

# **DEVELOPMENT AGREEMENT FOR AFFORDABLE HOUSING – HOMEOWNERSHIP PRODUCTION**

## **PROJECT NAME: RIVERSIDE TERRACE MOBILE HOME PARK**

This Development Agreement for Affordable Housing – Homeownership Production (this “**Agreement**”) made and entered into to be effective this \_\_\_\_\_ (the “**Effective Date**”) by and between the City of San Antonio (“**City**”), a Texas municipal corporation, acting by and through its Director of Neighborhood and Housing Services Department (“**NHSD**”), and MISSION TRAIL COMMUNITY ASSOCIATION, a Texas nonprofit corporation, (“**Developer**”). City and Developer are sometimes referred to herein each individually as a “**Party**” and collectively as the “**Parties**.”

### **RECITALS**

WHEREAS, the City held a bond Election on May 7, 2022 (“**Housing Bond Election**”) and received the City voters’ approval of Proposition F to fund the creation and preservation of affordable housing through projects that meet the strategic housing goals of the City as set forth in the Strategic Housing Implementation Plan (“**SHIP**”); and

WHEREAS, the City’s issuance of bonds (such initially issued bonds, as well as any City bonds from time to time issued to refund these initial City bonds) to fund the creation and preservation of affordable housing is authorized by applicable Texas law, including the City’s Home Rule Charter and the Housing Bond Election; and

WHEREAS, City has implemented the 2022-2027 Housing Bond Program (“**Housing Bond Program**”) and adopted the City of San Antonio Fee Waiver Program and other incentive programs to support, among other City goals, the creation and preservation of affordable housing citywide; and

WHEREAS, City issued a Request for Proposals (“**RFP**”) on February 3, 2023 seeking projects that will build affordable housing that is consistent with the goals of the Housing Bond Program and Developer, through its Sponsor, submitted a proposal in response to the City’s RFP for the development of housing opportunities that will meet or exceed the criteria outlined in the RFP, including affordability and other special characteristics as set forth in this Agreement; and

WHEREAS, after reviewing the responses to the RFP, the RFP evaluation panel recommended to the City Council of the City of San Antonio (“**City Council**”) that it approve Developer’s project for funding through the Housing Bond; and

WHEREAS, the City Council has found in Ordinance No. 2023-06-08-0396, dated June 8, 2023 and Ordinance No. 2023\_\_\_\_\_, dated \_\_\_\_\_, that the project proposed by Developer meets the requirements of the Housing Bond Program and will provide much needed housing that is affordable to the citizens of the City of San Antonio and, accordingly, the expenditure of proceeds derived from the sale of bonds authorized by the Housing Bond Election and other City incentive funds to defray the costs of Developer’s proposed development represents a valid expenditure of such bond proceeds and City incentive funds; NOW, THEREFORE, the Parties agree as follows:

## ARTICLE I DEFINITIONS

1.1 In addition to terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“*Business Day*” means every day of the week, except all Saturdays, Sundays and those scheduled holidays officially adopted and approved by City Council for City’s employees.

“*Day*” means calendar days.

“*Default*” has the meaning assigned in **Section 16.1** of this Agreement.

“*Event of Default*” has the meaning assigned in **Section 16.4** of this Agreement.

“*Environmental Report*” means a report prepared by a reputable engineer or other party reasonably satisfactory to City in such detail as City may reasonably require, indicating that no part of the Property is contaminated with Hazardous Materials (defined below) or is subject to undue risk of contamination by Hazardous Materials.

“*Governmental Authority*” means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal or otherwise), whether now or hereafter in existence.

“*Hazardous Materials*” means any flammables, explosives, radioactive materials, asbestos, petroleum products, or other hazardous waste, including, without limitation, substances defined as “hazardous substances,” “hazardous materials” or “toxic substances” in any federal, state, or local law, statute, ordinance, or regulation pertaining to health, industrial hygiene, or the environmental conditions on, under or about the Property (defined below).

“*Legal Requirements*” means (A) any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, or ordinances of any Governmental Authority in any way applicable to Developer, any guarantor of the Project, this loan, or the Property, including, without limitation, the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (B) any and all covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Property or the ownership, use, construction, occupancy, possession, operation, maintenance, alteration, repair, or reconstruction thereof; (C) Developer’s, or any Project guarantor, or any loan guarantor’s, presently or subsequently effective bylaws and articles of incorporation/certificate of formation or partnership, limited partnership, joint venture, trust or other form of business association agreement; (D) any and all leases related to the Property or the Project; or (E) any other contracts, whether written or oral, of any nature that relate in any way to the Property or the Project and to which Developer or any loan guarantor or Project guarantor may be bound.

“*Manufactured Home*” or “*Manufactured Housing*” means a HUD-Code manufactured home or a mobile home, as those terms are each defined in Texas Occupations Code, Section

1201.003. A reference to *Manufactured Home* or *Manufactured Housing* in this Agreement encompasses both HUD-Code manufactured homes and mobile homes.

“*Plans*” means any and all contracts and agreements, written, between the architect for the Project and Developer, together with the final plans, specifications, shop drawings and other technical descriptions prepared for the construction of the Project, and all amendments and modifications.

“*Project*” has the meaning assigned in **Section 2.1** of this Agreement.

“*Property*” means the land, together with all improvements, (in which Developer holds a fee simple interest) with a street address of 2315 Mission Road, San Antonio, Texas 78214 and more particularly described in **Exhibit “A,”** attached to this Agreement and incorporated here for all purposes.

“*Sponsor*” means ROC USA, LLC, a nonprofit corporation together with its successors and assigns.

## **ARTICLE II AGREEMENT**

**2.1 Purpose.** The purpose of this Agreement is to set the terms and conditions of the City’s loan of 2022-2027 Housing Bond Program funds to Developer to defray a portion of the acquisition and infrastructure construction costs of **Riverside Terrace Mobile Home Park**, an affordable housing development consisting of up to fifty-four (54), but no less than forty-six (46), lots for placement of Manufactured Housing on the Property that will be reserved for households earning up to a maximum area median income level as detailed in this Agreement (the “*Project*”).

**2.2 Term.** Unless terminated earlier, this Agreement shall commence on the Effective Date and shall continue until the end of the Affordability Period (defined in **Section 4.1**).

**2.3 Loan Amount.** In consideration of full and satisfactory performance of activities required by this Agreement, City has agreed to provide Developer with: (a) a loan for the acquisition of the Property in the amount of TWO MILLION, EIGHT HUNDRED FIFTY-ONE THOUSAND, TWENTY-ONE AND NO/100 DOLLARS (\$2,851,021.00) from the 2022-2027 Housing Bond Program funds and (b) a loan for the infrastructure improvements to the Property in the amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00) from the City’s Inner City Incentive Fund (collectively, the “*Loan Funds*”). In no event shall this Agreement in any way obligate any other monies or credits of City.

**2.4 Fee Waivers.** To further assist in the completion of this Project, the City has also agreed to provide Developer with waivers of development and permitting fees in an amount up to TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) (the “*City Fee Waivers*”), provided that Developer complies with each and every term of this Agreement and all requirements of the City Fee Waiver Program, as adopted by City of San Antonio Ordinance No. 2018-12-13-0996 and amended in Ordinance No. 2021-12-16-0990.

2.5 **Total Award.** The City Fee Waivers and the Loan Funds represent the full amounts awarded to Developer by this Agreement. With the exception of changes made pursuant to the terms of this Agreement, City will not be liable to Developer, or other entity, for any other costs incurred by Developer in the construction and completion of the Project.

2.6 **Loan Documents.** In addition to this Agreement, Developer shall execute the following documents:

- (A) Real Estate Lien Note payable to City in the amount of THREE MILLION SIX HUNDRED ONE THOUSAND TWENTY-ONE AND NO/100 DOLLARS (\$3,601,021.00) (the “*Note*”); and
- (B) Deed of Trust to be recorded against the Property in the Real Property Records of Bexar County, Texas, in favor of City (the “*Deed of Trust*”); and
- (C) Declaration of Restrictive Covenant of Affordability executed by Developer and dated as of even date herewith and recorded in the Official Property Records of Bexar County, Texas (the “*Restrictive Covenant*,” and together with this Agreement, the Note, and Deed of Trust, the “*Loan Documents*”).

### ARTICLE III AFFORDABILITY

3.1 **Affordability Period.** Developer shall maintain the affordability requirements in this article for an uninterrupted, a continuous forty (40) year period of time, as set forth in the Restrictive Covenant (the “*Affordability Period*”).

3.2 **Area Median Income.** “*Area median income*” (“*AMI*”) shall mean the area median income for the San Antonio-New Braunfels Metropolitan Area, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (“*HUD*”) in accordance with the then-current HUD income guidelines.

3.3 **Reservation of Units.** Subject to the express exceptions for immediate family members and home sellers set forth in Section 3.3(A)(iv) and (v) below, Developer shall reserve: (a) ninety percent (90%) of all lots for lease to households whose income is at or below 60% of AMI at the time of move-in; and (b) ten percent (10%) of all lots for lease to households whose income is at or below 80% of AMI (collectively, all so-reserved lots, the “*Affordable Units*”). The City intends that this reservation of Affordable Units shall result in affordable homeownership opportunities for no less than forty-six (46) households; accordingly, during the Affordability Period Developer shall maintain and make available for lease no less than 46 Affordable Units leased or available for lease on the Property subject to the specific AMI restrictions listed in the previous sentence.

