

## F. Draft Copy of City of Paterson's HOME Developer's Agreement



**CITY OF PATERSON**

**MAYOR  
ANDRÉ SAYEGH**

**HOME INVESTMENT PARTNERSHIP (HOME)  
PROGRAM**

**AGREEMENT BETWEEN  
The CITY OF PATERSON [Grantee]  
AND**

**\_\_\_\_\_ [Developer]**

**FOR THE**

**HOME INVESTMENT PARTNERSHIP (HOME) PROGRAM**

**THIS AGREEMENT** is entered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the HOME Grantee of the **CITY OF PATERSON** (hereinafter referred to as the "Grantee") and \_\_\_\_\_ hereinafter referred to as the "Developer") (hereinafter referred to together as the "Parties").

**WHEREAS**, the Grantee is an entitlement community designated by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD") and receive an annual allocation of funding under the HOME Investment Partnership Program (hereinafter referred to as the "HOME Program"); and,

**WHEREAS**, the Grantee wishes to engage the Developer to assist the Grantee in using \$ \_\_\_\_\_ from the Grantee's allocation of HOME funds for the program years 20\_\_ through 20\_\_ (hereinafter referred to as the "HOME Funds"), in accordance with applicable notices, regulations and guidance from HUD; and,

**WHEREAS**, the Grantee intends to make the HOME Funds available to the Developer in the form of a deferred payment loan; and,

**WHEREAS**, the Grantee and the Developer have entered into that certain HOME Deed Restriction and Long Term Affordability Mortgage and Loan Agreement of even date (hereinafter referred as the "Mortgage Agreement") that identifies the agreed upon terms, covenants, conditions and restrictions and are made a part of this Agreement;

NOW, THEREFORE, it is agreed between the Parties hereto that;

**I. SCOPE OF SERVICE**

The City is entering into this HOME Agreement with the Developer, for the commitment of HOME Funds contingent upon the City securing an acceptable environmental clearance on the property.



Developer will be responsible for carrying out HOME activities in a manner satisfactory to the Grantee and consistent with all standards required as a condition of providing these funds. Program activities will include the following uses and corresponding activities eligible under HOME:

**A. Developer Responsibilities**

1. Developer will carry out this program in accordance with the policies, procedures and other provisions of the City's Annual Action Plan for the City's HOME Program, provided to Developer by Grantee, and incorporated herein by reference. Developer will not take any actions such as signing any contracts prior to the Grantee issuing a release of funds to the Developer. Developer hereby agrees to accept and follow any additional guidance or regulations provided by HUD, as well as any written amendments that are mutually agreed upon by Grantee and Developer.

2. This program activity may include the acquisition and development of the residential property located at \_\_\_\_\_, Paterson, New Jersey (hereinafter referred to as the "Project") in accordance with the definitions and requirements of the HOME program, to the extent that these activities are incorporated in this Section I and in Exhibit B.

3. Developer is responsible for providing the deliverables that are described in Exhibit A, HOME Budget for Residential Acquisition and Redevelopment, within the time periods and for the approximate average budget amounts described therein. The total allocation of HOME funding provided under this Agreement may not exceed the total amount of HOME Funds indicated in Section III Subsection A below.

4. Developer's expenditures for program delivery will be limited as follows, unless changes to the limits are agreed to in writing by the Grantee and Developer for a particular property:

a. Estimated number of and addresses of the structures to be acquired, redeveloped and/or purchased:

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b. Eligible properties: Developer will acquire only properties in the City of Paterson that are eligible under HOME for rehabilitation or redevelopment as Low-Income unit defined per the HUD-issued Income Guidelines. Properties acquired, renovated or constructed with the HOME Funds (hereinafter referred to as the "HOME-Assisted Units") must be residential structures.

