has been disposed of to the Corporation's satisfaction.

2.2.4 Cost Certification:

Within 90 days of completion of construction Owner must submit evidence satisfactory to the Corporation (such as contracts, invoices, payment records, receipts, bank reconciliations, and the like) to facilitate a Corporation review of all project costs. At the Corporation's option, the Owner must also provide a cost certification prepared by an independent certified public accountant for Corporation review and approval. Should the Corporation determine that HOME funds were provided in an amount greater than was necessary or were used for ineligible costs, Owner shall promptly repay such funds. Additionally, the Corporation must determine based on the final sources and uses that the designation of HOME units in Section 3.2 below remains in compliance with the requirements of 24 CFR 92.205(d) and 24 CFR 92.250.

2.2.5 Disbursement of Developer Fee: Notwithstanding which specific funding source will be disbursed toward the Developer Fee, disbursement of the Developer Fee will be limited as follows:

- a) A maximum of 20% of the projected, non-deferred Developer Fee as shown in the Project Budget attached as **Exhibit C** upon i) closing of the HOME Loan and execution of all Loan Documents; and ii) issuance of building permits and the start of construction on the Project;
- b) A maximum of 30% of said Developer fee (bringing the total maximum disbursement to 50% of the projected, non-deferred Developer Fee) when construction is 50% completed;
- c) A maximum of 30% of said Developer Fee (bringing the total maximum disbursement to 80% of the projected, non-deferred Developer Fee) upon completion of construction; and

- d) The balance of the non-deferred Developer Fee upon i) the Corporation's review and approval of the Cost Certification, including the return/repayment of any previously disbursed HOME funds determined by the Corporation repayable pursuant to Section 2.2.4 above; and ii) achievement of Stabilized Occupancy as defined in Section 2.3.2 below.

Nothing in this section is intended to limit another funding source from imposing conditions upon the payment of the Developer Fee that are more restrictive than those imposed by the Corporation.

- 2.2.6 **Contingency:** No contingency for hard or soft costs in the Project Budget may be disbursed, regardless of which funding source is providing the funds for the specific draw, unless the Corporation has previously approved an amendment to the Project Budget and any associated change orders. The presence of any contingency will not limit Owner's obligations to complete the Project or diminish its liability under the Guarantees outlined in Section 2.1.5, if applicable. Further, the construction contract between the Owner and the general contractor may not include any construction contingency in the contract amount. The Corporation must approve all change orders, including those related to the use of the construction contingency funds or to non-construction uses within the Project Budget.

Notwithstanding, construction change orders do not require Corporation approval but must be disclosed within the next draw request package if all the following requirements are met:

- a) The change order does not increase either the total contract price or line items for contractor profit, overhead, or general conditions;
- b) If moving funds between construction cost line items, the change order represents no more than \$5,000 or 1% of the total contract amount, whichever is lesser;
- c) The change order does not extend the date of construction completion; and
- d) The change order is disclosed to the Corporation within thirty (30) days, typically within the next construction period draw package.

- 2.2.7 **Advances Without Receipt of Draw Requisitions:** Notwithstanding anything herein to the contrary, the Corporation shall have the irrevocable right at any time to apply funds that it agrees to advance hereunder to pay any and all project soft costs referenced in this Section 2.2 and any and all expenses incurred in connection with the enforcement of its remedies under Section 8.2 hereof, all without receipt of a draw requisition for funds from the Owner.

2.3 Reserves and Other Accounts

Owner must establish and shall maintain an Operating Reserve and a Replacement Reserve (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section. All accounts required by this section shall be held in interest-bearing segregated accounts. All accounts are to be held in banks or credit unions fully licensed to do business in the State of Kansas and in accounts insured to the maximum limit of either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA). Any interest earned on the Reserve Accounts shall remain within the Reserve Accounts.

- 2.3.1 **Replacement Reserve Account:** Owner shall fund a replacement reserve as required by the Corporation. Owner shall use the Replacement Reserve Account only for eligible capital costs as defined from time to time by the Corporation. Following closing on the HOME Loan, Owner shall make deposits to the replacement reserve not less than annually. The initial annual deposit must be made within six (6) months following construction completion but in no event later than December 31, 2019, and it shall be at least **\$1,200**. The minimum annual deposit shall be increased each year by 3%. Disbursements from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project or for other similar purposes for the benefit of the Project.

Based on the Corporation's physical inspections, the Corporation may periodically require Owner to obtain a capital needs assessment prepared by an independent third-party architect, engineer, or other qualified firm approved by the Corporation. Alternatively, the Corporation may conduct a capital needs assessment using its own staff or contractors. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project. The Corporation, at its discretion, may authorize paying the cost of a capital needs assessment from the Replacement Reserve Account if operating funds are not otherwise available.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the term of this Agreement, Owner shall, at the Corporation's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding.

- 2.3.4 **Escrow for Property Taxes and Insurance:** In general the Corporation will allow any senior lender approved by the Corporation to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in its sole discretion, the Corporation reserves the right, upon issuance of notice to the Owner, to require the Owner to establish and make monthly payments toward a reserve account held by the Corporation for tax and insurance payments.
- 2.3.5 **Term of Reserve Account(s):** All required Reserve Accounts must be maintained for the full term of this Agreement or while the Corporation HOME Loan is outstanding, whichever is longer.

2.4 Operating Receipts and Expense Account

The Owner shall establish and maintain an Operating Receipts and Expense Account to be reviewed by the Corporation periodically. All rents and other receipts of the Project shall be deposited in the name of the Owner and the Project. The Owner shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as "**Operating Receipts**," forthwith deposit the same in the Operating Receipts and Expense Account. Thereafter on a monthly basis, the Owner shall pay, or cause to be paid, all expenses in a timely manner out of

Operating Receipts of the Project, in the order and priority as set forth below unless otherwise directed by the Corporation, at its sole option, in writing:

- a) All of the amortized principal, interest, and mortgage insurance premium, if any, required to be paid under the Note and Mortgage to the Corporation or secured financing instruments associated with other Corporation-approved permanent sources (see **Exhibit D** for permitted encumbrances); and
- b) All of the real estate tax and insurance premium escrow payments required of the Owner, which payments shall be deemed to be part of the “**Operating Expenses**” of the Project for the purpose of this Agreement; and
- c) All amounts required to be deposited in any Replacement Reserve account required by this Agreement; and
- d) The fee of the Project’s managing agent as set forth in the Management Agreement between the Owner and said managing agent, excepting any fee to an identity of interest managing agent which shall only be paid after the remaining Operating Expenses below; and
- e) All remaining Operating Expenses of the Project (which specifically exclude the Loan principal, interest, and annual fee payments), including but not limited to, taxes other than those for which an escrow payment is required under this and any permitted senior mortgage, maintenance, fuel, management, water and sewage, administration, electricity, legal, audit, and all other current expenses, unless other funds for payment are set aside or deferment of payment has been approved by the Corporation.