- (A) Developer shall include the following provisions in its bylaws and in each lease agreement entered into with a resident community member of the Property (each resident a “*Member*”):
  - i. If any Member wishes to sell their home, the Member shall seek and approve a homebuyer who meets the income eligibility qualifications of the Restrictive Covenant and the membership eligibility requirements of Developer’s

community by reaching out proactively to three or more of the following: local housing authorities, City housing agencies, local NeighborWorks organization, or other similar nonprofit affordable homeownership entity that keeps a waiting list of interested low-income homebuyers to seek eligible buyers for the home to be sold in the Community, in addition to general advertising of the home for sale, (“**Best Marketing Efforts**”);

- ii. The Member shall diligently pursue Best Marketing Efforts for a period of 60 days from the date the home is first advertised for sale; and
  - iii. Prior to advertising the home for sale, the Member shall provide the resident community (a) notice of the Member’s intent to sell; and (b) a written summary and confirmation of all Best Marketing Efforts taken.
  - iv. If after 60 days of Best Marketing Efforts by the Member, a viable, written purchase offer has not been received from an income-eligible buyer which is acceptable to both the Member and resident community, the Member shall be able to market the home for sale to a buyer with an income up to 100% of the area median income for the San Antonio-New Braunfels Metropolitan Area, adjusted for household size, as determined by the U.S. Department of Housing and Urban Development (“**HUD**”) in accordance with the then-current HUD income guidelines.
  - v. Provisions (i)-(iv) shall not apply to Members transferring their home to an immediate family member, including a spouse, biological or adopted children.
- (B) Developer shall amend its bylaws before the expiration of sixty (60) days from the Effective Date to include (i) provision(s) requiring its Members to comply with the Restrictive Covenant; and (ii) the seller’s provisions above.
- (C) Developer shall make reasonable business efforts to ensure compliance with provisions of **Section 3.3(A)(i)-(v)** above during the term of this Agreement.

**3.4 Recording Position.** Any amortizing mortgage debt that will be senior to the loan provided by this Agreement must allow the Restrictive Covenant to be recorded senior to all other financing documents such that the Restrictive Covenant is not extinguished in the case of foreclosure by a senior lender. In such case, City agrees that the loan provided by this Agreement will be junior to the senior amortizing debt.

**4.2 Proof of Affordability Required.** Prior to Project Commencement, Developer shall provide City with documentation evidencing the affordability of the Affordable Units by providing a completed Income Verification Survey, attached to this Agreement as **Exhibit “D,”** for each tenant then-residing on the Property. Thereafter, and for the duration of this Agreement, Developer shall provide the City with a completed Income Verification Survey for each new tenant.

## **ARTICLE IV TIMELINE**

**4.1 Project Start.** Developer shall undertake the Project no later than thirty (30) days after the Effective Date unless written, prior approval is obtained from City to modify the start date of the Project (“**Project Commencement**”). Subject only to Force Majeure (defined herein) or unless written prior approval is obtained from the City to modify the completion date of the Project,

Developer shall complete construction of the Project no later than **November 13, 2024** (“**Project Completion**”).

4.2 **Time for Construction.** The time between Project Commencement and Project Completion (the “**Construction Period**”) shall not exceed one (1) year.

4.3 **Modifying Project Timelines.** City may require additional deadlines within the Construction Period in the established construction timeline for the Project in the work statement, attached to this Agreement as **Exhibit “B”**, and incorporated here for all purposes (the “**Work Statement**”). Developer shall follow the established timeline in the Work Statement, unless written, prior approval is obtained from City to modify the established timeline.

4.4 **Notice and Approval Required.** After Project Commencement, Developer shall notify City of requested adjustments to the Project’s established timeline and shall obtain City’s written approval by the Director of the Neighborhood and Housing Services Department (“**NHSD**”) before any such timeline adjustments are made.

4.5 **Termination Upon Failure to Start Work.** If Developer has not obtained the building permit and started construction within one hundred eighty (180) days after the effective date of this Agreement, City may terminate this Agreement for cause and recapture all funds provided to Developer by City under this Agreement.

## **ARTICLE V PROJECT**

5.1 **Project Intentions.** Developer shall ensure that all work performed under this Agreement shall be in accordance with the Work Statement and that the Loan Funds shall be expended in accordance with the Budget, attached to this Agreement as **Exhibit “C”** and incorporated here for all purposes.

5.2 **Environmental Review.**

- (A) Developer shall provide to City before commencing work on the Project (1) a copy of any current, valid Environmental Services Assessment(s) (“**ESA**”) conducted for the Property; and (2) any other environmental review records or documents provided to any senior lenders.
- (B) At the request of City, Developer shall also provide City the qualifications and experience of the assessment provider as well as proof of payment by Developer to the assessment provider for environmental services related to any ESA provided to the City.
- (C) Any change to the Work Statement shall require further environmental review.
- (D) City shall not be responsible for any action recommended by any ESA for the Property. Loan Funds shall not be used for any corrective action or additional steps recommended by any ESA for the Property.

5.3 **Plans Required Before Project Commencement.** Regardless of the date of Project Commencement, construction in connection with the Project shall not be commenced unless and until:

- (A) Developer has delivered a complete set of the Plans to City before the Project commencement date and prior to obtaining a permit for the Project or application to the City of San Antonio's Development Services Department for such permit. Unless otherwise requested by City, DEVEOPER shall submit hard (printed) copies of the Plans to City for review;
- (B) After delivery of the Plans, Developer has afforded City a period of no less than thirty (30) days, to review and provide comments to the submitted Plans;
  - i. Developer shall respond to any comments or questions City may have regarding the Plans within five (5) days of receipt from City;
  - ii. Developer acknowledges that changes to the Plans may be required after City's review of the Plans and that City's review is separate and distinct from the permitting process; and
- (C) City accepts the Plans (which acceptance shall be evidenced, if at all, in writing by City). In instances where City does accept the Plans (or any change therein), such acceptance shall be deemed to be strictly limited to an acknowledgment of City's consent to the construction in accordance therewith and shall not, in any way, be deemed to imply any warranty, representation, or approval by City that such construction, if so performed, will be structurally sound, will comply with all applicable federal, state, and local rules, regulations, and laws, will be fit for any particular purpose or will have a market value of any particular magnitude.

**5.4 Other Pre-Construction Deliveries.** In addition to the Plans, Developer shall provide the following documents to City prior to commencement of construction of the Project:

- (A) Proof that the selected general contractor or prime subcontractors (i) possesses all required licenses for the work performed on the Project; (ii) maintain appropriate insurance coverage covering the total cost of the construction done in connection with the Project, including, but not limited to, worker's compensation, general liability and personal liability; and (iii) provide a minimum of one (1) year warranty on all work performed;
- (B) If requested by City, immediately after execution by Developer of this Agreement, Developer and its general contractor or prime subcontractor for the Project shall execute and file an Affidavit of Commencement in accordance with Section 53.124(c) of the Texas Property Code and provide a copy thereof to City;
- (C) A sign acknowledging the City's investment placed on the Project site, as further described in **Exhibit B**, for the duration of the construction period. Language and images are to be coordinated and approved by the City; and
- (D) If requested by the City, a groundbreaking ceremony open to the public; provided that the costs of the same are reasonable and to include, but not be limited to: a

canopy; refreshments; seating; accessible parking; a sound system; press and media support; and public invitation support.

**5.5 Project Review.** It is material to this Agreement that the Project be completed in substantially the same form as proposed to City and in accordance with this Agreement. Developer acknowledges that City has relied on Developer's proposal of the Project as set forth in Developer's response to the RFP in determining whether to award the Loan Funds. Accordingly, City will assign staff to oversee construction and ensure the Project progress aligns with this Agreement ("**Project Review**"). Project Review shall include, but is not limited to, the following requirements:

(A) Project progress:

- (i) Developer or Developer's representative shall attend monthly City-held project management meetings;
- (ii) Developer or Developer's representative shall provide weekly reports, including a summary of weekly efforts with pictures of progress;
- (iii) Developer shall provide City access and invitation to bi-weekly Project site meetings with contractors;
- (iv) Developer shall provide City access to Project site, as needed, for observation of progress;
- (v) Developer shall participate in all site visits necessary to approve requests for reimbursement made pursuant to **Article VIII**; and
- (vi) Developer shall provide notice to City of all scheduled inspections (minimum 24 hour notice)

(B) Project Construction and Lease-Up Schedule:

- (i) Developer shall provide to City a baseline schedule at least 30 days before construction start;
- (ii) Developer shall provide to City monthly updates to the baseline schedule 24 business hours before the monthly project management meeting;
- (iii) Developer shall provide to City material delivery milestones; and
- (iv) Developer shall provide to City shop drawing and submittal schedules.

(C) Substantial Completion

- (i) Prior to Project Completion, Developer shall complete a punch list walk that is documented by Developer's contractor and validated by City;
- (ii) Developer shall participate in a verification walk of closed punch list items; and
- (iii) Developer shall provide to City all warranty documents.