c. Designated target areas: Developer may carry out this activity only in the following HOME area: **City of Paterson (      Ward)**

e. Prior approval of acquisitions by Grantee: Developer may not execute a purchase agreement for a property to be acquired and developed or contribute a Developer-owned property to this program without first obtaining written approval by Grantee. To request this approval, Developer will provide Grantee with a property description, preliminary plans and specifications for rehabilitation or construction work, a preliminary development cost estimate, an estimate of the purchase price per unit and a timeline for the proposed development of the property complete with milestones. The preliminary development cost estimate will be provided in a form acceptable to the Grantee and will include all proposed construction costs, fees and any other costs associated with completing the development of the proposed property. The Developer will provide the Grantee with a copy of an appraisal report on the property performed by a certified appraisal firm. Also, the Developer will provide the Grantee with a copy of a Phase I environmental assessment report on the property completed by a certified environmental assessment firm and in form and content satisfactory to the Grantee. The report must document that there are no environmental hazardous materials on the property. If the report indicates the presence of environmentally hazardous materials, the Developer must obtain a Phase II environmental assessment report and provide the Grantee with documentation of a remediation plan prior to Grantee approving the acquisition of the property. Grantee will base its approval of the purchase of any property upon an assessment of HOME compliance and conformity to expenditure limits described herein. In addition, properties must be located in HOME target areas as described herein.

f. It is the Developer's sole responsibility to obtain adequate financing from a third-party financial institution to complete the Project. Grantee will have no obligation to secure or guarantee such financing. Proof of financing in the form of a bona-fide binding commitment letter will be required prior to Grantee dispersing of any HOME Funds.



g. Developer will provide a summary of the procedures used to select potential buyers to occupy the property, estimated income targeting, and the identity of any additional subsidies that will be offered. In

h. determining the affordable sale price for the unit, the Developer will use the HOME Program Maximum Per-Unit Subsidy Amounts as defined by HUD at CFR 92.250(a). The Developer will set the purchase price at the lesser of the Maximum Purchase Price established for City of Paterson's HOME Program which is as periodically revised by Department of Community HOME Program assistance will only be provided to housing units that serve homeowners with annual income that is at or below 60% of area median income (AMI).

i. Developer fee allowed per dwelling unit: The maximum allowed developer fee is ten percent (10%) of the rehabilitation costs payable upon lease or sell of all of the completed units.

j. General contractor fee allowed: If Developer is acting as general contractor and thus hiring and managing subcontractors, Developer may charge an additional fee in the form of a 10% mark-up of subcontractor costs. Developer's reimbursement requests for construction costs may include a 10% mark-up of all valid, documented costs of subcontractors who have performed construction work. However, such mark-up may not be applied to non-construction costs such as taxes, insurance, security, general requirement, or working capital costs. No such fees will be paid to Developer for any HOME property that is rehabilitated or built by a third-party general contractor. All general contractors performing work on HOME-assisted projects must be properly licensed.

k. Allowed marketing costs for homes to be leased: Developer may expend up to \$1,500 per home in HOME Funds for marketing costs such as advertisements and flyers. If marketing is funded for multiple HOME properties, the costs of such marketing must be allocated to each HOME-Assisted Unit.

l. Other acquisition, rehabilitation/construction and soft costs are not subject to per-home cost limits, but must be reasonable and ordinary costs of development.

m. Developer will submit to Grantee for Grantee's approval all applicable architectural and engineering contracts, construction contracts and proof of adequate insurance (as specified in Exhibit B, Section D). Developer's architect will certify to Grantee that the plans and specifications developed for each property meet with Energy Star standards.



n. Accounting for expenditures: Developer will account for total HOME expenditures per home by means of assigning an accounting code for HOME-funded or reimbursed expenses for each property and

o. another accounting code, if applicable, for non-HOME funded expenditures (if any).

