

HOME WRITTEN AGREEMENT (RENTAL DEVELOPMENT)

This **HOME Written Agreement** (the "**Agreement**") is made and entered into this ____ day of **May, 2024**, by and between the **CITY OF NORTH LAS VEGAS, NEVADA**, a public body corporate and governmental instrumentality of the State of Nevada, whose address is **2250 LAS VEGAS BLVD. NORTH, NORTH LAS VEGAS, Nevada 89030** (the "**City**"), and **PEARSON PINES LP**, a Nevada limited partnership, having its principal office at 295 E. Warm Springs Rd., Suite #101, Las Vegas, NV 89119 (the "**Owner**").

WHEREAS, the City 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 24 CFR Part 92; and

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

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

WHEREAS, HAND Development Company (the "**Developer**") submitted an Application to the City to acquire and construct a **60-unit** multifamily housing project in the City of North Las Vegas, Nevada, to be known as **Pearson Pines Senior Apartments** (the "**Project**"), in furtherance of the goals of the City's Housing Element, Consolidated Plan and HOME Program Guide; and

WHEREAS, pursuant to NRS 244.189 the Board of County Commissioners may exercise such powers, not in conflict with the provisions of NRS or other laws or regulations of this State, as the board determines are necessary and proper for the development of affordable housing;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, the City 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 **60-unit rental development** located in the **City of North Las Vegas, Nevada** at **345 E Rome Blvd**, North Las Vegas, Nevada 89084, and more particularly described in Exhibit A (the "**Property**"). The Project consists of one residential structure, containing **sixty (60) units**. The overall unit breakdown includes **thirty-six 1-bedroom units** and **twenty-four 2-bedroom units**. Twenty-six (26) 1-bedroom units and five (5) 2-bedroom units will be income and rent restricted at 30% AMI, and ten (10) 1-bedroom units and nineteen (19) 2-bedroom will be rent and income restricted at 50% AMI. All units are available as senior housing.

In addition to HOME funds, permanent financing for the Project also came from an award under the Housing Tax Credit Program and a resulting equity investment from **NEF Assignment Corporation** (the "**Investor**"), a loan in the amount of **\$1,200,000.00** from the Nevada Division of Housing through the National Housing Trust Fund Program (the "**NHTF Loan**"), a permanent loan from Citibank, N.A. in the original principal amount of **\$[4,495,000.00]**a Community Housing Fund loan from Clark County, Nevada in the approximate amount of **\$1,800,000.00** (the "**County CHF Loan**"), and a deferred developer fee in the amount of **\$802,209.00**. Construction financing will be provided by Bank of America, N.A. in the amount of approximately **\$[12,627,000.00]** (the "**Construction Loan**").

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 unless otherwise provided herein.

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 loan funds, which may include penalties and interest as assessed by HUD be repaid within thirty (30) days of the Owner receiving written notice from the City.

1.2.1 HOME Affordability Period: 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**, unless otherwise required in this Agreement, 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 City 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 City 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 as set forth below and further described in Exhibit F, The Project Schedule of Performance and Development and Completion Schedule.

- 1.3.1 **Final Plans and Specifications:** 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 City 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 City, Owner must begin construction on the Project no later than **May 1, 2025**, and substantially complete construction within **twenty-four (24) months**. The parties agree that the dates within the Project Schedule of Performance Development and Completion Schedule may be extended, in writing, by the City of North Las Vegas Manager of Housing and Neighborhood Services so long as the dates comply with 24 CFR 92 and any and all HUD mandates.
- 1.3.3 **Cost Certification:** Within one hundred-eighty (180) days of completing construction, Owner must provide a cost certification outlining the final sources and uses of all funds as required by Section 2.4.2 below.
- 1.3.4 **Completion Report:** Prior to final disbursement of funds, Owner must provide the City with demographic data on the initial occupants of all HOME-assisted units in the Project in order to complete the Project in HUD's IDIS system. 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 City may cancel its commitment of funding, and the Owner shall repay the HOME loan balance. The HOME loan balance is defined as any HOME loan funds previously advanced and any accrued interest. 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:** All HOME units must be initially occupied within **eighteen (18) months** of Project Completion, 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 loan balance as defined in Section 1.3.4 attributable to those units based upon a revised cost allocation analysis completed by the City.

1.4 Project Budget

- 1.4.1 **HOME Investment:** Conditioned upon the availability of HOME funds and Owner's compliance with the conditions set out herein, the City intends to provide up to **\$2,200,000.00** in HOME funds to Owner toward eligible project costs. In no case will the City'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 1-bedroom units is **\$175,752**; the maximum subsidy for 2-bedroom units is **\$213,717**; and the maximum subsidy for 3-bedroom units is **\$N/A**.
- 1.4.2 **Project Budget:** Attached as Exhibit C is the project budget (the "**Project Budget**"). Owner agrees to promptly notify the City 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 City 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 City's underwriting analysis.

1.5 Other City Requirements for the Project

- 1.5.1 **City and HUD Recognition:** Developer shall not schedule, nor advertise, a date for a grand opening or dedication ceremony until they have first received a Certificate of Occupancy and approval from the City. Developer agrees and understands that all costs incurred for groundbreaking and grand opening ceremonies will be the sole responsibility of Developer. Developer shall ensure recognition of the role of the City and HUD in providing funding through this Agreement. In addition, Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.
- 1.5.2 **Notification of Accepting of Applicants for the Project:** Owner and/or Developer will notify the City, in writing, a minimum of sixty (60) days before the rental management company begins accepting applications for residency at the Project. The City will develop a referral process that will be in coordination with the Developer to ensure that support of all City initiatives are being met where possible.

