

HOME Investment Partnerships Program (HOME)

**INFILL HOUSING DEVELOPMENT
MASTER AGREEMENT**

by and between

the **City of San Bernardino**,
a California municipal corporation,

and

NPHS Community Redevelopment, Inc.,
a California nonprofit corporation,

for a grant & loans in the aggregate principal amount of

\$744,000 in HOME Funds

This HOME Investment Partnerships Program (HOME) Infill Housing Development Master Agreement (“Agreement”) is made as of the “Effective Date” as defined in Section 2 below, and is between the City of San Bernardino, a municipal corporation (“City”) and NPHS Community Redevelopment, Inc., a California nonprofit corporation (“Developer”).

RECITALS

WHEREAS, City has received HOME Investment Partnerships Act funds (“HOME Funds”) from the United States Department of Housing and Urban Development (“HUD”) pursuant to the Cranston-Gonzalez National Housing Act of 1990. The HOME Funds must be used by City in accordance with 24 C.F.R. Part 92, as amended from time to time (“HOME Regulations”); and

WHEREAS, City seeks to engage developers for the purposes of constructing or reconstructing infill housing on blighted or underutilized sites (“Eligible Properties,” each individually an “Eligible Property”) and expanding home ownership by selling these Eligible Properties to households whose income does not exceed 80 percent of the Area Median Income, as defined below; and

WHEREAS, Developer has the capacity and expertise to carry out infill housing development; and

WHEREAS, Developer desires to utilize HOME Funds in an amount not to exceed seven Hundred Forty-Four Thousand Dollars and Zero Cents (\$744,000.00) for the purpose of acquiring and/or constructing and/or reconstructing Eligible Properties to develop affordable housing units that will be sold to qualified homebuyers; and

WHEREAS, Developer will deliver to City, among other items, a “Site Agreement,” a “Promissory Note”, and a “Deed of Trust,” as defined below, for each Eligible Property for which Developer requests HOME Funds to acquire, construct, or reconstruct; and

WHEREAS, Developer will also deliver to City a “Housing Affordability Covenant,” as defined below, to cover all Eligible Properties for which Developer requests HOME Funds to acquire, construct, or reconstruct; and

WHEREAS, City desires to provide HOME Funds to Developer, on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt, legal sufficiency, and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

SECTION 1. Incorporation of Recitals.

The Recitals set forth above are true and correct and are incorporated into this Agreement.

SECTION 2. Definitions.

In addition to the meaning ascribed to certain words and phrases as set forth in the Recitals or in other sections of this Agreement, including any of the Attachments to this Agreement, other words and phrases shall have the meanings described below:

- **“Acquisition Escrow”** means an account set up with an escrow company that will oversee the transfer of title of an Eligible Property from City to Developer for the purpose of constructing and/or reconstructing affordable housing units, and the execution and recording of a Deed of Trust and a Housing Affordability Covenant between City and Developer.
- **“Affirmative Marketing Plan”** has the meaning set forth in Attachment “J”.
- **“Affordable Housing Cost”** means a purchase price determined using the criteria set forth in 24 C.F.R. Part 92.254(a)(2), i.e., not exceeding 95 percent of the median purchase price for the area.

“Affordability Period” means the period of time during which an Eligible Property has occupancy restrictions. Because each Project will receive more than Forty Thousand Dollars and Zero Cents (\$40,000.00) in HOME Funds, the length of the affordability period for each Eligible Property shall be 15 years.

- **“Area Median Income (AMI)”** means the median income for the Ontario/Riverside/San Bernardino Metropolitan Statistical Area, adjusted for household size, as defined, and periodically adjusted by HUD.
- **“Approved Financing”** means the following loans, or other financing, obtained by Borrower and approved by the City for the purpose of acquiring and/or constructing and/or reconstructing Eligible Properties to develop affordable housing units, in addition to the Grant and the Loans: (1) a line of credit of up to One Million Dollars and Zero Cents (\$1,000,000) pursuant to the Line of Credit Agreement by and between Commonspirit Health Operating Investment Pool, LLC, and Neighborhood Partnership Housing Services, Inc., dated November 30, 2020; and (2) a grant of up to One Million Dollars and Zero Cents (\$1,000,000) pursuant to the Grant Agreement No. B-23-CP-CA-0070 by and between HUD and Neighborhood Partnership Housing Services, Inc. dated May 7, 2024. Notwithstanding anything to the contrary in this Agreement, Developer agrees and understands that the City’s approval of the Approved Financing does not constitute any representation or warranty by the City that the Developer’s use of the Approved Financing complies with any contractual or legal requirements applicable to the use of such funds. Additionally, Developer assumes full

responsibility for compliance with any and all contractual and legal requirements applicable to or associated with the use of such funds.

- **“Construction Escrow”** means an account set up with the City of San Bernardino Finance Department that will process the disbursement of all construction or reconstruction payouts from City to Developer which are made to advance to Developer or reimburse Developer for payments made or to be made to general contractors, subcontractors, and material suppliers as construction or reconstruction work is completed.
- **“Deed(s) of Trust”** means the deeds of trust in favor of City as beneficiary that will encumber each Eligible Property as security for compliance with this Agreement, the Site Agreement(s), and the Promissory Note(s).. For each Eligible Property, the Developer shall enter into a Deed of Trust to secure compliance with this Agreement, the Site Agreement, and the Promissory Note for the Eligible Property.
- **“Effective Date”** means the date on which this Agreement shall become effective, which is the later of the date when approved by the City Council and signed by an authorized representative of Developer, and executed by the City Manager as set forth on the signature page of this Agreement.
- **“Escrow Agent”** means one or more escrow agents administering the Acquisition Escrow and the Sale Escrow, which are mutually acceptable to Developer and City.
- **“Event of Default”** has the meaning set forth in Section 14 of this Agreement.
- **“Hazardous Materials”** has the meaning set forth in Section 37 of this Agreement.
- **“HOME”** means the HOME Investment Partnerships Act Program established pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12701 et seq.), as amended from time to time, and the HOME Regulations.
- **“HOME Funds”** means the funds to be provided by City to Developer to acquire, construct or reconstruct Eligible Properties in an aggregate amount not to exceed Four Hundred Fifty-Five Thousand Dollars and Zero Cents (\$744,000.00). The HOME Funds to be made available to the Developer consist of: (1) a permanent HOME Grant and (2) three separate HOME Loans. The provisions of the HOME Funds are set forth herein.
- **“HOME Grant”** means the permanent grant of HOME Funds to be provided by the City to Developer in an amount not to exceed One Hundred Thirty Five Thousand Dollars and Zero Cents (\$135,000.00).
- **“HOME Loans”** means the three separate forgivable HOME Loans for the three Eligible Properties that the City will make to the Developer pursuant to Site Agreements. Each HOME Loan shall be in the amount of Two Hundred Three Thousands Dollars and Zero Cents (\$203,000.00).

- **“Housing Affordability Covenant(s)”** means the HOME Program Housing Affordability Covenants and Restrictions that will be entered into by and between Developer and City upon execution of this Agreement (“Developer Housing Affordability Covenant”), and by and between City and the Qualified Homebuyers to whom the Eligible Properties are sold following the construction or reconstruction of affordable housing units on the Eligible Properties (“Qualified Homebuyer Housing Affordability Covenant”). The form of the Developer Housing Affordability Covenant is Attachment “H”. The form of the Qualified Homebuyer Housing Affordability Covenant is Attachment “I”.
- **“Low-income Households”** means persons and households whose income does not exceed 80 percent of the Area Median Income, adjusted for family size, as set forth in the definition of “low-income families” in 24 C.F.R. Part 92.2.
- **“Notice of Completion”** means the Notice of Completion to be executed by Developer upon the completion of the construction or reconstruction of infill housing on an Eligible Property, in the form specified in California Civil Code Section 8182.
- **“Project”** means the acquisition of Eligible Properties, construction or reconstruction of infill housing on the Eligible Properties, and resale of the Eligible Properties to Qualified Homebuyers.
- **“Qualified Homebuyer”** means a household whose annual income does not exceed eighty percent (80%) of the Area Median Income, and which meets all of the requirements for purchasing an Eligible Property.
- **“Rehabilitation Standards”** means the HOME-compliant single-family standards for the rehabilitation of HOME-assisted properties adopted from time to time by City as a participating jurisdiction under the HOME Regulations.
- **“Sale Escrow”** means the property transfer transaction account by and among an Escrow Agent, the Qualified Homebuyer, Developer, and City in connection with the sale of a completed Eligible Property from Developer to a Qualified Homebuyer, and the execution and recording of a Qualified Homebuyer Deed of Trust and a Qualified Homebuyer Housing Affordability Covenant.
- **“Site Agreement”** means the loan agreement that the Developer and City will enter into for each Eligible Property. The form of the Site Agreement is Attachment “D”.
- **“Term”** has the meaning set forth in Section 5 of this Agreement.
- **“Total Development Cost”** means the total cost to Developer to construct/reconstruct and sell an Eligible Property to a Qualified Homebuyer. The Total Development Cost shall be determined by the sum total of the cost line items included in the Total Development Cost Pro Forma in the form of Attachment “E”, which Developer shall submit to City for each Eligible Property.

SECTION 3. Parties to the Agreement.

- A. The parties to this Agreement are Developer and City, referred to at times herein collectively as the “Parties” and individually as a “Party.”
- B. The principal office of Developer for purposes of this Agreement is located at 9551 Pittsburgh Avenue, Rancho Cucamonga, CA 91730.
- C. Prior to the Effective Date, Developer must have provided City with satisfactory evidence of the legal formation and the good standing of Developer to transact business within the State of California.

SECTION 4. Entire Agreement.

- A. This Agreement, including all attachments and addenda referenced herein, constitutes the entire agreement between the Parties. This Agreement supersedes all prior oral or written negotiations, discussions, and agreements between the Parties concerning the subject matters covered herein. The Parties intend this Agreement to be the final expression of their agreement with respect to the subjects covered herein and a complete and exclusive statement of such terms.
- B. Included as an integral part of this Agreement are the Attachments listed below. All Attachments set forth below and attached to this Agreement are incorporated herein by reference regardless of the prior reference of any or all of said Attachments in the text of this Agreement. All Attachments to this Agreement shall have the same force and effect as though the content of each and every one of said Attachments had been included within the text of this Agreement. Unless the context requires to the contrary, all references to this Agreement shall include each and every Attachment set forth below and attached hereto. Attachments identified as forms or templates may be modified by City as necessary to adapt the documents for use in connection with particular transactions.

List of Attachments:

Attachment “A”	Scope of Services
Attachment “B”	List of Eligible Properties
Attachment “C”	Form of Grant Deed
Attachment “D”	Form of Site Agreement
Attachment “E”	Total Development Cost Pro Forma Template
Attachment “F”	Sources and Uses Schedule Template
Attachment “G”	Project Timeline Template
Attachment “H”	Form of Developer Housing Affordability Covenant
Attachment “I”	Form of Qualified Homebuyer Housing Affordability Covenant

SECTION 5. Term of Agreement.

- A. The term of this Agreement (“Term”) shall commence on the Effective Date and will expire on the later of: (i) two (2) years after the Effective Date, (ii) July 1, 2026, or (iii) unless terminated pursuant to Section 15 below, until completion of the construction or reconstruction of all of the Eligible Properties to be constructed or reconstructed under this Agreement, and at least until ownership of all Eligible Properties has been transferred by Developer to Qualified Homebuyers and the Deeds of Trust for all Eligible Properties have been released by the City. City will have the option to extend the Term for one (1) additional one-year term, with the consent of Developer, which shall not be unreasonably withheld. Also, notwithstanding the foregoing portion of this Section 5(A), documents recorded pursuant to this Agreement, including, but not limited to, the Housing Affordability Covenants and all documents recorded pursuant to a Site Agreement, shall survive termination or expiration of this Agreement and remain effective in accordance with their terms. Additionally, upon expiration or termination of this Agreement, the obligations that by their nature are intended to survive expiration or termination of the Agreement shall survive.
- B. Upon the expiration or earlier termination of this Agreement, Developer shall provide City with all documents, notes, maps, reports, data, and all other work product developed in the performance of the Scope of Services within ten (10) calendar days after the effective date of such expiration or termination, without additional charge to or request by City.

SECTION 6. Scope of Developer Services.

- A. City hereby retains Developer to provide the professional services set forth in the Scope of Services attached hereto as Attachment “A” and incorporated herein by this reference. Developer hereby agrees to perform the work set forth in the Scope of Services, in accordance with the terms of this Agreement.

Before commencing any services under this Agreement, Developer shall provide City with documentation indicating Developer’s financial strength and capacity to provide start-up operations and working capital to develop Eligible Properties. Such documentation shall include Developer’s most recent certified financial statements with a statement in writing, signed by a duly authorized representative of Developer, stating Developer’s present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in Developer’s financial situation.

SECTION 7. Budget.

City has allocated an amount not to exceed Seven Hundred Forty-Four thousand Dollars and Zero Cents (\$744,000.00) of HOME Funds for the acquisition, construction, or reconstruction of Eligible Properties.

SECTION 8. Payment for Services Performed by Developer.

The amount to be paid by City to Developer for the services to be performed by Developer pursuant to this Agreement (the “Developer Fee”) will be established prior to the commencement of the Project, as reflected in the Total Development Cost Pro Forma that Developer is required to submit for each Eligible Property. City must approve the Developer Fee prior to the construction or reconstruction of any Eligible Property. In all cases, the Developer Fee shall be limited to no more than ten percent (10%) of the Total Development Cost.

SECTION 9. HOME Program Requirements.

- A. Developer shall remain fully informed of and comply with all applicable laws and regulations, including, without limitation, providing all required notices, governing the use of the HOME Funds as set forth in 24 C.F.R. Part 92, including the requirements of the Developer Housing Affordability Covenant. In the event of any conflict between this Agreement and applicable laws and regulations governing the use of the HOME Funds, the stricter requirement shall govern. The laws and regulations governing the use of the HOME Funds include (but are not limited to) the following:
- (i) Eligible Project Costs. Restrictions on funding only eligible project costs as set forth in 24 C.F.R. 92.206.
 - (ii) Environmental and Historic Preservation and Review. 24 C.F.R. Part 50 and 24 C.F.R. Part 58, which prescribe procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), and the additional laws and authorities listed at 24 C.F.R. § 58.5. Developer acknowledges that environmental review, which shall also review environmental impacts pursuant to CEQA (hereinafter defined), by the City of the activities to be undertaken under this Agreement is required, that City’s approval of this Agreement does not constitute approval of any development or completion of such environmental review, and that Developer may not expend funds, HOME or otherwise, for such activities until the City has notified Developer in writing that the environmental review is complete. Nothing in this Agreement shall be construed to limit the City’s discretion to consider and adopt any mitigation measure or project alternative, including the alternative of rejecting any proposed development of the Property, as provided in the California Public Resources Code.
 - (iii) Applicability of OMB Circulars. The applicable policies, guidelines, and requirements of OMB Circulars Nos. A-87, A-102, Revised, A-110, A-122, and A-133.
 - (iv) Debarred, Suspended or Ineligible Contractors. The prohibition on the use of debarred, suspended, or ineligible contractors set forth in 24 C.F.R. Part 24.
 - (v) Civil Rights, Housing and Community Development, and Age Discrimination Acts. The Fair Housing Act, as amended (42 U.S.C. § 3601 *et seq.*), and implementing regulations at 24 C.F.R. Part 100; Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended;

the Housing and Community Development Act of 1974 as amended, including Title I, Section 104(b) and Section 109; Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794, et seq.); the Age Discrimination Act of 1975 (42 USC § 6101, et seq.); Executive Order 11063 (Nondiscrimination and Equal Opportunity in Housing), as amended, and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 (Equal Employment Opportunity), as amended; Executive Order 11625 (National Program for Minority Business Enterprise), as amended; Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138 (National Women's Business Enterprise Policy), as amended.

- (vi) Nondiscrimination against the Disabled. The requirements of the Fair Housing Act (42 U.S.C. § 3601 et seq.) and implementing regulations at 24 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), and federal regulations issued pursuant thereto, which prohibit discrimination against the disabled in any federally assisted program; the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151 et seq.); and the applicable requirements of Title II and/or Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), and federal regulations issued pursuant thereto.
- (vii) Clean Air and Water Acts. The Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the National Environmental Policy Act of 1969, as amended (42 U.S.C. §§ 4321 et seq.), and the regulations of the Council on Environmental Quality with respect thereto at 40 C.F.R. Part 1500, as amended from time to time.
- (viii) Uniform Administrative Requirements. The provisions of 24 C.F.R. §§ 92.505-.506 regarding cost and auditing requirements.
- (ix) Labor Standards. The labor requirements set forth in 24 C.F.R. 92.354; the prevailing wage requirements of the Davis-Bacon Act and implementing rules and regulations (40 U.S.C. § 3141 et seq.; the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) which requires that workers be paid at least once a week without any deductions or rebates except permissible deductions; the Contract Work Hours and Safety Standards Act – CWHSSA (40 U.S.C. §§ 3701-3708) which requires that workers receive "overtime" compensation at a rate of 1-1/2 times their regular hourly wage after they have worked forty (40) hours in one (1) week; 29 C.F.R. Subtitle A, Parts 1, 3 and 5, which are the regulations and procedures issued by the Secretary of Labor for the administration and enforcement of the Davis-Bacon Act, as amended; the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, et seq.; and all other applicable federal and state labor laws, the applicability of which Developer assumes full responsibility for determining.

- (ix) Drug Free Workplace. The requirements of the Drug Free Workplace Act of 1988 (41 U.S.C § 8101, et seq.), and implementing regulations at 2 C.F.R. Part 2429.
- (xii) Anti-Lobbying; Disclosure Requirements. The disclosure requirements and prohibitions of 31 U.S.C. § 1352 and implementing regulations at 24 C.F.R. Part 87.
- (xiii) Historic Preservation. The historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (Division A of Subtitle III of 54 U.S.C.) and the procedures set forth in 36 C.F.R. Part 800. If archeological, cultural, or historic period resources are discovered during construction, all construction work must come to a halt and Developer shall immediately notify City. Developer shall not alter or move the discovered material(s) until all appropriate procedures for “post-review discoveries” set forth in the National Historic Preservation Act at 54 U.S.C. § 300101 et seq. have taken place, which include, but are not limited to, consultation with the California State Historic Preservation Officer and evaluation of the discovered material(s) by a qualified professional archeologist.
- (xiv) Flood Disaster Protection. The requirements of the Flood Disaster Protection Act of 1973, as amended (“Flood Act”) contained in the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4001 et seq.). No portion of the assistance provided under this Agreement is approved for acquisition or construction purposes as defined under Section 3(a) of the Flood Act (42 U.S.C. § 4003(a)), for use in an area identified by HUD as having special flood hazards which is not then in compliance with the requirements for participation in the national flood insurance program pursuant to Section 201(d) of the Flood Act (42 U.S.C. § 4105(d)). The use of any assistance provided under this Agreement for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program is subject to the mandatory purchase of flood insurance requirements of Section 102(a) of the Flood Act (42 U.S.C. § 4102(a)). If an Eligible Property is located in an area identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, the property owner and its successors or assigns must obtain and maintain, during the ownership of the Eligible Property, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Act. Such provisions are required notwithstanding the fact that the construction on the Eligible Property may not itself be funded with assistance provided under this Agreement.
- (xv) Project Requirements and Other Federal Requirements. The activities funded under this agreement must comply with the project requirements set forth in Subpart F of 24 C.F.R. Part 92 and must be carried out in accordance with the other federal requirements set forth in Subpart H of said Part 92.