p. Developer will maintain the rental properties developed with HOME Funds as affordable to the households stipulated (at 50 percent AMI or 60 percent AMI) for a period of \_\_\_\_\_ years from initial occupancy or the date that the City completes all required information in HUD's Integrated Disbursement and Information System, whichever is later (hereinafter referred to as the "Affordability Period"). During the Affordability Period, tenant will continue to occupy the property as their primary residents. The property owner will be required to list the City of Paterson on the policy, as a lien holder with their insurance company. During the Affordability Period, the Developer will submit to Grantee documentation on an annual basis to demonstrate that the unit in the Project have been fully occupied within the past twelve (12) months to qualifying households. Developers agrees to enter into the Mortgage Agreement with Grantee to ensure the continued affordability of the properties developed with HOME Funds during the Affordability Period.

q. During the initial lease up of all HOME-Assisted Units in the Project, the Owner shall not lease a HOME-Assisted Unit to any household whose annual household income exceeds 60% AMI. The rent shall not exceed the lesser of 30% of the annual income of a household whose annual income equals 65% of AMI (hereinafter referred to as the "High HOME Rent") or the Fair Market Rent for Passaic County as periodically revised by HUD (hereinafter referred to as "FMR").

For properties with five (5) or more HOME- Assisted Units, at least 20% of the HOME-Assisted Units must be rented to Very Low-Income Households and must have rents which are no greater than the lesser of 30% of the annual income of a household whose annual income equals 50% of the AMI (hereinafter referred to as the "Low HOME Rent") or the FMR. The Project Rule applies throughout the entire Affordability Period.

Prior to commencing the initial lease up of the HOME-Assisted Units, the Developer will meet with the Grantee to establish the High HOME Rents and the Low HOME Rents (if necessary) that the Developer is to use during the initial lease up period.

r. In the event the Project has more housing units than the number of HOME-Assisted Units, prior to the start of construction, the Developer will notify the Grantee if the Developer intends to maintain the



same units in the Project as the HOME-Assisted Units during the Affordability Period (hereinafter referred to as the "Fixed Units") or if the HOME-Assisted Units will change from year to year in the event the tenants' income increases beyond the High HOME rents or the Low HOME Rents as described above (hereinafter referred to as the "Floating Units"). Fixed units remain the same throughout the period of affordability and the Developer will follow the provisions at 24 CFR 92.252(i). Floating units are changed to maintain conformity with the requirements of this Agreement during the Affordability Period so that the total number of HOME-Assisted Units remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-Assisted Unit.

## **B. Grantee Responsibilities**

Grantee is responsible for the following tasks and deliverables.

1. Review the required documentation for the purchase of individual properties and approve each property purchase as described herein or notify the developer of any deficient required information.
2. Review and approve site-specific environmental assessment reviews, architect and engineering contract, construction contract, plans and specifications.
3. Issue to Developer a release of funds notifying developer they are authorized to move forward with the Project.
4. Inspect all progress on the Project to ensure all work is performed and all materials used are in accordance with the construction plans and specifications approved by the Grantee prior to the Grantee issuing the release of funds.
5. Management of all draws of HOME Funds from HUD and payment of valid and properly documented draw requests from Developer.
6. Reporting to HUD via the Integrated Disbursement Information System (IDIS) system, using, in part, data provided by Developer.
7. Monitoring all program activities of Developer to assure compliance with the terms of this Agreement including all HOME requirements.
8. Processing requests for disbursements of HOME Funds, including necessary construction inspections, in a timely manner; Grantee will clearly and promptly

describe any deficiencies identified by Grantee that prevent a disbursement or portion of a disbursement from being approved. Upon the request of Developer, Grantee must promptly itemize and describe such deficiencies in writing.

9. Ensuring that information required by HUD is reported in the IDIS system in a timely manner. Grantee must comply with the HOME performance reporting requirements and with any additional reporting requirements announced by HUD at any time during the duration of this agreement.

#### **C. Income Eligibility Requirements**

In accordance with HOME regulations and requirements found at 24 CFR 92, the Developer will use all HOME Funds to assist individuals and families whose incomes do not exceed 60 percent of AMI. The Developer will use the HOME Funds for individuals and families at or below 60 percent or 50 percent of AMI as required by provisions elsewhere in this Agreement.