(D) Final Completion

- (i) Developer shall obtain and provide to City a Certificate of Occupancy;
- (ii) Developer shall provide to City proof that all scope and punch-list items have been closed out and reported as complete, submitted and approved; and



- (iii) Upon Project Completion, Developer shall provide to City as-builts, as applicable.

**5.6 Clean Worksite.** Developer shall permit City to inspect the Property to ensure that the Property is being kept in a safe, sanitary, and decent condition.

**5.7 Special Characteristics of Project.** The Parties acknowledge that the following special characteristics are material to the Project:

- (A) Developer shall collaborate with local nonprofit and governmental providers of services that would support the health and well-being of resident and shall further ensure that community space is made available to such nonprofits and governmental providers on a regularly scheduled basis, as further described and detailed in the Work Statement;
- (B) Developer shall collaborate with San Antonio's Ready to Work job training program, as further described and detailed in the Work Statement;
- (C) Upon Project Completion and from the date the Project is placed in service, Developer shall have an on-site services coordinator to facilitate the provision of the on-site services to the satisfaction of City and as further described and detailed in the Work Statement;
- (D) No later than six months from the date the Project is placed in service, Developer shall complete a resident needs survey ("**Survey**") to assess the services most needed by residents and determine which on-site services (as further described in the Work Statement) will be offered. Developer shall promptly provide City with written notice of on-site services to be offered, which notice shall include for each service the name of the selected service provider, duration of service offerings, frequency of service offering; and a description of the service offered; and
- (E) The City acknowledges that Developer will enter into a separate agreement with a ROC USA Certified Technical Assistance Provider ("**CTAP**") whereby the CTAP will provide assistance to Developer in fulfilling Developer's duties under this Agreement and complying with its terms ("**Technical Assistance Agreement**"). The Technical Assistance Agreement shall remain in place throughout the term of this Agreement unless prior written consent is given by the City to end services by the CTAP at an earlier date.

**5.8 CTAP Cooperation.** Developer shall ensure in its Technical Assistance Agreement that the CTAP shall be required to fully cooperate with the City with any requests made by the City related to the monitoring, record keeping, proof of affordability and Project Review processes outlined in this Agreement.

**5.9 Changes in Work.** Developer shall not use any of the funds provided under this Agreement for any changes without the notice or approval required as follows:

- (A) Developer must obtain the written approval of City prior to implementing any of the following changes: (1) changes to the items listed in the Work

Statement; (2) changes to the Plans that (a) require City's approval pursuant to applicable statutes, or regulations, or (b) alter the fundamental characteristics of the Property or Project (e.g. number or type of apartment units, the ability to provide tenant services, design changes etc.); and/or (3) changes that would involve an adjustment in the funds awarded under this Agreement or an extension of the timeline for Project completion (collectively, "**Material Work Changes**").

- (B) Approval of Material Work Changes shall include consideration of the following factors: (i) eligibility in accordance with the City's regulations and policies; (ii) change in budget or contract price and proposed source and/or availability of funds; (iii) change in completion time; (iv) quality of workmanship and/or materials; and (v) any other factor the City determines is reasonably necessary to make a determination.
- (C) Material Work Changes shall be requested by written change orders, signed by Developer and the contractor or subcontractor, if applicable, and approved by the Project Architect. Use of Loan Funds for any Material Work Changes is subject to approval of the Director of NHSD, or their designee, and may require approval of the City Council of the City of San Antonio.
- (D) For any changes other than Material Work Changes, Developer shall provide City written notice of such change promptly after such change is effected.
- (E) Notwithstanding the foregoing, Developer shall be permitted to make non-material changes (which are changes that are not Material Work Changes) without the written approval of the City if it is not possible or practical to wait for such approval and the change required is necessary to protect or preserve the Property. If such change is effected, Developer shall notify City promptly thereafter of the change and the reason Developer made the change.
- (F) Notwithstanding the foregoing, Developer shall be permitted to make any change without the written approval of the City if it is not possible or practical to wait for such approval and the change required is necessary to protect health, safety and welfare of its tenants or others, and it is not possible or practical to wait for such approval. If such change is effected, Developer shall notify City promptly thereafter of the change and the reason Developer made the change.
- (G) Should Developer (i) initiate any Material Work Changes or (ii) fail to provide acceptable documentation requested by City to support a change order and such failure is not cured within the Cure Period (defined in **Article XVI**), then, in either event, City may, at its option (a) reduce the Loan Funds to a lesser amount based on the actual obligated development/construction cost documentation received or (b) withdraw City's funding for the development/construction of the Property, cancel the Loan and terminate the agreement for cause pursuant to **Article XVIII**.

**5.10 Performance of Work.** Developer shall (a) secure all appropriate permits, as required by local, state, and federal regulations or policies, for work related to the construction of the Project;

and (b) ensure that the work to be performed in connection with the Project is performed in a timely manner and in accordance with the highest standards and customs of the trade, complies with all Legal Requirements, including those requirements of the building, electrical, fire, mechanical, and plumbing codes of City.

**5.11 Developer's Business and Conduct.** Developer (or through its affiliate developer, contractor, or agent) shall perform or cause to be performed, in a satisfactory and efficient manner as determined by City, all work and activities set forth in this Agreement, and shall be solely responsible for all aspects of Developer's business and conduct in connection with the Project, including, without limitation, the following:

- (A) Quality and suitability of the Plans;
- (B) Supervision of construction of the Project;
- (C) Qualifications, financial condition and performance of all of the Project's architects, engineers, developers, sub-developers, consultants, and suppliers contracted by Developer;
- (D) Conformance of construction to the Plans, all Legal Requirements, and all requirements of this Agreement;
- (E) Quality and suitability of all materials and workmanship;
- (F) Accuracy of all requests for the disbursement of Loan Funds and the proper application of disbursed Loan Funds;
- (G) Uphold and enforce the Affordability Period (defined in **Article III**); and
- (H) Perform and document all income verification requirements needed in accordance with the AMI requirements for the Affordability Period.

**5.12 Deliveries Upon Project Completion.** Upon completion of the Project, Developer shall deliver the following to City:

- (A) evidence that all infrastructure improvements have been approved and accepted by City, San Antonio Water System (SAWS), and City Public Services (CPS), as applicable;
- (B) a copy of the final recorded plat;
- (C) a copy of the Certificate of Occupancy for the Project;
- (D) evidence, in a form acceptable to the City, of the title policy for the Property that meets the requirements of **Section 8.4(C)**;
- (E) a copy of an Affidavit and Full Release of Liens, from any third-party general contractor for the Project and, upon request of City, any other contractors or sub-contractors who have performed work on, or furnished materials for, the Project; and
- (F) if requested by City, within five (5) days after completion of the Project, Developer and the general contractor or prime subcontractor for the Project shall execute and

file an Affidavit of Completion in accordance with Section 53.106 of the Texas Property Code, and promptly upon such filing, Developer shall provide a file-stamped copy thereof to City; and

- (G) a plaque in the community room that memorializes the City's investment in the development by recognizing the members of City Council and other key stakeholders. The plaque shall be reviewed and reasonably approved by the City; and
- (H) if requested by the City, a ribbon cutting ceremony planned with the NHSD; provided that the costs of the same are reasonable and to include, but not be limited to: a canopy; refreshments; seating; accessible parking; a sound system; press and media support; and public invitation support

## **ARTICLE VI TENANT PROTECTIONS**

**6.1 No Permanent Displacement.** The Project shall not cause the direct, involuntary, and permanent displacement of existing residents on the Property.

**6.2 Tenant Regulations.** Developer shall comply with the City of San Antonio's applicable adopted tenant protections, including, but not limited to: Ordinance No. 2020-06-25-0453, Notice of Tenant Rights; Ordinance No. 2021-05-13-0329, Housing Voucher Incentive Policy; and any other housing incentive requirements City Council may adopt.

**6.3 Notice from Senior Lienholders.** Developer shall ensure in its contracts with senior lienholders that no later than thirty (30) days prior to the initiation of foreclosure proceedings, the superior lienholder shall provide the City with notice of the initiation of foreclosure proceedings in order to allow City to take steps to protect tenants residing in the Affordable Units from rent increases and possible eviction that may result from the foreclosure.

## **ARTICLE VII LOAN TERMS**

**7.1 Repayment.** The Loan Funds shall be repaid pursuant to the terms of the Note and be secured by the Deed of Trust.

**7.2 No Substituted Funds.** Developer agrees that the funds provided to it under the terms of this Agreement shall in no way be substituted for funds and resources provided from other sources, nor shall such funds and resources in any way serve to reduce the funds, resources, services, or other benefits which would have been available to, or provided through, Developer had this Agreement not been executed.

**7.3 Unconditional Obligation to Repay the Loan.** Unless forgiven pursuant to **Section 7.4** below, the obligations of Developer to repay the Loan Funds pursuant to the requirements of this Agreement, the Note, and the Deed of Trust are absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim it might otherwise have against the

City, and Developer shall repay the Loan Funds free of any deductions and without abatement, diminution or set-off.