2.5 Occupant Security Deposits

The Owner shall segregate or cause to be segregated all occupant security deposits, to be held in a separate depository account (hereinafter referred to as the “**Security Depository Account**”).

2.6 Surplus Cash

2.6.1 Definition of Surplus Cash: Surplus Cash shall equal the sum of:

- a) Project cash and cash equivalents (excluding the Security Depository Account and the Reserve Accounts);
- b) Short-term investments;
- c) Project-based rental assistance payments earned but not yet received by Owner, if any; and
- d) Any amounts approved for withdrawal but not yet withdrawn from the Reserves or escrow accounts;

After deducting:

- e) All sums due or required to be paid under the terms of the Corporation’s HOME Loan and any senior loan approved by the Corporation within the calendar month following the date as of which Surplus Cash is calculated; and
- f) All other obligations of the Project payable within the next thirty (30) days, unless the obligation is paid subject to available Surplus Cash or the Corporation has approved deferment of payment.

2.6.2 Distribution of Surplus Cash: Owner shall not make distributions of Surplus Cash (i.e., project “cash flow”) to any Controlling Entity or related parties, other than for normal

operating costs in the annual budget approved by the Corporation, scheduled payments on financing described above in Section 1.1, and required escrow and reserve deposits without written approval by the Corporation based on a determination by the Corporation that:

- a) No default in the terms of this Agreement or other Loan Documents exists and is continuing;
- b) The Project is in compliance with all applicable property standards and there are no unresolved physical deficiencies;
- c) All required reserves and escrows are fully and properly funded;
- d) The most recent annual audit of the Project has been received by the Corporation and shows no material weaknesses or unresolved findings; and
- e) Following any distribution of Surplus Cash, the Project will retain adequate liquidity to ensure uninterrupted operations. Liquidity will be measured by adding cash on hand and current receivables then subtracting current payables (i.e., liabilities) and must, following any distribution, equal or exceed one month of gross revenue potential in the most recent the Corporation-approved annual operating budget.

To obtain approval to make a Surplus Cash distribution, Owner shall submit to the Corporation a request at least fifteen (15) business days prior to any anticipated distribution together with a current financial statement for the Project that will enable the Corporation to assess criteria (e) above. Owner shall provide a prompt response to the Corporation's requests for additional documentation, if needed.

SECTION 3. HOME Program Requirements

3.1 Affordability Period Requirements

The Project must comply with all requirements of 24 CFR 92.252 and 24 CFR 92.253 for the duration of the Project's HOME Affordability Period. The Project must also maintain compliance with the physical standards of 24 CFR 92.251 and be operated consistent with applicable tenant protection, affirmative marketing, and fair housing requirements of Subpart F of 24 CFR 92.

Project shall, at all times during the term of this Agreement, be operated in compliance with the Corporation's Asset Management Division policies and procedures, which may be updated from time to time to reflect new, revised, or clarified administrative procedures and practices. Owner agrees to be bound by such updates, which may include, but not be limited to, procedures for obtaining annual rent or utility allowance approvals, reporting and document submission requirements, use of updated form documents provided by the Corporation, and the like.

3.2 Designation of HOME Units

Three (3) units will be designated as HOME-assisted. The restrictions of this section shall apply from Project Completion and throughout the term of this Agreement. The HOME units will be Fixed units as defined in 24 CFR Part 92.252. All three units shall be High-HOME units.

- 3.2.1 **Income Restrictions:** At initial occupancy (i.e., when leasing units to the first tenant following completion of construction) all High-HOME units must be rented exclusively to tenants with household incomes at or below 60% of Area Median Income (AMI) as adjusted for household size. Subsequently, all High-HOME units must be rented exclusively to tenants with household incomes at or below 80% AMI as adjusted for household size.

HUD releases updated HOME income charts annually, for which the Corporation will provide notification and access. The most current income chart must be used when determining eligibility for a prospective tenant or determining the income at recertification for in-place tenants.

The Project must determine tenant income qualification utilize the definition of annual income defined in 24 CFR 5.609 (often referred to as the "Section 8" definition). Prior to signing a lease with any tenant, Owner must obtain and examine at least two (2) months of source documents evidencing household income.

As a reference, Owner should consult the most recent version of the HUD publication: *Technical Guide for Determining Income and Allowances for the HOME Program*.

The HOME Income Limits and the Section 8 Income Limits (upon which the Housing Tax Credit Program relies) are released annually by HUD on independent schedules. To the extent that HOME Income Limits are published and made effective later than the Section 8 limits, Owner acknowledges that the qualifying incomes for HOME-assisted units will not be changed until updated HOME Income Limits are published.

- 3.2.2 **Rent Restrictions:** The gross rent for each High-HOME unit may not exceed the current High-HOME rent, as adjusted for unit size and published annually by HUD, regardless of whether there is a project-based rental subsidy.

The HOME rent limit is a gross rent limit. The total of rent paid to Owner plus the allowance for tenant-paid utilities may not exceed the applicable Low-HOME or High-HOME rent.

In the event other financing sources, including but not limited to the Housing Tax Credit Program, allow a higher rent, the HOME rent limits shall continue to apply to any units designated as HOME-assisted.

- 3.2.3 **Re-verifying Incomes:** Owner shall re-verify the income of in-place tenants on an annual basis. Not less than every 6th year of the Affordability Period (e.g. in at least the 6th year, 12th year, and 18th year following Project Completion), all in-place tenants shall be re-verified using at least two (2) months of source documentation. In such years, all in-place tenants must be re-verified with source documentation regardless of how long a given tenant has occupied the unit.

In other years, the Corporation may authorize the Owner to obtain a written certification from the tenant as to the household's size and income along with a statement that tenant will provide source documentation upon request.

3.2.4 **Treatment of Over-Income Tenants:** In the event an in-place tenant, upon re-verification of the tenant's income, has a household income above the applicable 80% AMI HOME Income Limit for Low-HOME or High-HOME tenants, the Owner shall take the following actions:

- a) If a HOME tenant's income increases at re-verification to greater than 80% of AMI, the Owner shall increase the rent for the over-income tenant to 30% of the tenant's adjusted income as soon as permitted by the terms of the lease.