#### **D. Developer Staffing**

The names and roles of Developer's key personnel (staff or contractors) executing the Project is as follows:

Executive Director: \_\_\_\_\_

HOME Project Manager: **BARBARA MCLENNON, ACTING CD DIRECTOR**

Financial staff person responsible for approving submission of HOME payment requests: **BARBARA MCLENNON, ACTING CD DIRECTOR.**

#### **E. Performance Monitoring**

The Grantee will monitor the performance of the Developer based on goals and performance standards as stated above along with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If corrective action is not taken by the Developer within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated. Developer agrees to provide HUD, the HUD Office of Inspector General, the General Accounting Office, the Grantee, or the Grantee's internal auditor(s) access to all records related to performance of activities in this agreement during



the Affordability Period. Failure to comply with proper record keeping and providing Grantee with access to Developer's records will result in a default of this agreement and a recapture of HOME Funds.

#### **F. Progress Reports and Other Reports**

Developer hereby agrees to provide in a timely manner all necessary progress reports and other reports required by Grantee on forms to be provided by Grantee. At a minimum, Developer will submit to Grantee the following:

1. Developer will submit on a periodic basis, but no more than once a month and no less than quarterly, a narrative progress report, in form and content acceptable to the Grantee, outlining the progress achieved by the Developer in completing the Project.

2. Developer will submit to the Grantee on a periodic basis, but no more than once per month, requests for reimbursement of acceptable development costs associated with completing the Project. The request for reimbursements must be in a form acceptable to the Grantee and certified by an official of the Developer as to their accuracy of the costs and compliance with all applicable HUD requirements and regulations.

## **II. TIME OF PERFORMANCE**

### **A. Start and Completion Dates**

Time is of the essence in completing the Project. Services of the Developer shall commence on the day this Agreement is executed and end on the last day of the Affordability Period. The construction of the Project shall be completed by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ with all HOME Funds allocated to the Project having been expended, unless the Grantee at its sole discretion approves a later completion date in a written notice to the Developer.

The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer is responsible for HOME reporting or compliance measures or remains in control of HOME Funds or other HOME assets.

### **B. HOME Funds Expenditure Deadline**

Developer must expend 100 percent of the total HOME Funds in Section III Subsection A herein by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_. Any HOME Funds that have not been expended by this date may be recaptured by the Grantee at the Grantee's sole discretion. Developer must report expended HOME Funds on a monthly basis or when requests for reimbursements are made, whichever occurs sooner.



### **C. Project Milestones**

Developer agrees to provide the Grantee with milestones and timelines of each of the development process to complete and lease the Project. Such milestones shall include but not be limited to the following: complete pre development work, finalize construction plans and specifications, secure building permits and all approvals, award construction contract and commence construction, 50 percent complete, 90 percent complete, lease up period start, lease up period end and final completion date.

## **III. BUDGET**

### **A. Program Budget**

The total amount of HOME Funds allocated to Developer is \$\_\_\_\_\_, (\$\_\_\_\_\_per unit) as outlined in the development budget included in Exhibit A. This amount represents an allocation of the Grantee's total HOME funding contingent upon Developer's performance.

### **B. Additional Budget Details**

A budget for the Project is included in Exhibit A. The Developer is required to notify the Grantee of any changes to the budget in detail prior to disbursement of any HOME Funds. In addition, the Grantee may require different budget breakdowns than the one contained herein, and the Developer shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee.

### **C. Recapture and Reallocation of Developer's Allocation of HOME Funds**

The HOME Funds are being provided to the Developer in the form of a deferred payment loan, which will be forgiven at the completion of the Affordability Period after all requirements in this Agreement and the Mortgage Agreement have been satisfied by the Developer.

If the Developer fails to expend the HOME Funds as indicated with regard to the Scope of Services, Grantee at its sole discretion may recapture a portion or all of the HOME Funds or the unexpended HOME Funds allocated to the Project. The portion recaptured will be equal to Grantee's estimate of the amount of HOME Funds that would remain unspent by the spending deadlines described herein, based on Developer's activities to date and capacity to complete the work.