SECTION 2. Form of Financing and Disbursements

2.1 Form and Terms of Assistance

- 2.1.1 **HOME Loan:** The City 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 Deed of Trust and Note and continue for a term of **forty (40) years** from the date the project is placed in service, estimated to be **October 1, 2025**.
- 2.1.2 **Security:** During construction, the HOME Loan must be secured by a promissory note, a [fourth]-position deed of trust on the Property. After construction is complete, the deed of trust securing the HOME Loan must be in [third] lien position.

Together, this Agreement, the Deed of Trust, the Note, the Assignment of Leases and Rents, 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 City, 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 Nevada and acceptable to the City. The name of the insured shall be the City of North Las Vegas, Nevada. The policy shall show fee simple title to the Property in Owner, subject only to such exceptions as the City may approve, be in the full amount of the City's loan, contain a comprehensive coverage endorsement and such other endorsements as the City may require and shall insure that the deed of trust 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 City.

- 2.1.4 **Covenant Running with the Land:** Owner must record a covenant running with the land, in form satisfactory to the City, that provides a means for enforcement of the affordability restrictions of 24 CFR 92.252. The City's covenant running with the land must be senior to all other financing liens, except the first mortgage from Bank of America, N.A. and the City's mortgage referenced above, and enforceable against all successors in interest to Owner.
- 2.1.5 **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.
- 2.1.6 **Ownership Entity:** The City'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 general or limited partnership interests, member interests, managing member interest, or other controlling interest in the Owner will be made without the prior written consent of the City. This will include but is not limited to:

- a) The voluntary or involuntary re-assignment of the role of general partner, managing member, or other controlling entity or individual (collectively the "**Controlling Entities**") to another entity or individual;
- b) Sale or transfer of the interest of any owner of a Controlling Entity;
- c) Sale or transfer of any other interests in Owner, including but not limited to a limited partner interest, special limited partner interest, or member interest.

Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the City consents to the transfer of the Investor limited partner's interest or Investor member's interest in the Owner among affiliates of the Investor. Owner must provide notice of such transfer to the City at least five (5) days prior to the transfer. Investor limited partner may, without City's consent, remove the General Partner for cause and replace it with an affiliate of the Investor in accordance with Owner's partnership agreement.

- 2.1.7 **Property Management:** The City'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 City must approve of any property management company, or another similar agent, employed by the Owner. The City'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 City.

Initially, the City has approved HAND Property Management Company as the property manager for the Project.

2.2 Disbursement

The City's HOME Loan is intended as construction and permanent financing. Owner may request disbursements no more than monthly and not less than quarterly from the City 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 otherwise HOME-eligible costs that were incurred prior to the execution of this Agreement. Otherwise, HOME-eligible costs incurred prior to this Agreement and contained with the Project Budget approved by the City may be paid with other sources of financing.

Further, the City 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.

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 City 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 City shall have received evidence satisfactory to the City 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 ten (10) days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by the City including, without limitation, the following:
 - i) Current Contractor Tracking Form and lien waivers.
 - ii) Evidence satisfactory to the City 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 City 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 City 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 City's inspector shall issue a current, approved inspection report.
- g) No determination shall have been made by the City 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 City 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 approved construction report 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 City 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 City 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 City unless Owner advises the City 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 City's sole discretion.

In addition to any other requirements the City may impose, any disbursement for materials stored will require, at minimum:

- i) Certification from the General Contractor (and, as applicable, any subcontractors) that:

- The materials for which payment is requested are consistent with the Project's plans and specification and have been purchased specifically for incorporation into the Project;
 - The Contractor (or subcontractor as applicable) is in actual possession of and has clear, marketable title to the materials and that such materials are not subject to any lien by the supplier or manufacturer; and
 - The materials are appropriately stored on-site and fully insured against theft, damage, or other loss OR that materials stored off-site are located in a licensed, bonded, and insured warehouse where they are fully insured against theft, damage, or other loss.
- ii) Submission of documentation (such as invoices, receipts, shipping manifests, or insurance policies) satisfactory to the City supporting the certifications;
 - iii) That any disbursement for materials stored are otherwise subject to the contract's standard retainage provisions;
 - iv) That the City shall have the right to inspect the materials wherever stored, at its convenience, during normal working hours;
 - v) That the cost and expense, if any, involved in the storage and/or delivery to the construction site will be borne by the Contractor;
 - vi) That storage of materials shall be at the risk of the Owner and the loss, damage, or destruction of any materials so stored does not relieve the Owner of the duty to complete the Project. It shall be the responsibility of the Owner to replace such items, if necessary.
- c) The parties covenant and agree that:
- i) In the event that the City 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 City 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 City shall not be under obligation to make further disbursement under the terms of the Agreement until the Owner has deposited with the City the sum necessary to make the available 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 City shall discontinue disbursement until the exception has been disposed of to the City's satisfaction.

2.2.4 Cost Certification: Within 180 days of completion of construction, Owner must provide a cost certification prepared by an independent certified public accountant for City review and approval. Should the City determine that the cost certification indicates 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 City must determine based on the cost certification that the designation of HOME units in Section 3.2 below remains in compliance with the requirements of 24 CFR 92.250, or Owner must agree to adjust the designation of HOME units to bring the Project into compliance.

