DEVELOPMENT AGREEMENT
FOR RENTAL HOUSING ACQUISITION, REHABILITATION AND PRESERVATION

PROJECT NAME: CASIANO HOMES APARTMENTS

This Development Agreement for Rental Housing Acquisition, Rehabilitation and Preservation (this "***Agreement***") made and entered into to be effective this _____ ("***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, and Housing Authority of the City of San Antonio, Texas AKA Opportunity Home San Antonio, a Public Housing Authority ("***Developer***"). City and Developer are sometimes referred to in this Agreement each individually as a "***Party***" and collectively as the "***Parties***."

RECITALS

WHEREAS, City has implemented the Strategic Housing Implementation Plan ("***SHIP***"), to create and preserve affordable housing and to increase the availability of public housing in San Antonio; and

WHEREAS, the City Council has allocated $1 million to be granted to Opportunity Home San Antonio ("***Developer***") to make repairs to the Casiano Homes Apartments ("***the Property***"), which the Council finds is necessary to preserve the property and enhance the quality of life for residents of the Property; and

WHEREAS, City acknowledges that Developer is a Housing Authority funded through the U.S. Department of Housing and Urban Development and provides public and income-based housing; and

WHEREAS, this Agreement will set forth the terms and conditions of the City's funding in support of the Casiano Homes project.

ARTICLE I.
DEFINITIONS

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

"*Area Median Income*" or "*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 HUD's then-current income guidelines.

"*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"* means any event or status of Developer that with notice or passage of time, or both, would constitute an Event of Default as defined in 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 or is subject to undue risk of contamination by Hazardous Materials.

"*Event of Default*" is defined in **Section 15.4**.

"*Governmental Authority*" means 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 grant, 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.

"*Plans*" means all contracts and agreements between the architect and/or engineer for the Project and Developer, together with the final plans, specifications, shop drawings, as-builts, and other technical descriptions prepared for the construction of the Project, and all amendments and modifications.

"*Project*" means the work being completed by Developer on the Property and consisting of 499 public housing units that will be reserved for tenants earning up to a maximum area median income level as detailed in this Agreement.

"*Property*" means the land in which Developer holds a fee simple interest with a street address of 2919 S Laredo St, San Antonio, Texas 78207, more particularly described in **Exhibit "A,"** attached to this Agreement and incorporated here for all purposes.

"*Public Housing*" means decent, safe, sanitary, affordable rental housing in good repair for low-income individuals and families, the elderly, and persons with disabilities where rents are based on local area household incomes, adjusted for size and other eligible deductions, that is managed by Developer in its capacity as a public housing authority.

ARTICLE II.
PURPOSE, TERM AND AWARD

2.1 **Purpose.** The purpose of this Agreement is to set the terms and conditions for the City's grant of the Opportunity Home San Antonio Repair Fund to defray costs of rehabilitation of the Project, which is in furtherance of the City's SHIP.

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

2.3 **Award Amount**. In consideration of full and satisfactory performance of activities required by this Agreement, City has agreed to provide Developer with a grant in the amount of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) ("***Grant Funds***") from the City's General Fund to assist in the rehabilitation of the Project.

2.4 **Total Award**. The Grant Funds represent the full amount awarded to Developer under this Agreement. With the exception of changes to this Agreement made pursuant to **Section 5.9**, City will not be liable to Developer, or other entity, for any other costs incurred by Developer in the completion of the Project.

ARTICLE III.
AFFORDABILITY REQUIREMENTS

3.1 **Affordability Period**. Developer shall maintain the existing and future affordability requirements as required by the Department of Housing and Urban Development (HUD)'s Declaration of Trust/Restrictive Covenants filed as Doc# 20200030067 in the Bexar County Clerk's Office, Records Division, specifically governing Capital Fund Grants for this Project hereafter collectively with this Agreement referred to as "Grant Documents", which shall be twenty (20) years from the date the city delivers the Grant Funds to Developer (the "***Affordability Period***").