In addition, the amount of the Developer's HOME Funds that are not expended by the expenditure deadline in Section II. Subsection B, herein will be recaptured immediately unless Grantee grants a brief extension of the deadline in writing based on extenuating circumstances and compelling evidence that the expenditures will be completed during the extended period.

If, during the Affordability Period, the Developer is in default on any of the provisions contained in this Agreement, including if the Developer does not adhere to the provisions at 24 CFR 92.252, or any of the provisions contained in the Mortgage Agreement and that default is not cured within a period of 60 days, the Grantee, at the Grantee's sole discretion can demand repayment of all HOME Funds expended on the Project and the Developer will be responsible for the repayment of all HOME Funds to the Grantee.

#### **IV. PAYMENT**

It is expressly agreed and understood that the total amount of HOME Funds to be paid by the Grantee to the Developer under this Agreement shall not exceed the amount described in Section III. Subsection A herein plus additional amounts allocated, if any. Requests for the payment of eligible expenses shall be associated with the budget line items in Exhibit A and in accordance with performance. The Developer agrees that the Grantee's payment of each request for funds made by the Developer is contingent upon the Grantee, or the Grantee's designee, inspecting the Project to ensure the work completed and the materials used are in accordance with the plans and specifications approved by the Grantee prior to issuing the release of funds.

#### **V. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, or sent by facsimile or other electronic means. Any notice sent as aforesaid shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. Communication and details concerning this contract shall be directed to the following contract representatives:

**If to the Developer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**If to the Grantee:**

**Barbara A. Blake-McLennon, Acting Director**

Department of Community Development

City of Paterson

125 Ellison Street

Paterson, NJ 07505

973-321-1212

[bmclennon@patersonnj.gov](mailto:bmclennon@patersonnj.gov)

## **VI. ENTIRE AGREEMENT**

This Agreement between the Grantee and the Developer for the use of HOME Funds eligible for receipt supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Developer with respect to this Agreement. By way of signing this Agreement, the Developer is bound to perform the terms contained within this Agreement or any HUD approved amendment thereof. Any amendment to this Agreement must be in writing and receive prior approval by HUD.



Additional requirements associated with this agreement are described in Exhibit B.

**GRANTEE**

**CITY OF PATERSON**

**BY:** \_\_\_\_\_

**Name:** ANDRÉ SAYEGH

**Title:** MAYOR

**Date:** \_\_\_\_\_

**DEVELOPER**

\_\_\_\_\_

**BY:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**SONIA GORDON**  
**CITY CLERK**

**Date:** \_\_\_\_\_

**APPROVED AS TO FACTS:**

\_\_\_\_\_  
**Name:** BARBARA A. BLAKE-MCLENNON  
**Title:** COMMUNITY DEVELOPMENT  
ACTING DIRECTOR

**DATE:** \_\_\_\_\_

**REVIEWED BY:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**HARLYNNE LACK, ESQ.**  
**ASSISTANT CORPORATION COUNSEL**

**APPROVED AS TO FORM AND LEGALITY:**

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**CORPORATION COUNSEL**

**Exhibit A-1: HOME Development Proposed Budget submitted by Developer**

Costs		Amount	Per Dwelling Unit
Land acquisition costs			
Building Acquisition			
Rehabilitation or Construction			
Site Improvements			
Demolition			
Permits			
Survey			
Environmental			
Professional Fees	Architect		
	Engineer		
	Attorney		
	Other		
Carrying and Finance Charges	Interest		
	R. E Taxes		
	Financing Fees (Bonds, LIHTC)		
	Utility Connection Fees		
	Title Insurance		
Marketing			
Contingency			
Developer's fee * <i>(cannot exceed 15% of total budget)</i>			
Appraisal/Market Study/Audit			
Other (Reserves)			
<b>Total</b>			



**Exhibit A-2: Cost Estimate Review Performed on \_\_\_\_\_ of the Development Project Budget**

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## **Exhibit B: Additional Requirements**

### **I. GENERAL CONDITIONS**

#### **A. General Compliance**

The Developer agrees to comply with all HOME Investment Partnership Program regulations and requirements, including those found in the 24 CFR 92. The Developer also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Developer further acknowledges its responsibility for adherence to all applicable terms and conditions of this grant award by sub-recipient entities and contractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration. The Developer further agrees to use funds available under this Agreement to supplement rather than supplant funds otherwise available.