- 2.2.5 **Disbursement of Developer Fee:** HOME funds will not directly disburse any portion of the Developer Fee. The City and Owner generally anticipate that the Developer Fee will be paid using equity contributions related to the Project's Housing Tax Credit Program award and cash flow. 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 30% 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; ii) closing of the Housing Tax Credit equity investment and substantially all construction financing for the Project; and iii) issuance of building permits and the start of construction on the Project;
 - b) A maximum of 60% of the projected, non-deferred Developer Fee as shown in the Project Budget (bringing the total maximum disbursement to 40% of the projected, non-deferred Developer Fee) upon completion of construction; and
 - c) The balance of the non-deferred Developer Fee upon i) repayment of any construction financing from the City determined not be eligible for a HOME or AAHTF, including the return/repayment of any previously disbursed HOME funds determined by the City repayable pursuant to Section 2.2.4 above; ii) the City's review of the Cost Certification; and iii) achievement of Stabilized Occupancy as defined in Section 2.3.2 below.

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

- 2.2.6 **Project Budget:** The Owner shall notify the City of any expected cost overruns outside of available contingency within the Project Budget that occurs during the design and construction period. The Owner shall notify the City as soon as this is known to the Owner. The Project Budget shall not increase, regardless of which funding source is providing the funds for the increase, unless the City has previously approved an amendment of the Project Budget and any associated change orders; further, any use of HOME funds toward such an additional cost item must be for costs determined by the City to be HOME eligible pursuant to 24 CFR 92.
- 2.2.7 **Disbursement of Owner's Funds:** If the City shall at any time in good faith determine that the undisbursed amount of available financing is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project and shall thereupon send written notice thereof to Owner specifying the amount required to be deposited by Owner with the City or its agent to provide sufficient funds to complete the Project, the Owner agrees that it will, within five (5) calendar days of receipt of any such notice, deposit with the City or its agent, in a noninterest-bearing account, the amount of funds specified in the City's notice. Owner agrees that any such funds deposited with the City or its agent may be disbursed by the City or its agent, before any further disbursement of loan proceeds from the City, to pay any and all costs and expenses of any kind in connection with completion of the Project.
- 2.2.8 **Advances Without Receipt of Draw Requisitions:** Notwithstanding anything herein to the contrary, the City shall have the irrevocable right at any time to apply funds that it agrees

to advance hereunder to pay 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, a Replacement Reserve, and an Operating Deficit Reserve (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section. The Reserve Accounts shall be held in deposit in a FDIC/NCUA insured account in a Nevada bank or credit union in an account established that is consistent with the Partnership Agreement. Should the parties amend the Partnership Agreement in regards to the Replacement Reserve Accounts, the Owner agrees that the City shall approve the language in regards to the Replacement Reserve Account prior to any changes being finalized.

- 2.3.1 Replacement Reserve Account:** Owner shall fund a replacement reserve as required by the City. Owner shall use the Replacement Reserve Account only for eligible capital costs as defined from time to time by the City. 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, 2027**, and it shall be at least **\$15,000.00**. 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.

The City 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 City. Alternatively, the City may conduct a capital needs assessment using its own staff or contractors. Initially, the City expects that capital needs assessments would be required every five (5) years following Project Completion. 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 through the Affordability Period or the term of the HOME Loan, whichever is longer. With written approval from the City, the cost of obtaining a capital needs assessment can be paid 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 City's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If the City requires an additional deposit, Owner and/or the Guarantors must replenish the Replacement Reserve Account within six (6) months.

- 2.3.2 Operating Reserve Account:** Prior to the final disbursement of the HOME Loan and not later than the conversion to the permanent loan, Owner shall fund and maintain an Operating Reserve Account in the amount of **\$172,266.00**. After Stabilized Occupancy, the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose. Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees.

If drawn upon, the Operating Reserve Account must be replenished to its required minimum balance prior to distributions of Surplus Cash as defined in Section 2.6 below.

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- a) Initial occupancy of all HOME units;
- b) Physical occupancy of no less than 93% of all units;
- c) Three (3) consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and
- d) Three (3) consecutive months of sustained operating performance at or above a debt coverage ratio of 1.10 (inclusive of all amortizing debt payments).

2.3.4 Intentionally Omitted.

2.3.5 Term of Reserve Account(s): All required Reserve Account(s) must be maintained for the full term of this Agreement or while the City 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 City 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 City, 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 Deed of Trust to the City or secured financing instruments associated with other City-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 the HOME Loan or 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 City.

2.5 Occupant Security Deposits

The Owner is further required to segregate or cause to be segregated all occupant security deposits, which are to be held in an interest-bearing 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 Section 8 Housing Assistance Payments earned but not yet received by Developer, 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 City's HOME Loan and any senior loan approved by the City 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 City 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 provided to the City, scheduled payments on financing described above in Section 1.1, and required escrow and reserve deposits without written approval by the City based on a determination by the City 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 (except that deposits to the Preservation Reserve Account are determined after the calculation of Surplus Cash);
- d) The most recent annual audit of the Project has been received by the City 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 City-approved annual operating budget.

To obtain approval to make a Surplus Cash distribution, Owner shall submit to the City 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 City to assess criteria (e) above. Owner shall provide a prompt response to the City's requests for additional documentation, if needed.