3.2.5 **Corporation Approval of Rent, Utility Allowances, and Fees:** Pursuant to the requirements of 92.252(d) and (f), the Corporation must approve the rents and utility allowances applied to the Project on an annual basis. The Owner may not increase the rents of HOME units without prior approval of the Corporation. Utility allowances must be determined by a method constituent with the requirements at 24 CFR 92.252(d).

If other fees are charged, the Owner shall provide a fee schedule, consistent with requirements of Section 3.3.2 below, for review and approval by the Corporation on an annual basis. Any mandatory tenant fees not otherwise approved by the Corporation shall be considered rent and are subject to the gross rent limits outlined herein.

3.3 Project Requirements

Owner must operate the Project in compliance with all applicable state and local landlord-tenant laws and the requirements of Subpart F of 24 CFR 92.

3.3.1 **Lease:** Owner must have a written lease with each tenant of a HOME-assisted unit, in a form acceptable to the Corporation. If directed by the Corporation, Owner shall include any required HOME Lease Addenda, as may be updated from time to time, on all HOME leases. The lease must, at a minimum, provide all HOME tenants with at least thirty (30) days written notice prior to (i) increasing the rent, or (ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Owner cannot terminate or refuse to renew the lease of any tenant for other than good cause. Good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered now or in the future to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, State, or local laws.

The lease may not include any provisions prohibited by 24 CFR 92.253(b).

3.3.2 **Prohibition on Certain Fees to Tenants:** Owner shall not charge tenants fees to cover operating costs of the Project or administrative costs related to complying with the HOME program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Owner may charge fees approved by the Corporation for the following:

- a) Reasonable application fees to prospective tenants;
- b) Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by the Corporation to be customary for rental housing projects in the neighborhood and not excessive; and
- d) Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, provided such services are voluntary and fees are charged only for services provided.

3.3.3 **No Mandatory Services:** Owner must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their initial lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

3.3.4 **Tenant Selection Plan:** Owner must develop a tenant selection plan meeting the requirements of 24 CFR 92.253(d). The tenant selection plan will be subject to review and approval by the Corporation both prior to initial occupancy of the HOME-assisted units and during the term of this Agreement.

Owner cannot refuse to lease to a holder of a Section 8 Housing Choice Voucher, or a prospective tenant receiving similar assistance under another similar federal, State, or local program solely because of the tenant or prospective tenant's participation in such program.

Potential tenants whose applications for occupancy are rejected must be notified in writing of the reasons for such denial.

3.3.5 **Target Population:** The Project has been designated for general occupancy. Occupancy will not be limited to nor preference in tenant selection given to any particular segment of the low-income population. All otherwise eligible applicants may occupy the HOME-assisted units in the Project.

3.3.6 **Leasing of Accessible Units:** Notwithstanding the provisions of Section 3.3.5 above, for units designed to be physically accessible or accessible to tenants with sensory impairments, the Owner may provide a preference to any existing or potential tenant who, by virtue of a disability, requires or would benefit from the provision of an accessible unit. When an accessible unit becomes available, Owner shall offer it first to an existing tenant in need of such a unit and second to the next applicant on the Project's waiting list who otherwise needs such a unit. If no existing tenants or waiting list applicants require an accessible unit, such unit be offered to the next otherwise qualified applicant not requiring an accessible unit.

3.3.7 **Conditions for Faith-Based Organizations:** Faith-based organizations are eligible to participate in the HOME program on the same basis as any other organization but must comply with the requirements of 24 CFR 5.109. Among other requirements, Owner may not require participation in inherently religious activities such as worship, religious instruction, or proselytization, and must offer any such activities separately from the

HOME-assisted housing. Owner shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

SECTION 4. Property Standards

4.1 Property Standards

The Project must be constructed and maintained in compliance with the requirements of 24 CFR 92.251.

4.2 Construction Codes

The Project must be constructed in compliance with all applicable State and local zoning, land use, and building code requirements. The Project's plans and specifications must clearly list all building codes applicable to the Project, including without limitations electrical, mechanical, plumbing, and fire codes.

Additionally, the Project must be constructed to meet or exceed all applicable State Building Codes in force at the time of construction.

In the absence of State or local building codes, construction must meet the requirements of the International Residential Code or the International Building Code, as applicable.

4.3 Required Project Amenities and Features

As the Corporation's decision to award funding for the Project was influenced, in part, by Owner's proposal to include various features and amenities in the construction of the project. The Project must be constructed to include all features and amenities promised within the Owner's application for HOME funding and further delineated in **Exhibit B**.

4.4 Additional Construction Requirements

- a) All buildings must comply with Kansas accessibility requirements at K.S.A. 58-1402.
- b) Owner must prohibit the use of lead-based paint construction of the Project and comply with all other applicable requirements of 24 CFR 35 (aka the Lead Safe Housing Rule).
- c) Owner must require the exclusive use of lead-free pipes, solder, and flux in all of the Project's potable water systems.
- d) Owner will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project.
- e) All buildings and units shall be designed and constructed to be energy efficient, at a minimum, by meeting:
 - i) For single-family homes and low-rise multifamily structures up to three (3) stories, the 2009 International Energy Conservation Code (IECC), with an energy audit performed by a certified energy rater, and a HERS score or equivalent of 70 or below.
- f) All buildings must be constructed to be radon resistant in accordance with ASTM E1465-08a.

4.5 Ongoing Maintenance of the Project

Owner must maintain the Project in compliance with all applicable State and local codes and ordinances throughout the term of this Agreement.

Owner shall state in its HOME Annual Report to the Corporation, whether the local community has applicable property condition standards, where those standards can be found, and the name and contact information for the person and department responsible for enforcement of those standards.

Additionally, Owner must maintain the Project in compliance with Uniform Physical Condition Standards (UPCS). In the event of conflicting requirements between state and local codes and UPCS on any given inspectable item or building component, the stricter standard will apply. The Corporation reserves the right to periodically update the inspection protocol and standards to comply with current federal, state, or local requirements.

In addition to any other monitoring oversight by the Corporation, the Owner must certify annually to the Corporation that the Property meets all applicable property standards and is suitable for occupancy.

SECTION 5. Insurance, Casualty, and Condemnation

5.1 General

During construction and throughout the term of this Agreement, Owner will maintain insurance as required by the Corporation, including property insurance which will be no less than replacement value for the Project.