3.2 **Reservation of Units**. During the Affordability Period, Developer shall maintain four hundred ninety-nine (499) units of the Project as Public Housing with all units reserved to households whose income is at or below 80% of the area median income for the San Antonio-New Braunfels Metropolitan Area as determined by U.S. Department of Housing and Urban Development ("***AMI***") with priority for serving residents at or below 30% AMI ("***Affordable Units***").

3.3 **Priority in Leasing**. In leasing the Affordable Units created by this Project, Developer shall first fill vacancies with families currently on Opportunity Home's waitlist.

3.4 **Restrictive Covenant**. The Affordability Period and the affordability requirements described shall be enforced pursuant to HUD's existing and future affordable covenants. Failure of Developer to comply with affordability covenants required by HUD and as set forth in section 3.1 of this Agreement will constitute a material breach of this Agreement.

3.5 **Proof of Affordability**. Upon Project completion and request by City, Developer shall provide City with documentation evidencing the affordability of the Affordable Units.

ARTICLE IV.
PROJECT TIMELINE

4.1 **Construction Period**. Developer shall make reasonable efforts to begin construction within thirty (30) days from the Effective Date. At a minimum, Developer shall issue a Notice to Proceed enabling mobilization and procurement of materials. If Developer fails to make reasonable efforts to begin construction as required by this section, City may terminate this Agreement for cause and recapture all Grant Funds disbursed to Developer.

4.2 Except as otherwise agreed by City and subject to any extensions for Force Majeure delays (as defined in this Agreement), Developer shall complete the Project on or before **December 15, 2024**.

4.3 **Project Progress**. Developer shall follow the established timeline for the Project, more particularly described in the work statement, attached to this Agreement as **Exhibit** "**B**," and incorporated herein for all purposes (the "***Work Statement***"), unless prior written approval is obtained from City to modify the date of Project commencement.

4.4 **Adjustments**. After work begins on the Project, Developer shall notify City of requested adjustments to the Project's established timeline and shall obtain written approval by the Director of the City's Neighborhood and Housing Services Department ("***NHSD***") before any such timeline adjustments are made.

ARTICLE V.
PROJECT

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

5.2 **Project Review** Developer acknowledges that City has relied on Developer's scope of work submitted in Developer's proposal to award the Grant Funds. The Project shall be completed in accordance with the plans and scope of work described in Developer's proposal, subject to any changes agreed to through negotiations of this Agreement. Accordingly, City will assign staff to oversee construction of the Project and ensure the Project's 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 VII; and
- (vi) Developer shall provide notice to City of all scheduled inspections (minimum 24 hour notice)

(B) Project Construction:
- (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 provide to City proof that all scope and punch-list items have been closed out and reported as complete, submitted and approved**;** and

(ii) Upon Project completion, Developer shall provide to City as-builts, as applicable.

5.3 **Environmental Review**.

(A) Before commencing work on the Project, Developer shall provide to City (1) a copy of any current, valid Environmental Services Assessment(s) ("***ESA***") conducted for the rehabilitation of the Property; and (2) any other environmental review records or documents related to the ESA for the Property.

(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. Grant Funds shall not be used for any corrective action or additional steps recommended by any ESA for the Property.

5.4 **Tenant Protections.**

(A) The Project shall not cause the direct, involuntary, and permanent displacement of residents on the Property.

(B) Developer shall comply with the City of San Antonio's adopted tenant protections, including, but not limited to: Ordinance No. 2020-06-25-0453, Notice of Tenant Rights; and any other housing incentive requirements City Council may adopt.

5.5 **Changes in Work**. Developer shall not use any of the funds provided under this Agreement for any changes without complying with the following requirements:

(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)

changes 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 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 Grant 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 made.

(E) Notwithstanding Section **5.9(A)**, Developer shall be permitted to make non-material changes without the written approval of the City if necessary to protect or preserve the Property and it is not possible or practical to wait for such approval. If such change is made, Developer shall notify City promptly thereafter of the change and the reason Developer made the change.