2.6.3 Intentionally omitted.

SECTION 3. HOME Program Requirements

3.1 Affordability Period Requirements

The Project must comply with all requirements of 24 CFR 92.252, in particular requiring the HOME-assisted units be income and rent restricted 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 City's Rental Management Handbook, or successor publications, 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 City, and the like.

3.2 Designation of HOME Units

Eight (8) units will be designated as HOME-assisted. The restrictions of this section shall apply from initial occupancy of the Project and throughout the term of this Agreement. As noted in Section 2.4.2 above, the City reserves the right to adjust the number of HOME-assisted units if the sources and uses of funds change during development of the Project. The HOME units will be Floating units as defined in 24 CFR Part 92.252.

Eight (8) units will be designated as Low-HOME units, including five 1-bedroom units and three 2-bedroom units.

3.2.1 Income Restrictions: At all times, all Low-HOME units must be offered for occupancy exclusively to tenants with household incomes at or below 50% of the Area Median Income (AMI) as adjusted for household size. At initial occupancy (i.e., when leasing units to the first tenant following completion of construction) all High-HOME units must be offered for occupancy exclusively to tenants with household incomes at or below 60% 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, which the City will (i) provide to Owner and (ii) post to its website. 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 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*.

Owner acknowledges that the HOME Income Limits and the Section 8 Income Limits (upon which the Housing Tax Credit Program relies) are released by HUD on independent schedules. To the extent that HOME Income Limits are published and made effective by HUD 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. If applicable, any time the income limits applicable to HOME and Housing Tax Credit Program conflict, the more restrictive (i.e., lower) income limit will apply. In particular, High-HOME units that are subject to Housing Tax Credit Program restrictions will be subject to the more restrictive income targeting of the Housing Tax Credit Program (i.e., 60% AMI using Housing Tax Credit income limits).

- 3.2.2 **Rent Restrictions:** The gross rent for each Low-HOME unit may not exceed the Low-HOME rent, as adjusted for unit size published annually by HUD, except for those units receiving federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30% of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the federal or State project-based rental subsidy program. The gross rent for each High-HOME unit may not exceed the High-HOME rent, as adjusted for unit size, and published annually by HUD.

The HOME rent limit is a gross rent limit. An allowance for any tenant-paid utilities must be made to ensure that the combination of rent paid to Owner and the allowance for tenant-paid utilities does not exceed the applicable Low-HOME or High-HOME rent.

Owner acknowledges that, if applicable, the Housing Tax Credit Program imposes similar but different limits on rent and further acknowledges that in the event other financing sources allow a higher rent, the HOME rent limits imposed by the City and the HOME limitations shall continue to apply.

- 3.2.3 **Re-verifying Incomes:** Owner shall re-verify the income of in-place tenants on an annual basis. Not less than every sixth 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 been in place.

Re-verification using source documentation is always acceptable. In other years, the Owner may obtain (a) 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 or (b) a written statement as to the household size and income from the administrator of another governmental program under which the household receives benefits and which examines the annual income of the household on a yearly basis.

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 50% AMI HOME Income Limit for Low-HOME tenants or the applicable 80% AMI HOME Income Limit for Low-HOME or High-HOME tenants, the Owner shall take the following actions:

- a) If a Low-HOME tenant's income increases at re-verification to greater than 50% AMI but less than or equal to 80% AMI, then the Owner will first substitute another unit that is comparable or larger by either (i) designating another unit in the Project occupied by an eligible Low-HOME tenant, or (ii) renting the next-available unit as a Low-HOME unit. After substituting another Low-HOME unit, the Owner may raise the rent for the over-income tenant to the lesser of (i) 30% of the over-income tenant's adjusted income, or (ii) the applicable High-HOME rent for such unit.
- b) If a Low-HOME tenant's income increases at re-verification to greater than 80% AMI, then the Owner will first increase the rent for the over-income tenant to the lesser of (i) 30% of the tenant's adjusted income, or (ii) the "market rent" for the unit (i.e., what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, Housing Tax Credit Program, or other such programs). The Owner must also substitute another unit that is comparable or larger by either (i) designating another unit in the Project occupied by an eligible Low-HOME tenant, or (ii) renting the next available unit as a Low-HOME unit.
- c) If a High-HOME tenant's income at re-verification increases to greater than 80% AMI, then the Owner will first increase the rent for the over-income tenant to the lesser of (i) 30% of the tenant's adjusted income, or (ii) the "market rent" for the unit (i.e., what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, Housing Tax Credit Program, or other such programs). The Owner must also substitute another unit that is comparable or larger by either (i) designating another unit in the Project occupied by an eligible High-HOME tenant, or (ii) renting the next available unit as a High-HOME unit.

Any increases in a tenant's rent must be implemented subject to the terms of the lease, including Section 3.3.1 below, and applicable state or local law.

This section notwithstanding, if the unit occupied by an over-income tenant is subject to Housing Tax Credit Program rent restrictions, the Owner will not be required to raise the rent beyond the applicable Housing Tax Credit Program rent for the unit.

3.2.5 Approval of Rent, Utility Allowances, and Fees: Pursuant to the requirements of 24 CFR 92.252(d) and (f), the City 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 City.