In the event of loss, the Owner shall give prompt notice by mail to the insurance carrier and the Corporation, and the Corporation may make proof of loss, if not made promptly by the Owner. Subject to prior permitted exceptions recorded against the Property and described on **Exhibit D** attached hereto (the "**Permitted Exceptions**"), the Corporation is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Owner shall promptly furnish to the Corporation a copy of any proof of loss given to the insurance carrier.

If the Project, or any part thereof, shall be damaged by fire or other insured hazard, the amounts paid by any insurance company shall be paid to the Corporation, to the extent of the Indebtedness then remaining unpaid, and, at the option of the Corporation, all or any part of such amount may be applied in reduction of the Indebtedness or released for the repairing or rebuilding of the Project. If in the Corporation's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to the Corporation as additional security for the payment of the Indebtedness. In event of foreclosure of this Project, all right, title and interest of Owner in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

5.2 Condemnation

Subject to the Permitted Exceptions, the Owner hereby irrevocably assigns to the Corporation any award or payment which becomes payable by reason of any taking of the Property, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

The Owner will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment, and subject to the Permitted Exceptions, will cause the same to be collected and paid over to the Corporation, and the Owner irrevocably authorizes and empowers the Corporation, in the name of the Owner or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for, and retain the same.

The proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by the Corporation in the collection thereof, at the sole discretion of the Corporation, be released to the Owner, applied to restoration of the Project, or applied in reduction of the indebtedness secured hereby. If in the Corporation's determination restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

5.3 Application of Proceeds in an Event of Default

Subject to the Permitted Exceptions, in the event of an event of default under this Agreement or any other Loan Document, the Corporation may apply insurance and condemnation proceeds to the reduction of the indebtedness secured hereby in any manner selected by the Corporation but, unless otherwise agreed by the Corporation in writing, no application of such proceeds to the HOME Loan, or to other obligations secured by the Loan Documents, or any of them, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the HOME Loan, or any such other obligations.

SECTION 6. Other Federal Requirements

6.1 Other Federal Requirements

Owner agrees to develop and operate the Project in full compliance with all other applicable federal requirements of 24 CFR 92 Subpart H and 24 CFR 5 Subpart A and the nondiscrimination requirements of section 282 of the Act. This includes, but is not limited to compliance with the drug-free workplace requirements of 2 CFR 2429.

6.2 Equal Opportunity and Fair Housing Requirements

In accordance with Sections 24 CFR 92.350 and 24 CFR 92.351, except for specific exceptions allowing elderly designated projects to apply age restrictions, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation

in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HOME funds. In addition, Owner shall develop, operate, and maintain the Project in accordance with the following:

- a) 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 B1963 Comp., P. 652 and 3 CFR 1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- b) 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;
- c) The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting owners (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
- d) 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;
- e) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Owner must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Owner will cooperate with the Corporation in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including, without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services; and
- f) The nondiscrimination requirements of section 282 of the HOME Investment Partnerships Act at title II of the Cranston-Gonzales National Affordable Housing Act, as amended.

Nondiscrimination: Owner agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Owner, shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, familial status, national origin, or age.

6.3 Affirmative Marketing

Owner must adopt and implement affirmative marketing procedures for the Project consistent with the requirements of 24 CFR 92.351. Owner must submit an Affirmative Fair Housing Marketing Plan ("AFHMP"), using form HUD-935.2A, or on another such form as the Corporation may reasonably require, for the Corporation review prior to marketing and leasing the HOME-assisted units.

The Corporation reserves the right to require Owner to update the Project's AFHMP from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

6.4 Environmental Review

The award of HOME to the Project requires compliance with the review and clearance provisions of the National Environmental Policy Act (NEPA) and HUD's implementing regulations at 24 CFR 58. Completion of the required review is the responsibility of the Corporation but requires the participation of the Owner.

Applicants for HOME funds are prohibited from undertaking or committing or expending any funds to (including non-federal funds) undertake any physical or choice-limiting actions on the Project site prior to an environmental determination and/or clearance as required by Part 58. Physical and choice limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair or construction. This prohibition applies regardless of whether federal or non-federal funds are used for such actions.

As of the date of this Agreement, the required environmental reviews have been completed. The Corporation has made a determination that the project is Categorically Excluded Subject to 58.5, and that the project has met the requirements for conversion to Exempt.

Owner certifies that it has not taken any choice limiting actions subsequent to its application for HOME financing and prior to notification by the Corporation of HUD's approval of the release of funds under NEPA. Owner further certifies that it has no new knowledge or information that would call into question the determination of the Project's environmental status and that it will immediately disclose to the Corporation any new information related to the environmental condition or status of the Project that becomes available. If such new information is deemed material by the Corporation, Owner shall stop work until a revised environmental determination can be made.

If human remains, bones, artifacts, foundations, or other indications of past human occupation are unearthed during the course of site work, construction, or other activity, Owner will immediately stop work and notify the Corporation and the State Historic Preservation Office.

6.5 Displacement, Relocation, and Acquisition

As applicable, Owner will take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Additionally, Owner will assure compliance with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

6.6 Labor Standards

Owner will ensure that its contracts and subcontracts for construction require compliance with the Fair Labor Standards Act (29 USC 201 et seq).

The Project is subject to the requirements 24 CFR 92.354. Because there are fewer than eleven (11) HOME-assisted housing units, the prevailing wage standards of the Davis-Bacon and Related Acts do not apply.

6.7 Section 3

The requirements of Section 3 of the Housing and Urban Development Act of 1968 (U.S.C. 1701u and 24 CFR 135) **apply** to the Project. As such, the Owner is a "recipient" of Section 3 covered assistance and subject to the responsibilities of 24 CFR 135.32 including, inter alia, notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating the Section 3 clause set forth in 24 CFR 135.38 (provided as **Exhibit E**) in all solicitations and contracts. If required by the Corporation, the Owner, in coordination with the general contractor, shall submit a plan outlining efforts and goals for complying with Section 3. Owner shall further report on its hiring and contracting activity by submit form HUD-60002 or other such form as required by the Corporation not later than ninety (90) days following completion of construction.

6.8 Use of Contractors and Subcontractors

Owner will ensure and maintain records demonstrating that none of the contractors or subcontractors involved in the development of the Project are suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts. Owner will further ensure that its contractors include parallel provisions in their subcontracts and maintain records showing that subcontractors are not suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts.

Owner shall, at a minimum, search at www.sam.gov to verify that each contractor and subcontractor is not listed as an excluded party, and shall require such contractors and subcontractors to provide a statement certifying that they are no Excluded Parties.