7.4 **Loan Forgiveness.** Developer shall have a right to reduce or eliminate the amount of the repayment of the loan by showing strict compliance with the terms of this Agreement above on the due date of the loan or sooner. Upon compliance with the terms of this Agreement, the full balance of the Loan, including any accrued interest, shall be fully forgiven and the lien evidencing the Loan Funds shall be released by City. However, forgiveness of the Loan Funds shall not terminate the Restrictive Covenant and it shall remain in effect until its expiration.

## **ARTICLE VIII REIMBURSEMENT AND ACCOUNT OF FUNDS**

8.1 **Reimbursement.** As Developer performs incremental services and activities set forth in this Agreement in a satisfactory manner as reasonably determined by City, City agrees to reimburse Developer for all eligible expenses incurred for work on the Project. Notwithstanding any other provision of this Agreement, the total of all reimbursements paid by City for infrastructure improvements to the Project shall not exceed the sum of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00).

8.2 **Draw Process.** After initial funding as approved by the City, on or before the fifteenth (15th) day of each month, Developer shall request from City draws from the Loan Funds as necessary for actual construction costs incurred, as set forth in the City-approved Budget (Exhibit C) and pursuant to the process described in this Article. Upon all such requests, Developer shall submit to City all information reasonably deemed relevant and requested by City.

8.3 **Retainage.** Ten percent (10%) of the Loan funds shall be retained by City until the Project is complete and documentation evidencing acceptance and approval of the infrastructure by the City, San Antonio Water Systems (SAWS), City Public Services (CPS), as applicable, is provided by Developer to City through those required documents listed in **Section 5.12**.

8.4 **Other Requirements.** In addition to any other requirements or restrictions herein or in any of the Loan Documents, unless otherwise agreed by City, City shall not be obligated to make the initial reimbursement to Developer unless and until:

- (A) City has received true, legible, and correct printed copies of the following:
  - (i) The complete Plans and the final draft of the general contract and prime contract (if applicable) for the construction work to be done in connection with the Project;
  - (ii) All authorizations and permits which are then procurable and required by any Legal Requirements for the construction and proposed use contemplated herein in connection with the Project and the Property;
  - (iii) An original current survey of the Property containing the certification of the surveyor in form and substance satisfactory to City in its reasonable discretion and showing the perimeter of the Property by courses and distances, all easements and rights-of-way, the boundary

lines of the streets abutting the Property, any encroachments and the extent thereof in feet and inches.

- (iv) A copy of the plat for the proposed development showing the proposed infrastructure improvements to the Property by distances to the perimeter of the Property and the proposed building lines and easements in connection with the Project.
  - (v) The insurance requirements set forth in **Article XXI**, which Developer must comply with and maintain, accompanied by evidence of the payment of the premiums;
  - (vi) The environmental services assessment(s); and
  - (vii) Any other documents and information as City may reasonably require.
- (B) This Agreement and the other Loan Documents must be duly authorized, executed, and delivered to the title company or filed in accordance with applicable Legal Requirements and original counterparts thereof delivered to City;
- (C) evidence, in a form acceptable to the City, from the title company issuing the commitment for title insurance that the title policy for the Property has been issued or that the title company has agreed, in writing, to issue without further condition the title insurance for the benefit of Developer in connection with the Property. Said title insurance shall be in a form acceptable to the City and with only the liens created in connection with this loan ("***Permitted Liens***") and the Permitted Exceptions (as defined in the Deed of Trust) and the liens in favor of City as permitted exceptions to the title insurance;
- (D) Developer pays to City, or any other person or party entitled thereto, all fees and costs then due and payable in connection with this Agreement or any of the other Loan Documents; and
- (E) Developer has complied with each and every provision of the Loan Documents requiring such compliance prior to the disbursement or reimbursement by City of Loan Funds, unless City has waived any such requirement in writing.

**8.5 Subsequent Reimbursements.** In addition to any other requirements or restrictions in this Agreement or in any of the Loan Documents, City shall not be required to make any reimbursement pursuant to this Article if, at the time of the requested advance, any of the following exists:

- (A) Any Default or Event of Default under any of the Loan Documents;
- (B) The requested reimbursement, plus the sum of the previous reimbursement, if any, or other sums disbursed by City under any of the Loan Documents exceed the face amount of the Note;
- (C) In the reasonable and sole judgment of City, the construction work to be performed in connection with the Project will not be completed substantially in accordance with the Plans and the other provisions hereof on or before

Project Completion, regardless of the cause of such failure to so complete (other than delays caused by Force Majeure);

- (D) In the reasonable and sole judgment of City, the sum of the undistributed Loan Funds and all other funds available to Developer are insufficient to complete the Project construction substantially in accordance with the Plans and this Agreement;
- (E) Unless otherwise approved by City, the Property or any significant part thereof is demolished or substantially destroyed (other than the existing improvements which will make way for the development of the Project) or condemnation or similar type proceedings are commenced in connection with a material portion of the Property, unless Developer has sufficient funds to repair or restore the same and such repair or restoration is completed within a reasonable time;
- (F) Any change in the status of title to the Property has occurred subsequent to the date hereof without City's prior, written consent;
- (G) Any event has occurred which has given rise to a lien claim of equal or superior rank to the lien and security interest intended to be created by the Loan Documents, other than the Permitted Liens, which is not bonded, insured, or being contested in accordance with the terms of the Loan Documents;
- (H) A final order or decree in any court of competent jurisdiction exists enjoining Project construction or enjoining or prohibiting Developer or City or either of them from performing their respective obligations under this Agreement;
- (I) Any material deviation exists in the Project construction from the Plans without the prior, written approval of City, or it reasonably appears to City that there are material defects in the workmanship or materials; or
- (J) Any significant encroachment undisclosed in the title commitment or survey provided in connection with this loan exists which has occurred without the approval of City and such encroachment does not benefit the Property or the owners of units installed on the Property, and materially impairs the operation of the Project.

**8.6 Allowable Costs.** Allowable costs shall only be those costs incurred directly and specifically in the performance of and in compliance with this Agreement and with all Legal Requirements ("**Allowable Cost**"). Approval of Developer's Budget as set forth in Exhibit C shall not constitute prior written approval of the items included therein. All costs reimbursed by City as Loan Funds under this Agreement shall be tracked and reported separate and apart from the costs associated with the any units funded by other funds.

**8.7 Ineligible Costs.** City shall not be liable for any cost, or portion thereof, which is or was incurred in connection with an activity of Developer where prior written authorization from City is required for the activity and such authorization was not first procured, or City has requested that Developer furnish data concerning an activity prior to proceeding further therewith and Developer

nonetheless proceeds without first submitting data and receiving approval thereof. Additionally, City shall not be liable for any Developer cost, or portion thereof, which (A) is not in strict accordance with the terms of this Agreement or of the other Loan Documents, including all exhibits attached hereto and thereto; (B) has been paid, reimbursed, or is subject to payment or reimbursement from another source other than City, unless such cost is specifically identified and authorized by this Agreement; or (C) is not an Allowable Cost under **Section 8.6** above or as set forth in Exhibit C.

**8.8 Invoices.** All requests for reimbursement shall be submitted utilizing forms and instructions approved by City. City shall reimburse Developer on a monthly basis upon receipt and approval of an invoice within thirty (30) days after receipt of an approved invoice. Requests for reimbursement shall be submitted by invoice to City on or before the fifteenth (15th) day of each month. Upon any and all such requests for reimbursement, Developer shall submit to City all information reasonably deemed relevant by City to such requests.

**8.9 Schedule of Values.** A schedule of values for all work performed under this Agreement shall, at a minimum, include quantities and prices of items to be reimbursed, and other sufficient detail to serve as the basis for the request for reimbursement ("***Schedule of Values***"). Prior to the initial request for reimbursement, Developer must submit a Schedule of Values for payment to be approved by City, allocated to the portions of work performed under this Agreement and the subject of the request for reimbursement. Thereafter, Developer shall submit an updated Schedule of Values showing changes or adjustments to the schedule, as applicable, with each subsequent request for reimbursement. All Schedule of Values submitted to City by Developer shall be prepared in such form and supported by such data to substantiate its accuracy as City may require. Unless objected to by City, a Submitted Schedule of Values shall be used as a basis for reviewing Developer's requests for reimbursement. Developer acknowledges that any changes to the Schedule of Values shall be approved by City in its sole discretion before any subsequent requests for reimbursement will be considered.

**8.10 Inspection before Reimbursement.** Prior to reimbursement, City shall have the right to inspect work completed to ensure conformance with the approved Plans.

**8.11 Timely Reimbursement.** Developer shall submit to City any or all invoices for reimbursement within thirty (30) days following the purchase of goods or services for which reimbursement is to be requested.

**8.12 Notice of Ineligible Costs.** City shall provide Developer written notice regarding any expenditure for which Developer has requested reimbursement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said notice shall provide Developer thirty (30) days from receipt of said notice to provide documentation requested by the City to determine if such cost may be eligible for reimbursement under this Agreement or refund to the City any sum of money paid by City to Developer determined to:

- (A) Have not been spent by Developer strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.



8.13 **Refunds for Ineligible Costs.** Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in this article as a result of any auditing or monitoring by City, Developer shall refund such amount to City within thirty (30) working days of City's written request wherein the amount disallowed or disapproved shall be specified.