Additionally, the Owner shall provide a fee schedule, consistent with requirements of Section 3.3.2 below, for review and approval by the City on an annual basis. Any mandatory tenant fees not otherwise approved by the City 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 City. If directed by the City, Owner shall include the City's HOME Lease Addendum, 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. In particular, 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 City 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 determined by the City to be customary for rental housing projects in the area and not excessive;
- c) Parking fees to tenants only if such fees are determined by the City 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, as long as the services are voluntary, and fees are charged only for services provided.

- 3.3.3 **Voluntary 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 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 City 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 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 occupancy only by tenants who are aged 55 or older. Other than the age limits set forth above, 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 available. 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. Only if no existing tenants or waiting list applicants require an accessible unit may such a unit be offered to an applicant not otherwise 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 engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Project. If Owner does engage in such religious activities, those activities must be offered separately from the HOME-assisted housing, and participation by tenants of the Project must be voluntary. Additionally, 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.

4.3 Required Project Amenities and Features

The Owner acknowledges that the City'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. Consequently, 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) The Project must also be constructed in compliance with the accessibility requirements of 24 CFR 8, which implements Section 504 of the Rehabilitation Act of 1973. Additionally, if the Project is a "covered multifamily dwelling" as defined in 24 CFR 100.201, the Project must also meet the design and construction requirements of 24 CFR 100.205 regarding, among other things, accessibility to the building and common areas.
- b) In particular, Owner must ensure that the construction of the units in the Project will satisfy requirements for both physically-accessible units and those accessible for tenants with sensory (i.e., hearing or visual) impairments. Based on the **sixty (60)**-unit Project, a minimum of **three (3)** unit(s) must be physically accessible and a minimum of **two (2)** unit(s) must be accessible for tenants with sensory impairments.
- c) 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).
- d) Owner must require the exclusive use of lead-free pipes, solder, and flux in all of the Project's potable water systems.
- e) Owner will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project. Owner will require its contractors to stop construction if ground disturbance related to this Project results in the discovery of any human remains, bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and the City immediately.
- f) All buildings of five (5) or more residential units in the Project must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100.

4.5 Ongoing Maintenance of the Project

Throughout the term of this Agreement, Owner must maintain the Project in compliance with the City's ongoing property standards as published in the City's Rental Management Handbook or other successor publication. Owner must maintain the Project in compliance with all applicable State and local codes and ordinances, including but not limited to fire codes, health codes, property maintenance codes, or other habitability codes, throughout the term of this Agreement.

At minimum, during periodic on-site inspections, the City will review all HUD-specified inspectable items and areas based on the Uniform Physical Condition Standards (UPCS) prescribed by HUD pursuant to 24 CFR 5.705. Further the City will require that any identified deficiencies be corrected, including that any deficiencies determined to be life-threatening be addressed immediately.

Additionally, to the extent known and applicable, the City's periodic inspections will incorporate State and local code requirements. However, any such inspection by the City is for its own purposes and does not warrant compliance with applicable codes or supplant the authority of any other State or local code officials over the Project. 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. Outside of its periodic inspections, in the event the City becomes aware of any violation of applicable State or local codes, Owner must correct those deficiencies.

Failure to correct any deficiencies identified by the City within the timeframe specified shall constitute a default.

In addition to any other oversight by the City, the Owner must annually certify to the City that each building in the Project is suitable for occupancy, taking into account (i) State and local health, safety, and other applicable codes, ordinances, and requirements, and (ii) the City's ongoing property standards established pursuant to 24 CFR 92.251.

SECTION 5. Insurance, Casualty, and Condemnation

5.1 General

During construction and throughout the term of this Agreement, Owner will maintain insurance, 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 City, and the City may make proof of loss, if not made promptly by the Owner. Subject to the rights of holders of senior loans ("**Senior Lenders**") with deeds of trust or other instruments recorded against the Property and described in Exhibit D attached hereto (the "**Permitted Exceptions**"), the City 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 City a copy of any proof of loss given to the insurance carrier.

Subject to the rights of Senior Lenders, 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 City, to the extent of the Indebtedness then remaining unpaid, and, at the option of the City, 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. Notwithstanding the foregoing, if in the City'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 City 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 rights of the Senior Lenders, the Owner hereby irrevocably assigns to the City 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 City, and the Owner irrevocably authorizes and empowers the City, 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.

Subject to the rights of the Senior Lenders, the proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by the City in the collection thereof, at the sole discretion of the City, be released to the Owner, applied to restoration of the Project, or applied in reduction of the Indebtedness secured hereby. If in the City'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

In the event of an event of default hereunder under the HOME Agreement or any other Loan Document, the City may apply insurance and condemnation proceeds to the reduction of the indebtedness secured hereby in any manner selected by the City but, unless otherwise agreed by the City 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 92.351 of the HOME regulations, 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 City 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, national origin, religion, or sex.

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 City may reasonably require, for the City review prior to marketing and leasing the HOME-assisted units.

The City 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 City 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 **not** been completed. As such, the Agreement does not constitute a final commitment of funds or site approval but instead is a "contingent commitment" as authorized by HUD in CPD Notice 01-11 and CPD Notice 15-09 (or successor notices issued by HUD). The commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of an approval of the request for release of funds and certification from HUD under 24 CFR Part 58. The provision of any HOME funds to the Project is conditioned on the City's determination to proceed with, modify or cancel the Project based on the results of the environmental review. The City will issue a formal written notice to the Owner upon completion of environmental review.