(F) Notwithstanding Sections **5.9(A)** and **(E)**, Developer shall be permitted to make changes without the written approval of the City if such changes are 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 made, Developer shall notify the 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 below), then, in either event, City may, at its option (a) reduce the Grant 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 Grant and terminate this Agreement for cause pursuant to **Article XVII**.

5.6 **Work standards**. 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.

5.7 **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; and

(F) Accuracy of all requests for the disbursement of Grant Funds and the proper application of disbursed Grant Funds; and

(G) Perform and document all income verification requirements needed in accordance with the AMI requirements for the Affordability Period.

5.8 **Plans Review Before Project Commencement**. Developer agrees that 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; and

(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

(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 NHSD's consent to the construction in accordance with the Plans 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.

5.9 **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) NHSD's review and written approval of construction plans prior to obtaining the permit; and

(C) 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; and

5.10 **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 during construction.

5.11 **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 and San Antonio Water Systems, as applicable;

(B) a file-stamped copy of any Affidavit and Full Release of Liens duly recorded in the Real Property Records of Bexar County, Texas 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

(C) 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 immediately upon such filing, Developer shall provide a file-stamped copy thereof to City; and

ARTICLE VI.
GRANT TERMS

6.1 **Grant Disbursement**. CITY will make half of the Grant Funds available upon execution and the remainder to DEVELOPER upon request for reimbursement for actual costs incurred during the construction or completion of the Project. City will withhold 10% of the Grant Funds as retainage to ensure full completion of the Project. Developer shall request draws from the Grant Funds using to the process described in **Article VII** below as necessary for actual construction costs incurred.

6.2 Reserved.

6.3 Reserved.

6.4 Reserved.

ARTICLE VII.
PAYMENT.

7.1 **Reimbursement**. City agrees to reimburse Developer for all eligible expenses incurred for work performed on the Project. Notwithstanding any other provision of this Agreement, the total of all reimbursements paid by City for the Project shall not exceed the sum of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00).

7.2 **Draw Process**. On or before the fifteenth (15th) day of each month, Developer shall request draws from the Grant 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 to such requests for draws.

7.3 **Other Requirements**. In addition to any other requirements or restrictions herein or in any of the Grant 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) The insurance requirements set forth in **Article XX**, which Developer must comply with and maintain, accompanied by evidence of the payment of the premiums;

(iv) Prior to Developer's first request for reimbursement, a completed Schedule of Values pursuant to **Section 7.9**;

(v) The environmental services assessment(s); and

(vi) Any other documents and information as City may reasonably require.

(B) This Agreement and the other Grant 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) 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 Grant Documents; and

(D) Developer has complied with each and every provision of the Grant Documents requiring such compliance prior to the disbursement or reimbursement by City of Grant Funds, unless City has waived any such requirement in writing.

7.4 **Subsequent Reimbursements**. In addition to any other requirements or restrictions in this Agreement or in any of the Grant 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 Grant Documents;

(B) The requested reimbursement, plus the sum of the previous reimbursement, if any, or other sums disbursed by City exceed the amount of ONE MILLION AND NO/100 DOLLARS ($1,000,000.00);

(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 the completion date set forth in **Section 4.1**, regardless of the cause of such failure to so complete (other than delays caused by Force Majeure, defined below);

(D) In the reasonable and sole judgment of City, the sum of the undistributed Grant 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) A final order or decree in any court of competent jurisdiction exists enjoining the Project construction or enjoining or prohibiting Developer or City or either of them from performing their respective obligations under this Agreement;

(H) 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

7.5 **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 Costs***"). 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 Grant Funds under this Agreement shall be tracked and reported separate and apart from the costs associated with the any units funded by other funds.

7.6 **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 Grant 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 7.5** above or as set forth in the Budget.