## **ARTICLE IX RETENTION AND ACCESSIBILITY OF RECORDS**

9.1 **Records.** For purposes of this Agreement, "**Records**" shall mean all books, records, documents, reports, written accounting policies and procedures, all supporting documentation for expenditures of funds directly associated with this Agreement, Rental Records (defined below), and/or that provide accurate, current, separate, and complete disclosure of the status of Loan Funds, including a detailed accounting of the expenditure of amounts received from the City under this Agreement.

9.2 **Retention Period.** Developer shall retain all Records for five (5) years, unless a longer period is required by other applicable laws and regulations, from the Project Completion and after all performance requirements are achieved for audit purposes, or until the completion of any such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries, and open records requests.

9.3 **Affordability Records.** In addition to the retention requirement of **Section 9.2**, Developer shall also retain records of individual tenant income verification, project rents, project inspections and the other rental records documenting compliance with the affordability requirements described in **Article III** (collectively, "**Rental Records**") until five (5) years after the Affordability Period terminates.

9.4 **Record Maintenance.** Developer shall ensure that maintenance of the Records shall comply with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and that Developer's record system shall contain sufficient documentation to provide, in detail, reasonable support and justification for each expenditure.

9.5 **Access.** Developer shall, following reasonable advance written notice from the City, give the City, its designee, or any of their duly authorized representatives, access to and the right to examine all Records belonging to or in use by Developer pertaining directly to this Agreement. The City's access to Developer's Records will be limited to information needed to verify that Developer is and has been complying with the terms of this Agreement and all applicable federal, state and local rules and regulations and to verify that Loan Funds are or were used in connection with the development and operation the Project. Any information that is not required by law to be made public shall be kept confidential by City. Developer shall not be required to disclose to the City any information that by law Developer is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, the City reserves the right to require Developer at its expense to obtain an independent firm to verify the information. The rights to access the Records shall continue as long as the Records are retained by Developer.

9.6 **Public Information.** Developer agrees to maintain the Records in an accessible location and to provide citizens reasonable access to the Records consistent with the Texas Public Information Act on the same terms as the Records are made available to the City as set forth above. All of the above notwithstanding, the City and the citizens shall have no right to access any confidential or proprietary records of Developer, including but not limited to the ownership and capital structure of Developer.

## **ARTICLE X DEVELOPER GUARANTEES & OTHER RESPONSIBILITIES**

10.1 **Real Property Ownership.** Developer shall acquire and become the sole, current owner of a fee simple interest in the Property prior to Project Commencement. Prior to Project Commencement, Developer shall provide the City an updated, valid and current commitment for title insurance indicating Developer's ownership of the fee simple interest and any and all liens and encumbrances filed against the Property.

10.2 **Other Liens.** Developer warrants that the Property to be developed is not subject to any liens other than the Other Liens and Permitted Exceptions listed in the Deed of Trust.

10.3 **Encumbrances.** Except for, as applicable, Developer's financing for development, construction, and operation of the Project, Developer shall ensure that the Property remains free and clear from all other liens or claims for liens, other than the liens or security interests created for the benefit of City in connection with the Project, or as expressly authorized by City in writing, or other customary encumbrances, such as easements, licenses for cable, utilities, service agreements, platting, and internet service. In the event that any other mortgage, lien, pledge, security interest, encumbrance or charge is asserted or recorded against the Property (a "***New Encumbrance***"), Developer shall notify City within ten (10) Days after the date Developer either actually or constructively has knowledge of the New Encumbrance, regardless of whether or not the New Encumbrance is permitted by City or constitutes a violation of any of the provisions hereof; such notice to specify who is asserting the New Encumbrance, with a detailed description of the origin and nature of the underlying claim giving rise to the New Encumbrance.

10.4 **Subordination.** The Loan Funds awarded in this Agreement shall be secured by a lien against the Property in favor of the City and shall be subordinate only to any lien against the Property properly recorded prior in time to the recording of the Real Estate Lien Note and Deed of Trust in the real property records of Bexar County or as otherwise agreed by the City to be subordinated pursuant to a subordination agreement. Notwithstanding the foregoing, the lien created by Real Estate Lien Note, Deed of Trust and pursuant to the terms of this Agreement shall be superior to and take priority over any deeds of trust governing the Property recorded after the recording of the Deed of Trust unless otherwise subordinated thereto by agreement of City.

10.5 **Taxes.** Upon signing this Agreement, and annually thereafter, Developer, if not exempt, shall provide City with proof of timely payment prior to such payment being past due and incurring penalties in full of all taxes assessed against the Property or proof that Developer is contesting any such taxes and as a result such taxes are not yet due and owing.

**10.6 Payment Status of Other Loans.** Upon signing this Agreement, and annually thereafter, provide City evidence of Developer's current payment status on all private loans in connection with the Property.

**10.7 Covenants.** During the term of this Agreement, Developer covenants as follows:

- (A) Subject to the Permitted Liens and any other permitted exceptions previously disclosed to City by Developer and as otherwise provided under the Loan Documents, Developer shall not fully or partially sell, convey, dispose of, alienate, hypothecate, assign, mortgage, pledge, transfer, or encumber, except for transfers for the benefit of the Property (including utility and telecommunication easements) or its tenants (including the execution of lease agreements in the ordinary course of business), all or any part of the Property or improvements thereon or any other item of collateral securing the repayment of the Loan Funds, whether voluntarily or involuntarily (except for partial condemnation).

Notwithstanding the foregoing and while the Loan remains outstanding, Developer shall have the ability to refinance any senior loan only if such refinance does not: (i) increase any amounts secured by any Permitted Liens (excluding any amounts having been advanced by such lenders for the protection of its security interest pursuant to such funding documents); (ii) increase the interest rate of any amounts secured by any Permitted Liens; or (iii) decrease the original maturity term of the any amounts secured by Permitted Liens, unless consented to in writing by City.

- (B) Developer shall not convert the Property to a use other than its current use as a Manufactured Home park;
- (C) Developer shall not commit or permit any physical waste, damage, or deterioration (other than normal wear and tear and insured casualty) on the Property;
- (D) Developer shall maintain, preserve, and keep the Property in good repair (subject to normal wear and tear and insured casualty);
- (E) Subject to the other terms in the Loan Documents, Developer shall from time to time make all necessary repairs and renewals, replacements, and substitutions so that the efficiency, effectiveness, and utility of the Property are at all times reasonably preserved and maintained;
- (F) Except as disclosed to City, all third-party agreements related to the Project shall be on terms equivalent to an arm's length transaction;
- (G) Developer shall comply with each and every provision of the Loan Documents;
- (H) To the extent applicable, if at all, Developer shall assume any and all relocation costs in accordance with the Uniform Relocation and Acquisition Act associated with all property acquisition in connection with the Project;

- (I) Upon written demand of City, Developer shall correct any material structural defect in the Project or any material departure from the Plans not accepted in writing by City; and
- (J) All applicable local procurement and bidding policies have been, and will be during the term of this Agreement, adhered to in the implementation of all funds provided under this Agreement.

## **ARTICLE XI CONFLICT OF INTEREST**

11.1 **Ethics Code.** Developer shall comply with Chapter 171, Texas Local Government Code as well as Chapter 2, Art. III of the City of San Antonio's Code of Ordinance ("**Ethics Code**") which prohibits any persons who exercises or have exercised any functions or responsibilities with respect to activities assisted with City funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from a City-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the City-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. Immediate family ties include (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild), brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person.

11.2 **Conflict of Interest.** Developer shall use reasonable business efforts to ensure that no employee, officer, or individual agent of Developer shall participate in the selection, award, or administration of a subcontract supported by funds provided under this Agreement if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any corporation which employs, or is about to employ, any of the above has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such sub-developer on terms which are greater than those which are customary in the industry for similar services conducted on similar terms.

11.3 **Assurances.** Developer shall submit a Certificate of Interested Parties (Form 1295) as well as the City of San Antonio's Contracts Disclosure Form at the time this Agreement is executed.

## **ARTICLE XII NONDISCRIMINATION AND SECTARIAN ACTIVITY**

12.1 **Sectarian Activity.** None of the performances rendered by Developer under this Agreement shall involve, and no portion of the funds received by Developer under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

12.2 **Equal Opportunity Clause.** During the performance of this Agreement, Developer agrees as follows:

- (A) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability. Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by contracting officer setting forth the provisions of this nondiscrimination clause.
- (B) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability.
- (C) Developer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Developer's legal duty to furnish information.
- (D) Developer will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (E) Developer will comply with the Non-Discrimination Policy contained in Chapter 2, Article X of the City of San Antonio's Code of Ordinances.
- (F) Developer will furnish all information and reports to City and permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with this section.
- (G) In the event of Developer's non-compliance with the nondiscrimination clauses of this Agreement, this Agreement may be cancelled, terminated, or

suspended in whole or in part and the contractor may be declared ineligible for further contracts with City.

- (H) Developer shall include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless otherwise exempted by law, so that such provisions will be binding upon each subcontractor or vendor.