Owner certifies that it has not taken and will not take any choice limiting actions subsequent to its application for HOME financing and prior to notification by the City 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 City 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 City, Owner shall stop work until a revised environmental determination can be made.

If human remains, bones, artifacts, foundations, or other indications of past human activity are unearthed during the course of site work, construction, or other activity, Owner will immediately stop work and notify the City 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. As required by the City, 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 to City on its efforts to comply with Section 3 requirements in terms of hiring and contracting activity. Owner shall submit form HUD-60002 or other such form annually around mid-year during the course of construction, as required by the City and again not later than thirty (30) 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.

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.

The City 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 City'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 City in writing and seek the City 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 City 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 City's sole discretion. Notwithstanding the foregoing, the City initially acknowledges and approves the Owner's use of HAND Construction Company as the general contractor and HAND Property Management Company as the property manager.

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 City-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 City'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 City 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 City'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 protections 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 individual 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, shall be maintained in strict confidence.

SECTION 7. Reporting

7.1 General Requirements

Owner agrees to provide reports to the City 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 City, 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 City on the progress and performance of the Project. The City 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 City 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 City regardless of whether Owner is requesting a disbursement from the City 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 City's review 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. Further, Owner shall submit proof of current insurance to the City.

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

7.3 Recordkeeping and Inspections

Owner shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of the City, HUD, or their designees may examine any records or information accumulated pursuant to this Agreement. During the Period of Affordability, the City 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 City or HUD 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 tenant 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) 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 (as applicable);
 - 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 specified in Section 7.3 above, 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.

Owner shall maintain reasonable security measures to protect records containing personal information from unauthorized access, acquisition, destruction, use, modification, or disclosure per NRS Chapter 603A to ensure against a breach of the security of personal information of clients, staff or other individuals. Subrecipient shall have established written policies and procedures that align with NRS Chapter 603A and shall follow these procedures. Upon request, Subrecipient shall make available to City of North Las Vegas staff these written policies and procedures and will be monitored for compliance.

7.5 Inspections

Owner will provide the City, 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 City will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, the City 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 Financial Management

- a) Owner agrees that all costs of the Project shall be recorded by budget line items and be supported by checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payrolls, time records, invoices, contracts, vouchers, orders or other accounting documents which pertain, in whole or in part, to the Project shall be thoroughly identified and readily accessible to the City.
- b) Owner agrees that excerpts or transcripts of all checks, payrolls, time records, invoices, contracts, vouchers, orders, and other accounting documents related to or arguably related to the Project will be provided upon reasonable request to the City.
- c) Owner agrees that disbursement under this Agreement will be made only when the total amount of eligible reimbursable expenses exceeds \$1,000, excepting for the final request for payment under this Agreement. If Owner requests payment in an amount less than the minimum established, payment will be made when the cumulative amount of all eligible reimbursable expenses exceeds \$1,000.
- d) Owner agrees that it may not request disbursement of funds under the Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed; the City may require evidence documenting compliance to Davis-Bacon and Related Acts prior to releasing any funds.
- e) An amount not to exceed the lesser of ten percent (10%) or \$10,000 of the funds allocated under this Agreement will be retained until the Project is completed and the Owner submits the following:

1. Documentation showing that the assisted units meet the Housing Quality Standards, or, if new construction, that the Project has received an occupancy certificate;
 2. A certified statement of Final Development Costs which, at a minimum, reports all development costs and expenditures for all federal funds, and the disposition of all of the Funds (from any source);
 3. For projects involving new construction or rehabilitation, a completed form HUD-2516 "Contract and Subcontract Activity" submitted on an annual basis on or before October 15;
 4. A completed form HUD-40097 "Rental Housing Completion Project Report" or, for Owner-occupied projects, form HUD-4096 "Home Ownership Project Completion Report";
 5. Evidence that none of the project contractors or subcontractors were listed as disqualified on the System for Award Management (SAM);
 6. Evidence of recording of the fully executed Deed of Trust and Assignment of Deed of Trust securing Clark City's interest in the Property; and
 7. Evidence that Owner has provided the "Management Agent" with a copy of the HOME Program regulations and the specific HOME compliance requirements for the Project.
 8. Current Single Audit Report or Certification of Annual Federal Expenditures;
 9. If the project is a rehabilitation project, then a copy of a post-rehab. appraisal; and
 10. Current rent roll.
- f) Owner shall provide a sample tenant lease to the City for review and approval prior to lease-up. Should the approved sample tenant lease be modified at any time during the Period of Affordability the Owner shall remit the modified lease for approval prior to any tenant entering into a lease with the Owner.
- g) Annually from the date of first occupancy Owner shall provide the City with the proposed rents for the applicable HOME-assisted units for review and approval. Owner shall not institute any rent increase in a HOME-assisted unit without the prior written approval by the City.

SECTION 8. Enforcement and Termination

8.1 Default

The actions noted below shall constitute an event of default by Owner hereunder. The City 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 City, 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 City's prior written consent as required herein; insolvency; forfeiture of right to do business in the State of Nevada 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 City's prior written consent; and
- h) Any default under any documents evidencing other financing for the Project, whether junior or senior to the City's HOME loan or in effect as of the date of this Agreement or at any future point, including but not limited to 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 City as described in Section 8.1, the City 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 City (but the City 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) Subject to the rights of the Senior Lenders, require the use of or change in professional property management;
- e) Subject to the rights of the Senior Lenders and the Investor limited partner, 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, 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 City 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 City 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 City 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 City 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.