- (xvi) Property Standards. The housing developed pursuant to this Agreement must meet the property standards in 24 C.F.R. § 92.251, the lead hazard control requirements in 24 C.F.R. § 92.355, and the Rehabilitation Standards upon completion of construction or reconstruction.
- (xvii) Religious Organizations. If Developer is a religious organization, as defined by the HOME Regulations, Developer shall comply with all conditions prescribed by HUD for the use of HOME Funds by religious organizations, including the First Amendment of the United States Constitution regarding church/state principles and the applicable constitutional prohibitions set forth in 24 C.F.R. § 92.257.
- (xviii) Relocation. As applicable, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601, et seq.), and implementing regulations at 49 C.F.R. Part 24; 24 C.F.R. § 570.606; Section 104(d) of the Housing and Community Development Act of 1974 and implementing regulations at 24 C.F.R. Part 42; 24 C.F.R. § 92.353; and California Government Code Section 7260 et seq. and implementing regulations at 25 California Code of Regulations Sections 6000 et seq. If and to the extent that development of the project results in the permanent or temporary displacement of residential tenants, homeowners, or businesses, Developer shall comply with all applicable local, state, and federal statutes and regulations with respect to relocation planning, advisory assistance, and payment of monetary benefits, and shall prepare and submit a relocation plan to City for approval. Developer is solely responsible for its compliance with applicable notice requirements, payment of any relocation benefits to any displaced persons, and any other obligations associated with complying with such relocation laws. Developer shall indemnify and defend City (with counsel approved by City, in its sole discretion), and hold City harmless against all claims that arise out of relocation obligations to residential tenants, homeowners, or businesses permanently or temporarily displaced by the Project.
- (xix) Other HUD Regulations. Any other HUD regulations now in effect or as may be amended or added in the future pertaining to the HOME Funds, the existence and applicability of which Developer assumes full responsibility for determining.
- (xx) Fees. As required by 24 C.F.R. Part 92.504(c)(3)(xi), Developer shall not charge servicing, origination, processing, inspection, or other fees for the costs of providing homeownership assistance.

SECTION 10. Records Retention.

Records, field notes, inspection documents, and other supporting documents pertaining to the use of HOME Funds disbursed to Developer shall be retained by Developer with a corresponding copy provided to City. All records shall be made available to City, HUD,

and other appropriate federal agencies and officials for examination for a period of five (5) years from the date of expiration or termination of this Agreement. Records shall be available for inspection during Developer's regular business hours. In the event of litigation or audit relating to this Agreement, such records shall be retained by Developer until all such litigation or audit has been resolved.

SECTION 11. Indemnification.

In addition to any other specific indemnification or defense obligations of the Developer set forth in this Agreement, Developer shall (with counsel approved by City, in its sole discretion) defend, indemnify, and hold harmless City and its officers, officials, employees, representatives, and agents (collectively "Indemnitees") from and against any and all causes of action, suits, proceedings, claims, demands, liens, awards, judgments, losses, penalties, fines, costs and expenses, including, without limitation, incidental and consequential damages, court costs, litigation expenses, fees of expert consultants or expert witnesses, costs of investigation, attorneys' fees, liability for injury or death to any person, workers' compensation or prevailing wage determinations, and other costs or damages of any kind, nature, or description occurring during or arising in connection with, in whole or in part, the construction, operation, or other services or work relating to this Agreement, the Project, Developer's ownership of the Eligible Properties, or Developer's compliance with the requirements of the Approved Financing as a result of the direct or indirect acts, faults, or omissions, whether active or passive, of Developer or its officers, employees, contractors or subcontractors of any tier, agents, representatives, or other parties engaged on Developer's behalf, unless arising from the sole gross negligence or willful misconduct of City. The provisions of this section shall survive the termination or earlier expiration of this Agreement and shall not merge into any deeds conveying ownership of any of the Eligible Properties.

SECTION 12. Insurance.

- A. Developer shall at its sole expense procure and maintain, or cause its subcontractors to procure and maintain, as applicable, the insurance as set forth below throughout the Term. Developer shall obtain City approval, in its sole discretion, of each insurance company prior to commencement of any activities pursuant to this Agreement. There shall be no limitations to coverage, whether for insured claims or contractual liability, and Developer shall remain liable as stated in Section 11 above for all losses and damages incurred by any of the Indemnitees that are caused directly or indirectly through the actions or inactions, willful misconduct or negligence of Developer in the performance of the duties assumed by Developer pursuant to this Agreement, to the extent such losses and damages are not covered by insurance maintained by Developer pursuant to this Section 12.
- B. Developer shall maintain insurance policies issued by an insurance company or companies authorized to do business in the State of California and that maintain during the term of the policy a Financial Strength Rating of at least "A-" and a Financial Size Category designation of at least "VI," as assigned by A.M. Best Company, Inc. in the then most current edition of "Best's Credit Guide," as follows:

- i. Automobile Insurance. Developer and each of its subcontractors shall maintain comprehensive commercial automobile liability insurance coverage for any vehicle, including owned, hired, and non-owned automobiles, of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, including, without limitation, for bodily injury and property damage.
- ii. Worker's Compensation Insurance. Developer and each of its subcontractors shall maintain worker's compensation coverage in accordance with California workers' compensation laws for all workers under Developer's and/or its any of its subcontractors' employment performing work under this Agreement, which shall include an endorsement that the insurer waives the right of subrogation against City and Indemnitees.
- iii. Liability Insurance. Developer and each of its subcontractors shall maintain comprehensive commercial general liability insurance, including coverage for bodily injury, personal injury, advertising injury, death, property damage and contractual liability, with a limit of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, including products and completed operations coverage. Said insurance shall be primary insurance with respect to City and the policy shall so provide. All defense costs shall be outside the limits of the policy. Developer shall require and ensure that all general liability insurance policies covering work at any Eligible Property, whether obtained by Developer or Developer's contractors or subcontractors, include City and the other Indemnitees as additional insureds. If required by City from time to time, Developer shall increase the limits of Developer's liability insurance to reasonable amounts customary for owners of improvements similar to the Project.

Developer and each of its subcontractors shall maintain professional liability coverage with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, covering the risk of errors and omissions, negligent acts, and costs of claims/litigation, including investigation and court costs.

- iv. Builders' Risk/Property Insurance. Developer and each of its subcontractors shall maintain Builders' Risk insurance during the course of construction on an All Risk Completed Value form, in an aggregate amount equal to 100% of the completed insurable value of the Project or portion of the Project on which Developer is performing work. Upon completion of construction for any Eligible Property, Developer shall maintain fire and extended coverage property insurance covering the Project, in form appropriate for the nature of such property, covering all risks of loss, excluding earthquake, for one hundred percent (100%) of the replacement value, with deductible, if any, acceptable to City, naming City as a loss payee, as its interests may appear.
- v. Flood Insurance. Flood insurance must be obtained if required by applicable federal regulations.

- C. Concurrent with the execution of this Agreement and prior to the commencement of any work by Developer, and upon other reasonable request by City, Developer shall deliver to City copies of policies, certificates, and endorsements evidencing the existence of the insurance coverage required herein and the amounts of all deductibles or retentions, which coverage shall remain in full force and effect continuously throughout the term of this Agreement. Insurance coverage required under this Agreement shall not be written on a “claims made” basis. The applicable certificate of insurance must clearly provide that the coverage is on an “occurrence” basis. Receipt by the City of evidence of insurance that does not comply with the above requirements shall not constitute a waiver of the insurance requirements of this Agreement.
- D. Each policy of insurance required under this Agreement, except worker’s compensation, shall, to the fullest extent allowed by law, be endorsed naming City and the other Indemnitees as additional insureds, and shall provide that such insurance, except with respect to the coverage limits, applies to each named and additional insured as though a separate policy were issued to each and shall provide cross-liability coverage.
- E. Each policy shall provide for a waiver of any and all rights of subrogation against City and the other Indemnitees. Each policy shall provide that it is primary to any insurance or self-insurance of City or the other Indemnitees with respect to the operations of the Developer. Any insurance maintained by City or Indemnitees shall be in excess of Developer’s insurance and shall not contribute to it.
- F. Developer shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits are exhausted or upon insolvency of the insurer that issued the policy. Each policy shall provide that it may not be canceled, terminated or modified, except upon thirty (30) days’ prior written notice to City.
- G. Failure on the part of Developer to procure or maintain, or cause its subcontractors to procure or maintain, or provide evidence of renewals of the insurance coverage required herein for fifteen (15) days or longer shall constitute a material breach of this Agreement pursuant to which City may exercise all rights and remedies set forth herein and may at its sole discretion, without waiving or limiting its rights or remedies for such default, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by City shall be reimbursed by Developer upon demand, including interest thereon at the rate of ten percent (10%) per annum compounded annually from the date paid by City to the date reimbursed by Developer. City shall have the right, at its election, to participate in and control any insurance claim adjustment or dispute with the insurance carrier. Developer’s failure to assert or delay in asserting any claim shall not diminish or impair the rights of City against Developer or the insurance carrier.

SECTION 13. Press Releases.

Press or news releases, including photographs or public announcements, or confirmation of the same related to the work to be performed by Developer under this Agreement shall be made by Developer only with the prior written consent of City. Press or news releases shall include language identifying the Project as a City-funded project, and include the City seal.

SECTION 14. Defaults and Remedies.

- A. Events of Default. Subject to the Enforced Delay; Extension of Time for Performance provisions of Section 36, the occurrence of any of the following shall, after the giving of any notice (delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default) and the expiration of any applicable cure period, constitute a default by Developer hereunder (“Event of Default”):
- i. The failure of Developer to pay or perform any monetary covenant or obligation hereunder or under any of the documents executed in connection herewith, without curing such failure within ten (10) calendar days after receipt of written notice of such default from City (or from any party authorized by City to deliver such notice as identified by City in writing to Developer).
 - ii. The failure of Developer to perform any nonmonetary covenant or obligation hereunder or under any of the documents executed in connection herewith, without curing such failure within thirty (30) calendar days after receipt of written notice of such default from City (or from any party authorized by City to deliver such notice as identified by City in writing to Developer) specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency; provided, however, that if any default with respect to a nonmonetary obligation is such that it cannot be cured within a thirty-day period, it shall not be deemed a default if Developer commences the cure within said thirty-day period and diligently prosecutes such cure to completion thereafter.

Notwithstanding anything herein to the contrary, the herein described notice requirements and cure periods shall not apply to any Event of Default described in Sections iii through vi below, each of which shall constitute an immediate default under this Agreement without regard to any curative action undertaken or completed by Developer:

- iii. The material falsity of any representation, warranty, disclosure, or covenant made by Developer regarding the Project, this Agreement, or any documents executed in connection herewith, whether or not such representation, warranty, disclosure, or covenant is included in this Agreement.
- iv. Developer or any constituent member, partner, or majority shareholder of Developer shall (a) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian or the like of its property, (b) fail to pay or admit in writing its inability to pay its debts generally as they become due, (c) make a general assignment for the benefit of creditors, (d) be adjudicated a bankrupt or insolvent or (e) commence a voluntary case under the Federal bankruptcy laws of the United States of America or file a voluntary petition that is not withdrawn within ten (10) calendar days after the filing thereof seeking an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or file an answer admitting the material

allegations of a petition filed against it in any bankruptcy or insolvency proceeding.

- v. If, without the application, approval or consent of Developer, a proceeding shall be instituted in any court of competent jurisdiction, under any law relating to bankruptcy, in respect of Developer or any constituent member or partner, or majority shareholder, of Developer, for an order for relief or an adjudication in bankruptcy, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of Developer or of all or any substantial part of Developer's assets, or other like relief under any bankruptcy or insolvency law, and, if such proceeding is being contested by Developer, in good faith, the same shall (a) result in the entry of an order for relief or any such adjudication or appointment, or (b) continue undismissed, or pending and unstayed, for any period of ninety (90) consecutive calendar days.
- vi. Voluntary cessation of the operation of the Project for a continuous period of more than thirty (30) calendar days or the involuntary cessation of the operation of the Project for a continuous period of more than sixty (60) calendar days.
- vii. A mechanic's lien or any other type of encumbrance on any Eligible Property resulting from Developer's failure to fulfill its financial or other contractual obligations with respect to any of its vendors or sub-contractors is not removed within ten (10) calendar days after receipt of written notice of such default from City.

B. City Remedies. Upon the occurrence of an Event of Default hereunder, City may, in its sole discretion, take any one or more of the following actions:

- i. Cease making any payment of fees or reimbursement of eligible expenses to Developer unless and until the Event of Default (if curable) is cured.
- ii. Demand reimbursement from Developer for any payments made to it by City for which the contracted work product was not satisfactorily delivered by Developer.
- iii. Take possession of any material or other work product purchased or produced by Developer for the Project.
- iv. Upon the occurrence of an Event of Default which is occasioned by Developer's failure under this Agreement to pay money to a third party, City may, but shall not be obligated to, make such payment. If such payment is made by City, Developer shall deposit with City, upon written demand therefor, such sum plus interest at the rate of ten percent (10%) per annum compounded annually. The Event of Default with respect to which any such

payment has been made by City shall not be deemed cured until such repayment (as the case may be) has been made by Developer.

- v. Upon the occurrence of an Event of Default described in Section 14.A.(iv) or 14.A.(v) hereof, City shall be entitled and empowered by intervention in such proceedings or otherwise to file and prove a claim for any amount owing to City under this Agreement and unpaid and, in the case of commencement of any judicial proceedings, to file such proof of claim and other papers or documents as may be necessary or advisable in the judgment of City and its counsel to protect the interests of City and to collect and receive any monies or other property in satisfaction of its claim.
- vi. If the Event of Default consists of the failure of Developer to comply with the requirement that it transfer each of the Eligible Properties only to a Qualified Homebuyer, Developer shall be required to repay to City all funds provided by City to Developer for the acquisition, construction, or reconstruction of the Eligible Property to which said Event of Default applies.

Any failure or delays by City in asserting any of its rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays in asserting any of its rights and/or remedies shall not deprive City of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

C. City Default and Developer Remedies. Subject to the Enforced Delay; Extension of Time for Performance provisions of Section 36, upon failure of City to meet any of its obligations under this Agreement without curing such failure within thirty (30) calendar days after receipt of written notice of such failure from Developer specifying the nature of the event or deficiency giving rise to the default and the action required to cure such deficiency, Developer may, as its sole and exclusive remedies:

- i. Bring an action in equitable relief seeking the specific performance by City of the terms and conditions of this Agreement or seeking to enjoin any act by City which is prohibited hereunder; and/or
- ii. Bring an action for declaratory relief seeking judicial determination of the meaning of any provision of this Agreement. Without limiting the generality of the foregoing, Developer shall in no event be entitled to, and hereby waives, any right to seek incidental or consequential damages of any kind of nature from City arising out of or in connection with this Agreement, and in connection with such waiver Developer is familiar with and hereby knowingly and voluntarily waives the provisions of Section 1542 of the California Civil Code which provides as follows: **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR**

RELEASED PARTY.” Developer further waives the benefit of any other statute, rule, regulation, or common law principle to the same or similar effect.

Initials of Developer: SE

SECTION 15. Termination for Convenience.

- A. This Agreement may be terminated by City at any time prior to its expiration for any reason by giving Developer thirty (30) calendar days' prior written notice. If Developer is in compliance with this Agreement on the date such termination takes effect, City shall pay Developer the reasonable value of all work authorized by City pursuant to this Agreement prior to the date of such notice and completed thereafter prior to the effective termination date.
- B. In the event of a termination of this Agreement pursuant to this section, Developer shall comply with Section 5.B of this Agreement.

SECTION 16. HOME Funds.

- A. Subject to the terms and conditions of this Agreement, City shall make HOME Funds to Developer for the purpose of construction or reconstruction of Eligible Properties, and soft costs involved in the development of Eligible Properties. City shall commit an aggregate amount not to exceed Seven Hundred Forty-Four Thousand Dollars and Zero Cents (\$744,000.00) in HOME Funds. The HOME Funds shall consist of one (1) permanent grant of HOME Funds in an amount not to exceed One Hundred Thirty Five Thousand Dollars and Zero Cents (\$135,000.00) (the "HOME Grant") and three (3) separate loans of HOME Funds in an amount not to exceed Two Hundred Three Thousand Dollars and Zero Cents (\$203,000.00) (the "HOME Loans") per Eligible Property. The HOME Grant shall be provided by the City upon execution of this Agreement and in accordance with the terms and conditions of this Agreement. Each HOME Loan shall be provided by the City upon execution of a Site Agreement for each Eligible Property and in accordance with the terms and conditions of this Agreement as well as the additional terms and conditions set forth in the applicable Site Agreement. Proceeds from the HOME Funds shall not be used by Developer for any off-site costs, with the exception of use for utility installations outside the boundaries of the Eligible Property pursuant to HOME Regulations at 24 C.F.R. Section 92.206(a)(3)(ii), which allows the use of HOME funds for such offsite utility connections.
- B. Disbursements from the HOME Funds will only be made for reimbursement of expenditures incurred. An exception is made for construction or reconstruction work performed on an Eligible Property, in which case disbursements will be allowed for direct payment of services rendered or products delivered. Non-construction related costs ("Soft Costs") will only be paid on a reimbursement basis. As used here "Soft Costs" means predevelopment, indirect, financing, and sales closing costs; and Developer Fee. City will respond to any Developer request for payment or reimbursement under this Agreement within thirty (30) days after receipt of such request by City.
- C. The net proceeds derived from the sale of the Eligible Property to the Qualified Homebuyer (if any) shall be collected by City as program income upon the close of the Sales Escrow, and the amount advanced by City as downpayment assistance and the amount potentially owed by the Qualified Homebuyer will be reduced by the amount of such payment to City.

No net proceeds other than those approved by City shall be paid to Developer. Net proceeds means sale price minus costs of sale (e.g., broker and escrow fees).

SECTION 17. Acquisition, Development and Sale of Eligible Properties.