6.9 Conflict of Interest

No officer, employee, agent, or consultant of Owner or immediate family members thereof (known as covered persons) may occupy a HOME-assisted affordable housing unit in the Project. However, this provision does not apply to an employee or agent of Owner who occupies a housing unit in the Project as a project manager or maintenance worker.

Notwithstanding, the Corporation may approve a waiver to allow a covered person to occupy a unit in the Project based on a written request from Owner if, in the Corporation's sole discretion, a waiver would be appropriate under the provisions of 24 CFR 92.356(f)(2).

While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to Owner's procurement of goods and services associated with the development or operation of the Project, Owner agrees to notify the Corporation in writing and seek the Corporation approval prior to

entering into any contract with an entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by Owner, any Controlling Entities of the Owner, any of the underlying individual owners of the Controlling Entities, or any of the Guarantors. The Corporation will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in the Corporation's sole discretion.

Notwithstanding, the Corporation initially acknowledges and approves the Owner's use of _____ as the property manager for the Project.

6.10 Certification Regarding Lobbying

Owner certifies that it will not and, to the best of its knowledge, has not used federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award. Owner further agrees that it shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

6.11 VAWA Compliance

Owner agrees to comply with the provisions of the Violence Against Women Act (VAWA) as applied by 24 CFR 92.359 and, as applicable, 24 CFR 5, Subpart L. Owner further acknowledges that, despite its name, VAWA provisions apply without regard to an individual's sex, gender identity, or sexual orientation.

6.11.1 **Core VAWA Protections:** Unless included in the limitations on VAWA protections delineated in 24 CFR 5.2005(d), the following VAWA protections will apply to all applicants for or tenants of HOME-assisted units:

- a) No individual may be denied admission or evicted on the basis or as a direct result of the fact that the individual is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the individual otherwise qualifies for admission or continued occupancy.
- b) Further, no individual may be denied tenancy or occupancy rights solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking if: i) The criminal activity is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, and ii) the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.
- c) In no case may an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall be construed as: i) a serious or repeated violation of a lease by the victim or threatened victim of such incident; or ii) good cause for terminating the tenancy or occupancy rights of the victim or threatened victim of such incident.

6.11.2 **VAWA Notice:** Owner must provide a Corporation-approved or specified VAWA notice and certification form to:

- a) Any tenant admitted to a HOME-assisted unit, at the point the tenant is admitted to the unit;
- b) Any prospective tenant for a HOME-assisted unit whose application for occupancy is being denied based on the Owner's tenant selection policies or criteria as part of the written notification of denial otherwise required by 24 CFR 92.253; and
- c) Any existing tenant of a HOME-assisted unit whose lease is being terminated, or for whom the Owner is refusing to renew the lease, at the point the tenant is being provided with notice of termination or non-renewal.

6.11.3 **Lease Bifurcation:** Owner may seek to evict, remove, or otherwise terminate a household member from a HOME-assisted unit on the basis of such member's criminal activity relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual, as defined in 24 CFR 5.2003, or other individual. Such action may be taken without regard to whether the individual being removed is a signatory to the lease. In any such case, however, if necessary to avoid evicting, removing, or otherwise penalizing any victim of such activity who is also a lawful occupant of the HOME-assisted unit the Owner must bifurcate the lease to allow continued occupancy by remaining members of the household.

6.11.4 **Emergency Transfer Plan:** The Owner must comply with the terms of the Corporation's VAWA Emergency Transfer Plan, as may be updated from time to time, which among other items will:

- a) Allow for an internal emergency transfer to another available and safe unit in the development by any tenant or other lawful resident of a HOME-assisted unit who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. In such cases, the transferring tenant(s) may transfer to the new unit without having to undergo an application process and will, in all other respects, be treated as an in-place tenant.
- b) In cases where an immediately available and safe unit is not available for internal transfer, require the Owner to notify the Corporation of the tenant's request for an external emergency transfer, to cooperate and assist in providing information to the tenant about other units potentially available in the Corporation's portfolio of HOME-assisted units, and waive any early termination or other similar fee for tenants requiring an emergency transfer that results in the breaking of the lease.

6.11.5 **Documentation:** Owner may request that an individual seeking protection under the VAWA provisions provide documentation demonstrating that he/she is a victim of domestic violence, dating violence, sexual assault, or stalking. Owner's seeking such documentation must accept any of the following:

- a) A signed tenant certification, using HUD Form 5382 or such subsequent form document HUD may publish pursuant to 24 CFR 5.2005;
- b) A document signed by the tenant and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom the tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking

occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.

- c) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency.

Further, the Owner may choose to accept other reasonable documentation of the individual seeking VAWA protections.

Nothing in this section shall be construed to require the Owner to document an individual's status as a victim. Instead the Owner may extend the VAWA protections broadly to any person requesting VAWA protections based on a presumption of their status without requiring documentation of their victimization.

- 6.11.6 **Confidentiality:** Any information submitted to the Owner under these VAWA provisions, including but not limited to an individual's request for VAWA protections or the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking is, confidential information and shall be maintained in strict confidence.

SECTION 7. Reporting

7.1 General Requirements

Owner agrees to provide reports to the Corporation and to maintain records documenting compliance with this Agreement, the Loan Documents and regulatory agreements, the HOME rule, and all other applicable federal, State, and local laws and regulations. Owner also agrees to provide the Corporation, HUD, HUD's Office of Inspector General, the Comptroller General of the United States (*aka* the U.S. Government Accountability Office or "GAO"), or their representatives access to the Project and its records for the purpose of monitoring Owner's compliance with applicable requirements.

7.2 Reports

Owner shall submit periodic reports to the Corporation on the progress and performance of the Project. The Corporation reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to HOME regulations, or to address findings related to noncompliance by the Project.

Initially, the Corporation may require reports as follows:

- a) Prior to the commencement of construction, Owner shall report not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due);
- b) During the construction period, Owner shall report monthly on progress, submit invoices being paid, and provide evidence of appropriate lien waivers to the Corporation regardless of whether Owner is requesting a disbursement from the Corporation during that month;

- c) Upon completion of construction and prior to reaching Stabilized Occupancy, Owner shall report monthly on progress toward leasing units and provide monthly income and expense reports;
- d) Following the completion of construction, Owner shall report on the occupancy, physical condition, and financial status of the Project not less than annually.

Annual reports shall include an Annual Occupancy Report, identifying the occupants of HOME-assisted units, rents in effect, income determination information, and steps taken to fill vacancies, substitute units, and otherwise maintain the appropriate unit mix. Owner must also provide utility allowance documentation, and examples of marketing materials. Owner shall submit for the Corporation's review and approval an annual operating budget and certify in writing that the Property meets all appropriate physical standards and is suitable for occupancy.