The Developer agrees to screen each general contractor and subcontractor used in conjunction with the Project to ensure that none are on the HUD list of disbarred and suspended contractors. The Developer will provide the Grantee with a list of all general contractors and subcontractors that are scheduled to work on the Project. The Grantee will review the list to ensure compliance with this requirement.

#### **B. “Independent Contractor”**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. The Developer shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as the Developer is an independent contractor.

#### **C. Workers’ Compensation**

The Developer shall provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.



#### **D. Insurance & Bonding**

The Developer agrees to comply with all HOME regulations and requirements, including those found in 24 CFR 92. The Developer also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Developer shall maintain insurance to cover the Grantee for any liability for personal injuries or property damage arising out of the activities covered by this agreement. Proof of said coverage shall be furnished to the grantee upon request and shall have limits of coverage not less than two million dollars per person per incident.

#### **E. Suspension or Termination**

In accordance with 24 CFR 85.43 or 84.62, the Grantee may suspend or terminate this Agreement if the Developer materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the statutes, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD policies or directives as may become applicable at any time;
  2. Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement;
  3. Ineffective or improper use of funds provided under this Agreement;
- or
4. Submission by the Developer to the Grantee reports that are incorrect or incomplete in any material respect.

This Agreement may also be terminated for convenience by mutual agreement between the Grantee and the Developer, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety. Such a termination shall only be carried out with the explicit written approval from HUD.

#### **G. Indemnification**

Developer agrees to indemnify, protect and hold harmless the Grantee and or the City of Paterson from any and all losses, injuries, expenses, demands and claims against Grantee and or the City of Paterson sustained or alleged to have been sustained in connection with

or resulting from (i) the Developer's execution of the activities proposed under this agreement; (ii) the delivery by the Developer to the Grantee of any other documents or information; and, (iii) any other conduct undertaken by the Developer in furtherance of or in relation to the activities undertaken by the Developer per the terms of this agreement. The Developer agrees that its duty to indemnify and hold harmless shall not be limited to the terms of any liability insurance, if any, required under this Developers Agreement or any other contract between the Grantee and the Developer.

## **II. ADMINISTRATIVE REQUIREMENTS**

### **A. Financial Management**

#### **1. Accounting Standards**

The Developer agrees to comply with 24 CFR 85.20-26 for other governmental entities and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

### **B. Documentation and Record Keeping**

#### **1. Client Data**

The Developer shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, household composition, utility allowances, and description of service or benefit provided. Such information shall be made available upon request to Grantee monitors or their designees for review.

#### **2. Records to be Maintained**

Prior to release of final payment by the Grantee to the Developer, the Developer shall provide the Grantee with all records required by Federal regulations specified in 24 CFR 92.508. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken benefits very low



and low-income persons;

c. Records required in determining the eligibility of activities and the eligibility of all properties assisted;

d. Records required documenting the purchase and sale amounts of each property, discounts, and the sources and uses of funds for each activity;

e. Records documenting compliance with the fair housing and equal opportunity requirements of the HOME program, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program;

f. Records documenting efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the tenant protection requirements;

g. Financial records as required by 24 CFR 92.508 and 24 CFR 84.21 and 84.28; and

h. Other records necessary to document compliance with 24 CFR 92.