- A. Selection and Acquisition of Eligible Properties. City currently owns a number of properties that are suitable for infill development pursuant to this Agreement, as specified in Attachment “B” (the “Eligible Properties”). City shall transfer each Eligible Property to Developer by a grant deed in the form attached hereto as Attachment “C”. An Acquisition Escrow, as defined in Section 2 of this Agreement, shall be opened to accomplish the transfer of an Eligible Property to Developer. Transfer of any Eligible Property to Developer shall occur pursuant to the Acquisition Escrow only upon the deposit in escrow by Developer of a duly executed and notarized Developer Housing Affordability Covenant in which Developer covenants that it will sell the Eligible Property only to a Qualified Homebuyer, and a duly executed and notarized Deed of Trust securing the Promissory Note for each HOME Loan.
- B. Construction Disbursements. Disbursement of HOME Funds to Developer for the purpose of constructing/reconstructing Eligible Properties shall be carried out through the Construction Escrow with an Escrow Agent acceptable to City and Developer as defined in Section 2 of this Agreement. Disbursements made by City for the purpose of constructing/reconstructing Eligible Properties using the HOME Funds shall be expressly subject to satisfaction of all of the following conditions (collectively, the Closing Conditions) on or before the date (“Closing Deadline”) which is thirty (30) calendar days following the execution date of a Site Agreement initially entered into by City and Developer for the purposes of developing an Eligible Property:
- (1) Execution of this Agreement and delivery of a fully executed copy of the Site Agreement in the form attached hereto as Attachment “D” to the Construction Escrow Agent.
 - (2) Receipt by City from Developer of such other documents, certifications and authorizations as are reasonably required by City, in form and substance satisfactory to City, to ensure compliance with all legal requirements for the making of the HOME Funds to be used for the construction or reconstruction of the Eligible Property.
 - (3) No Event of Default and no breach shall exist under this Agreement, the Site Agreement, or under any agreement or instrument relating to any other funding obtained by Developer for the purpose of constructing or reconstructing the Eligible Property.
 - (4) Developer shall have provided to City, in a form satisfactory to City, certified copies of (a) Developer’s articles of organization and operating agreement, together with a certification by Developer’s president or chief executive officer that such articles of organization and operating agreement have not been amended or modified except as described in the certification; (b) a good standing certificate from the California Secretary of State, certifying that Developer is duly qualified and in good standing to conduct business in this state; and (c) all other documents necessary to evidence to City’s

satisfaction that the individuals and entities executing this Agreement, and any other entities on whose behalf this Agreement is executed, are fully authorized to do so and to bind the respective entities, including Developer, to the terms hereof.

(5) Developer shall have furnished City with evidence satisfactory to City that the insurance coverage required by Section 12 of this Agreement has been obtained.

(6) Developer shall have commenced or be ready to commence construction or reconstruction of the Eligible Property, and shall have (a) furnished City with copies of a contract for the construction/reconstruction work and materials ("Construction Contract") entered into with a general contractor ("General Contractor") previously approved in writing by City; (b) submitted to City and received City's approval of any design plans or other design documents requested by City; and (c) received all necessary City permits for the Project.

(7) Not as a Closing Condition, but at least thirty (30) calendar days prior to occupancy and prior to the commencement of homebuyer selection for the Eligible Property, Developer shall have obtained City's written approval of an Affirmative Marketing Plan, complying with the requirements set forth in Attachment "J" to this Agreement, for the sale of each Eligible Property, including specifically the procedures to be employed by which the Qualified Homebuyers of the Eligible Property shall be selected in the event that there are multiple homebuyers qualified to purchase the Eligible Property.

C. Acquisition Escrow Terms. In establishing the Acquisition Escrow, the Parties may execute supplemental instructions to the Escrow Agent consistent with the terms of this Agreement, but in the event of a conflict between the terms of this Agreement and any supplemental escrow instructions, the terms of this Agreement shall control. Except as otherwise expressly provided herein, any fees and costs incurred by the Escrow Agent in the performance of their duties hereunder and agreed to be paid by the Parties shall be paid exclusively by Developer.

D. Selection of Qualified Homebuyers. Developer shall initiate the sale of an Eligible Property to a Qualified Homebuyer by submitting to City a purchase and sale agreement executed by the prospective homebuyer, with such verifying documentation from the prospective homebuyer with respect to residency, income and the property condition as City, or its designee, may reasonably request (collectively, "Homebuyer Application"). The Homebuyer Application shall consist of the following information in the form approved by City:

(1) A California Association of Realtors California Residential Purchase Agreement or such other purchase agreement as may be specified by City, fully executed by the prospective homebuyer.

(2) Application Affidavit – Completely filled out and signed by the prospective homebuyer.

(3) Income documentation in accordance with the HOME Regulation's Part 5 Definition of Income, pursuant to 24 C.F.R. §§ 5.609 and 92.203(b), for all household members who are 18 years of age and older.

(4) Copy of employment verification or other source of income and eligibility information for each homebuyer, including additional requirements as set forth in Section C(3)(c)(1) of Attachment A.

(5) Proof of legal residency in the United States for all members of the household who are applying for consideration as the Qualified Homebuyer.

(6) Evidence of terms for purchase money loan, including loan amount, interest rate, and monthly payment.

(7) A calculation of the amount of the downpayment assistance payment to be provided to the homebuyer by City and deposited with the Escrow Agent in the escrow for the sale of the property to the homebuyer.

E. Sale Escrow. Within seven (7) calendar days after the receipt of the Homebuyer Application, City will notify Developer of approval or denial of the prospective homebuyer's eligibility and the amount of homebuyer downpayment assistance to be provided by City. Confirmation of such eligibility and downpayment assistance amount by means of a Preliminary Approval (all preliminary approvals will be valid for sixty (60) calendar days from the date of certification). Upon notification of the prospective homebuyer's eligibility and downpayment assistance amount, Developer shall open the Sale Escrow with a City-approved escrow company (the "Sale Escrow Agent"). City shall furnish the Sale Escrow Agent with executed escrow instructions and the downpayment assistance amount. Developer shall not permit any escrow to close for the sale of an Eligible Property until and unless the escrow instructions executed by City and the downpayment assistance amount have been submitted to the Sale Escrow Agent. As provided in the escrow instructions, the Sale Escrow shall also not close unless and until:

(1) The Sale Escrow Agent holds the following documents: (a) a Qualified Homebuyer Housing Affordability Covenant executed by the Qualified Homebuyer in favor of City and duly notarized; (b) a grant deed for the conveyance of the Eligible Property from Developer to the Qualified Homebuyer, stating that the conveyance is subject to the restrictions of the Qualified Homebuyer Housing Affordability Covenant, including, without limitation, the HOME Fund recapture provisions set forth in Section 10 thereof, and the restrictions of the Deed of Trust; and (c) such other documents as the City in its sole discretion may deem to be required for the purpose of ensuring the affordability of the Eligible Property for the duration of the Affordability Period.

(2) Proof of hazard insurance for the full replacement cost of the Eligible Property is provided to City; and

(3) Construction or reconstruction of the Eligible Property is completed in accordance with this Agreement and with all applicable City permits and ordinances, and City has issued a final certificate of occupancy for the Eligible Property.

The Sale Escrow shall not close while any Event of Default exists under this Agreement or under any agreement or instrument relating to any financing for the Eligible Property.

- F. Release of Deeds of Trust & Developer Housing Affordability Covenant. Notwithstanding anything to the contrary in this Agreement, Developer shall not be entitled to a release of a Deed of Trust securing a Promissory Note for a HOME Loan for an Eligible Property unless and until the Developer causes the Qualified Homebuyer for the Eligible Property to execute and record a Qualified Homebuyer Housing Affordability Covenant for the Eligible Property. Additionally, Developer shall not be entitled to a release of the Developer Housing Affordability Covenant unless and until the Developer causes a Qualified Homebuyer Housing Affordability Covenant to be executed and recorded for every Eligible Property.

SECTION 18. Use of the Eligible Properties.

- A. Developer hereby covenants and agrees, for itself and its successors and assigns, that the Eligible Properties shall be developed for sale to a household whose total annual income is at or below eighty percent (80%) of Area Median Income.
- B. Developer covenants and agrees that it shall not devote the Eligible Properties to uses inconsistent with either this Agreement or the Housing Affordability Covenants.
- C. Notwithstanding anything in this Agreement to the contrary, the Housing Affordability Covenants, once recorded, shall have priority over any and all liens proposed to evidence or secure the Approved Financing and any other financing obtained by the Developer for the Project and/or each Eligible Property.

SECTION 19. Discrimination Prohibited.

- A. Except as provided in the Housing Affordability Covenants with respect to the reservation of the Eligible Property for occupancy by a Qualified Homebuyer, there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, familial status, physical or mental disability, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Eligible Property, or any portion thereof. The nondiscrimination and non-segregation covenants contained in the Housing Affordability Covenant shall remain in effect in perpetuity.
- B. Developer shall not discriminate against any person on the basis of race, color, creed, religion, national origin, ancestry, sex, marital status, or physical handicap in the performance of the Scope of Services of this Agreement. Without limitation, Developer hereby certifies that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status or national origin. Further,

Developer shall promote affirmative action in its hiring practices and employee policies for minorities and other designated classes in accordance with federal, state and local laws. Such action shall include, but not be limited to, the following: recruitment and recruitment advertising, employment, upgrading, and promotion. In addition, Developer shall comply with all state and federal laws prohibiting the exclusion from participation under this Agreement of any employee or applicant for employment on the basis of age, handicap, or religion.

SECTION 20. Effect of Covenants.

City is the beneficiary of the terms and provisions of this Agreement and of the restrictions and affordable housing covenants running with the land with respect to the Eligible Properties, whether or not appearing in the Housing Affordability Covenant(s), for and in its own right and for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The Housing Affordability Covenants in favor of City shall run without regard to whether City has been, remains, or is an owner of any interest in an Eligible Property and shall be effective as both covenants and equitable servitudes against the Eligible Property. If any of the Housing Affordability Covenants referred to in this Agreement are breached, City shall have the right to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to compel the curing of such breaches to which it may be entitled.

SECTION 21. Notices.

- A. Notices, demands, and communications between City and Developer shall be sufficiently given if: (1) personally delivered with a delivery receipt; (2) delivered by a nationally recognized courier service with a delivery receipt; or (3) sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to City: City of San Bernardino
 Community and Economic Development – Housing Division
 290 North “D” Street Third Floor
 San Bernardino, CA 92401-1734

If to Developer: NPHS Community Redevelopment, Inc.
 9551 Pittsburgh Avenue
 Rancho Cucamonga, CA 91730

- B. Notices shall be effective upon the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable. Each Party shall promptly notify the other Party of any change(s) of address to which notice shall be sent pursuant to this section.

SECTION 22. Compliance with Laws.

Developer shall comply with all Applicable Governmental Restrictions. As used herein, “Applicable Governmental Restrictions” shall mean and include any and all laws, statutes, ordinances, codes rules, regulations, directives, writs, injunctions, orders, decrees, rulings, conditions of approval, or authorizations, now in force or which may hereafter be in force, of any governmental entity, agency or political subdivision as they pertain to the performance of this Agreement or construction/reconstruction of the Project, including specifically, but without limitation, all code and other requirements of the jurisdiction in which the Project is located; the National Environmental Policy Act of 1969, as amended; fair housing laws; prevailing wage laws per the Davis-Bacon Act 40 U.S.C. § 3141-3148; HOME Regulations; and any other applicable federal, state and local law. Developer shall maintain all necessary licenses and registrations for the lawful performance of the work required of Developer and hold City and other Indemnitees harmless for any suit, cost, attorneys’ fees, claim, administrative proceeding, damage, wage award, fine, penalty, or liability arising out of or relating to Developer’s failure to comply with any Applicable Governmental Restrictions including, without limitation, the nonpayment of any prevailing wages required to be paid in connection with the Project, as applicable. Developer is solely responsible for determining the applicability of laws, and shall not rely on statements by City as to the existence, effect, or applicability of such laws.

SECTION 23. Developer and each of Developer’s Contractors and Subcontractors are Independent Contractors.

Developer shall at all times during the performance of any work described in the Scope of Services be deemed to be an independent contractor. Neither Developer nor any of its contractors or subcontractors shall at any time or in any manner represent that it or any of its employees are employees of City. City shall not be requested or ordered to assume any liability or expense for the direct payment of any salary, wage or benefit to any person employed by Developer or its contractors or subcontractors to perform any item of work described in the Scope of Services. Developer is entirely responsible for the immediate payment of all contractor, subcontractor, and material supplier liens.

SECTION 24. Severability.

Each and every section of this Agreement shall be construed as a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to certain circumstances shall be declared invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

SECTION 25. Amendment or Modification.

This Agreement may only be modified or amended by written instrument duly approved and executed by each of the Parties hereto, following all necessary approvals and authorizations for such execution.

SECTION 26. Governing Law.

This Agreement shall be governed by the laws of the State of California. Any legal action arising from or related to this Agreement shall be brought in the Superior Court of the State of California in and for the County of San Bernardino.

SECTION 27. Non-waiver.

Failure or delay of City to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the same provision or any remaining provisions of this Agreement.

SECTION 28. Assignment.

The Developer acknowledges that the qualifications and identity of the Developer are of particular importance to the City and the City has relied and is relying on the specific qualifications and identity of the Developer in entering into this Agreement. This Agreement shall be assignable by Developer only with the prior express written consent of City, which consent may be withheld by City in its sole and absolute discretion. For purposes of this section, an assignment includes any merger, consolidation, sale, or lease of all or substantially all of the assets of the Developer or a series of such sales, assignments and the like that, in the aggregate, result in a disposition of more than a 49% interest of all or substantially all of the assets of the Developer. Notwithstanding anything to the contrary in this Agreement, no purported assignment of this Agreement shall be effective if not approved by City or if such assignment would violate any Applicable Governmental Restrictions. City's consent to any assignment shall be expressly conditioned upon (i) the assignee's execution of such documents as required by City in its sole discretion, including, without limitation, any and all documents deemed necessary by City to provide for said assignee's assumption of all of the obligations of Developer hereunder and under any documents executed by Developer in connection herewith, and (ii) City's approval of the financial condition and credit-worthiness of such proposed assignee and the assignee's ability to perform all of Developer's obligations under this Agreement and all documents executed in connection herewith, as may be determined by City in its sole discretion. Any assignment or other transfer, except for sales to Qualified Homebuyers, made in contravention of this section shall be voidable at the election of the City or the City may terminate this Agreement or exercise any other remedy available to the City herein, at law, or in equity.

SECTION 29. Representations of Persons Executing this Agreement.

A. The persons executing this Agreement warrant that they are duly authorized to execute this Agreement on behalf of and are legally able to bind the respective Party that each purports to represent.

B. Developer is a California nonprofit corporation, lawfully entitled to do business in the State of California, and has the legal right, power, and authority to enter into this Agreement and the instruments and documents referenced herein. Developer has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement and the instruments and documents referenced herein and the consummation of the transactions contemplated hereby, and no consent of any other party is required for the Developer's authorization to enter into Agreement. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of or constitute a default under any other agreement, document, instrument or other obligation to which the Developer is a party or by which the Developer may be bound, or under law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body applicable to the Developer or to the Project.

C. The Developer acknowledges that the execution of this Agreement by City has been made in material reliance by City on the representations, warranties, and covenants made by Developer. If the Developer becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Developer under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Developer's knowledge and/or belief as of a certain date, the Developer will give immediate written notice of such changed fact or circumstance to the City.

SECTION 30. Execution in Counterparts.

This Agreement may be executed in one (1) or more counterparts, each of which will constitute an original. The Parties hereto hereby agree that electronic signatures are acceptable and shall have the same force and effect as original wet signatures.

SECTION 31. Effectiveness of This Agreement as to City.

This Agreement shall not be binding on City until executed by an authorized representative of Developer and executed by the City Manager or his or her designee.

SECTION 32. Conflicts of Interest.

A. Developer hereby represents that it has no interests adverse to City at the time of execution of this Agreement. Developer hereby agrees that, during the term of this Agreement, Developer shall not enter into any agreement or acquire any interests detrimental or adverse to City. Additionally, Developer hereby represents and warrants to City that Developer and any partnerships, individual persons or any other party or parties comprising Developer

(its officers and employees), together with each contractor or subcontractor who may hereafter be designated to perform services pursuant to this Agreement, do not have and, during the term of this Agreement, shall not acquire any property ownership interest, business interests, professional employment relationships, contractual relationships of any nature or any other financial arrangements relating to City, property over which City has jurisdiction or any members or staff of City that have not been previously disclosed in writing to City, and that any such property ownership interests, business interests, professional employment relationships, contractual relationships of any nature or any other financial arrangements will not adversely affect the ability of Developer to perform the services to City as set forth in this Agreement.

- B. Developer shall comply with the conflict of interest provisions set forth in 24 C.F.R. § 92.356(f).

SECTION 33. Non-Exclusivity.

This Agreement shall not create an exclusive relationship between City and Developer for the Scope of Services as set forth in Attachment “A” or any similar or related services. City may, during the term of this Agreement, contract with other persons or entities for the performance of the same, similar, or related services as those that may be performed by Developer under this Agreement. City reserves the discretion and the right to determine the amount of services to be performed by Developer for City under this Agreement, including not requesting any services at all. This Agreement only sets forth the terms upon which any such services will be provided to City by Developer, if such services are requested by City, as set forth in this Agreement.

SECTION 34. Consequential Damages and Limitation of Liability.

City and Developer agree that except as otherwise provided in this Agreement, including, without limitation, Section 11 hereof, in no event will either Party be liable to the other Party under this Agreement for any damages, including, but not limited to, special damages, loss of revenue, loss of profit, operating costs, or business interruption losses, regardless of cause, including breach of contract, negligence, strict liability, or otherwise. The limitations and exclusions of liability set forth in this Section 34 shall apply regardless of fault, breach of contract, tort, strict liability or otherwise of Developer and City, their employees, officers, contractors, agents, subcontractors, or officials.

SECTION 35. Business Registration Certificate.

Developer warrants that it possesses, and will maintain during the period of time that this Agreement is in effect, a business registration certificate pursuant to Title 5 of City of San Bernardino Municipal Code, together with any and all other licenses, permits, qualifications, insurance, and approvals of whatever nature that are legally required to be maintained by Developer to conduct its business activities within City.

SECTION 36. Enforced Delays; Extension of Time for Performance.

- A. Neither Party shall be deemed to be in default where delays or defaults in its performance under this Agreement are due to force majeure events that are not attributable to the fault of the Party claiming an extension of time, including, without limitation, war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, government imposed moratorium legislation, freight embargoes, lack of transportation, weather-caused delays, inability to secure necessary labor, materials, or tools, or delays of any contractor, subcontractor, or supplier that delay the commencement of construction of the Project or, after such construction is commenced, suspend the prosecution of the work of improvement of the Project. An extension of time for any such force majeure cause shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided, however, that the Party claiming the existence of the delay first provides the other Party with written notice of the occurrence of the delay, within ten (10) calendar days after the commencement of such occurrence of a force majeure event and, thereafter, takes prompt and reasonable action within its control to restore, reconstruct or rebuild any damage to the Project caused by such force majeure event and resume regular business operation.
- B. The failure of City to provide any necessary approval relating to the development of the Project in accordance with the terms of this Agreement or applicable law or regulation or the inability of Developer to satisfy any other condition of this Agreement relating to the design, financing, or development of the Project shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a forced delay under this Section 36. The Parties each expressly acknowledge and agree that changes in either general economic conditions or the economic assumptions of either of them that provided a basis for entering into this Agreement occurring at any time after the execution of this Agreement are not force majeure events and do not provide either Party with grounds for asserting the existence of a forced delay in the performance of this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in their economic assumptions could impose an inconvenience or hardship on the continued performance by such Party under this Agreement and that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such Party of its obligations under this Agreement.

SECTION 37. Hazardous Materials.