Additionally, Owner shall submit copies of its statement of cash flows and annual project audit, prepared by an independent certified public accountant, within one hundred-eighty (180) days of the end of its fiscal year or statement of financial condition, as applicable. Such information shall include copies of bank account statements and proof of current insurance and payment of property taxes due.

- e) Owner shall submit an updated Affirmative Fair Housing Marketing Plan not less than every five (5) years from the date of the Corporation's initial approval.

7.3 Recordkeeping and Inspections

Owner shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of the Corporation, HUD, GAO, or their designees may examine any records or information accumulated pursuant to this Agreement. During the Period of Affordability, the Corporation will conduct on-site inspections to verify compliance with 24 CFR 92.252 as required by 24 CFR 92.504. All confidential information shall be treated as such by all aforementioned Corporation, HUD, or GAO representatives or designees.

Owner shall maintain administrative and financial records as required by 24 CFR 92.508, applicable to the activities to be carried out under this Agreement, including but not necessarily limited to:

- a) Property description and location;
- b) Records regarding project requirements that apply for the duration of the period of affordability (all of Subpart F of 24 CFR 92);
- c) Documentation that the amount of investment in each housing unit is in compliance with the requirements in 24 CFR 92.205(c) and maximum subsidy limits in 24 CFR 92.250;
- d) Information about contractors, vendors and other lenders to include, but not necessarily be limited to, verification of non-debarment and suspension, verification of qualifications and experience, legally-binding contracts and agreements, invoices and payment records and related correspondence (see 24 CFR Part 24 and 2 CFR 2424);

- e) Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
- f) Project records in accordance with 24 CFR 92.508(a)(3) that demonstrate that each HOME-assisted renter and each housing unit leased meets the requirements of the HOME program;
- g) Other records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the funded activity:
 - i) Documentation of efforts to affirmatively further fair housing;
 - ii) If applicable, records documenting compliance with federal law regarding displacement, relocation and property acquisition in accordance with the URA;
 - iii) Records demonstrating compliance with labor requirements set out in 24 CFR 92.354, including contract provisions and payroll records;
 - iv) Records concerning lead-based paint set out in 24 CFR Part 35;
 - v) Records supporting requests for waivers of the conflict of interest prohibition set out in 24 CFR 92.356;
 - vi) Records demonstrating compliance with environmental requirements under 24 CFR 92.352 and 24 CFR 58, including applicable flood insurance requirements;
 - vii) Records of emergency transfers requested under 24 CFR 5.2005(e) and 24 CFR 92.359 pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of those requests; and
- h) Records related to any decision to terminate or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

7.4 Records Retention

Owner shall retain all applicable administrative and project records and records pertinent to other federal requirements as follows:

General project records pertaining to the development of the Project must be retained for not less than five (5) years beyond the date of Project Completion. These include, but are not limited to, construction contracts and associated documents, invoices and payment records, records documenting compliance with applicable labor standards, and the like.

Records relating to ongoing operations of the Project must be maintained for not less than the most recent five-year period. Such records must be maintained until five (5) years beyond the end of the HOME Affordability Period.

This Agreement and all Loan Documents must be retained for not less than five (5) years beyond the end of the HOME Affordability Period.

Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the retention

periods outlined, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the retention period, whichever occurs later.

7.5 Inspections

Owner will provide the Corporation, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds. The Corporation will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, the Corporation will inspect the Project annually or on another schedule it determines to ensure that the Project is being maintained in compliance with all appropriate property standards.

7.6 Compliance Monitoring Fee

Following the completion of construction and for the duration of the Affordability Period, the Owner will pay the Corporation an annual compliance monitoring fee. For the first year of operations, the fee shall be \$2,500. Upon notice to the Owner, the Corporation may adjust the fee annually, based on its estimated costs of monitoring the project for compliance with the HOME Program. In no case may the Corporation increase the fee beyond an annualized rate of 3% calculated with 20XX as the base year. The Compliance Monitoring Fee shall be payable as of the first of January each year; failure to submit the fee shall be a violation of this Agreement.

SECTION 8. Enforcement and Termination

8.1 Default

The actions noted below shall constitute an event of default by Owner hereunder. The Corporation may give written notice of default to the Owner, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to the Corporation, be designated by the Owner as its legal business address:

- a) Failure to comply with the terms and conditions hereof;
- b) Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements related to the Project, or any applicable State or local law, regulation, ordinance, or requirement;
- c) A default by Owner under any other of the Loan Documents;
- d) Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Owner in the execution or performance of this Agreement or in its application for participation in the HOME Program;

- e) The Owner's dissolution or other termination of existence; merger or consolidation with any other entity; change in control of the Project or the Owner, or any of its partners, shareholders, members, or owners without the Corporation's prior written consent as required herein; insolvency; forfeiture of right to do business in the State of Kansas or business failure; abandonment of the Project for more than thirty (30) days; appointment of a receiver of any part of the Owner's property; the calling of any meetings of, or the assignment for the benefit of, creditors of the Owner; or the commencement of any proceedings under any bankruptcy or insolvency laws by or against the Owner which are not dismissed within sixty (60) days;
- f) Any judgment or lien is filed against the Property if not paid, stayed on appeal, discharged, bonded, or dismissed within sixty (60) calendar days after the entry of such judgment or lien, except any judgment or lien resulting from liability that is fully payable from the proceeds of an insurance policy maintained by Owner;
- g) A sale, transfer, or further encumbrance of all or part of the Project without the Corporation's prior written consent; and
- h) Any default under any documents evidencing other financing for the Project, whether junior or senior to the Corporation's HOME loan or in effect as of the date of this Agreement or at any future point, including but not limited the loans or encumbrances identified in **Exhibit D**. This may include but is not limited to the failure to maintain any reserve account required by another lender.