7.7 **Invoices**. City shall reimburse Developer on a monthly basis upon receipt and approval of an invoice through the City's assigned Project Manager by email 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, including, but not limited to the following items:

(A) Documentation supporting any allowances for labor and materials;
(B) Proof of insurance and pictures of any materials stored on site;
(C) An updated Project schedule, to include any updated timelines and/or recovery;
(D) any updated as-builts, with redlines.

7.8 **Schedule of Values**. A schedule of values for all work performed under this Agreement shall, at a minimum, shall 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 submitting the first request for reimbursement, Developer shall submit to City a completed Schedule of Values, 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.

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

7.10 **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.

7.11 **Notice of Ineligible Costs**. City agrees to 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 fully justifying the expenditure 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.

7.12 **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 VIII.
RETENTION AND ACCESSIBILITY OF RECORDS

8.1 **Records to be Retained**. 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 all other relevant materials that pertain to activities pertinent to this Agreement and/or that provide accurate, current, separate, and complete disclosure of the status of Grant Funds, including a detailed accounting of the expenditure of amounts received from the City under this Agreement.

8.2 **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 completion of the Project 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.

8.3 **Affordability Records**. In addition to the retention requirement of **Section 8.2**, 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.

8.4 **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, full support and justification for each expenditure.

8.5 **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 the proceeds of this grant 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.

8.6 **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 IX.
DEVELOPER GUARANTEES & OTHER RESPONSIBILITIES

9.1 **Real Property Ownership**. Developer hereby acknowledges that it is the sole, current owner of a fee simple interest in the Property and will provide, if Developer has not done so already, an updated valid and current Commitment for Title Insurance indicating Developer's

ownership interest as set forth in this section and any and all liens and encumbrances filed against the Property.

9.2 **Public Housing Authority Classification**. Developer shall maintain its classification as a "public housing authority" as defined in Texas or federal law and its funding to provide affordable housing by the federal government or under Texas law. Notwithstanding the foregoing, Developer shall not be in default of this Agreement so long as DEVELOPER continues to provide housing and reserve the units as required by this Agreement for the duration of the Affordability Period

9.3 **Other Liens**. Developer warrants that the Property to be developed is not subject to any liens that have not been approved by City.

9.4 **Encumbrances**. Except for, as applicable, Developer's financing for development, construction, and operation of the Project, to include financial institution financing and financing from the Developer's affiliates to be secured by superior prior liens on the Project, Developer shall ensure that the Property remains free and clear from all other liens or claims for liens, 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 five (5) 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.

9.5 **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.

9.6 **Notice on Proceedings to Divest Control**. 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 any holders of 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.

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

(A) Except for any items replaced in the ordinary course of business, Developer shall not fully or partially sell, convey, dispose of, alienate, hypothecate, assign, mortgage, pledge, transfer, or encumber 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,

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), whether lawfully or unlawfully or voluntarily without the prior written consent of City (except for partial condemnation);

(B) Developer shall not fully or partially sell, convey, assign, pledge, or transfer 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;

(C) Developer shall not convert the Property, the improvements or a portion thereof to a form of condominium or cooperative ownership or other non-residential use;

(D) Developer shall not abandon the Property, the improvements or a significant portion of the Project;

(E) Developer shall honor its commitments 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;

(F) 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 Grant 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 Grant 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) Developer shall and will adhere to all applicable federal and local procurement and bidding policies have been, during the term of this Agreement and in the implementation of all funds provided under this Agreement.

ARTICLE X.
CONFLICT OF INTEREST

10.1 **Ethics**. 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.

10.2 **Conflicts 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.

10.3 **State Certification**. If not previously submitted to City, 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 XI.
NONDISCRIMINATION AND SECTARIAN ACTIVITY

11.1 **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.

11.2 **Equal Opportunity Clause**. During the performance of this agreement, DEVELOPER shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, veteran status, age or national origin.

11.3 **Commercial Nondiscrimination**. Developer represents and warrants that it will comply with the City's Commercial Nondiscrimination Policy, as described under Section III.C.1 of the Small Business Economic Development Advocacy ("***SBEDA***") Ordinance No. 2010-06-17-0531. As part of such compliance, the company shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. Developer shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace (as defined in the SBEDA Ordinance). The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

11.4 **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.