- A. Developer represents and warrants that it has not deposited "Hazardous Materials" (as defined below) in or upon any Eligible Property and Developer covenants that it shall not deposit or permit the deposit of Hazardous Materials in or upon any Eligible Property. Developer further covenants to remove or remediate, at its expense (subject to any reimbursement it may be able to obtain from third parties) any Hazardous Materials located in or upon the Eligible Property as of the date hereof or which are deposited in or upon the Eligible Property from and after the date hereof and during Developer's performance of this Agreement, including any asbestos, lead-based paint and any other Hazardous Materials located in or on the site of the Project, to the extent required by and in accordance with the requirements of all Applicable Governmental Restrictions, including, without limitation, all applicable environmental laws.
- B. The foregoing shall not be construed or understood to prohibit Developer from allowing Hazardous Materials to be brought upon the Project site so long as they are materials which are customary to the normal course of business in the operation of a well-designed housing facility and so long as such materials are used, stored and disposed of in accordance with all Applicable Governmental Restrictions.

C. Except with respect to any claims arising solely out of the gross negligence or misconduct of City, Developer shall, at its sole cost, indemnify, protect, defend with counsel selected by City, and hold City and its members, directors, agents, representatives, officers, officials, and employees harmless from and against any and all present and future claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever relating to or arising in connection with, directly or indirectly, in whole or in part, the presence of any Hazardous Materials existing or deposited (or claimed to have been deposited) from and after the Effective Date hereof on, in, under, from, or affecting any Eligible Property or the Project or in connection with Developer's performance of this Agreement, including, without limitation:

- (i) any deposits of Hazardous Materials described in Section 37.B. above;
- (ii) the storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal, or transportation of, or failure to lawfully store, handle, hold, remove, contain, transport, dispose, abate, or remediate, any Hazardous Materials;
- (iii) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency or any violation of a law, rule, ordinance, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement, or similar, by Developer, its agents, representatives, or contractors and subcontractors of any tier, relating to or governing in any way Hazardous Materials;
- (iv) any failure of the Developer, its agents, representatives, or contractors and subcontractors of any tier, to properly complete, obtain, submit, and/or file any and all notices, permits, licenses, authorizations, covenants, or similar in connection with the Project; or
- (v) implementation and enforcement by Developer, its agents, representatives, or contractors and subcontractors of any tier, of any monitoring, notification, or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Materials.

The provisions of this section shall survive the termination or earlier expiration of this Agreement and shall not merge into any deeds conveying ownership of any of the Eligible Properties.

In connection with this release and waiver, Developer is familiar with and hereby knowingly and voluntarily waives the provisions of Section 1542 of the California Civil Code which provides as follows: "**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**" Developer further waives the benefit of any other statute, rule, regulation, or common law principle to the same or similar effect.

Initials of Developer: SE

- D. For purposes of this Agreement, the term “Hazardous Materials” means, without limitation, gasoline, petroleum products, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls or related or similar materials, asbestos or any other substance or material as may now or hereafter be defined as a hazardous or toxic substance or material, solid waste, pollutant, contaminant, or similar term by any federal, state or local environmental law, ordinance, rule, or regulation that regulates, relates to, or imposes liability or standards of conduct concerning any such hazardous materials, pertaining to occupational health or industrial hygiene applicable to the Project, or other occupational or environmental conditions (such as ambient air, soil, soil vapor, groundwater, surface water, or land use), including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act (42 U.S.C. Section 9601-9675), (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), (iii) the Clean Air Act (42 U.S.C. Section 7401 et seq.), (iv) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Section 6901-6992k), (v) the Toxic Substances Control Act (15 U.S.C. Section 2601-2629), (vi) the Hazardous Materials Transportation Act (49 U.S.C. Section 5101-5128), (vii) the Carpenter-Presley-Tanner Hazardous Substance Account Act (CA Health & Safety Code Section 25300-25395.45), (viii) the Hazardous Waste Control Law (CA Health & Safety Code Section 25100 et seq.), (ix) the Porter-Cologne Water Quality Control Act (CA Water Code Section 13000 et seq.), (x) the Safe Drinking Water and Toxic Enforcement Act of 1986 (CA Health & Safety Code Section 25249.5 - 25249.13), (xi) the Hazardous Materials Release Response Plans and Inventory (CA Health & Safety Code Section 25500-25547.8), (xii) the Air Resources Law (CA Health & Safety Code Section 39000 et seq.), (xiii) California Environmental Quality Act (CEQA), Public Resources Code, Sections 21000, et seq., or (xiv) in any of the regulations adopted or publications promulgated pursuant to the foregoing.

SECTION 38. Labor Provisions.

- A. The Developer acknowledges that the City has not made any representation, express or implied, to the Developer or any person associated with the Developer regarding whether or not laborers employed relative to the construction of the Project must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, et seq. The Developer agrees it shall assume the responsibility and be solely responsible for determining whether or not laborers employed in connection with the Project must be paid the prevailing per diem wage rate for their labor classification. Unless otherwise exempted pursuant to applicable provisions of California law, the prevailing wage provisions, including but not limited to those regarding payrolls, records, apprentices and trainees, shall apply to Developer’s performance of services pursuant to this Agreement.
- B. The Developer, on behalf of itself, its successors, and assigns, waives and releases the City from any right of action against it that may be available pursuant to California Labor Code Sections 1726 and 1781. Developer shall, in accordance with Section 11 of this Agreement, indemnify, defend with counsel acceptable to the City, and hold the City harmless against any claims pursuant to Labor Code Sections 1726 and 1781 arising from this Agreement or the construction or operation of the Project. Developer is familiar with and hereby knowingly and voluntarily waives the provisions of Section 1542 of the California Civil Code which provides as follows: **“A GENERAL RELEASE DOES NOT EXTEND TO**

CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” Developer further waives the benefit of any other statute, rule, regulation, or common law principle to the same or similar effect.

Initials of Developer: SE

- C. Developer shall submit written proof that the Developer is insured against liability for workers’ compensation in accordance with the provisions of Section 3700 of the California Labor Code. By executing this Agreement, the Developer makes the following certification, required by Section 1861 of the Labor Code:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

- D. The Developer shall require each contractor and subcontractor performing work on the Project to provide workers’ compensation coverage for all of such contractor’s or subcontractor’s employees, unless the contractor’s or subcontractor’s employees are covered by workers’ compensation insurance provided by the Developer. If any class of employees engaged in work or services performed in connection with the Project is not covered by Labor Code Section 3700, the Developer shall provide, or require each contractor or subcontractor to provide, adequate workers’ compensation insurance covering such employees. Each workers’ compensation policy procured pursuant to this section and Section 12 of this Agreement shall contain a full waiver of subrogation clause in favor of the Additional Insureds.

SECTION 39. Section 3 of the Housing and Community Development Act of 1968, as Amended.

- A. The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (2 U.S.C. 1701u) (“Section 3”). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The Parties to this Agreement agree to comply with HUD Regulations in 24 C.F.R. Part 75, which implement Section 3. As evidenced by their execution of this Agreement,

the Parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.

- C. Developer agrees to send to each labor organization or representative of workers with which Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Developer's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth the minimum number and job titles subject to hire; the availability of apprenticeship and training positions and the qualifications for each; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. Developer agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 75. Developer will not subcontract with any subcontractor where Developer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
- E. Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent Developer's obligations under 24 C.F.R. Part 75.
- F. Noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 5307) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

[Signature Page to Follow]

IN WITNESS WHEREOF, City and Developer have each executed this Agreement to be effective as of the Effective Date.

CITY OF SAN BERNARDINO

Date: _____

By: _____
Rochelle Clayton, Acting City Manager

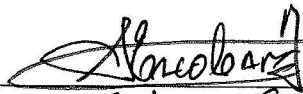
Approved as to Form:
Sonia Carvalho, City Attorney

By: _____

DEVELOPER

NPHS Community Redevelopment, Inc.,
a California nonprofit corporation

Date: _____

By:  _____
Name: Solon Escobar
Title: CFO

ATTACHMENT A TO MASTER AGREEMENT

Scope of Services

A. Introduction

The Infill Housing Program was established by the City of San Bernardino (the “City”) to increase the availability of affordable homes for low-income households. The Developer has been retained to carry out infill housing activities in accordance with HOME Program regulations (24 CFR Part 92), the HOME Guide for Review of Homebuyer Projects, and the Infill Housing Development Master Agreement between the Developer and the City (the “Agreement”).

The Developer will furnish all labor, materials, supplies, equipment, and services necessary (hereinafter collectively referred to as “Services”) to design, permit, construct, market and sell the Eligible Properties to qualified low-income households, and adequately satisfy requirements set forth in the Agreement.

The Services will be carried out in a manner satisfactory to the City and any standards required as a condition of providing the HOME Funds.

B. Budget

The approved budget is seven hundred forty-four thousand dollars and zero cents (\$744,000.00), to construct/reconstruct up to three (3) Eligible Properties, subject to the Maximum per Unit Subsidy Limits established by HUD. Proceeds will be returned to the City as program income, pursuant to Section 16 C of this Agreement.

C. Program Delivery

1. General Requirements.

a. As part of the Services, Developer agrees that it will make available a primary staff person on an as needed basis within close proximity to the project sites in order to successfully complete program activities.

b. As part of the Services, Developer will provide or cause to be provided and will enter into agreements for construction manager services, property management, property acquisition and relocation consultant services, as applicable.

c. Developer will utilize realtors, appraisal services, escrow services and title companies as approved by the City. If such services have not been identified by the City within a pool of City pre-approved service providers, Developer will utilize businesses located within the City and if they are deemed to be unavailable, then utilize businesses in the County of San Bernardino.

d. Developer warrants that it has the expertise and experience to perform the Services set forth in the Agreement and that it will perform said Services pursuant to the Agreement and *as* stated in this Scope of Services.

e. Developer will document performance on a Quarterly Report, which report will be in a form satisfactory to the City. The Quarterly Report will be due by the thirtieth (30th) day of the month following the end of the quarter, as follows:

Reporting Period	Report Due
October- December	January 30 th
January- March	April 30 th
April- June	July 30 th
July- September	October 30 th

Progress reports will be used by the City in evaluating time extensions requests, if any.

f. Developer will provide notification to the City of any audits or investigations including results, findings and/or liens within ten (10) calendar days after Developer has obtained information regarding such audits or investigations and the results, findings and/or liens.

2. Infill Housing Development

- a. Identifying and Selecting Sites - The Developer is responsible for identifying lots within the City of San Bernardino that may be suitable for infill housing. The City will facilitate the sale or transfer of City-owned parcels to the Developer for development of Eligible Properties.

Eligible Properties must be in such condition that the total cost to construct/reconstruct and resell them does not exceed the maximum sales price limit for the County of San Bernardino established per HOME Final Rule 24 CFR Part 92.254.

Once Developer has selected a site, a request for environmental review and approval must be submitted to the City, including:

- i. Photographs of the site
- ii. Property profile cover sheet
- iii. A Total Development Cost Pro Forma and a Sources and Uses Schedule for each site in the forms set forth, respectively, in Attachments "E" and "F" to the Agreement that demonstrate that sufficient funds are available for the acquisition of the property, and payment for the labor, materials and other services required to complete the project.

- iv. A Project Timeline for each site in the form set forth in Attachment “G” to the Agreement.

The City will review the Developer’s request to make the following determinations:

1. The site is appropriate for the construction/reconstruction of infill housing.
2. The proposed- project meets HOME requirements, including those relating to maximum subsidies and maximum resale values.
3. The proposed project does not negatively impact the surrounding environment and the property site itself will not have an adverse environmental or health effect.

The City will issue a Preliminary Property Analysis to the Developer to advise if the infill site was approved. Once an infill site is approved, the Developer can initiate the Acquisition Escrow.

- a. Other than those liens approved by the City, Developer will ensure that title to the Eligible Property will be and remain free and clear from any and all security interests, liens or other encumbrances. In carrying out the Services, Developer promises and agrees that it will not pledge or otherwise encumber title to the Eligible Property in any manner that would result in any lien, security interest, charge or claim upon or against said property other than a construction loan for the portion of the costs that are not covered by City funding.
- b. Construction/Reconstruction of Eligible Properties acquired by Developer pursuant to the Agreement will be completed, and said properties will be ready for sale as evidenced by a Certificate of Occupancy issued by the City and/or a recorded Notice of Completion, by the date of completion stipulated on the approved Project Timeline.
- c. Developer will construct/reconstruct Eligible Properties in accordance with the California Building Code, the City’s Development Code for residential properties, pursuant to the terms of this Agreement, and in accordance with the plans and specifications approved by the City’s Planning and Building & Safety Divisions.
- d. As part of the Developer’s process for each Eligible Property, Developer will prepare and/or provide the following:
 - i. Budget Estimate - for the total development cost of the Eligible Property and a budget estimate for construction/reconstruction costs.
 - ii. Project Timeline - for the completion of the various steps involved in the acquisition, construction/reconstruction and sale of the Eligible Property.

- iii. Property Security - upon acquisition of title to an Eligible Property, Developer will provide locked fencing on the perimeter of the site to preclude unauthorized entry upon an Eligible Property.
- iv. Property Maintenance - Developer must maintain property during the holding period, including utilities services, and interior and exterior appearance of the property.
- v. Construction Management Services - Developer must provide construction management services for the construction or reconstruction of the Eligible Property, which will include but not be limited to: establishing a scope of work, confirm that the financing is adequate to pay for all labor and materials, conducting weekly on-site project inspections, managing relationships with all sub-contractors, verifying permits and City compliance, administering both conditional and unconditional lien releases. The Developer is responsible for closely monitoring the various phases of development, conducting and documenting inspections, and resolving problems that may be encountered during construction.
- vi. File Maintenance - Developer must maintain adequate files for each property, ensuring compliance with all City requirements, all documents required to verify compliance with the Affirmative Marketing Guidelines as attached hereto as Attachment "J" such as copies of advertisements published in local and community newspapers, etc.
- vii. Environmental - Developer must comply with Lead-Based Paint requirements, and implement all lead-based paint, asbestos, mold or any other environmental mitigation measures required, and provide proof of completion of these mitigation measures.

3. Marketing and Sale of Eligible Property.

- a. Marketing - Developer will market the Eligible Property through advertising, published promotional materials and community outreach, in accordance with the Affirmative Marketing Guidelines as described in Attachment "J".
- b. Marketing Materials - All marketing materials must include language identifying the Project as a City-funded project, and include the City seal and the Fair Housing logo.
- c. Sale to Qualified Homebuyer - Eligible properties must be sold to Qualified Homebuyers, and who will use the Eligible Property as a primary place of residence. The Developer is responsible for the following process:

1. Identify Homebuyer - Developer must identify prospective Qualified Homebuyers, facilitate adequate homebuyer education training and pre-qualify the homebuyer using the HOME Part 5 definition (24 CFR Part 5.603) of income, to establish eligibility to purchase the Eligible Property. Developer must submit the following documents for the Qualified Homebuyer, for City review and certification of income eligibility:
 - Last three (3) years tax returns (State and Federal) (1040's) signed, with W2's.
 - Income Certification form
 - Supporting income documentation as required by HOME Regulations, Part 5 definition of income, for all household members who are 18 years of age and older and will reside in the Eligible Property, including 2 months of source documentation for all income sources such as paystubs, bank statements, employment verification, verification of income from assets, etc.
 - A California Association of Realtors California Residential Purchase Agreement fully executed by the prospective homebuyer.
 - Application Affidavit- Completely filled out and signed by Qualified Homebuyer.
 - 3-year Housing History
 - Homebuyer Education Certificate from a HUD-approved Housing Counseling Agency
 - Proof of completion of a Financial Literacy course
 - Evidence of loan terms for first mortgage, verifying loan amount, fixed rate, and monthly payment amount. Non- traditional mortgages, such as negative amortization loans, interest-only loans, or loans with balloon payments, are not allowed.
 - Proof of legal residency in the United States for all members of the household who are applying for consideration as the Qualified Homebuyer.
- ii. Income Eligibility and Homebuyer Downpayment Assistance Amount - In determining whether a prospective homebuyer is income eligible, the Developer will adhere to the procedures specified in 24 CFR Part 92.203. The City utilizes the HOME Regulations Part 5 definition of income (24 CFR Part 5), which is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. Household income cannot exceed eighty percent (80%) of AMI as established by HUD. It is the Developer's responsibility to properly determine income eligibility by examining source documentation evidencing anticipated annual income, and applying the correct income limits. Based on income eligibility, sales price of the home, and Qualified Homebuyer ability to pay without undue economic burden, Developer will provide a calculation

to City of the amount of homebuyer downpayment assistance that the City will provide to each Qualified Homebuyer.

- d. Appraisal - Developer must obtain an appraisal from an appraiser approved by the City to determine the sales price for the Eligible Property, to ensure that the sales price does not exceed the homeownership sales price limits in accordance with Section 92.254(a)(2)(iii) of the HOME Final Rule.
- e. Escrow - Developer will work with the selected title company and manage the escrow process through closing on behalf of the Qualified Homebuyer, and ensure that all the HOME Loan Documents and property documents are executed, notarized and recorded as needed.

4. Construction Requirements.

- a. Developer will cause the construction/reconstruction work to proceed diligently no later than fourteen (14) calendar days following the close of the Acquisition Escrow. "Completion of the Project" shall occur no later than the date approved in the Project timeline. "Completion of the Project" shall be deemed to have occurred when the City has received satisfactory evidence that the City has executed the final inspection for the particular Eligible Property and has authorized the unconditional provision of utilities to the Eligible Property.
- b. Developer shall provide evidence that the construction/reconstruction work on the Eligible Property has been completed in compliance with this Agreement, and that all final permits and certificates necessary for the sale of the Eligible Property have been obtained, including, without limitation, the following, each of which is subject to the City's review and approval: (1) a minimum 5- year warranty from the general contractor, in a form reasonably acceptable to the City, with respect to the construction work performed and all components and systems constructed or installed upon the Eligible Property; (2) a certificate of occupancy or Notice of Completion, as may be warranted, and other final permits and licenses necessary to permit the use and occupancy of the Eligible Property for its intended purposes, which have been issued by proper governmental agencies; and (3) evidence satisfactory to the City that the Eligible Property is free from any mechanics' liens.

5. Relocation Requirements.

In the event relocation is determined to be a requirement for the successful implementation of the Agreement, the Developer shall be required to submit a relocation plan to the City for consideration. It is the preference of the City that the Developer acquire only Eligible Properties that have been non-occupied for ninety (90) days or more, but in the event that acquired properties require relocation assistance Developer shall be responsible for funding and compliance with all relocation requirements as governed by federal relocation

laws and regulations for projects funded in whole or in part with HOME funding, including the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. §§ 4601, et seq., as amended), Federal Relocation Regulations (49 CFR Part 24), and the HUD Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0).

ATTACHMENT B TO MASTER AGREEMENT

List of Eligible Properties

1. APN: 0147-224-11-0-000
Address: 1356 Hillside Dr., San Bernardino, CA 92404
2. APN: 0147-224-28-0-000
Address: 1384 Hillside Dr., San Bernardino, CA 9240
3. APN: 0147-224-20-0-000
Address: 1394 Hillside Dr., San Bernardino, CA 92404

ATTACHMENT C TO MASTER AGREEMENT

Form of Grant Deed

[Attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Bernardino
290 North "D" Street, Third Floor
San Bernardino, CA 92401-1734
Attn: Housing Division

(Space Above Line Reserved For Use By Recorder)

No fee shall not be imposed on any real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state - GC 27388.1 (a)(2)(D)

GRANT DEED CONTAINING COVENANTS, CONDITIONS, AND RESTRICTIONS

THE UNDERSIGNED GRANTOR(S) DECLARE(S):

Documentary Transfer Tax is \$ _____.