**12.3 Federal Laws.** Developer acknowledges and shall comply with the following federal nondiscrimination laws:

- (A) Title VII of the *Civil Rights Act of 1964*, which prohibits employment discrimination based on race, color, religion, sex and national origin;
- (B) the *Equal Pay Act of 1963 (EPA)*, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- (C) the *Age Discrimination in Employment Act of 1967*, which protects individuals who are forty (40) years of age or older from discrimination; and
- (D) Title I and Title V of the *Americans with Disabilities Act of 1990*, which prohibit employment discrimination against qualified individuals with disabilities.
- (E) Reserved.

### **ARTICLE XIII COMPLIANCE WITH OTHER LAWS**

**13.1 Legal Compliance.** Developer shall develop and operate the Project in accordance with the terms and conditions of this Agreement and shall comply with all applicable federal, state and local laws and regulations, including, without limitation:

- (A) City of San Antonio Code of Ordinances, Chapter 35, Section 35-379, “Manufactured Home and Recreational Vehicle Parks;”
- (B) City of San Antonio Code of Ordinances, Chapter 18, “Mobile Home Living Parks;”
- (C) Texas Property Code, Title 8, Chapter 94, “Manufactured Home Tenancies”; and
- (D) all rules and regulations administered by the Texas Department of Housing and Community Affairs.

**13.2 Public Subsidy Limitations.** Developer has reviewed the requirements of Texas Government Code Chapter 2264 of Subtitle F, Title 10, Section 2264.00. If Developer is a “business” and if the City’s contribution under this Agreement is a “public subsidy” as that term is defined in Texas Government Code Section 2264.001, the following applies: By executing this Agreement, Developer certifies that Developer does not and will not knowingly employ an undocumented worker, as that term is defined in Texas Government Code Section 2264.001. If Developer is convicted of knowingly employing an undocumented worker, Developer shall repay

the Loan Funds and interest within six (6) months of final conviction. Interest shall accrue at the rate of one-half percent (0.50%) per month until the time of such repayment from the date of final conviction.

**13.3 Property Maintenance.** Developer shall comply with the property standards set forth in Chapter 10, Art. III of City of San Antonio's Code of Ordinances.

**13.4 Heat Illness Safety.** Developer shall ensure that all work performed under this Agreement shall comply with the City of San Antonio's adopted Heat Illness Safety regulation, Ordinance No. 2023-08-31-0585, as may be amended from time to time.

**13.5 Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.**

(A) By executing this Agreement, Developer certifies that:

- (i) Developer and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any local, state, or federal governmental agency or department.
- (ii) Developer will not enter into any lower tier transaction with a person who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the City from which the transaction originated.
- (iii) Developer will not knowingly award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs by any local, state, or federal governmental agency or department.

(B) Developer will immediately notify City in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded at the time the parties executed this contract if due to changed circumstances Developer or any of its principals have subsequently been excluded by the City of San Antonio as provided in clauses (i)-(iii) above.

## **ARTICLE XIV SUBCONTRACTS**

**14.1 Performance by Subcontractors.** Developer shall use reasonable business efforts to ensure that the performance rendered under all subcontracts directly related to the Project complies with this Agreement as if such performance were rendered by Developer.

**14.2 No Liability.** Developer, in subcontracting any of the project improvements contemplated under this Agreement, expressly understands that in entering into such subcontracts, City shall not be liable to Developer's sub-contractor(s) or sub-subcontractors.

14.3 **Heat Illness Safety.** Developer shall require its general contractor and all sub-contractors to comply with the City of San Antonio's adopted Heat Illness Safety regulation, Ordinance No. 2023-08-31-0585, as may be amended from time to time.

14.4 **Compliance with Other Laws.** Developer shall require its general contractor and all sub-contractors to comply with all applicable laws, rules, and regulations, policies and procedures or guidance to the same extent Developer is obligated under this Agreement.

14.5 **Nondiscrimination.** Developer shall ensure that no person shall, on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to subcontracts for project improvements funded in whole or in part with funds made available under this Agreement.

## **ARTICLE XV MONITORING**

15.1 **Monitoring for Compliance.** City reserves the right to confirm Developer's compliance with this Agreement and Legal Requirements. Developer shall cooperate fully with City in the development, implementation and maintenance of record-keeping systems and to provide City with any data determined by City to be reasonably necessary for its effective fulfillment of its monitoring and evaluation process. Developer will cooperate with City in such a way so as not to obstruct or delay City in its monitoring and will designate one of its staff to coordinate the monitoring process as requested by City staff.

15.2 **Report of Findings.** City will provide Developer with a written report of the monitor's findings. If the monitoring report notes deficiencies in Developer's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Developer and a reasonable amount of time in which to attain compliance. Failure by Developer to act as specified in the monitoring report will allow City to exercise its rights to suspend or terminate this Agreement for cause, in accordance with **Articles XVII and XVIII.**

15.3 **Fee.** Unless waived under **Section 15.4**, City will assess a \$3,000.00 monitoring fee which shall be payable to City annually within ten (10) days of receipt of the City's request for payment. The \$3,000.00 monitoring fee shall increase by 3% annually throughout the term of this Agreement.

15.4 **Waiver.** City may, in its discretion, rely upon a monitoring or evaluation report provided by Developer that was completed by an entity with which Developer has partnered in the completion of the Project if the City finds that the contents of the report are sufficient to confirm to the City's satisfaction that Developer is complying with the terms of this Agreement. If the City elects to rely on another entity's report, the \$3,000.00 monitoring fee shall be waived.

## **ARTICLE XVI**



## DEFAULT

16.1 **Default.** Any one of the following shall constitute a default of this Agreement (“**Default**”):

- (A) Failure of Developer to comply, observe or perform any covenant, obligation, condition, or agreement required by the Loan Documents;
- (B) The dissolution or liquidation of Developer (unless a new Developer assumes the obligations hereunder pursuant to **Article XXVII**) or the filing by Developer of a voluntary petition in bankruptcy, or failure by Developer to promptly cause to be lifted any execution, garnishment, or attachment of such consequence as will impair Developer’s ability to carry on its obligations under this Agreement;
- (C) The commission by Developer of any act of voluntary or involuntary bankruptcy under any state or federal law unless dismissed or Developer posts adequate security with City (the amount of such security to be reasonably determined by City) during the pendency of a good faith proceeding brought by Developer within ninety (90) days after such filing;
- (D) The admittance of Developer, in a court filed writing or other official document, of its dissolution, defunding, or inability to pay its debts generally as they become due, or other action that may result in Developer’s inability to complete the work as required by this Agreement and Developer has not redemonstrated to City its ability to complete the work as required by this Agreement; or the appointment of a receiver, trustee or liquidator of Developer in any proceeding brought against Developer and not discharged within ninety (90) days after such appointment;
- (E) Except for any items replaced in the ordinary course of business, Developer fully or partially sells, conveys, disposes of, alienates, hypothecates, assigns, mortgages, pledges, transfers, or encumbers all or any part of the Property or improvements or any interest therein (except for any items replaced in the ordinary course of business and any agreements and other easements related to utility, telecommunications, and other service, telecommunications, platting, and other similar agreements and/or easements, and the execution of lease agreements with residential tenants in the ordinary course of business after the date hereof), the rents therefrom, the income therefrom, or any other item of collateral, whether lawfully or unlawfully or voluntarily without the prior written consent of City;
- (F) Except as otherwise permitted by the Loan Documents and subject to the terms of any of Developer’s senior loans, Developer fully or partially sells, conveys, assigns, mortgages, pledges, transfers, or encumbers an interest in Developer (if Developer is not a natural person or persons but a corporation, partnership, trust, or other legal entity), either voluntarily, involuntarily or otherwise. Developer shall provide the City written notice of any substitution, addition or withdrawal of a member of Developer;

- (G) The Property or any material part thereof is taken on execution or other process of law in any action against Developer (other than condemnation);
- (H) Developer abandons the Property, the improvements or a significant portion of the Project;
- (I) City finds that the Property, or any significant portion thereof, is subjected to actual or continued physical waste or to removal, demolition, or alteration (excluding any casualty and condemnation) so that the value of the Property is materially diminished thereby and City reasonably determines that it is not adequately protected from any loss, damage, or risk associated therewith and Developer is unable to reasonably and efficiently perform its obligations under the Loan Documents;
- (J) Any representation or warranty made in this Agreement or the other Loan Document(s) by Developer, any principal, or any person with express authorization by Developer to execute any of the aforesaid documents on behalf of Developer in connection with this Agreement, Developer's application for the Loan Funds that is knowingly false or misleading in any material adverse respect at the time made;
- (K) Except as otherwise agreed by City and subject to any extensions for Force Majeure delays (as defined in this Agreement), Developer fails to complete the Project on or before the Project Completion date;
- (L) A default (after notice and cure periods) under any agreement with a lien holder or government and/or regulatory entity that maintains ownership or oversight of Developer and/or the Property, which results or is likely to result in the foreclosure of Developer's interest in the Property. Developer shall provide City with notice of the initiation of any proceedings to divest ownership or management of the Property by any person or entity within ten (10) business days of the initiation of such proceedings in writing Developer shall provide all holders of the liens against the Property written notice of the existence of this Agreement and Restrictive Covenant within ten (10) days of the date the documents are recorded in the Bexar County Clerk's Office Recordings Division; and
- (M) The holder of any lien or security interest on the Property whether superior or subordinate to the Deed of Trust or the Note, declares a default and such default is not cured within the applicable notice, cure, and grace periods set forth in the applicable documents or institutes foreclosure or other proceedings for the enforcement of its remedies under said applicable documents.