ARTICLE XII.
COMPLIANCE WITH OTHER LAWS

12.1 **Legal Compliance**. Developer shall comply with all applicable federal, state and local laws and regulations, and shall develop and operate the Project in accordance with the terms and conditions of this Agreement unless prohibited by law.

12.2 **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.

12.3 **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.

ARTICLE XIII.
SUBCONTRACTS

13.1 Developer shall use reasonable business efforts to ensure that the performance rendered under all subcontracts directly related to the project improvements complies with this Agreement as if such performance were rendered by Developer.

13.2 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.

13.3 Developer shall require its general contractor and all sub-contractors to comply with all applicable laws, rules, and regulations, policies and procedures or guidance concerning debarment, suspension, and exclusion.

13.4 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.

13.5 **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.

ARTICLE XIV.
MONITORING

14.1 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.

14.2 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 XVI** and **XVII**.

ARTICLE XV.
DEFAULT

15.1 **Default**. Any one of the following shall constitute a Default (defined in **Article I**):

(A) Failure of Developer to (i) comply with any term of this Agreement or the Restrictive Covenant; or (ii) failure to observe or perform any promise, covenant, obligation, or condition, required by this Agreement or the Restrictive Covenant;

(B) 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;

(C) The admittance of DEVELOPER, in a court filed writing or other official document, of its dissolution, defunding or other action that may result in DEVELOPER's inability to complete the work as required by this Agreement;

(D) The Property or any material part thereof is taken on execution or other process of law in any action against Developer;

(E) 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 Grant Documents; or

(F) Any representation or warranty made in this Agreement or the other Grant Document(s) by Developer, any principal, or any person with express authorization by Developer to execute any of the aforestated documents on behalf of Developer in connection with this Agreement, Developer's application for the Grant Funds that is knowingly false or misleading in any material adverse respect at the time made.

15.2 **Notice of Default Required**. If a Default occurs, City shall provide Developer written notice of the 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 may extend the initial 30-day cure period for up to an additional sixty (60) days (collectively, "***Cure Period***"). City reserves the right to extend the Cure Period for a period of additional days if City determines the circumstances require. However, nothing in this section shall be interpreted as requiring the City to provide Developer additional days to cure beyond the initial 30-day cure period.

15.3 **Remedies to City upon a Default**. If a Default occurs City may:

(A) withhold further payments to Developer;

(B) prohibit Developer from incurring additional obligations of funds under this Agreement;

(C) both (A) and (B).

15.4 **Event of Default**. A Default that, after notice and expiration of the Cure Period, has not been cured, shall constitute an event of default ("***Event of Default***").

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

(A) City may suspend this Agreement pursuant to **Article XVI** or terminate this Agreement for cause pursuant to **Article XVII**;

(B) City may recapture the grant and the entire lump sum payment of the Grant Funds shall become immediately due and payable to the City;

(C) In addition to the other remedies afforded to City under the Grant Documents, Developer or party in possession at the time of the Event of Default will be required to pay the City liquidated damages equal to the gap investment provided by the City divided by the affordability covenant period for each day Developer or party in

possession is in default. Developer agrees that liquidated damages under this Section are not punitive damages.

15.6 **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.

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

15.8 **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 Grant 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 XVI.
SUSPENSION

16.1 **Actions on Suspension**. If City elects to suspend this Agreement pursuant to **Section 15.5**, City may:

(A) suspend this 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).

16.2 **Notice**. In the event of suspension, City shall provide written 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.

16.3 **Resolution**. 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.

16.4 **No Liability for Consequences**. 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 XVII.
TERMINATION

17.1 **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 this Agreement.

17.2 **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.