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, the **CITY OF SAN BERNARDINO**, a California municipal corporation, herein called "Grantor," hereby grants to **NPHS COMMUNITY REDEVELOPMENT, INC.**, a California nonprofit corporation, herein called "Grantee," certain real property, herein called the "Property" and described in Exhibit "A" attached hereto and incorporated herein by this reference.

1. Grantor excepts and reserves from the Property all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface of the Property, together with the right to drill into, through, and to use and occupy all parts of the Property lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances, or minerals from the Property or other lands, but without, however, any right to penetrate or use either the surface of the Property or any portion of the Property within 500 feet of the surface for any purpose or purposes whatsoever, as and to the extent reserved by the parties named in deeds, leases and other documents of record.

2. Grantor excepts and reserves any existing street or alley or proposed street or alley, or portion of any existing street or alley or proposed street or alley, lying outside the boundaries of the Property which might otherwise pass with a conveyance of the Property, including the fee title reversion underlying public rights of way abutting the boundaries of the Property.

3. The Property is conveyed subject to all easements, covenants, conditions, restrictions, and other encumbrances of record, and those revealed by inspection of the Property.

4. The Property is conveyed in accordance with that certain HOME Investment Partnerships Program (HOME) Infill Housing Development Master Agreement entered into by and between Grantor and Grantee dated as of _____, 2024 (the "Agreement"), which document is a public record on file in the office of the Clerk of the Grantor.

5. The Property is conveyed to Grantee for a purchase price herein called "Purchase Price," determined in accordance with the uses permitted. Therefore, Grantee hereby covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Property and each portion thereof, that Grantee, such successors and such assigns shall, in accordance with the Agreement improve the Property.

6. Grantee hereby covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property that:

(a) Grantee shall not, except as expressly permitted by the Agreement, assign or attempt to assign the Agreement or any rights therein, nor make any total or partial sale, transfer, conveyance or assignment of the whole or any part of the Property or the improvements thereon without the prior written approval of Grantor. This prohibition shall not be deemed to prevent the granting of easements or permits to facilitate the development of the Property or to prohibit or to prohibit transfers permitted pursuant to the Deed of Trust for the Property.

(b) Grantee shall not place, suffer or allow to be placed on the Property, or on any portion thereof, any mortgage, trust deed, encumbrance or lien not authorized by this Section 6(b). Mortgages, deeds of trust, sales and leases back, or any other reasonable form of conveyance for financing are permitted prior to completion of the construction of the improvements on the Property, but only for the purpose of securing funds to be used for financing the acquisition of the Property, construction of the improvements thereon, and any other expenditures necessary and appropriate to develop the Property pursuant to the Agreement. Grantee shall not enter into any such conveyance for financing without the prior written approval of Grantor, which approval Grantor agrees to give if the conveyance conforms to the provisions set forth above and all requirements of the Agreement, including, without limitation, the requirement that any and all financing acknowledge the superiority of the Housing Affordability Covenants, as defined in the Agreement, imposed on the Property pursuant to the Agreement. In any event, Grantee shall promptly notify Grantor of any mortgage, deed of trust, sale and leaseback or other financing conveyance, encumbrance or lien that has been created or attached thereto prior to completion of the construction of the improvements on the Property, whether by voluntary act of Grantee or otherwise.

7. Prior to the issuance by the Grantor of a Certificate of Completion of construction of the improvements to be constructed on the Property or on any part thereof:

(a) Grantor shall have the right, at its option, to reenter and take possession of the Property (or any portion thereof) with all improvements thereon, and terminate and revest in Grantor the estate theretofore conveyed to Grantee, if Grantee shall:

i) fail to commence construction of the improvements as required by the Agreement for a period of fifteen (15) days after this Grant Deed is recorded; or

ii) abandon or substantially suspend construction of the improvements for a period of ninety (90) days after written notice of such abandonment or suspension has been given by Grantor; or

iii) assign or attempt to assign the Agreement, or any rights therein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of the Agreement, and such violation shall not be cured within thirty (30) days after written demand by Grantor; or

iv) default in any other term or condition of the Agreement, and fail to cure such default within the time required by the Agreement.

(b) The right to reenter, repossess, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid, or limit:

i) Any mortgage, deed of trust or other security instrument permitted by the Agreement and approved by Grantor;

ii) Any rights or interests provided in the Agreement for the protection of: (a) the holders of such mortgages, deeds of trust, or (b) other security instruments.

(c) The right to reenter, repossess, terminate and revest with respect to the Property shall terminate when the Certificate of Completion regarding the improvements to be made on and to the Property pursuant to the Agreement has been issued by Grantor.

(d) In the event title to the Property or any part thereof is revested in Grantor as provided in this Section 7, Grantor shall, pursuant to its responsibilities under California law, use its best efforts to resell the Property or part thereof as soon and in such manner as Grantor shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the improvements, or such other improvements in their stead as shall be satisfactory to Grantor. Upon such resale of the Property, the proceeds thereof shall be applied:

i) First, to reimburse Grantor for all costs and expenses incurred by Grantor, including but not limited to salaries to personnel, in connection with the recapture, management and resale of the Property or part thereof (but less any income derived by Grantor from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or,

in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by Grantor, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in Grantor or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of Grantee, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on the Property or part thereof; and any amount otherwise owed to Grantor by Grantee and its successors or transferees; and

ii) Second, to reimburse Grantee, its successor or transferee, up to the amount equal to the sum of (1) the Purchase Price paid to Grantor by Grantee for the Property (or allocable to the part thereof), and (2) the costs incurred for the development of the Property and for the improvements existing on the Property at the time of the reentry and repossession, less (3) any gains or income withdrawn or made by Grantee from the Property or the improvements thereon;

iii) Any balance remaining after such reimbursements shall be retained by Grantor.

(e) Any instrument or instruments by which Grantee transfers or conveys the Property, or any portion thereof, shall contain appropriate reference and provision to give effect to Grantor's right of reentry provided in this Section 7.

(f) To the extent that the rights established in this Section 7 involve a forfeiture, it must be strictly interpreted against Grantor, the party for whose benefit it is created. The rights established in this Section 7 are to be interpreted in light of the fact that Grantor will convey the Property to Grantee for development and not for speculation.

8. Notwithstanding anything to the contrary in this Grant Deed, upon and after the issuance by the Grantor of a Certificate of Completion of construction of the improvements to be constructed on the Property or on any part thereof:

(a) Grantor shall have the right to recapture from Grantee all HOME Funds, as defined in the Agreement, used for the development of the Property and/or improvements thereto, including, without limitation, the entire amount of the HOME Grant and the amount of the applicable HOME Loan for the Property, in accordance with the terms of Section 10 of the Developer Housing Affordability Covenant dated _____, 2024, if Grantee shall:

i) assign or attempt to assign the Agreement, or any rights therein, or transfer, or suffer any involuntary transfer of the Property, or any part thereof, in violation of the Agreement, and such violation shall not be cured within thirty (30) days after written demand by Grantor; or

ii) default in any other term or condition of the Agreement or of the Developer Housing Affordability Covenant, and fail to cure such default within the time required by the Agreement.

(b) Any instrument or instruments by which Grantee transfers or conveys the Property, or any portion thereof, shall contain appropriate reference and provision to give effect to Grantor's right to recapture the HOME Funds from Grantee provided in this Section 8 and in Section 10 of the Developer Housing Affordability Covenant.

(c) Any instrument or instruments by which Grantee transfers or conveys the Property, or any portion thereof, to a Qualified Homebuyer, as defined in the Agreement, shall also require that the Qualified Homebuyer execute and record a Qualified Homebuyer Housing Affordability Covenant for the Property in the form set forth in Attachment "X" to the Agreement and contain appropriate reference and provision to give effect to Grantor's right to recapture of the HOME Funds from the Qualified Homebuyer provided in this Section 8 and in Section 10 of the Qualified Homebuyer Housing Affordability Covenant.

(d) To the extent that the rights established in this Section 8 involve a forfeiture, it must be strictly interpreted against Grantor, the party for whose benefit it is created. The rights established in this Section 8 are to be interpreted in light of the fact that Grantor will convey the Property to Grantee for development and not for speculation.

9. Grantee covenants and agrees for itself, its successors, assigns and any successor in interest to the Property that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Grantee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property. The foregoing covenants shall run with the land.

10. Grantee shall refrain from restricting the rental, sale, or lease of the Property on the basis of sex, marital status, race, color, creed, religion, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to the following nondiscrimination or nonsegregation clauses:

(a) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or herself, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants,

lessees, subtenants, sublessees or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

(b) In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account or race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased."

(c) In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, or use, occupancy, tenure or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

11. Promptly after completion by Grantee of the improvements upon the Property required under the Agreement, and after satisfaction of any other conditions precedent thereto established by the Agreement and upon written request therefor, Grantor shall furnish Grantee with a Certificate of Completion for the Property. Grantor shall not unreasonably withhold such Certificate of Completion. Such Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by the Agreement upon the Property.

The Certificate of Completion shall be in such form as to permit it to be recorded in the Office of the County Recorder, County of San Bernardino, California.

If Grantor refuses or fails to furnish the Certificate of Completion after a written request therefor by an entity entitled thereto pursuant to this Grant Deed, Grantor shall, within thirty (30) days after written request, provide the requesting party with a written statement of the reasons why Grantor refuses or fails to furnish such Certificate of Completion. The statement shall also contain Grantor's opinion of the action that must be taken to obtain such Certificate of Completion. If the reason for such refusal is minor, unfinished work for which a specific cost can be specified, or if it is confined to the immediate unavailability of specific items or materials for landscaping, Grantor will issue its Certificate of Completion upon the posting of a bond by such requesting party with Grantor in an amount representing the cost of the work not yet completed. If Grantor shall have failed to provide such written statement within said 30-day period, the requesting entity shall be deemed entitled to the Certificate of Completion.

Such Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Grantee to any holder of a mortgage, nor to any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof. Such Certificate of Completion is not notice of completion as referred to in California Civil Code Section 3093.

12. The covenants contained in Sections 5 and 7 of this Grant Deed shall terminate upon issuance by Grantor of a Certificate of Completion for the Property. Every other condition, covenant, and restriction contained in this Grant Deed not previously terminated shall terminate on the anniversary of the date of recordation of this Grant Deed in the Official Records of the County of San Bernardino, except that: (i) the covenants contained in Sections 6 and 8 of this Grant Deed shall remain in effect until such time that Property has been transferred by Grantee to a Qualified Homebuyer in accordance with the terms of the Agreement and (ii) the covenants against discrimination contained in Sections 9 and 10 of this Grant Deed shall remain in perpetuity.

13. All covenants, conditions, and restrictions contained in this Grant Deed shall be covenants running with the land, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, be, to the fullest extent permitted by law and equity, binding for the benefit of, and in favor of, and enforceable by Grantor, its successors and assigns, against Grantee, its successors and assigns to or of the Property, or any portion thereof, or any interest therein, and any party in possession or occupancy of the Property, or any portion thereof, for the duration of such covenants, conditions, and restrictions.

14. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that Grantor shall be deemed a beneficiary of the agreements and covenants provided hereinabove both for and in its own right and also for the purpose of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of Grantor, and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions at law, suits in equity, or other proper proceedings to enforce the curing of such breach of agreement or covenant.

15. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by Section 6(b) of this Grant Deed; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations, and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale, or otherwise.

16. Both before and after issuance of a Certificate of Completion, only Grantor, its successors and assigns, and Grantee and the successors and assigns of Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or other restrictions contained in this Grant Deed, or to subject the Property to additional covenants, conditions, or other restrictions.

Grantor, its successors and assigns, and Grantee and the successors and assigns of Grantee in and to all or any part of the fee title to the Property shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, conditions, or other restrictions contained in this Grant Deed or to subject the Property to additional covenants, conditions, or other restrictions without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust, or any other person or entity having any interest less than a fee in the Property. The covenants contained in this Grant Deed, without regard to technical classification, shall not benefit or be enforceable by any person or entity having any interest less than a fee interest in the Property or any part thereof, other than Grantor.

17. None of the terms, covenants, agreements, or conditions heretofore agreed upon in writing in the Agreement, or other instruments between the parties to this Grant Deed, or their predecessors in interest, with respect to obligations to be performed, kept, or observed by Grantee or Grantor with respect to the Property, or any part thereof, after this conveyance of the Property shall be deemed to be merged with this Grant Deed.

18. The covenants contained in this Grant Deed shall be construed as covenants running with the land, and not as conditions which might result in forfeiture of title.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed.

[Signatures on following page]

**SIGNATURE PAGE
TO
GRANT DEED CONTAINING COVENANTS,
CONDITIONS AND RESTRICTIONS**

APPROVED AS TO FORM:

CITY OF SAN BERNARDINO, a California
municipal corporation

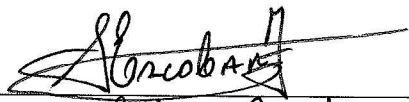
Best Best & Krieger LLP

By: _____
Sonia Carvalho
City Attorney

By: _____
Rochelle Clayton, Acting City Manager

The Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth in this Grant Deed.

NPHS COMMUNITY REDEVELOPMENT,
INC., a California nonprofit corporation

By: 
Name: Solon Escobar
Its: CEO

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[SEAL]

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[SEAL]

**EXHIBIT A TO GRANT DEED CONTAINING COVENANTS, CONDITIONS, AND
RESTRICTIONS**

Legal Description

Real property in the City of San Bernardino, County of San Bernardino, State of California,
described as follows:

ATTACHMENT D TO MASTER AGREEMENT

Form of Site Agreement

[Attached]

SITE AGREEMENT

THIS SITE AGREEMENT (“Agreement”) is made as of the ___ day of ___, 2024, by and between the CITY OF SAN BERNARDINO, a municipal corporation (“City”), and NPHS COMMUNITY REDEVELOPMENT, INC., a California nonprofit corporation (“Developer”), for the purpose of acquiring a blighted vacant lot, constructing reconstructing infill housing, and selling the property, whose address is indicated below (“Project”), in accordance with the terms of that certain Master Agreement dated ___ day of ___, 2024, entered into between Developer and the City (the “Master Agreement”).

The City agrees, subject to the terms and conditions of the Master Agreement and this Agreement and in consideration of the representations, covenants and obligations of Developer contained in the Master Agreement and this Agreement, to make a loan to Developer in the amount not to exceed Two Hundred and Three Thousand Dollars and Zero Cents (\$203,000.00) (the “Loan”) for the purpose of providing acquisition and construction/reconstruction financing for a detached, single-family home located at _____, San Bernardino, CA _____ (the “Eligible Property”), which Eligible Property will be reserved for a household whose income is less than or equal to 80% of Area Median Income (“AMI”) as provided in the Master Agreement, and whose legal description is attached herewith and incorporated herein as Exhibit “A”, to be used solely for the purposes described herein and secured by a Deed of Trust. The City’s source of funding for the Grant is provided from the HOME Investment Partnerships Program, 24 CFR Part 92, (hereinafter referred to as “HOME”) administered and funded by the United States Department of Housing and Urban Development (“HUD”).

Developer will deliver to the City, among other items, the “Promissory Note” and “Deed of Trust”, in the respective forms attached hereto and incorporated herein as Exhibits “B” and “C”, herewith to secure repayment of the loan by Developer as provided herein.

By the execution and submittal of this Site Agreement, and upon acceptance hereof by the City, the Developer shall apply all requirements of the HOME program as required by federal law, rules and regulations, in addition to all other requirements contained in the Master Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, City and Developer have each executed this Agreement, to be effective as of the Effective Date, as defined in this Agreement.

CITY OF SAN BERNARDINO

Date: _____

By: _____
Rochelle Clayton, Acting City Manager

Approved as to Form:
Sonia Carvalho, City Attorney

By: _____

DEVELOPER

Date: 8/1/2024


By: 
[Name, Title]
Solon Escobar, CFD

EXHIBIT A TO SITE AGREEMENT

Legal Description of Property

Real property in the City of San Bernardino, County of San Bernardino, State of California,
described as follows:

EXHIBIT B TO SITE AGREEMENT

Form of Promissory Note

[Attached]

PROMISSORY NOTE
(City HOME Loan)

\$203,000.00

San Bernardino, California
_____, 2024

FOR VALUE RECEIVED, the undersigned, Nphs Community Redevelopment, Inc., a California nonprofit corporation (the "Borrower"), hereby promises to pay to the order of the City of San Bernardino, a California municipal corporation (the "Holder"), whose address is 290 North "D" Street, Third Floor, San Bernardino, CA 92401-1734, or the Holder's assignee, the principal amount equal to Two Hundred Three Thousand Dollars and Zero Cents (\$203,000.00) plus interest thereon pursuant to Section 2 below.

1. Borrower's Obligation. This Promissory Note (the "Note") evidences the Borrower's obligation to pay the Holder the principal amount of Two Hundred Three Thousand Dollars and Zero Cents (\$203,000.00) (the "HOME Loan"), pursuant to the Site Agreement between Borrower and the Holder dated as of the date of this Note (the "Site Agreement"), in relation to the property generally located at _____ Hillside Drive in the City of San Bernardino, California (the "Eligible Property"), and the HOME Investment Partnerships Program (HOME) Infill Housing Development Master Agreement entered into by and between Borrower and Holder dated as of _____, 2024 (the "Master Agreement") (collectively, the "HOME Loan Documents"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the HOME Loan Documents and the Developer Housing Affordability Covenant dated as of _____, 2024.

2. Interest.

(a) Interest. Subject to the provisions of Section 2(b) below, the outstanding principal balance of the HOME Loan shall bear simple interest at a rate of three percent (3%) per annum. Interest on the HOME Loan shall accrue commencing on the date of this Note.

(b) Default Interest. In the event of a Default, interest on the HOME Loan shall begin to accrue, as of the date of Default and continuing until such time as the HOME Loan funds are repaid in full or the Default is cured, at the Default Rate.

3. Terms of Repayment Requirements. Borrower shall repay the HOME Loan as follows:

(a) Due in Full. All principal and accrued interest on the HOME Loan shall be due in full on the earlier to occur of: (i) the date of any Default, or (ii) the expiration of the Term of the Master Agreement; provided, however, that so long as the Borrower does not fail to perform any obligation of Borrower set forth in the HOME Loan Documents or in the Developer Housing Affordability Covenant prior to the transfer of the Eligible Property to a Qualified Homebuyer in strict accordance with the terms of the HOME Loan Documents and the

Developer Housing Affordability Covenant, Borrower's obligation to pay any principal and interest under this Promissory Note shall be forgiven as of the Delivery Date, as defined in the Developer Housing Affordability Covenant.

(b) Right to Prepay. Borrower may prepay, in whole or in part, the HOME Loan at any time without premium or penalty. However, the HOME Loan Documents and the Housing Affordability Covenants shall remain in effect for the entire Term regardless of any prepayment. Payments made shall be credited first against accrued interest and then against outstanding principal.

4. No Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the Holder, other than as set forth in the HOME Loan Documents.

5. Security. This Note is secured by the Deed of Trust.

6. Terms of Payment.

(a) U.S. Currency. All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) Location. All payments on this Note shall be paid to Holder at 290 North "D" Street, Third Floor, San Bernardino, CA 92401-1734, or to such other place as the Holder of this Note may from time to time designate.