8.2 Remedies

In the event of default by Owner hereunder, which is not cured within thirty (30) days of the mailing of written notice by the Corporation as described in Section 8.1, the Corporation may seek any combination of the following remedies:

- a) Withhold any further payments to be made under this Agreement until such time as Owner's breach has been cured in accordance with the terms and conditions of any cure period provided by the Corporation (but the Corporation may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
- b) Apply to any appropriate court, State or federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
- c) Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of the Owner, as the attorney-in-fact of the Owner (which authority is coupled with an interest and is irrevocable by the Owner), to complete or cause to be completed the Project, at the cost and expense of the Owner;
- d) Require the use of or change in professional property management;

- e) Require the replacement of the Owner's general partner(s) or managing member(s), as applicable;
- f) Pursue the appointment of a receiver to collect rents and profits or to take possession of the Project;
- g) Declare immediately due and payable all unpaid principal, accrued interest, and annual fees on the Note, together with all other sums payable thereunder and the same shall thereupon be immediately due and payable without presentment or other demand, protest or notice of protest, notice of dishonor, or any other notice of any kind, all of which are hereby expressly waived;
- h) Apply sanctions set forth in 24 CFR 92, if determined by the Corporation to be applicable;
- i) Apply to any appropriate court, State or federal, for such other relief as may be appropriate and allowed by law, since the injury to the Corporation arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and
- j) Terminate this Agreement by giving written notice to Owner of such termination and specifying the effective date of such termination. If the Agreement is terminated by the Corporation as provided herein, Owner shall have no claim of payment or claim of benefit for any incomplete activities undertaken under this Agreement.

Any delay by the Corporation in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order), or concurrently, and as often as the occasion therefore arises.

8.3 Termination for Convenience

In addition to the termination provision in Section 8.2(j), this Agreement may be terminated by the Corporation upon thirty (30) days written notice. In the event of termination under this section, Owner shall have no claim of payment or claim of benefit for any incomplete project activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses.

SECTION 9. Indemnification

Owner hereby agrees to reimburse, indemnify, and save and hold the Corporation and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost, or deficiency, including but not limited to any repayment obligation to HUD incurred by the Corporation under 24 CFR 92.503(b) or 24 CFR 92.551, reasonable attorney's fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to the Corporation or its successor in interest, on demand, the full amount of any sum which the Corporation or its successor has paid or becomes obligated to pay on account of:

- a) Any misrepresentation, omission, or the breach of any representation or warranty of the Owner under this Agreement or any other Loan Document;
- b) Any failure of the Owner to fully perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by the Owner, or, after an assumption, by a subsequent Owner, pursuant to this Agreement or any other Loan Document;
- c) Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Owner, or, after an assumption, Owner's successors to the Property or Project; or
- d) The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by the Owner or any of their past or present affiliates on the Property which occurs prior to possession passing from the Owner pursuant to a deed received upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

The provisions of this Section 9 shall survive the termination of this HOME Agreement, the other Loan Documents, the payment of the Corporation loan, and the liabilities and the exercise of any right or remedy under this Agreement or any other Loan Document.

SECTION 10. CHDO Provisions

10.1 CHDO Designation

Cornerstone of Topeka, Inc. ("Cornerstone") has been designated by the Corporation as a Community Housing Development Organization (CHDO) as defined under 24 CFR 92.2 and shall serve as the Developer of the Project as such role is defined under 24 CFR 92.300(a).

10.2 Certification of Current and Continuing CHDO Status

Cornerstone of Topeka hereby acknowledges that this Project is being funded with HOME funds reserved specifically for CHDOs and certifies that as of the date of this Agreement it meets the definition of a CHDO under 24 CFR 92.2. Cornerstone further certifies and agrees that it will continue to operate its affairs such that it continuously meets the CHDO definition for the life of this Agreement and will notify the Corporation immediately if any change in circumstance results in it no longer meeting these criteria at any time during the term of this Agreement. It further will provide documentation to the Corporation as may be requested from time to time to document that it continues to comply with the CHDO definition.

Reserved

10.3 Tenant Grievance Procedures and Tenant Participation

Owner will operate the Project in compliance with 24 CFR 92.303 and will adhere to a fair lease and grievance procedure approved by the Corporation and follow a program of tenant participation in management decisions. Owner will update these procedures from time to time as may be appropriate or required by the Corporation and will report to the Corporation on their implementation.

SECTION 11. Notices

Except in the case of notice of default under this Agreement, notices due to Owner hereunder shall be deemed delivered two (2) days after being placed in the United States mail, postage pre-paid, addressed to the Owner as follows:

Tenants to Homeowners, Inc.
2518 Ridge Court
Lawrence, Kansas 66046
Attn: Executive Director

Notices due the Corporation shall be in writing and must be personally delivered or placed in the United States mail. Notices to the PJ delivered via the mail must be delivered via certified mail with return receipt requested and will be deemed delivered upon signature of a Corporation representative. Notices to the Corporation should be addressed as follows:

Kansas Housing Resource Corporation
611 S. Kansas Avenue, Suite 300
Topeka, Kansas 66603
Attn: HOME Division

11.1 Reserved

SECTION 12. Miscellaneous Provisions

12.1 Assignment

This Agreement is binding on the Corporation and Owner, and their respective successors and assigns. Owner shall not assign or transfer its interest in this Agreement without the written consent of the Corporation.

12.2 Interpretation

This Agreement shall not be merged with any subsequent agreement between the Corporation and Owner, including, but not limited to, the Corporation's Loan Documents or regulatory agreements related to Project. Any question or dispute regarding the interpretation of the terms of this Agreement shall be decided by the Corporation. The Corporation's decision shall be final and binding. In the event of a conflict between this Agreement, the Loan Documents, and/or the regulatory agreements, the Corporation reserves the right to resolve the conflict and determine which provision will take precedence. In general, the more restrictive provision will apply.

12.3 Applicable Law

This Agreement shall be construed and interpreted in accordance with Kansas law. In the event of legal action resulting from a dispute hereunder, the parties agree that the State and federal courts of the State of Kansas shall have jurisdiction and that the proper forum for such action shall be Topeka, Kansas.

12.4 Entire Agreement

This Agreement, together with the exhibits hereto and proposal and application for participation in the HOME program submitted by Owner, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations, or agreements whether written or oral.

12.5 Amendments

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

12.5.1 Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice, or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Project, Owner agrees to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Owner further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to reflect and implement new HOME requirements or correct identified deficiencies. The Corporation shall provide not less than thirty (30) days' notice to the Owner of any such modifications.

12.6 Headings and Pronouns

The headings of the paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents. Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neutral gender, shall include all other genders and singular nouns used herein shall include the plural and vice versa.

12.7 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

12.8 Counterparts

This Agreement may be executed in two (2) or more counterparts, each of which shall be considered an original, and shall be binding when fully executed by both parties.

12.9 Authority

Except as otherwise provided herein, at any time during the term of this Agreement, whenever any approval or notice by the Corporation is required under this Agreement, or whenever any action by the Corporation is required or permitted, the Director of the HOME Program for the Corporation,

its successor or its authorized delegate, shall have the power and right to approve, give notice or act on behalf of the Corporation, as the case may be.