SECTION 9. Indemnification

Owner hereby agrees to reimburse, indemnify, and save and hold the City 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 City 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 City or its successor in interest, on demand, the full amount of any sum which the City 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 City loan, and the liabilities and the exercise of any right or remedy under this Agreement or any other Loan Document.

SECTION 10. Intentionally omitted.

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:

Pearson Pines LP
295 E Warm Springs Rd., Suite 101
Las Vegas, NV 89119
Attn. Kathy Carpenter
assetmanage@nevadahand.org

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

Housing & Neighborhood Services

2250 Las Vegas Blvd. N., Suite 625
North Las Vegas, NV 89030
Attn: HOME Program

11.1 Investor Notice and Opportunity to Cure

The City will accept from the Investor a cure of any default under this Agreement or the Loan Documents on the same terms as such cure would be permitted and accepted by the Owner. In the event of default, the City will endeavor to provide a courtesy notice of such default to the Investor, as applicable. However, in no case will the failure of the City to provide or of the Investor to receive such a notice be grounds to challenge, delay, or otherwise infringe any enforcement action taken by the City, including but not limited to foreclosure.

Any notice provided to the Investor hereunder will be placed in the United States mail, postage prepaid, addressed to the Investor as follows:

NEF Assignment Corporation
10 South Riverside Plaza, Suite 1700
Chicago, IL 60606

The Investor may update its address or contact by providing notice to the City, but any such updated address or contact information shall only be effective upon written acknowledgement of the change by the City.

SECTION 12. Miscellaneous Provisions

12.1 Assignment

This Agreement is binding on the City 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 City.

12.2 Interpretation

This Agreement shall not be merged with any subsequent agreement between the City and Owner, including, but not limited to, the City's Loan Documents or regulatory agreements related to Project. In the event of a conflict between this Agreement, the Loan Documents, and/or the regulatory agreements the more restrictive provision will apply.

12.3 Applicable Law

This Agreement shall be construed and interpreted in accordance with Nevada 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 Nevada shall have jurisdiction and that the proper forum for such action shall be Clark County, Nevada.

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 City 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 City is required under this Agreement, or whenever any action by the City is required or permitted, the City of North Las Vegas Housing and Neighborhood Services staff, its successors or its authorized delegates, shall have the power and right to approve, give notice or act on behalf of the City, 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 City harmless with respect to noncompliance; and agrees that the representations contained herein shall survive the expiration or termination of this Agreement.

IN WITNES WHEREOF, The City and Provider have executed this agreement as of the Effective Date.

CITY OF NORTH LAS VEGAS

a Nevada Municipal Corporation

By: _____

Michaela Rustia Moore, City Manager

ATTEST:

By: _____

Jackie Rodgers, City Clerk

Approved as to from:

By: **Andy Moore, Acting City Attorney**

PEARSON PINES LP, a Nevada limited partnership

By: PEARSON PINES LIHTC LLC, a Nevada limited liability company, its
general partner

By: HAND ENTERPRISES, INC., a Nevada nonprofit corporation, its
Manager

By: 
Audra Hamernik, President

LEGAL DESCRIPTION

EXHIBIT A

The land referred to herein below is situated in the City of North Las Vegas, County of Clark, State of Nevada, and described as follows:

THAT PORTION OF THE SOUTHEAST QUARTER (SE ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION 16, TOWNSHIP 20 SOUTH, RANGE 61 EAST, M.D.M., DESCRIBED AS FOLLOWS:
PARCEL ONE (1) OF PARCEL MAP IN FILE 130, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND RECORDED FEBRUARY 07, 2024 IN BOOK 20240207 AS INSTRUMENT NO. 02205, OFFICIAL RECORDS.APN: 139-16-401-004

PROJECT SUMMARY

SECTION A – PROJECT OVERVIEW**Project Name:** Rome South 2 Senior Apartments**Address:** 345 E Rome Blvd, North Las Vegas, Nevada 89084**Owner:** Rome South 2 LP**CHDO Set-Aside:** ☐ Yes ☒ No **CHDO Role:** ☐ N/A ☐ Owner ☐ Developer ☒ Sponsor**HOME Investment:** Up to \$2,200,000**Unit Mix:**

	Low-HOME	High-HOME	30% TC	50%TC	Market	Subtotal
1-Bed	5	0	21*	10	0	36
2-Bed	3	0	2	19	0	24
3-Bed	NA	NA	NA	NA	NA	0
4-Bed	NA	NA	NA	NA	NA	0
Subtotal	8	0	23	29	0	Total: 60

*Borrower expects to obtain operating subsidies ("Subsidies") for the Project in the form of project based rental assistance for all sixty (60) units. If such Subsidies become unavailable or are reduced, and if compatible subsidies are not sufficient to allow the Project to remain in compliance with any lender or investor debt service coverage standards or other requirements then in effect, Borrower shall give written notice of that fact to the City. Borrower's notice to the City shall include an estimate of the number of Thirty Percent (30%) of AMI Gross Rent set-aside units that need to be rented at a Gross Rent at or below Fifty Percent (50%) of AMI in order to meet such lender or investor requirements, and the backup detail showing the basis for the estimate. If the City disagrees with Borrower's estimate, the City and the Borrower shall cooperate to revise such estimate in a manner acceptable to both parties. Upon the City's confirmation of Borrower's estimate (as it may be revised), Borrower and the City shall amend this Declaration to provide for the corresponding changes in the Gross Rent restrictions required hereunder, provided however that existing tenants at the time of such amendment shall not be required to vacate their units, nor shall any tenant leases be terminated solely as a result of any such amendment. If, subsequent to any such amendment, the Subsidies or a compatible subsidy become available such that the Project can meet lender or investor requirements with more restrictive rent restrictions, Borrower and the City shall cooperate to further amend the declaration to reflect the same, provided, however, that in no event shall any such further amendment of the declaration restrict tenant incomes or rents to a greater extent than they are restricted under the original requirements of the declaration.