(c) No Expense to Holder. All payments on this Note shall be without expense to the Holder, and the Borrower agrees to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs of the Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) No Unlawful Interest. Notwithstanding any other provision of this Note, or any instrument securing the obligations of the Borrower under this Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that the Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall the Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

(e) Nonrecourse. This Note shall be nonrecourse to the Borrower, pursuant to, and except as provided in, the HOME Loan Documents.

7. Default.

(a) Events of Default. Any of the following shall constitute an event of default under this Note:

1. Any failure to pay, in full, any payment required under this Note within ten (10) days of written notice from the Holder to the Borrower that such payment is due;

2. Any failure in the performance by the Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in the HOME Loan Documents;

3. The occurrence of any event of default under any of the HOME Loan Documents or other instrument securing the obligations of the Borrower under this Note or under any other promissory note(s) hereafter issued by the Borrower to the Holder pursuant to the HOME Loan Documents or the Deed of Trust, subject to notice and cure periods, if any, set forth therein.

(b) Balance Due. Upon the occurrence of one or more of the foregoing events of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of the Holder become immediately due and payable upon written notice by the Holder to the Borrower without further demand.

(c) No Waiver. Holder's failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Holder, except as and to the extent otherwise provided by law.

8. Waivers.

(a) Borrower's Waivers. The Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. The Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Holder may accept further security or release any security for this Note, all without in any way affecting the liability of the Borrower.

(b) Extension is no Release of Liability. Any extension of time for payment of this Note or any installment hereof made by agreement of the Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of the Borrower under this Note, either in whole or in part.

(c) No Offset. The obligations of the Borrower under this Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) Notices. All notices to the Holder or the Borrower shall be given in the manner and at the addresses set forth in the HOME Loan Documents, or to such addresses as the Holder and the Borrower may therein designate.

(b) Holder's Costs. The Borrower promises to pay all costs and expenses, including reasonable attorney's fees and other professional service fees and costs, incurred by the Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) Amendment in Writing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) California Law. This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) Severability. If any provision of this Note shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

(f) Time. The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(g) Entire Agreement. This document, together with the HOME Loan Documents, contains the entire agreement between the parties as to the HOME Loan.

Remainder of page left intentionally blank

BORROWER:

**NPHS COMMUNITY REDEVELOPMENT, INC., a
California nonprofit corporation**

By:

Name:

Its:

A handwritten signature in black ink, appearing to read "Solon Escobar", written over a horizontal line.

Solon Escobar

CFO

EXHIBIT C TO SITE AGREEMENT

Form of Deed of Trust

[Attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Bernardino
290 North "D" Street, Third Floor
San Bernardino, CA 92401-1734
Attn: Housing Division

(Space Above Line Reserved For Use By Recorder)

No fee shall not be imposed on any real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state - GC 27388.1 (a)(2)(D)

**DEED OF TRUST AND ASSIGNMENT OF RENTS
(HOME Loan)**

This **Deed of Trust**, is made as of ____ __, 2024, between NPHS COMMUNITY REDEVELOPMENT, INC., a California nonprofit corporation, herein called **Trustor**, whose address is: 9551 Pittsburgh Avenue, Rancho Cucamonga, CA 91730, _____, a California corporation, herein called **Trustee**, and the City of San Bernardino, a California municipal corporation, herein called **Beneficiary**,

Witneseth: That Trustor **IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE**, that property generally located at _____ Hillside Drive in the City of San Bernardino, California, described as follows:

SEE EXHIBIT A, incorporated herein by this reference.

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph C.10 of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing:

(1) Performance of each agreement of Trustor incorporated by reference or contained herein. (2) Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of up to Two Hundred Three Thousand Dollars and Zero Cents (\$203,000.00) executed by Trustor in favor of Beneficiary or order. (3) Payment

of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the Promissory Note secured hereby, including the provisions set forth in EXHIBIT B and EXHIBIT C of this Deed of Trust, which are incorporated by this reference; that Trustor will observe and perform said provisions; and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to it at its address.

TRUSTOR:

**NPHS COMMUNITY
REDEVELOPMENT, INC., a California
nonprofit corporation**

By: _____

Name: _____

Its: _____

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public _____ [SEAL]

EXHIBIT A TO DEED OF TRUST AND ASSIGNMENT OF RENTS

Legal Description

Real property in the City of San Bernardino, County of San Bernardino, State of California,
described as follows:

EXHIBIT B TO DEED OF TRUST AND ASSIGNMENT OF RENTS

Deed of Trust Addendum

B.1. Casualty or Condemnation Proceeds. Notwithstanding anything to the contrary contained in the Deed of Trust to which this Exhibit is attached or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that, subject to the rights of all senior lenders, in the event of a casualty or condemnation of the Property, the Beneficiary shall permit the Trustor to use any proceeds from such event to rebuild or otherwise restore the improvements located on the Property.

B.2. Conflict. In the event of any conflict between this Exhibit and any other provision of the Deed of Trust, this Exhibit shall control. This Exhibit is hereby incorporated into, and made a part of, the Deed of Trust by this reference.

B.3. Refinancing of Senior Loans. Notwithstanding anything to the contrary contained in this Deed of Trust, Trustor may refinance any loans secured by deeds of trust senior in lien priority to the Deed of Trust (the "Senior Indebtedness") without the prior consent of the Beneficiary (the "Refinanced Indebtedness"), and the Beneficiary hereby agrees to subordinate the loan secured by this Deed of Trust (the "Loan") and all documents securing or evidencing the Loan, including, but not limited to, this Deed of Trust and the Promissory Note, to the Refinanced Indebtedness and the lien of any deed of trust or mortgage securing the Refinanced Indebtedness, provided that (i) the principal balance of the Refinanced Indebtedness does not exceed the then outstanding principal balance of the Senior Indebtedness plus the costs of refinancing the Senior Indebtedness and (ii) the scheduled maturity date of the Senior Indebtedness is not modified.

B.4. Notices. Notwithstanding anything to the contrary contained in this Deed of Trust, notices to the Trustor shall be given in the manner and to the addresses as described in the Note.

EXHIBIT C TO DEED OF TRUST AND ASSIGNMENT OF RENTS

Conventional Terms

To Protect the Security of This Deed of Trust, Trustor Agrees:

C.1 Subsequent to completion of construction/renovations of improvements, keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

C.2 To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default hereunder or invalidated any act done pursuant to such notice.

C.3 To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such actions or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

C.4 To pay: at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.

Should Trustor fail to make any payment or to do any act as herein provided, the Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior to or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

C.5 To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him/her/them in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

C.6 That any award of damages in connection with any condemnation for public use or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him/her them in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

C.7 That by accepting payment of any sum secured hereby after its due date, beneficiary does not waive his right either to require prompt payment when due all other sums so secured or to declare default for failure so to pay.

C.8 That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said Note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may; reconvey any part of said property, consent to the making of any map or plat thereof; join in granting any easement thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof

C.9 That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Five years after issuance of such full reconveyance, Trustee may destroy this document (unless directed in such request to retain it).

C.10 That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to adequacy of any security for the indebtedness hereby secured enter upon and take possession of said property or any part thereof, in his/her/their own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including

reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

C.11 That upon default by trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not the repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

C.12 Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

C.13 That this Deed applies to inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not

named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

C.14 That trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

ACCEPTANCE OF CONVEYANCE

Address: _____ Hillside Dr.
San Bernardino, CA 92404

APN: _____

This instrument certifies that the interest in real property conveyed by the Deed of Trust with Assignment of Rents dated ____ __, 2024, from Trustor, NPHS COMMUNITY REDEVELOPMENT, INC., to the CITY OF SAN BERNARDINO, as "Beneficiary" thereunder, which Beneficiary is a municipal corporation of the State of California, is hereby accepted by the undersigned officer on behalf of the City of San Bernardino pursuant to the authority conferred by resolution of the City Council adopted on ____ __, ____, and the Beneficiary consents to the recordation thereof by its duly authorized officer.

Signature must be notarized

Dated: _____

By: _____
Rochelle Clayton
Acting City Manager

APPROVED AS TO FORM:
Best Best & Krieger LLP

By: _____
Sonia Carvalho
City Attorney

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS.
COUNTY OF _____)

On _____, before me, _____, a Notary Public in and for said State, personally appeared, _____, who proved to me the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

[SEAL]

ATTACHMENT E TO MASTER AGREEMENT

Total Development Cost Pro Forma Template

[Attached]

Total Development Cost

Pro Forma

(Property Address)

<u>Acquisition Cost</u>		
Purchase Price	\$	Acquisition - price of property as-is
Closing Cost	\$	Escrow and Title Fees etc.
Appraisal	\$	Third party appraisal of the property as-is
<u>Subtotal Acquisition Cost</u>	a. \$	
<u>Construction Cost</u>		
Direct Construction	\$	Cost estimated to complete scope of work
General Conditions	\$	Cost of temporary utilities, toilets, fencing, lighting, etc.
Profit/Overhead	\$	General Contractor's Profit and Overhead
Contingency	\$	Percentage of Construction, Gen. Conditions, and Profit/OH
<u>Subtotal Construction Cost</u>	b. \$	
<u>Indirect Cost</u>		
Hazard Insurance	\$	Insurance Coverage for the work performed
Building Fees & Permits	\$	Cost of obtaining construction permits etc.
Lead Based Paint Risk Assessment	\$	Cost of Lead Based Paint
Asbestos and Mold Inspection Report	\$	Cost of Asbestos and Mold
Security During Construction homebuyer	\$	Intermediary fixed fee per
Property Taxes	\$	Taxes for the house incurred during holding period
Homebuyer Education Course Fee Homebuyer	\$	Cost of enrollment in Homebuyer course for Qualified
<u>Subtotal Indirect Cost</u>	c. \$	
Sales Cost		
Commissions	\$	Brokerage commissions
Appraisal	\$	Third party appraisal of property after rehab
Title & Escrow	\$	Seller's side escrow and title fees
<u>Subtotal Sales Cost</u>	d. \$	
Developer Fee	e. \$	Developers Fee for managing project (fixed fee)
Total Development Cost	f. \$	The sum of a., b., c., d. and e.
Final Sale Price	g. \$	Estimated market value of home after construction
Amount Granted to Project	\$	(f.-g.) (proposed)

ATTACHMENT F TO MASTER AGREEMENT

Sources and Uses Schedule Template

[Attached]

Sources and Uses Schedule
(ADDRESS)
San Bernardino

Sources: Construction		Uses: Construction	
HOME Acq./Rehab Loan	\$	Acquisition Cost	\$
Deferred Developer Fee	\$	Rehabilitation Cost	\$
Other	\$	Indirect Cost	\$
	\$	Sale Cost	\$
	\$	Developer Fee*	\$
	\$	Other	\$
	\$		\$
Total	\$	Total	\$
Sources: Permanent		Uses: Permanent	
First Mortgage Loan	\$	Acquisition Cost	\$
Homebuyer Down payment	\$	Rehabilitation Cost	\$
Down Payment Assistance	\$	Indirect Cost	\$
HOME Loan Write-off	\$	Sale Cost	\$
Other	\$	Developer Fee	\$
	\$	Other	\$
	\$		\$
Total	\$		\$

*Note: Equal to 10% of the total Development Cost recognized upon resale.

ATTACHMENT G TO MASTER AGREEMENT

Project Timeline Template

Task No.	Event/Activity	Duration	Start Date	End Date
1	Property Identified			
2	Open Escrow			
3	Due Diligence Period			
4	Review and Execute Sub-agreements			
5	Rehab Construction Drawings submitted <i>if applicable</i>			
6	Schedule security			
7	Schedule Job Walk			
8	Schedule Roof Replacement			
9	Schedule A/C Repair			
10	Close Acquisition Escrow			
11	Transfer utilities to HPI			
12	Install Security System			
13	Lead Paint/Asbestos and Environmental testing			
14	Jobwalk 9:00 AM			
15	Bids Due 10:00 AM			
16	Award Bid			
17	Work Begins			
18	Punch List			
19	Construction Complete			
20	Marketing of Property			
21	Identify Buyer and Qualify for Program Eligibility			
22	Provide Homebuyer Education Certificate			
23	Submit Homebuyer Application to Agency			
24	Escrow Period			
25	Process and Record Loan Documents of behalf of buyer			
26	Close Escrow and Deliver Property to Homebuyer			

ATTACHMENT H TO MASTER AGREEMENT

Form of Developer Housing Affordability Covenant

[Attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Bernardino
290 North "D" Street, Third Floor
San Bernardino, CA 92401-1734
Attn: Housing Division

(Space Above Line Reserved For Use By Recorder)

No fee shall not be imposed on any real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state - GC 27388.1 (a)(2)(D)

HOME PROGRAM HOUSING AFFORDABILITY COVENANTS AND RESTRICTIONS

City of San Bernardino Infill Housing Development Program – Home Funds

These HOME Program Housing Affordability Covenants and Restrictions (collectively referred to herein as this "Affordable Housing Covenant") are made and entered into as of _____ by and between the City of San Bernardino, a municipal corporation ("City"), and NPHS Community Redevelopment, Inc., a California nonprofit corporation ("Developer"). This Affordable Housing Covenant relates to the following facts:

--- R E C I T A L S ---

A. City and Developer are parties to that certain HOME Investment Partnerships Program (HOME) Infill Housing Development Master Agreement ("Master Agreement") dated _____.

B. Under the terms and conditions of the Master Agreement, Developer shall acquire from City, or acquire with funds provided by City pursuant to the HOME Investment Partnerships Program, 24 C.F.R. Part 92 ("HOME"), an amount not to exceed Seven Hundred and Forty Four Thousand Dollars and Zero Cents (\$744,000.00) for the purpose of providing financing for the housing developments described in the Master Agreement (the "Project"). The Project will be developed on three sites legally described on Exhibit "A" to this Affordable Housing Covenant (the "Eligible Properties"), which is attached hereto and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer do hereby covenant and agree for themselves, their successors and assigns, as follows:

Section 1. Definitions of Certain Terms. As used in this Affordable Housing Covenant, the following words and terms shall have the meaning as provided in this Section 1 unless the specific context of usage of a particular word or term may otherwise require:

Adjusted Family Income. The words “Adjusted Family Income” mean and refer to the total “annual income,” as this term is defined in HOME Final Rule, 24 C.F.R. Part 92.203, for each individual or household residing or treated as residing in an Eligible Property.

Affordable Housing Cost. The words “Affordable Housing Cost” mean and refer to a purchase price determined using the criteria set forth in 24 C.F.R. Part 92.254(a)(2), i.e., not exceeding 95 percent of the median purchase price for the area.

Code. The word “Code” means the Internal Revenue Code of 1986, as amended, and any regulation, rulings or procedures with respect thereto.

Delivery Date. The words “Delivery Date” mean and refer to the date of delivery of title and possession of the Eligible Property to the Qualified Homebuyer at the close of the Sale Escrow.

Eligible Property. The words “Eligible Property” mean and refer to each infill housing property constructed or reconstructed by Developer, including the blighted or underutilized site acquired and the single family dwelling constructed or reconstructed on the site, as described in the Master Agreement, and which conforms to all of the other requirements set forth in the Master Agreement.

HOME Funds. The words “HOME Funds” mean and refer to funds received by City from the United States Department of Housing and Urban Development (“HUD”) under the HOME program and provided by City to Developer for the purpose of acquiring, constructing and selling Eligible Properties to Qualified Homebuyers.

Laws. The word “Laws” means and refers to all federal, state, municipal, local and governmental authority laws, statutes, codes, ordinances, rules, regulations, and orders, now or hereafter in effect, and as may be amended, replaced or substituted from time to time.

Low-Income Household. The words “Low-Income Household” mean and refer to persons and households whose income does not exceed 80% percent of area median income (“AMI”), adjusted for household size, as set forth in HOME Final Rule 24 C.F.R. Part 92.2.

Notice of Affordability Restrictions. The words “Notice of Affordability Restrictions” mean and refer to the Notice of Affordability Restrictions on sale, conveyance, transfer or assignment of an Eligible Property executed by the Qualified Homebuyer and City in connection with the Sale Agreement. The Notice of Affordability Restrictions shall be duly notarized and recorded in the Official Records of the County Recorder’s Office for the County of San Bernardino, State of California.

Notice of Concurrence. The words “Notice of Concurrence” mean and refer to the acknowledgment in recordable form in which the City confirms that the proposed Qualified Successor-In-Interest of the Qualified Homebuyer satisfies all of the Adjusted Family Income and other requirements of this Affordable Housing Covenant for ownership and occupancy of the Eligible Property by the Qualified Successor-In-Interest at any time during the Qualified Residence Period.

Project CC&Rs. The words “Project CC&Rs” mean and refer to all covenants, conditions and restrictions, if any, affecting and applicable to and relating to the Eligible Property, as amended from time to time.

Qualified Homebuyer. The words “Qualified Homebuyer” mean the purchaser of the Eligible Property, i.e., all persons identified as having a property ownership interest vested in the Eligible Property at the close of the Sale Escrow. At the close of the Sale Escrow, the Qualified Homebuyer shall: (i) have an annual Adjusted Family Income which does not exceed the household income qualification limits of a Low-Income Household under HOME Final Rule 24 C.F.R. Part 92.2; and (ii) pay no more than an Affordable Housing Cost for the Eligible Property pursuant to the terms of the purchase transaction for the Eligible Property, including all sums payable by the Qualified Homebuyer for its purchase money mortgage financing, insurance, escrow and other fees and costs..

Qualified Residence Period. The words “Qualified Residence Period” mean and refer to the period of time beginning on the Delivery Date and ending on the date which is fifteen (15) years after the Delivery Date.

Qualified Successor-In-Interest. The words “Qualified Successor-In-Interest” mean and refer to the person or household which may acquire the Eligible Property from the Qualified Homebuyer at any time during the Qualified Residence Period by purchase, assignment, transfer or otherwise. The Qualified Successor-In-Interest shall have an income level which does not exceed the maximum income level for a Low-Income Household as applicable to the Qualified Homebuyer under the Sale Agreement, and the Qualified Successor-In-Interest shall agree to own and occupy the Eligible Property as its principal residence. Upon acquisition of the Eligible Property, the Qualified Successor-In-Interest shall be bound by each of the covenants, conditions and restrictions of this Affordable Housing Covenant.

Sale Agreement. The words “Sale Agreement” mean and refer to a standard California Association of Realtors California Residential Purchase Agreement and Joint Escrow Instructions, as modified by any addenda required by City, or a substantially equivalent purchase and sale agreement, by and between Developer as seller and the Qualified Homebuyer as purchaser of the Eligible Property, as amended from time to time. City shall be a third-party beneficiary of such Sale Agreement.

Sale Escrow. The words “Sale Escrow” mean and refer to a real estate conveyance transaction or escrow by and between Developer as seller and the Qualified Homebuyer as purchaser of the Eligible Property. The transfer of the Eligible Property to the Qualified Homebuyer shall be accomplished upon the close of the Sale Escrow.

The titles and headings of the sections of this Affordable Housing Covenant have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict the meaning of any of the terms or provisions hereof.