### 3. Retention

The Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the completion of the twenty (20) year affordability period. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

### 4. Disclosure

The Developer understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Developer's responsibilities with respect to services provided under this contract, is prohibited by law unless

written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The Developer's obligation to the Grantee shall not end until the US Department of Housing and Urban Development completes all close-out requirements for the HOME grant. Activities during this close-out period shall include, but are not limited to: making final payments; disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, balances, and accounts receivable to the Grantee); and determining the custodianship of records. However, the terms of this Agreement shall remain in effect during any period that the Developer has control over HOME Funds.

6. Audits & Inspections

All Developer records with respect to any matters covered by this Agreement shall be made available to the Grantee, Grantee agency, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments or termination of this agreement. The Developer hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Developer audits and OMB Circular A-133.

**C. Reporting and Payment Procedures**

1. Payment Procedures

The Grantee will pay to the Developer funds available under this Agreement based upon information submitted by the Developer and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for the reimbursement of eligible HOME related expenses actually incurred by the Developer, and will not exceed actual cash requirements. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Developer.

HUD, through the Integrated Disbursement Information System (IDIS) system, generally provides access to grant funds within 3 working days of an



electronically submitted request by the Grantee. To ensure expeditious implementation of activities, Grantee agrees to draw funds from the line of credit and make payment to the Developer within 30 working days of receipt of the Developer's complete and properly submitted requests for payment for activities under this agreement, if feasible. Developer agrees to submit requests for payment in a timely manner in the form and at the times directed by the Grantee.

The Grantee, at the Grantee's sole discretion, may retain up to ten (10) percent of the funds requested by the Developer and hold the retained funds until the Project has been completed to the Grantee's satisfaction and a final inspection can be made by the Grantee to determine that all work performed and all materials used were in accordance with the construction plans and specifications provided to the Grantee at the time the release of funds was approved.

## 2. Progress Reports

The Developer shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee. The Developer will reference the milestones in the Project timeline provided to the Grantee prior to the Grantee issuing a release of funds. The Developer will document each milestone in the timeline that the Developer will not be able to adhere to and provide the Grantee with a reasonable explanation and a revised date for completion of the milestone.

## **D. Use of and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 [or Part 85] and 24 CFR 92, as applicable, which include but are not limited to the following:

1. The Developer shall transfer to the Grantee any HOME Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified in the HUD closeout agreement with the Grantee.

2. Real property under the Developer's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the HOME application for the period consistent with the land-banking and continued affordability requirements.

### **III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Developer agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 92.353 – Displacement, relocation acquisition, and replacement of housing. The Developer shall provide appropriate relocation assistance (URA or section 104(d)) to eligible displaced persons as defined by applicable HUD and/or URA regulations that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an HOME-assisted project. The Developer also agrees to comply with applicable Grantee or local ordinances, resolutions and policies concerning the displacement of persons.

The Developer will use HOME Funds to demolish major structures or convert units from non-residential uses only with the prior written permission of Grantee. Permission for demolition of minor structures such as porches, sheds and garages shall be deemed to have been granted when Grantee approves the plans and specifications (which may also be referred to as work write-ups) for a particular property that Developer is assisting with the HOME Funds.

### **IV. PERSONNEL & PARTICIPANT CONDITIONS**

#### **A. Civil Rights**

##### 1. Compliance

The Developer agrees to comply with applicable state and local civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974 as amended (the HCDA), section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

##### 2. Nondiscrimination

The Developer agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders. The applicable non-discrimination provisions in section 109 of the HCDA are still applicable.

##### 3. Section 504



The Developer agrees to comply with all Federal regulations issued pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

**B. Affirmative Action**

**1. Approved Plan**

The Developer agrees that it shall be committed to carry out, pursuant to the Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Developer to assist in the formulation of such program.

**2. Women- and Minority-Owned Businesses (WBE/MBE)**

The Developer will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group Developers or women. The Developer may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation. The Developer will provide the Grantee with written evidence of their efforts to recruit and contract with Minority and Women-Owned Businesses

**3. Access to Records**

The Developer shall furnish and cause each of its own Developers or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Developer will include the provisions of Paragraphs XI.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Developers or subcontractors.