SECTION 13. Certification

Owner representative initial here: _____

Owner certifies that its duly authorized representative has read and reviewed this HOME Agreement in its entirety; acknowledges its responsibility for implementation of the Agreement; assumes full responsibility for compliance therewith; indemnifies and holds the Corporation harmless with respect to noncompliance; and agrees that the representations contained in this section shall survive the expiration or termination of this Agreement.

(signatures on following page)

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the date or dates set opposite the signatures of their duly authorized representatives, respectively.

KANSAS HOUSING RESOURCE CORPORATION

8/15/2018
Date

By: Dennis L. Mesa
Dennis L. Mesa
Its: Executive Director

Tenants to Homeowners, Inc.
a Kansas not-for-profit corporation

8/15/18
Date
Its:

By: Rebecca Buford
Rebecca Buford
Executive Director

LEGAL DESCRIPTION

Lot 28, 30, 32, Block 1, Belmont Addition, Douglas County, Kansas

Commonly known as 1346 and 1350 Maple Lane, Lawrence, KS 66044

PROJECT SUMMARY

SECTION A – PROJECT OVERVIEW

Project Name: Maple Family Homes
Address: 1346-1350 Maple Lane, Lawrence, Kansas
Owner: Tenants to Homeowners, Inc.
CHDO Set-Aside: Yes **CHDO Role:** Developer

HOME Investment: Up to \$500,000

Unit Mix:

	Low-HOME	High-HOME	X% TC	Y%TC	Market	Subtotal
1-Bed	0	0	0	0	0	
2-Bed	0	1	0	0	0	1
3-Bed	0	2	0	0	0	2
4-Bed		0	0	0	0	
Subtotal	0	3	0	0	0	Total: 3

Targeting:

Project is for general occupancy.

Fixed/Floating: HOME Units are Fixed
 If Fixed, HOME units are: All

Accessibility:

Physically Accessible Units: 0
 Sensory Accessible Units: 0
 All units are subject to state accessibility requirements at KSA 58-1402

Initial HOME Rent Limits:

Following the completion of construction and lease-up, the Owner must seek the Corporation's approval of rents annually. HOME rents may increase or decrease in a given year. Notwithstanding decreases in the HUD-published HOME rents, pursuant to 24 CFR 92.252(f) the Owner shall not be required to reduce the rent of HOME-assisted units below the gross HOME rents in effect as of the date of this Agreement. In effect, this sets a floor rent for HOME units. However, the actual rent to the owner, after accounting for utility allowances may still decrease. The HOME rents in effect as of the date of this Agreement are as follows:

	Utility Allowance	Low-HOME			High-HOME		
		Gross Limit	Contract Rent Limit	Underwritten Rent	Gross Limit	Contract Rent Limit	Underwritten Rent
1-Bed	-	-	-	-	-	-	-
2-Bed	81 est	-	-	-	843	762	340
3-Bed	117 est	-	-	-	1226	1109	530
4-Bed	-	-	-	-	-	-	-

SECTION B—COMPLIANCE /DEVELOPMENT FACTORS

The Project, as planned, includes the following elements which may require specialized compliance with cross-cutting federal requirements and/or additional care in the construction process:

- | | | | |
|--------------------------|--------------------------------------|--|---|
| <input type="checkbox"/> | Land assembly and subdivision | <input type="checkbox"/> | Extension/installation of off-site infrastructure |
| <input type="checkbox"/> | Relocation of existing/prior tenants | <input type="checkbox"/> | Demolition of existing structures |
| <input type="checkbox"/> | Environmental conditions | <input type="checkbox"/> | Remediation of Lead Base Paint hazards |
| <input type="checkbox"/> | Labor Standards (Davis-Bacon) | — Using: <input type="checkbox"/> Interim Controls or <input type="checkbox"/> Abatement | |

SECTION C—ADDITIONAL FEATURES, AMENITIES, AND REQUIREMENTS

The Project was funded, in part, on the basis of the Owner's agreement to provide various features, amenities, or services beyond those explicitly required by the HOME regulations at 24 CFR 92. Owner therefore agrees to the following requirements as a condition of receiving HOME funds and agrees that failure to provide or maintain such features, amenities, or services or other failures to comply with such conditions will be a violation of the Agreement:

Range and refrigerator, Energy Star compliant.

PROJECT BUDGET

Development Cost Detail

The Development Cost Detail should be completed in full detail. If, in the opinion of KHRC, costs are omitted which could change the number of points allowed in the overall rating system, the application will be considered incomplete. Incomplete applications may be rejected. Applicants requesting both HOME and HTC may substitute the Project Cost Detail sheets from the HTC application.

Itemized Cost	Development Cost	Do Not Use This Space
To Purchase Land & Buildings		
Land	113690	
Existing Structures		
Demolition	15000	
Other		
For Site Work		
Site Work	10000	
Off-Site Work		
For Rehabilitation & New Construction		
New Building	392210	
Rehabilitation		
Accessory Building		
General Requirements	5000	
Contractor Overhead	5000	
Contractor Profit	15000	
Building Permit Fee	5000	
For Contingency		
Construction Contingency	15000	
Other		
For Architectural & Engineering Fees		
Architect Fee – Design	5000	
Architect Fee – Supervision		
Real Estate Attorney		
Property/Survey Fee		
Engineering Fee		
Other –		
For Interim Costs		
Construction Insurance	1500	
Construction Interest		
Construction Loan Origination Fee		
Taxes	2000	
SUBTOTAL	584400	

Development Cost Detail Continued

Itemized Cost	Total Development Cost	Do Not Use This Space
For Financing Fees & Expenses		
Bond Premium		
Credit Report		
Permanent Loan Origination Fee		
Permanent Loan Credit Enhancement		
Cost of Issuing Underwriters Discount		
Title and Recording		
Counsel's Fees		
Cost Certification Fee		
Other		
For Soft Cost		
Property Appraisal (Feasibility)	400	
Market Study	1000	
Environmental Report	1200	
Tax Credit Fees		
Rent-Up		
Consultants		
Other		
For Syndication Costs		
Organizational (Partnership)		
Bridge Loan Fees and Expenses		
Tax Opinion		
Other		
For Developer's Fees		
Developer's Overhead	0	
Developer's Fees		
Other		
For Project Reserves		
Rent-Up Reserve	3000	
Operating Reserve	10000	
Other		
Other		
SUBTOTAL	15600	
SUBTOTAL FROM PREVIOUS PAGE	584400	
TOTAL	600000	

PERMITTED EXCEPTIONS

None

Section 3 Clause (See 24 CFR 135.38)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