For purposes of this subsection, a "compatible subsidy" is one that (a) is provided on terms consistent with the operation of the Property in compliance with this declaration, with all other recorded covenants and loan documents entered into by Borrower for the Property and (b) will not reduce or impair the use of low-income housing tax credits claimed for the Project.

Fixed/Floating: HOME Units are ☒ Floating or ☐ Fixed.

If Fixed, HOME units are: IDENTIFYHOMEUNITS (EG #301, #534, etc.)

Accessibility:

Physically Accessible Units: 3 Units – IDENTIFYUNITS (EG #207 (2-Bedroom), #101 (3-bedroom))

Sensory Accessible Units: 2 Units – IDENTIFYUNITS (EG #207 (2-Bedroom), #101 (3-bedroom))

Initial HOME Rent Limits:

Following the completion of construction and lease-up, the Owner must seek the City'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	0	703	703		877	877	
2-Bed	0	759	759		1,076	1,076	
3-Bed	NA	NA	NA	NA	NA	NA	NA
4-Bed	NA	NA	NA	NA	NA	NA	NA

SECTION B—COMPLIANCE /DEVELOPMENT FACTORS *{This section is intended to highlight "special features" of the development that raise particular monitoring issues or may merit more careful oversight.}*

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 remediation | <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:

- **NONE**

EXHIBIT D

PERMITTED EXCEPTIONS

Existing title exceptions:

Reservations and provisions as contained in the Patent from the State of Nevada, recorded August 04, 1928, in Book 13 of Deeds, Page 152, as Instrument No. 28890.

13. Any private easements or lesser rights together with the rights, if any, of the City of North Las Vegas and/or the County of Clark, public utilities or special districts, which may not have been affected by the proceedings vacating alley as the same was recorded March 23, 1998 in Book 980323 as Instrument No. 01745 of Official Records.

14. An easement for public utilities and incidental purposes in the document recorded October 6, 1998 in Book No. 981006 as Instrument No. 01001 of Official Records.

15. Easements as shown and/or dedicated upon the parcel map, recorded in File 94, Page 74 of Parcel Maps.

16. Provisions, recited on the Dedication Statement on the parcel map recorded April 2, 1999 in Book 990402 as Instrument No. 00451 of Official Records, in File 94, Page 74 of Parcel Maps. Covenants, conditions, restrictions and easements in the document recorded December 01, 1999 in Book 991201 as Instrument No. 01323 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Document(s) declaring modifications thereof recorded April 16, 2002 in Book 20020416 as Instrument No. 00834 of Official Records.

Document(s) declaring modifications thereof recorded March 04, 2005 in Book 20050304 as Instrument No. 00552 of Official Records.

An easement for public utilities and incidental purposes in the document recorded May 11, 2000 in Book 20000511 as Instrument No. 00712 of Official Records.

Any private easements or lesser rights together with the rights, if any, of the City of North Las Vegas and/or the County of Clark, public utilities or special districts, which may not have been affected by the proceedings vacating right-of-way as the same was recorded August 14, 2001 in Book 20010814 as Instrument No. 00693 of Official Records.

23. An easement for public utilities and incidental purposes in the document recorded March 12, 2002 in Book 20020312 as Instrument No. 00919 of Official Records.

Encumbrances Related to Financing:

1. City of North Las Vegas Declaration of Restrictive Covenants related to HOME funding;
2. Clark County Declaration of Restrictive Covenants related to CHF funding;
3. Bank of America, N.A. Construction Deed of Trust;
4. Permanent Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing in favor of [Citibank, N.A.]
5. City of North Las Vegas HOME Deed of Trust;
6. Bank of America Subordination and Standstill Agreement – City HOME Loan;
7. Citibank Subordination and Intercreditor Agreement – City Loan;
8. County CHF All-Inclusive Deed of Trust and Assignment of Rents;
9. Bank of America Subordination and Standstill Agreement – County CHF Loan;
10. Citibank Subordination and Intercreditor Agreement – County CHF Loan;
11. LIHTC Declaration of Restrictive Covenants

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).

**Project Schedule of Performance
Development and Completion Schedule**

Estimated Date	Milestone
May 2024	Environmental Review process completed. Final HOME Agreements. City Manager Signature. Notice to Proceed, pre-bid meeting, post-advertisements for subcontractor bidding, bid-opening, and pre-construction meeting.
May 2024	Close equity investment in limited liability company, close construction loan, start construction.
May 2025	Start Preleasing
May 2026	Construction Complete
December 2026	100% Occupied
January 2027	Issuance of 8609's from Nevada Housing Division & Conversion of Permanent Loan
February 2027	Project Completion Packet Completed and Retention Released