**C. Employment Restrictions**

1. Prohibited Activity

The Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the



payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. “Section 3” Clause

a. *Compliance*

Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Developer and any of the Developer’s grantees and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Developer and any of the Developer’s grantees and subcontractors, their successors and assigns, to those sanctions specified by this Agreement through which Federal assistance is provided. The Developer certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Developer further agrees to comply with the Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the Project area, and that contracts for work in connection with the Project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the Project is located.”

The Developer further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation

(including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the HOME-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the Project or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the HOME-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.

The Developer certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements. The Developer agrees to complete and submit to the Grantee written evidence in reports, on forms acceptable to the Grantee, documenting Section 3 compliance.

*b. Notifications*

The Developer agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

*c. Subcontracts*

The Developer will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Grantee's agency. The Developer will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.



## **D. Conduct**

### 1. Assignability

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto and HUD; provided, however, that claims for money due or to become due to the Developer from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

### 2. Subcontracts

#### *a. Monitoring*

The Developer will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

#### *c. Content*

The Developer shall cause all of the provisions in this Exhibit to be included in and made a part of any subcontract executed in the performance of this Agreement.

#### *d. Selection Process*

The Developer shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process. The Developer agrees to screen all general contractors and subcontractors to ensure that none are included on the HUD list of disbarred and suspended contractors.

### 4. Conflict of Interest

The Developer agrees to abide by the provisions of 24 CFR 84.42 and 92.356, which include (but are not limited to) the following:

a. The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to HOME-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME-assisted activity, or with respect to the proceeds from the HOME-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Developer, or any designated public agency.

## 5. Lobbying

The Developer hereby certifies that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Developer of Congress, an officer or employee of Congress, or an employee of a Developer of Congress in



connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:

d. Lobbying Certification

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

6. Copyright

If this contract results in any copyrightable material or inventions, HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Developer agrees that it will comply with 24 CFR 92.257 so that funds are not used to support inherently religious activities.

**V. ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C., 7401, et seq.;

2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder; and

3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 92.355, and 24 CFR Part 35, Subpart B. Such regulations pertain to all HOME-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

**D. Historic Preservation**

The Developer agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.



In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

## **VI. ENVIRONMENTAL REVIEW**

All HOME assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR parts 50 or 58.

## **VII. REHABILITATION STANDARDS**

The Developer will carry out all HOME-assisted rehabilitation of an abandoned or foreclosed-upon home or vacant residential property in compliance with the rehabilitation standards stipulated in the New Jersey Rehabilitation Subcode 5.23.6 as outlined in the Grantee's HOME application and in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties.

## **VIII. TIMELINESS OF USE AND EXPENDITURE OF HOME FUNDS**

The Developer will ensure that HOME allocated funds are expended within a timely manner in accordance with Section II in this Agreement. HUD, on the first business day after that deadline, will notify the Grantee, restrict the amount of unused funds in the Grantee's line of credit, and begin the process of de-obligating the unused amounts.

To ensure the timeliness of the use of HOME Funds, the Developer will provide the Grantee a timeline outlining milestones for completion of the Project. The Developer will report to the Grantee with each request for funds the Developer's progress in meeting the milestones. Should the Developer fail to meet the milestones outlined in the timeline and the Grantee make a determination that such failure of performance could jeopardize the HOME grant from HUD, the Grantee, at its sole determination and discretion, may revoke the balance of the grant amount and this agreement will be terminated.

## **IX. ELIGIBILITY AND ALLOWABLE COSTS**

The Developer will ensure that its HOME activities meet eligible use, allowable cost, and eligible activity requirements of HOME.

## **X. EMINENT DOMAIN**

The Developer will not undertake any involuntary acquisition of property with HOME Funds without prior written consent of the Grantee and written opinion of counsel that such acquisition is lawful.

## **XI. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

## **XII. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

## **XIII. WAIVER**

The Grantee's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.