**16.2 Notice of Default and Cure Period.** If a Default occurs, City shall provide Developer and Developer's Sponsor, written notice of the Default ("*Notice of Default*") and provide Developer thirty (30) days to cure the Default. If Developer's Default has not been cured or may not be reasonably cured by Developer before the end of the initial 30-day cure period, City, in its sole discretion, may extend the initial 30-day cure period for up to an additional sixty (60) days so long

as Developer is diligently working to cure the Default (collectively, “**Cure Period**”). City reserves the right to extend the Cure Period for a period of additional days beyond the initial Cure Period if City determines the circumstances require. However, nothing in this section shall be interpreted as requiring the City to provide Developer more than 30 days to cure the Default after the Notice of Default is issued.

**16.3 Sponsor May Cure.** Developer’s Sponsor shall have the right, but not the obligation, to cure on behalf of Developer any default in the same manner as Developer and within the same Cure Period granted by City to Developer under this Agreement and such cure shall be treated as if tendered by Developer. Any cure made on behalf of Developer by any of Developer’s Sponsor shall not have the effect of restarting or extending the Cure Period beyond that initially granted to Developer by City.

**16.4 Event of Default.** A Default that, after notice and expiration of the Cure Period, has not been cured to the satisfaction of the City, shall constitute an event of default (“**Event of Default**”).

**16.5 Remedies to City upon an Event of Default.** If an Event of Default occurs:

- (A) City may suspend the agreement pursuant to **Article XVII** or terminate the agreement for cause pursuant to **Article XVIII**;
- (B) City may decline to forgive the loan or any portion of the loan, at the City’s option;
- (C) City may accelerate the loan and the entire lump sum payment of the Loan Funds plus accrued interest shall become immediately due and payable to the City;
- (D) In addition to the other remedies afforded to City under the Loan Documents, Developer, or party in possession at the time of an Event of Default, will be required to pay the City liquidated damages in the amount of \$246.65 per day for each day that Developer is in default. The Parties agree that this measurement and calculation of damages, which is approximately equal to the Loan Funds divided by the days of the term of this Agreement, is reasonable because it accounts for the proportionate investment made by City over the length of the Agreement. Developer agrees that liquidated damages under this Section are not punitive damages.

**16.6 All Rights Reserved.** City reserves all of its rights at law or in equity as may be necessary to enforce performance and observance of any obligation, agreement, or covenant of Developer under this Agreement.

**16.7 Default under Loan Documents.** A Default under any of the Loan Documents, shall be a Default under each of the other Loan Documents. If an Event of Default occurs, any obligation of City to advance funds hereunder or under any of the other Loan Documents shall immediately cease and City may terminate this Agreement for cause pursuant to **Article XVIII**.

**16.8 No Remedy Exclusive.** The Parties agree that any right or remedy provided for in this Agreement is intended to be exclusive of any other available remedy. The Parties agree that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under the Loan Documents or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies now or

hereafter existing at law or in equity. Failure to exercise any right or remedy under this Agreement shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

## **ARTICLE XVII SUSPENSION**

**17.1 Remedies Upon Suspension.** If City elects to suspend this Agreement, City may:

- (A) suspend the agreement in whole or in part;
- (B) withhold further payments to Developer;
- (C) prohibit Developer from incurring additional obligations of funds under this Agreement;
- (D) any combination, or all, of the above (A) through (C).

**17.2 Notice.** In the event of suspension, City shall provide written notice of suspension (“*Notice of Suspension*”) to Developer which shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; (3) in the case of partial suspension, the portion of the agreement to be suspended.

**17.3 Lifting Suspension.** A suspension under this article may be lifted only at the sole discretion of the City upon a showing of compliance with or written waiver by City of the term(s) in question.

**17.4 No Liability for Costs.** With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, City shall not be liable to Developer or to Developer's creditors for costs incurred during any term of suspension of this Agreement.

## **ARTICLE XVIII TERMINATION**

**18.1 Termination For Cause by City.** If an Event of Default exists or as otherwise provided in this Agreement, City may immediately terminate this Agreement for cause by providing written notice to Developer and proceed with execution of all remedies afforded City under the Loan Documents.

**18.2 Termination By Mutual Consent.** This agreement may be terminated by mutual consent and a written agreement by both Parties. In such case, the Parties shall agree upon the reason(s) of such termination, the termination conditions, any proposed pay-back plan of disbursed funds, and the proposed effective date of such termination. Upon any such termination, the Restrictive Covenant and the Deed of Trust shall be simultaneously released and be given no further effect.

**18.3 Repayment of Loan Funds.** If this Agreement is terminated prior to Project Completion, either voluntarily or otherwise, Developer shall repay any Loan Funds disbursed by City for the portion of the Project not completed under this Agreement to City’s Affordable Housing Fund within ninety (90) days following delivery of notice of termination by City.

18.4 **Documents Returned.** If this Agreement is terminated and upon repayment to City of any disbursed funds under this Agreement in accordance with this article, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of Developer under this Agreement relating to the portion of the Project not completed shall become the property of Developer.

18.5 **Effect of Termination.**

- (A) Upon receipt of notice to terminate this Agreement, City shall not be liable to Developer or Developer's creditors for any expense, encumbrances, or obligations whatsoever incurred after the date of termination. Further, if Developer fails to repay all disbursed Loan Funds to City in accordance with **Section 18.3**, all finished or unfinished documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, prepared by or on behalf of Developer under this Agreement shall, at the option of City, become the property of City and shall be delivered by Developer to City in a timely and expeditious manner.
- (B) Within thirty (30) days after receipt of notice to terminate, Developer shall submit a statement to City, indicating in detail the services performed under this Agreement prior to the effective date of termination.
- (C) Termination of this Agreement shall not relieve Developer from the payment of any sums that shall then be due and payable or become due and payable to City under the terms of the Loan Documents, or as provided for at law or in equity, or any claim for damages then or theretofore accruing against Developer hereunder or by law or in equity, and any such termination shall not prevent City from enforcing the payment of any such sums or claim for damages from Developer. All rights, options, and remedies of City contained in this Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any such other remedy or relief which may be provided by law or in equity whether or not stated in this Agreement.
- (D) In the event that City terminates this Agreement for cause, Developer shall be barred from future contracts with City absent the express written consent of City's City Manager or City Manager's designee.

**ARTICLE XIX**  
**AUTHORIZED RELIEF FROM PERFORMANCE**

19.1 **Force Majeure.** Developer shall request temporary relief from performance of this Agreement if the Developer is prevented from compliance and performance by an act of war, declaration of emergency by a federal, state, or local governmental entity or other order of legal authority, act of God, or other unavoidable cause not attributed to the fault or negligence of the Developer ("**Force Majeure**"). The burden of proof for the need for such relief shall rest upon the Developer. To obtain release from its obligations under this Agreement, based upon Force

Majeure, the Developer must file a written request with the City. City shall not unreasonably withhold, condition, or delay its response to such request for temporary relief. The temporary relief to Developer shall in no case relieve Developer from any other repayment obligations as specified in **Article VII** of this Agreement.

## **ARTICLE XX NOTICE**

20.1 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, or by Electronic Mail (Email) when receipt is acknowledged, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Neighborhood & Housing Services Department  
P.O. Box 839966  
San Antonio, TX 78283  
Attn: Housing Bond Administrator  
Email: NHSDHousingBond@sanantonio.gov

with a copy to:

City of San Antonio  
Office of the City Attorney  
P.O. Box 839966  
San Antonio, TX 78283  
Attn: Housing Bond Attorney

If intended for Developer, to: Mission Trail Community Association

2315 Mission Road, #12

San Antonio, TX 78214

If intended for Developer's Sponsor, to: ROC USA LLC

6 Loudon Road, Suite 501  
Concord, NH 03301

## **ARTICLE XXI INSURANCE**

21.1 **Certificate Requirements.** Prior to Project Commencement, Developer shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Neighborhood and Housing Services Department. The certificate must be:

- (A) clearly labeled “**Mission Trail Community Association**” in the Description of Operations block of the Certificate;
- (B) completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf (City will not accept a Memorandum of Insurance or Binder as proof of insurance); and
- (C) signed by the authorized representative of the carrier and list the agent’s signature and phone number.