Section 2. Use of the Eligible Properties

Developer shall construct or reconstruct on each Eligible Property a single-family detached home, to be occupied and owned by persons or households whose income is equal to or below 80% of AMI and that meet all of the other requirements to be a Qualified Homebuyer or a Qualified Successor-in-Interest as those terms are defined in Section 1 and which person or household will receive downpayment assistance pursuant to the Master Agreement..

Section 3. Covenants of Developer.

(a) Upon completion of the construction or reconstruction of each Eligible Property, Developer shall sell the Eligible Property to a Qualified Homebuyer at an Affordable Housing Cost for use and occupancy as the Qualified Homebuyer's principal residence during the Qualified Residence Period, to which use and occupancy the Qualified Homebuyer must agree as a condition of the sale. As a condition of the sale, Developer shall require that that Qualified Homebuyer agree that it shall not sell the Eligible Property during the Qualified Residence Period except to a Qualified Successor-In-Interest at an Affordable Housing Cost. Developer shall confirm to City, and shall permit City to verify, that the proposed Qualified Homebuyer satisfies the income requirements for a Low-Income Household based on Adjusted Family Income, that the proposed sale price satisfies the Affordable Housing Cost limitations, and that the Qualified Homebuyer has agreed to the sale conditions set forth in this Section 3.

(b) Developer agrees to provide City with the items of information required by Section 17 of the Master Agreement for inspection by City or its contracted designee prior to any sale by Developer of any Eligible Property, promptly upon written request of City.

(c) While it owns an Eligible Property, Developer shall abide by and comply with all applicable Project CC&Rs, and, at the request of City, shall assign to City the right to enforce the Project CC&Rs on behalf of Developer.

(d) Also, while it owns an Eligible Property, Developer shall enforce all applicable Project CC&Rs against all individuals and entities, including, without limitation, against all non-complying members of a homeowner's association, who are subject to, bound by and obligated to perform and comply with the Project CC&Rs, at Developer's sole cost and expense.

(e) Developer shall not sell any Eligible Property without first giving written notice to City and obtaining City's written concurrence as provided in Section 3(g). At least sixty (60) calendar days prior to the date on which Developer proposes to transfer title to an Eligible Property to a Qualified Homebuyer, Developer shall send a written notice to City, as provided in Section 14, of Developer's intention to sell the Eligible Property, which includes the following true and correct information:

- (i) Name of the proposed Qualified Homebuyer, including the identity of all persons in the household of the Qualified Homebuyer who propose to reside in the Eligible Property, together with a completed Qualified Homebuyer Application Affidavit, as applicable, executed by the proposed Qualified Homebuyer;
- (ii) Sale price of the Eligible Property payable by the Qualified Homebuyer, including the terms of all purchase money mortgage financing to be assumed, provided or obtained by the Qualified Homebuyer, escrow costs and charges, realtor/broker fees, and all other sale costs or charges payable by the Qualified Homebuyer;
- (iii) Amount of downpayment assistance to be provided to the Qualified Homebuyer at close of escrow for the purchase of the Eligible Property.
- (iv) Name, address, and telephone number of the escrow company which shall coordinate the transfer of the Eligible Property from Developer to the Qualified Homebuyer;
- (v) Appropriate mortgage credit reference for the Qualified Homebuyer with a written authorization signed by the Qualified Homebuyer authorizing City to contact each such reference; and

(vi) Such other relevant information as City may reasonably request.

(f) Within thirty (30) calendar days following receipt of notice of Developer's intention to sell an Eligible Property as described in Section 3(e), City shall provide Developer with either a preliminary confirmation of approval or a preliminary rejection in writing of the income and household occupancy qualifications of the Qualified Homebuyer. City shall not unreasonably withhold approval of any proposed sale of the Eligible Property to a Qualified Homebuyer who satisfies the Adjusted Family Income and Affordable Housing Cost requirements for occupancy of the Eligible Property and for whom the other information described in Sections 3(b) and 3(e) has been provided to City. In the event that City may request additional information relating to the confirmation of the matters described in Sections 3(b) and 3(e), Developer shall provide such information to City as promptly as feasible.

(g) Upon its final confirmation of approval of the Adjusted Family Income and Affordable Housing Cost eligibility of the Qualified Homebuyer to acquire an Eligible Property, City shall deliver a written Notice of Concurrence in the sale of the Eligible Property, in recordable form, to the escrow holder referenced in Section 3(e)(iii) above. Thereafter, the Qualified Homebuyer may acquire the Eligible Property subject to the satisfaction of the following conditions:

- (i) The recordation of the Notice of Concurrence executed by City, verifying that Developer and the Qualified Homebuyer in making the sale and purchase have complied with the requirements of this Affordable Housing Covenant as of the close of the Sale Escrow; and
- (ii) The escrow holder shall have provided City with a copy of the customary form of final escrow closing statements for Developer and the Qualified Homebuyer; and
- (iii) The other conditions of the Sale Escrow as established by Developer and the Qualified Homebuyer shall have been satisfied.

(h) Developer shall require in connection with the sale of an Eligible Property to the Qualified Homebuyer that the Qualified Homebuyer agree that it and all of its heirs, successors and/or assigns shall abide by and comply with all applicable Project CC&Rs and, at the request of City, shall assign to City on behalf of the Qualified Homebuyer the right to enforce the Project CC&Rs on behalf of the Qualified Homebuyer.

(i) Developer also shall require in connection with the sale of an Eligible Property to a Qualified Homebuyer that the Qualified Homebuyer agree that during the Qualified Residence Period, the Qualified Homebuyer and any heirs, successors and/or assigns shall not lease, sublease, or rent the Eligible Property to any third person, except for a temporary period (not to exceed 3 months) in the event of an emergency or other unforeseen circumstance as may be expressly approved in writing by City subject to compliance during the temporary rental period with reasonable temporary rental occupancy conditions required by City. The Qualified Homebuyer shall submit a written request to City at least ten (10) calendar days prior to the commencement of the temporary occupancy of the Eligible Property by a third party, which notice shall set forth the grounds on which the Qualified Homebuyer believes an emergency or other unforeseen circumstance has occurred and that a temporary rental occupancy is necessary.

Section 4. Acknowledgment of First Mortgage Lender Financing.

It is expected and acknowledged by City that concurrently with the Delivery Date, the Qualified Homebuyer for an Eligible Property shall obtain purchase money mortgage financing for the acquisition of the Eligible Property from a qualified financial institution ("First Mortgage Lender"). Developer shall

require in connection with the sale of the Eligible Property to the Qualified Homebuyer that the Qualified Homebuyer agree to provide City with a true and correct copy of the loan agreement by and between the First Mortgage Lender and the Qualified Homebuyer, prior to the Delivery Date.

Section 5. Maintenance Condition of the Eligible Property. While it owns an Eligible Property, Developer shall:

(a) Maintain the exterior areas of the Eligible Property which are subject to public view (e.g.: all improvements, paving, walkways, landscaping, and ornamentation) in good repair and in a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during Developer's ownership of the Eligible Property there is an occurrence of an adverse condition on any area of the Eligible Property which is subject to public view in contravention of the general maintenance standard described above (a "Maintenance Deficiency"), City shall notify Developer in writing of the Maintenance Deficiency and give Developer thirty (30) calendar days from the date of such notice to cure the Maintenance Deficiency as identified in the notice. The words "Maintenance Deficiency" include without limitation the following inadequate or non-confirming property maintenance conditions and/or breaches of single family dwelling residential property use restrictions:

- (i) failure to properly maintain the windows, structural elements, and painted exterior surface areas of the dwelling unit in a clean and presentable manner;
- (ii) failure to keep the front and side yard areas of the property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the property;
- (iii) failure to regularly mow lawn areas or permit grasses planted in lawn areas to exceed nine inches (9") in height, or failure to otherwise maintain the landscaping in a reasonable condition free of weeds and debris;
- (iv) parking of any commercial motor vehicle in excess of 7,000 pounds gross weight anywhere on the property except construction vehicles being use in construction or reconstruction on the Eligible Property, or the parking of motor vehicles, boats, camper shells, trailers, recreational vehicles and the like in any side yard or on any other parts of the property which are not covered by a paved and impermeable surface;
- (v) the use of the garage area of the dwelling unit for purposes other than the parking of motor vehicles and the storage of construction equipment.

In the event Developer fails to cure or commence to cure the Maintenance Deficiency within the time allowed, City may thereafter conduct a public hearing following transmittal of written notice thereof to Developer ten (10) calendar days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether Developer has failed to comply with the provisions of this Section 5(a). If, upon the conclusion of a public hearing, City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter City shall have the right to enter the Eligible Property (exterior areas only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by City for the abatement of a Maintenance Deficiency as authorized by this Section 5(a) shall become a lien on the Eligible Property. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by the City to the Qualified Homebuyer, City shall have the right to enforce the lien in the manner as provided in Section 5(c).

(b) Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Eligible Property shall be removed by Developer from any exterior surface of a structure or improvement on the Eligible Property by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied or by removal with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Eligible Property (exterior areas only) and such graffiti is visible from an adjacent or contiguous public right-of-way and thereafter such graffiti is not removed within 72 hours following the time of its application, then in such event and without notice to Developer, City shall have the right to enter the Eligible Property and remove the graffiti. Notwithstanding any provision of Section 5(a) to the contrary, any sum expended by City for the removal of graffiti from the Eligible Property as authorized by this Section 5(b) shall become a lien on the Eligible Property. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by City to developer, City shall have the right to enforce its lien in the manner as provided in Section 5(c).

(c) The parties hereto further mutually understand and agree that the rights conferred upon City under this Section 5 expressly include the power to establish and enforce a lien or other encumbrance against the Eligible Property in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount reasonably necessary to restore the Eligible Property to the maintenance standard required under Section 5(a) or Section 5(b), including, without limitation, attorneys' fees, court costs and costs of City associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of City in connection with such action. In any legal proceeding for enforcing such a lien against the Eligible Property, the prevailing party shall be entitled to recover its attorneys' fees, court costs and other costs of suit. The provisions of this Section 5 shall be a covenant running with the land for the period of Developer's ownership of the Eligible Property and shall be enforceable by City in its discretion, cumulative with any other rights or powers granted to City under applicable law. Nothing in the foregoing provisions of this Section 5 shall be deemed to preclude Developer from making any alterations, additions, or other changes to any structure or improvement or landscaping on the Eligible Property, provided that such changes comply with the zoning and development regulations of City and other applicable law.

Section 6. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein are part of a plan for the promotion and preservation of affordable single family housing dwelling units within the territorial jurisdiction of City and each shall be deemed covenants running with the land and shall pass to and be binding upon the Eligible Properties for the term provided in Section 8. Developer shall require that the Qualified Homebuyer for each Eligible Property assume the duty and obligation to perform each of the covenants and to honor each of the reservations and restrictions set forth in this Affordable Housing Covenant as to such Eligible Property. Each and every contract, deed or other instrument hereafter executed covering or conveying an Eligible Property or any interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

Section 7. Burden and Benefit. The burden of the covenants set forth herein touch and concern the land in that the Developer's and the Qualified Homebuyers' legal interests in the Eligible Properties are affected by the affordable single family dwelling use and occupancy covenants hereunder. The benefit of such covenants touches and concerns the land by enhancing and increasing the enjoyment and use of the Eligible Properties by the intended beneficiaries of such covenants, reservations and restrictions, by furthering the affordable single family housing development goals and objectives of City, and by making the Eligible Properties available for acquisition and occupancy by the Qualified Homebuyers.

Section 8. Term.

(a) The provisions of this Affordable Housing Covenant shall apply to the Eligible Properties for the period of Developer's ownership of the Eligible Properties, and thereafter for a term of fifteen (15) years after the Delivery Date for the final Eligible Property transferred to a Qualified Homebuyer.

(b) For each Eligible Property, any provision or section of this Affordable Housing Covenant may be terminated after the Delivery Date upon the written agreement of City and the Qualified Homebuyer for such Eligible Property, if there shall have been provided to City an opinion of legal counsel that such a termination, under terms and conditions approved by City in its reasonable discretion, will not adversely affect the affordable single family housing and development goals and obligations of the City.

Section 9. Breach and Default and Enforcement.

(a) Failure or delay by Developer to honor or perform any material term or provision of this Affordable Housing Covenant shall constitute a breach hereunder; provided, however, that if Developer commences to cure, correct or remedy the alleged breach within thirty (30) calendar days after the date of written notice specifying such breach and diligently completes such cure, correction or remedy, Developer shall not be deemed to be in default hereunder.

City shall give Developer written notice of breach specifying the alleged breach which if uncured by Developer within thirty (30) calendar days, shall be deemed to be an event of default. Delay in giving such notice shall not constitute a waiver of any breach or event of default nor shall it change the time of breach or event of default; provided, however, that City shall not exercise any remedy for an event of default hereunder without first delivering the written notice of breach as specified in this Section 9.

Except with respect to rights and remedies expressly declared to be exclusive in this Affordable Housing Covenant, the rights and remedies of City are cumulative with any other right or power of City or other applicable law, and the exercise of one or more of such rights or remedies shall not preclude the exercise by City at the same or different times, of any other right or remedy for the same breach or event of default.

If a breach by Developer remains uncured for more than thirty (30) calendar days following written notice, as provided above, an event of default shall be deemed to have occurred. In addition to the remedial provisions of Section 5 as related to a Maintenance Deficiency at the Eligible Property, upon the occurrence of any event of default City shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings as follows:

- (i) by mandamus or other suit, action or proceeding at law or in equity, to require Developer to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of City; or
- (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and agreements of Developer to City.

(b) Except as set forth in the next sentence, no third party shall have any right or power to enforce any provision of this Affordable Housing Covenant on behalf of City or to compel City to enforce any provision of this Affordable Housing Covenant against Developer or the Eligible Properties. City may assign the right and power to enforce the provision of this Affordable Housing Covenant against Developer or the Eligible Properties as the successor administration agency of the HOME Investment Partnerships Program.

Section 10. Recapture of HOME Subsidy. If Developer at any time during the Period of Affordability sells or transfers an Eligible Property, whether voluntarily or involuntarily due to foreclosure or other circumstance, to any party other than to a Qualified Homebuyer, the following provisions shall apply, pursuant to 24 C.F.R. Part 92.254:

(a) City shall recover from the Net Proceeds, if any, the entire amount of the HOME Subsidy for the Eligible Property, or such lesser amount as the Net Proceeds may permit to be recovered. The Net Proceeds are the sales price paid to Developer minus repayment of loans that are superior in priority to this Affordable Housing Covenant and the Deed of Trust securing the Promissory Note for the HOME Loan for the Eligible Property, and any closing costs.

(b) In no event shall City's recovery exceed the amount of the Net Proceeds.

Section 11. Governing Law. This Affordable Housing Covenant shall be governed by the laws of the State of California.

Section 12. Amendment. This Affordable Housing Covenant may be amended only by a written instrument executed by Developer and City.

Section 13. Severability. If any provision of this Affordable Housing Covenant is declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining parts of this Affordable Housing Covenant which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

Section 14. Time is of the Essence. For each provision of this Affordable Housing Covenant which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

Section 15. Notice. Notices, demands, and communications between City and Developer shall be sufficiently given if: (1) personally delivered with a delivery receipt; (2) delivered by a nationally recognized courier service with a delivery receipt; or (3) sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to City: City of San Bernardino
Community and Economic Development – Housing Division
290 North "D" Street Third Floor
San Bernardino, CA 92401-1734
Phone: (909) 384-5357

If to Developer: NPHS Community Redevelopment, Inc.
9551 Pittsburgh Avenue
Rancho Cucamonga, CA 91730

Notices shall be effective upon the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable.

Section 16. Entire Agreement. Except as to matters set forth in the other agreements to which reference is made herein, this Affordable Housing Covenant is the parties' entire agreement with respect to the matters set forth herein and supersedes all prior negotiations and oral or written agreements or expressions of the parties with respect thereto.

Continued on Next Page

IN WITNESS WHEREOF, City and Developer have caused this Affordable Housing Covenant to be signed, acknowledged and attested on its behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

CITY OF SAN BERNARDINO

Date: _____

By: _____
Rochelle Clayton, Acting City Manager

**NPHS COMMUNITY REDEVELOPMENT,
INC.**

Date: 8/1/2024


By: 
[Name, Title]
Solon Escobar, CFO

EXHIBIT “A” TO DEVELOPER HOUSING AFFORDABILITY COVENANT

Legal Description

Real property in the City of San Bernardino, County of San Bernardino, State of California, described as follows:

APN: 0147-224-11-0-000

Address: 1356 Hillside Dr , San Bernardino, CA 92404

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE WEST 50 FEET OF LOT 5 OF TRACT 2316, CONEJO RANCHOS, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO AS PER MAP RECORDED IN BOOK 33, PAGE 31 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN BERNARDINO COUNTY.

APN: 0147-224-28-0-000

Address: 1384 Hillside Dr , San Bernardino, CA 92404

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

THE EAST 50 FEET OF THE WEST 150 FEET OF LOT 5, TRACT NO. 2316, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 33 OF MAPS, PAGE 31, RECORDS OF SAID SAN BERNARDINO COUNTY.

APN: 0147-224-20-0-000

Address: 1394 Hillside Dr , San Bernardino, CA 92404

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 5 EXCEPTING THE WEST 150 FEET OF SAID LOT 5, OF TRACT NO. 2316, IN THE CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 33 OF MAPS, PAGE 31 RECORDS OF SAID SAN BERNARDINO COUNTY TOGETHER WITH THAT PORTION OF FAIRFAX DRIVE ADJOINING AS VACATED BY A RESOLUTION BY THE BOARD OF SUPERVISORS, CITY OF SAN BERNARDINO, COUNTY OF SAN BERNARDINO, RECORDED JUNE 21, 1939 IN BOOK 1353, PAGE 343 OF OFFICIAL RECORDS.

ATTACHMENT I TO MASTER AGREEMENT
Qualified Homebuyer Housing Affordability Covenant

[Attached]

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San Bernardino
290 North "D" Street, Third Floor
San Bernardino, CA 92401
Attn: Housing Division

(Space Above Line Reserved For Use By Recorder)

No fee shall not be imposed on any real estate instrument, paper, or notice executed or recorded by the state or any county, municipality, or other political subdivision of the state - GC 27388.1 (a)(2)(D)

HOME PROGRAM HOUSING AFFORDABILITY COVENANTS AND RESTRICTIONS

City of San Bernardino Infill Housing Development Program – HOME Funds

These HOME Program Housing Affordability Covenants and Restrictions (collectively referred to herein as this "Affordable Housing Covenant") are made and entered into as of _____ by and between the City of San Bernardino, a municipal corporation ("City"), and _____ ("Buyer"). This Affordable Housing Covenant relates to the following facts:

--- R E C I T A L S ---

A. City and NPHS Community Redevelopment, Inc., a California nonprofit corporation ("Developer") are parties to that certain HOME Investment Partnerships Program (HOME) Infill Housing Development Master Agreement ("Master Agreement") dated _____.

B. Under the terms and conditions of the Master Agreement Developer acquired from City, or acquired with funds provided by City pursuant to the HOME Investment Partnerships Program, 24 C.F.R. Part 92 ("HOME"), property on which Developer constructed or reconstructed a detached single-family dwelling. Said property and dwelling are referred to herein as the "Eligible Property." The Eligible Property is legally described in Exhibit "A" to this Affordable Housing Covenant.