17.3 **Termination due to non-appropriation of funds**. DEVELOPER acknowledges and agrees that the funding for this Grant derives from public funds and as such, if the City Council does not appropriate funds for this Grant due to a change in the CITY's budget or any other purpose allowed by law, this Agreement shall terminate, and CITY shall not be liable to DEVELOPER for any further payments or obligations under this Agreement. Upon any such termination, the Restrictive Covenant shall be simultaneously released and be given no further effect.

17.4 **Recapture of Grant Funds**. If this Agreement is terminated prior to completion of the Project, either voluntarily or otherwise, Developer shall repay any Grant Funds disbursed by City for the portion of the Project not completed under this Agreement to the City within sixty (60) days following delivery of notice of termination by City.

17.5 **Documents Upon Repayment**. 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.

17.6 **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 Grant Funds to City in accordance with **Section 17.5**, 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 Grant 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 XVIII.
AUTHORIZED RELIEF FROM PERFORMANCE *(Force Majeure)*

18.1 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 VI** of this Agreement.

ARTICLE XIX.
NOTICE

19.1 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 to CITY:
City of San Antonio
Neighborhood & Housing Services Department
Attention: Housing Bond Administrator
P.O. Box 839966
San Antonio, Texas 78283-3966

With a copy to:
City of San Antonio
Office of the City Attorney
Attention: Housing Bond Attorney
P.O. Box 839966
San Antonio, Texas 78283-3966

If to DEVELOPER:
Opportunity Home San Antonio
Casiano Homes Apartment
818 S. Flores
San Antonio, TX 78204
Attn: Chief Legal and Real Estate Officer

ARTICLE XX.
INSURANCE

20.1 Prior to the commencement of any work under this Agreement, 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 "**Casiano Homes Apartments**" 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.

20.2 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 NHSD. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

20.3 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.

20.4 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 2. Employers' Liability	Statutory $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 Liability Coverage must be on a per project aggregate. *g.) $500,000
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 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.
9. Employee Dishonesty Liability	$500,000
*If applicable	

20.5 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

20.6 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.

20.7 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.

20.8 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.

20.9 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.

20.10 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.

20.11 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.

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

ARTICLE XXI.
INDEPENDENT CONTRACTOR

21.1 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 XXII.
INDEMNIFICATION

22.1 **Texas Tort Claims Act**. DEVELOPER and CITY acknowledge that they are political subdivisions of the State of Texas and are subject to and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practices and Remedies Code. Section 101.001, et. Seq., and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. DEVELOPER and CITY shall each promptly notify the other in writing of any claim or demands that become known against them in relation to or arising out of activities under this Agreement.

ARTICLE XXIII.
LITIGATION AND CLAIMS

23.1 **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.

23.2 **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.

23.3 **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.

23.4 **Employee Litigation**. In any and all claims against any party indemnified under **Article XXII** 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.

23.5 **Prohibited Use of Funds**. Under no circumstances will the Grant Funds 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.

23.6 **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.

23.7 **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 XXIV.
ADVERSARIAL PROCEEDINGS

24.1 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.

24.2 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.

24.3 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 XVII**.

24.4 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 XXV.
CHANGES AND AMENDMENTS

25.1 Except as provided in **Section 25.2** below and changes that do not require prior written consent of City pursuant to **Sections 5.9(E)** and **5.9(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.

25.2 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 XXVI.
NON-ASSIGNMENT

26.1 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 this 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.

26.2 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 XXVII.
MISCELLANEOUS

27.1 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.

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

27.3 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 XVIII.
LEGAL AUTHORITY

28.1 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.

28.2 City will have the right to suspend or terminate this Agreement for cause in accordance with **Articles XVI** and **XVII** 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.

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

[*Signature page follows.*]

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: _____
Jameene Williams
Assistant City Attorney

EXECUTED and AGREED:

OPPORTUNITY HOME SAN ANTONIO,
a Public Housing Authority

By: _____
Brandee Perez
Chief Real Estate & Development Officer

Date: _____

EXHIBITS:
Exhibit A – Work Statement
Exhibit B– Budget