**21.2 Receipt Required.** The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

**21.3 Right to Review.** The City reserves the right to review the insurance requirements of this article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

**21.4 Standards and Limits.** A Developer’s financial integrity is of interest to the City; therefore, subject to Developer’s right to maintain reasonable deductibles in such amounts as are approved by the City, Developer shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Developer’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If Developer claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

INSURANCE TYPE	LIMITS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors f. Explosion, Collapse, Underground Property Hazard Liability *g. Damage to property rented by you	For Bodily Injury and Property Damage \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage must be on a per project aggregate.  *g. \$300,000

4. Business Auto Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.
5. Builder's Risk	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
6. Umbrella or Excess Liability Coverage	\$2,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage. (per occurrence limit depends on scope of operation)
7. Professional Liability (Claims-made Coverage)	\$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service.  Coverage to be maintained and in effect for no less than two years subsequent to the completion of the professional service.
8. Environmental Insurance – (Contractor's Pollution Liability (Claims-made coverage)	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with Hazardous Materials, to include spills and mitigation.
*If applicable	

**21.5 Notice on Loss.** If a loss results in litigation, then the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Developer shall comply with such requests within ten (10) business days by submitting the requested insurance documents at Developer's expense to the City at the following address:

City of San Antonio  
Attn: Neighborhood and Housing Services Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

**21.6 Policy Requirements.** Developer agrees that, with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- (A) Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- (B) Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy. Developer acknowledges and understands that City's insurance is not applicable in the event of a claim;



- (C) To the extent applicable to Developer, Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- (D) Provide thirty days (30) advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

**21.7 Coverage Lapse.** Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Developer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Developer's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

**21.8 Stop Work.** In addition to any other remedies the City may have upon Developer's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Developer to stop work hereunder, and/or withhold any payment(s) which become due to Developer hereunder until Developer demonstrates compliance with the requirements hereof.

**21.9 Interpretation of Provisions.** Nothing herein contained shall be construed as limiting in any way the extent to which Developer may be held responsible for payments of damages to persons or property resulting from Developer's or its subcontractors' performance of the work covered under this Agreement.

**21.10 Primary Carrier.** Developer's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

**21.11 Acknowledgement.** Developer acknowledges, understands and agrees that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

**21.12** Developer and any subcontractors are responsible for all damage to their own equipment and/or property result from their own negligence.

## **ARTICLE XXII INDEPENDENT CONTRACTOR**

**22.1** Developer is an independent contractor and is not an employee, servant, agent, partner or joint venturer of City. City is interested only in the results achieved by the services of the Developer, and the manner of legally achieving those results is the responsibility of the Developer. City is not responsible for deducting, and shall not deduct, from payments to Developer any amounts for withholding tax, FICA, insurance or other similar item relating to Developer or Developer's employees. Neither Developer nor its employees shall be entitled to receive any benefits which employees of City are entitled to receive and shall not be entitled to workers'

compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or social security on account of their work for City.

## **ARTICLE XXIII INDEMNIFICATION**

**23.1 INDEMNIFICATION.** Developer covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, City and the elected officials, employees, officers, directors, volunteers and representatives of City (each, an “*Indemnified Party*” and collectively, “*Indemnified Parties*”), individually and collectively, from and against any and all actual costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of, resulting from or related to Developer’s activities under this Agreement, including any acts or omissions of Developer, any of Developer’s agents, officers, directors, representatives, employees, consultants or subcontractors of Developer, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this Section 23.1 shall not apply to any liability resulting from the intentional, wrongful acts or negligence of Indemnified Party, in instances where such intentional, wrongful acts or negligence causes personal injury, death, or property damage. IN THE EVENT Developer AND City ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO City UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. In addition, Developer agrees to indemnify, defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

**23.2 No Waiver of Governmental Powers or Immunity.** Nothing in this Agreement is intended, nor will it be construed, to waive any claims of sovereign or governmental immunity on the part of the City.

**23.3 Limitations.** The indemnity provisions set forth in this section are solely for the benefit of the Parties to this Agreement and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

## **ARTICLE XXIV LITIGATION AND CLAIMS**

**24.1 Notice.** Developer shall give City notice in writing of any action, including any proceeding before an administrative agency, filed against Developer directly related to the project improvements covered by this Agreement and, specifically, the Work Statement within three (3) Business Days after the date Developer is notified of such action. Except as otherwise directed by City, Developer shall furnish to City copies of all pertinent papers received by Developer with respect to such action or claim within three (3) Business Days of receiving such pertinent papers.

Developer shall notify the City immediately upon obtaining actual knowledge of any legal action filed against the Developer, or of any proceeding filed against such parties under the federal bankruptcy code. Developer shall submit a copy of such notice to City within three (3) Business Days.

Developer is not required to notify City of any claim or litigation which arise out of Developer's operations on the Project, including without limitation, landlord tenant disputes, personal injury actions (slip and falls), and other operational activities or relationships.

**24.2 Investigation and Defense.** Developer shall see to the investigation and defense of such claim or demand at Developer's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Developer of any of its obligations under this article.

**24.3 Defense Counsel.** City shall have the right to select or approve defense counsel to be retained by Developer in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Developer shall retain City-approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Developer fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Developer shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

**24.4 Employee Litigation.** In any and all claims against any party indemnified under **Article XXIII** by any employee of Developer, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Developer or any subcontractor under worker's compensation or other employee benefit acts.

**24.5 Prohibited Use of Funds.** Under no circumstances will the Loan Funds or City Fee Waivers be used in the payment of any costs or attorney fees incurred from violations or settlements of, or failure to comply with, federal and state regulations.

**24.6 Texas Tort Claims Act.** The Parties acknowledge that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

**24.7 Governing Law.** This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

## **ARTICLE XXV**

## **ADVERSARIAL PROCEEDINGS**

25.1 **Definition.** For purposes of this article, “*Adversarial Proceeding*” means any cause of action filed by Developer in a state or federal court, as well as any state or federal administrative hearing, against the City, but does not include alternative dispute resolution proceedings.

25.2 **Prohibited Use of Funds.** Under no circumstances will the funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any Adversarial Proceeding against City.

25.3 **Termination.** During the term of this Agreement, if Developer files and/or pursues an Adversarial Proceeding against City using the funds provided under this Agreement, this Agreement and all access to the funding provided for hereunder may be terminated for cause at City’s option, in accordance with **Article XVIII**.

25.4 **Future Consideration.** Developer, at City’s sole option, may be ineligible for consideration to receive any future funding while any such Adversarial Proceeding against City remains unresolved.

## **ARTICLE XXVI CHANGES AND AMENDMENTS**

26.1 **Written Amendment.** Except as provided in **Section 26.2** below and changes that do not require prior written consent of City pursuant to **Section 5.9(E)** and **(F)** above, any alterations, additions, or deletions to this Agreement shall be by amendment in writing and executed by both parties to this Agreement upon City approval, authorization of Developer, and, if required for Material Work Changes that the Director of NHSD, in their discretion, determines requires it, approval by the City Council of the City of San Antonio by ordinance.

26.2 **Changes in Law.** Any alterations, additions, or deletions to this Agreement required by changes in state law or regulations are automatically incorporated into this Agreement without written amendment and shall become effective on the date designated by such law or regulation.

## **ARTICLE XXVII NON-ASSIGNMENT**

27.1 **No Assignment.** This agreement is not assignable without the written consent of City and the passage of a City Ordinance approving such assignment. Any other attempt to assign the agreement shall not relieve Developer from liability under this Agreement and shall not release Developer from performing any of the terms, covenants and conditions herein. Developer shall be held responsible for all funds received under this Agreement.

27.2 **Notice Required.** In such case, Developer shall give City prior written notice of any potential assignments or other transfers that Developer concludes is compliant with this article and shall submit such notice for City to review and confirm that such assignment is compliant with this article. Final determination shall be made by the City Manager’s Office in consultation with the City Attorney’s Office. The City reserves the right to make a final determination as to whether

an assignment under this article must be approved by City Council. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

## **ARTICLE XXVIII MISCELLANEOUS**

28.1 All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

28.2 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

28.3 Where appropriate, all personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders and singular nouns used in this Agreement shall include the plural and, conversely, plural nouns shall include the singular.

## **ARTICLE XXIX LEGAL AUTHORITY**

29.1 **Guarantee of Signatory.** The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that they have been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

29.2 **Disputed Authority.** City will have the right to suspend or terminate this Agreement for cause in accordance with **Articles XVII** and **XVIII** if there is a dispute as to the legal authority, of either Developer or the person signing this Agreement, to enter into this Agreement, any amendments hereto or failure to render performances hereunder. Developer is liable to City for any money it has received from City for performance of the provisions of this Agreement if City suspends or terminates this Agreement for reasons enumerated in this article.

29.3 **Duplicates.** This Agreement shall be executed in two duplicate originals on behalf of the City of San Antonio and Developer. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall constitute original signatures for all purposes under this Agreement.

*[Signature page follows.]*

**WITNESS OUR HANDS, EFFECTIVE as of the date set forth above.**

EXECUTED and AGREED:

**CITY OF SAN ANTONIO,**  
a Texas municipal corporation

By: \_\_\_\_\_  
Veronica Garcia  
Director, Neighborhood and Housing Services Department

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Andrea Hernandez  
Assistant City Attorney

EXECUTED and AGREED:

**MISSION TRAIL COMMUNITY ASSOCIATION**  
a Texas nonprofit corporation

By: \_\_\_\_\_  
Joseph C. Valdez, Jr, President

By: \_\_\_\_\_  
Claudia Hernandez, Secretary

**EXHIBITS:**

Exhibit A – Legal Description

Exhibit B – Work Statement

Exhibit C – Budget

Exhibit D – Income Verification Survey