C. Buyer wishes to purchase the Eligible Property from Developer. Under that certain document entitled HOME Program Housing Affordability Covenants and Restrictions between City and Developer and dated _____, Buyer will receive downpayment assistance from City and must obtain the concurrence of City in the sale of the Eligible Property from Developer to Buyer in order to purchase the Eligible Property and receive the downpayment assistance from the City.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, City and Buyer do hereby covenant and agree for themselves, their successors and assigns, as follows:

Section 1. Definitions of Certain Terms. As used in this Affordable Housing Covenant, the following words and terms shall have the meaning as provided in this Section 1 unless the specific context of usage of a particular word or term may otherwise require:

Affordable Housing Cost. The words “Affordable Housing Cost” mean and refer to a purchase price determined using the criteria set forth in 24 C.F.R. Part 92.254(a)(2), or as published annually by HUD in the HOME Homeownership Value Limits, i.e., not exceeding 95 percent of the median purchase price for the type of single family home for the area.

Annual Income. The words “Annual Income” mean and refer to the total “annual income,” as this term is defined in 24 C.F.R. § 5.609, for each individual or household residing or treated as residing in an Eligible Property.

Buyer. The word “Buyer” means the purchaser or purchasers of the Eligible Property and includes all persons identified as having a property ownership interest vested in the Eligible Property at the close of the Sale Escrow. At the close of the Sale Escrow, Buyer shall: (i) have an Annual Income which does not exceed the household income qualification limits of a Low-Income Household under HOME Final Rule 24 C.F.R. Part 92.2; and (ii) pay no more than an Affordable Housing Cost for the Eligible Property pursuant to the terms of the purchase transaction for the Eligible Property, including all sums payable by Buyer for purchase money mortgage financing, insurance, escrow, and other fees and costs.

Delivery Date. The words “Delivery Date” mean and refer to the date of delivery of title and possession of the Eligible Property to Buyer at the close of the Sale Escrow.

Eligible Property. The words “Eligible Property” mean and refer to an infill housing property constructed or reconstructed by Developer, including the blighted or underutilized site acquired and the single family dwelling constructed or reconstructed on the site, as described in the Master Agreement, and which conforms to all of the other requirements set forth in the Master Agreement.

HOME Funds. The words “HOME Funds” mean and refer to funds received by City from the United States Department of Housing and Urban Development (“HUD”) under the HOME program and provided by City to Developer for the purpose of acquiring, constructing and selling Eligible Properties to Qualified Homebuyers, as defined in the Master Agreement.

HOME Subsidy. The words “HOME Subsidy” mean and refer to the fair market value of the Eligible Property at the time it is sold to Buyer, minus the sales price paid by Buyer for the Eligible Property.

Laws. The word “Laws” means and refers to all federal, state, municipal, local and governmental authority laws, statutes, codes, ordinances, rules, regulations, and orders, now or hereafter in effect, and as may be amended, replaced or substituted from time to time.

Low-Income Household. The words “Low-Income Household” mean and refer to persons and households whose Annual Income does not exceed 80 percent of area median income (“AMI”), adjusted for household size, for the Riverside-San Bernardino-Ontario, California, metropolitan statistical area, as published by United States Department of Labor, Bureau of Labor Statistics.

Notice of Affordability Restrictions. The words “Notice of Affordability Restrictions” mean and refer to the Notice of Affordability Restrictions on sale, conveyance, transfer or assignment of an Eligible Property to be executed by Buyer and City in connection with the Sale Agreement. The Notice of Affordability Restrictions shall be duly notarized and recorded in the Official Records of the County Recorder’s Office for the County of San Bernardino, State of California.

Period of Affordability. The words “Period of Affordability” mean and refer to fifteen (15) years from the Delivery Date.

Project CC&Rs. The words “Project CC&Rs” mean and refer to all covenants, conditions and restrictions, if any, affecting and applicable to and relating to the Eligible Property, as amended from time to time.

“Qualified Homebuyer.” The words “Qualified Homebuyer” mean and refer to a household whose annual income does not exceed eighty percent (80%) of the Area Median Income, and which meets all of the requirements for purchasing an Eligible Property.

Sale Agreement. The words “Sale Agreement” mean and refer to a standard California Association of Realtors California Residential Purchase Agreement and Joint Escrow Instructions, as modified by any addenda required by City, or a substantially equivalent purchase and sale agreement, by and between Developer as seller and Buyer as purchaser of the Eligible Property, as amended from time to time. City shall be a third-party beneficiary of such Sale Agreement.

Sale Escrow. The words “Sale Escrow” mean and refer to a real estate conveyance transaction or escrow by and between Developer as seller and Buyer as purchaser of the Eligible Property. The transfer of the Eligible Property to Buyer shall be accomplished upon the close of the Sale Escrow.

The titles and headings of the sections of this Affordable Housing Covenant have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict the meaning of any of the terms or provisions hereof.

Section 2. Use of the Eligible Property

Buyer shall use the Eligible Property as a single-family detached home, to be occupied and owned by persons or a household whose income is equal to or below 80% of AMI and that meet all of the other requirements to be a Qualified Homebuyer as defined in Section 1.

Section 3. Covenants of Buyer.

(a) Buyer shall use and occupy the Eligible Property as Buyer’s principal residence during the Period of Affordability. Buyer shall not sell or transfer the Eligible Property or any interest in the Eligible Property, including without limitation a leasehold interest, or cease to use and occupy the Eligible Property as Buyer’s principal residence, during the Period of Affordability. Buyer shall confirm to City, and shall permit City to verify, that Buyer satisfies the income requirements for a Low-Income Household based on Annual Income.

(b) Buyer agrees to provide City with the following items of information for inspection by City or its contracted designee, promptly upon written request of City or its contracted designee:

(i) State and federal income tax returns for the calendar year preceding the close of the Sale Escrow, filed by all persons who will reside in the Eligible Property;

- (ii) Current wage, income and salary statements for all persons who will reside in the Eligible Property at the close of the Sale Escrow.

(c) While Buyer owns the Eligible Property, Buyer shall abide by and comply with all applicable Project CC&Rs, and, at the request of City, shall assign to City the right to enforce the Project CC&Rs on behalf of Buyer.

(d) Also, while Buyer owns the Eligible Property, Buyer shall enforce all applicable Project CC&Rs against all individuals and entities, including, without limitation, against all non-complying members of a homeowner's association, who are subject to, bound by and obligated to perform and comply with the Project CC&Rs, at Buyer's sole cost and expense.

Section 4. Acknowledgment of First Mortgage Lender Financing.

It is expected and acknowledged by City that concurrently with the Delivery Date, Buyer shall obtain purchase money mortgage financing for the acquisition of the Eligible Property from a qualified financial institution ("First Mortgage Lender"). Buyer agrees to provide City with a true and correct copy of the loan agreement by and between the First Mortgage Lender and Buyer, prior to the Delivery Date.

Section 5. Maintenance Condition of the Eligible Property. While Buyer owns the Eligible Property, Buyer shall:

(a) Maintain the exterior areas of the Eligible Property which are subject to public view (e.g.: all improvements, paving, walkways, landscaping, and ornamentation) in good repair and in a neat, clean and orderly condition, ordinary wear and tear excepted. In the event that at any time during Buyer's ownership of the Eligible Property there is an occurrence of an adverse condition on any area of the Eligible Property which is subject to public view in contravention of the general maintenance standard described above (a "Maintenance Deficiency"), City shall notify Buyer in writing of the Maintenance Deficiency and give Buyer thirty (30) calendar days from the date of such notice to cure the Maintenance Deficiency as identified in the notice. The words "Maintenance Deficiency" include without limitation the following inadequate or non-confirming property maintenance conditions and/or breaches of single family dwelling residential property use restrictions:

- (i) failure to properly maintain the windows, structural elements, and painted exterior surface areas of the dwelling unit in a clean and presentable manner;
- (ii) failure to keep the front and side yard areas of the property free of accumulated debris, appliances, inoperable motor vehicles or motor vehicle parts, or free of storage of lumber, building materials or equipment not regularly in use on the property;
- (iii) failure to regularly mow lawn areas or permit grasses planted in lawn areas to exceed nine inches (9") in height, or failure to otherwise maintain the landscaping in a reasonable condition free of weeds and debris;
- (iv) parking of any commercial motor vehicle in excess of 7,000 pounds gross weight anywhere on the property except construction vehicles being use in construction or reconstruction on the Eligible Property, or the parking of motor vehicles, boats, camper shells, trailers, recreational vehicles and the like in any side yard or on any other parts of the property which are not covered by a paved and impermeable surface;

- (v) the use of the garage area of the dwelling unit for purposes other than the parking of motor vehicles and the storage of construction equipment.

In the event Buyer fails to cure or commence to cure the Maintenance Deficiency within the time allowed, City may thereafter conduct a public hearing following transmittal of written notice thereof to Buyer ten (10) calendar days prior to the scheduled date of such public hearing in order to verify whether a Maintenance Deficiency exists and whether Buyer has failed to comply with the provisions of this Section 5(a). If, upon the conclusion of a public hearing, City makes a finding that a Maintenance Deficiency exists and that there appears to be non-compliance with the general maintenance standard, as described above, thereafter City shall have the right to enter the Eligible Property (exterior areas only) and perform all acts necessary to cure the Maintenance Deficiency, or to take other action at law or equity City may then have to accomplish the abatement of the Maintenance Deficiency. Any sum expended by City for the abatement of a Maintenance Deficiency as authorized by this Section 5(a) shall become a lien on the Eligible Property. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by the City to Buyer, City shall have the right to enforce the lien in the manner as provided in Section 5(c).

(b) Graffiti which is visible from any public right-of-way which is adjacent or contiguous to the Eligible Property shall be removed by Buyer from any exterior surface of a structure or improvement on the Eligible Property by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface on which the paint is applied or by removal with solvents, detergents or water as appropriate. In the event that graffiti is placed on the Eligible Property (exterior areas only) and such graffiti is visible from an adjacent or contiguous public right-of-way and thereafter such graffiti is not removed within 72 hours following the time of its application, then in such event and without notice to Buyer, City shall have the right to enter the Eligible Property and remove the graffiti. Notwithstanding any provision of Section 5(a) to the contrary, any sum expended by City for the removal of graffiti from the Eligible Property as authorized by this Section 5(b) shall become a lien on the Eligible Property. If the amount of the lien is not paid within thirty (30) calendar days after written demand for payment by City to Buyer, City shall have the right to enforce its lien in the manner as provided in Section 5(c).

(c) The parties hereto further mutually understand and agree that the rights conferred upon City under this Section 5 expressly include the power to establish and enforce a lien or other encumbrance against the Eligible Property in the manner provided under Civil Code Sections 2924, 2924b and 2924c in the amount reasonably necessary to restore the Eligible Property to the maintenance standard required under Section 5(a) or Section 5(b), including, without limitation, attorneys' fees, court costs and costs of City associated with the abatement of the Maintenance Deficiency or removal of graffiti and the collection of the costs of City in connection with such action. In any legal proceeding for enforcing such a lien against the Eligible Property, the prevailing party shall be entitled to recover its attorneys' fees, court costs and other costs of suit. The provisions of this Section 5 shall be a covenant running with the land for the period of Buyer's ownership of the Eligible Property and shall be enforceable by City in its discretion, cumulative with any other rights or powers granted to City under applicable law. Nothing in the foregoing provisions of this Section 5 shall be deemed to preclude Buyer from making any alterations, additions, or other changes to any structure or improvement or landscaping on the Eligible Property, provided that such changes comply with the zoning and development regulations of City and other applicable law.

Section 6. Covenants to Run With the Land. The covenants, reservations and restrictions set forth herein are part of a plan for the promotion and preservation of affordable single family housing dwelling units within the territorial jurisdiction of City and each shall be deemed covenants running with the land and shall pass to and be binding upon the Eligible Property for the term provided in Section 8.

Section 7. Burden and Benefit. The burden of the covenants set forth herein touch and concern the land in that Buyer's legal interests in the Eligible Property are affected by the affordable single family

dwelling use and occupancy covenants hereunder. The benefit of such covenants touches and concerns the land by enhancing and increasing the enjoyment and use of the Eligible Property by the intended beneficiaries of such covenants, reservations and restrictions, by furthering the affordable single family housing development goals and objectives of City, and by making the Eligible Property available for acquisition and occupancy by Buyer any.

Section 8. Term.

(a) The provisions of this Affordable Housing Covenant shall apply to the Eligible Property for the length of the Period of Affordability, as defined in Section 1.

(b) Any provision or section of this Affordable Housing Covenant may be terminated after the Delivery Date upon the written agreement of City and the Buyer, if there shall have been provided to City an opinion of legal counsel that such a termination, under terms and conditions approved by City in its reasonable discretion, will not adversely affect the affordable single family housing and development goals and obligations of the City.

Section 9. Breach and Default and Enforcement.

(a) Failure or delay by Buyer to honor or perform any material term or provision of this Affordable Housing Covenant shall constitute a breach hereunder; provided, however, that if Buyer commences to cure, correct or remedy the alleged breach within thirty (30) calendar days after the date of written notice specifying such breach and diligently completes such cure, correction or remedy, Buyer shall not be deemed to be in default hereunder.

City shall give Buyer written notice of breach specifying the alleged breach which if uncured by Buyer within thirty (30) calendar days, shall be deemed to be an event of default. Delay in giving such notice shall not constitute a waiver of any breach or event of default nor shall it change the time of breach or event of default; provided, however, that City shall not exercise any remedy for an event of default hereunder without first delivering the written notice of breach as specified in this Section 9.

Except with respect to rights and remedies expressly declared to be exclusive in this Affordable Housing Covenant, the rights and remedies of City are cumulative with any other right or power of City or other applicable law, and the exercise of one or more of such rights or remedies shall not preclude the exercise by City at the same or different times, of any other right or remedy for the same breach or event of default.

If a breach by Buyer remains uncured for more than thirty (30) calendar days following written notice, as provided above, an event of default shall be deemed to have occurred. In addition to the remedial provisions of Section 5 as related to a Maintenance Deficiency at the Eligible Property, upon the occurrence of any event of default City shall be entitled to seek any appropriate remedy or damages by initiating legal proceedings as follows:

- (i) by mandamus or other suit, action or proceeding at law or in equity, to require Buyer to perform its obligations and covenants hereunder, or enjoin any acts or things which may be unlawful or in violation of the rights of City; or
- (ii) by other action at law or in equity as necessary or convenient to enforce the obligations, covenants and agreements of Buyer to City.

(b) Except as set forth in the next sentence, no third party shall have any right or power to enforce any provision of this Affordable Housing Covenant on behalf of City or to compel City to enforce any provision of this Affordable Housing Covenant against Buyer or the Eligible Property. City may assign the right and power to enforce the provision of this Affordable Housing Covenant against Buyer or the Eligible Property as the successor administration agency of the HOME Investment Partnerships Program.

Section 10. Recapture of HOME Subsidy. If Buyer at any time during the Period of Affordability sells or transfers the Eligible Property, whether voluntarily or involuntarily due to foreclosure or other circumstance, the following provisions shall apply, pursuant to 24 C.F.R. Part 92.254:

(a) If Buyer sells or transfers the Eligible Property within the first five (5) years of the Period of Affordability, City shall recover from the Net Proceeds, if any, the entire amount of the HOME Subsidy, or such lesser amount as the Net Proceeds may permit to be recovered. The Net Proceeds are the sales price paid to Buyer minus repayment of loans that are superior in priority to this Affordable Housing Covenant and the Deed of Trust securing the Promissory Note for the HOME Loan for the Eligible Property, and any closing costs.

(b) If Buyer sells or transfers the Eligible Property after occupying the Eligible Property for at least five (5) years (sixty [60] months from the Delivery Date), City's recovery from the Net Proceeds shall equal the amount of the HOME Subsidy, reduced by a percentage determined by dividing the number of Buyer's full years of occupation of the Eligible Property by the number of years of the Period of Affordability, and multiplying the result by one hundred (100). In calculating recapture of the HOME subsidy only full 12-month periods of occupancy will be utilized in the calculation. For example, if Buyer sells or transfers the Eligible Property during the seventh year, before the completion of the full seventh year of a fifteen-year Period of Affordability, the City would recover sixty percent (60%) of the HOME Subsidy and the balance (forty percent [40%]) would go to the Buyer:

$(6 \text{ years} \div 15 \text{ years}) \times 100 = 40$. Assuming sufficient Net Proceeds, City would recover sixty percent (60%). If there were not sufficient Net Proceeds, City would recover sixty percent (60%) of Net Proceeds, whatever the amount.

(c) In no event shall City's recovery exceed the amount of the Net Proceeds.

Section 11. Governing Law. This Affordable Housing Covenant shall be governed by the laws of the State of California.

Section 12. Amendment. This Affordable Housing Covenant may be amended only by a written instrument executed by Buyer and City.

Section 13. Severability. If any provision of this Affordable Housing Covenant is declared invalid, inoperative or unenforceable by a final judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining parts of this Affordable Housing Covenant which are hereby declared by the parties to be severable from any other part which is found by a court to be invalid or unenforceable.

Section 14. Time is of the Essence. For each provision of this Affordable Housing Covenant which states a specific amount of time within which the requirements thereof are to be satisfied, time shall be deemed to be of the essence.

Section 15. Notice. Notices, demands, and communications between City and Buyer shall be sufficiently given if: (1) personally delivered with a delivery receipt; (2) delivered by a

nationally recognized courier service with a delivery receipt; or (3) sent by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

If to City: City of San Bernardino
 Community and Economic Development – Housing Division
 290 North “D” Street Third Floor
 San Bernardino, CA 92401-1734
 Phone: (909) 384-5357

If to Buyer: _____

Notices shall be effective upon the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the notice was returned as undeliverable.

Section 16. Entire Agreement. Except as to matters set forth in the other agreements to which reference is made herein, this Affordable Housing Covenant is the parties’ entire agreement with respect to the matters set forth herein and supersedes all prior negotiations and oral or written agreements or expressions of the parties with respect thereto.

[Signatures on next page]

IN WITNESS WHEREOF, City has caused this Affordable Housing Covenant to be signed, acknowledged and attested on its behalf by duly authorized representatives in counterpart original copies which shall upon execution by all of the parties be deemed to be one original document.

City of San Bernardino

Date: _____

By: _____
Rochelle Clayton, Acting City Manager

Buyer

Date: _____

EXHIBIT “A” TO QUALIFIED HOMEBUYER HOUSING AFFORDABILITY COVENANT

Legal Description

Real property in the City of San Bernardino, County of San Bernardino, State of California,
described as follows:

ATTACHMENT J TO MASTER AGREEMENT

Affirmative Marketing Requirements

In accordance with the California Fair Employment and Housing Act and the policy of the City of San Bernardino, the Developer or designees must adhere to the following affirmative marketing guidelines in order to create awareness for the general public and certain community groups as to the availability of Eligible Properties available for sale to low-income households.

APPLICABILITY

Developer is required to provide an affirmative marketing plan and procedures for all developments with HOME-assisted units. Procedures to be used must identify how persons in the housing market area who are not likely to apply for the housing without special outreach, shall be informed of available affordable housing opportunities. The City has identified three groups as least likely to. apply without special outreach efforts, namely, African American, Asian American and Pacific Islanders, and Hispanic persons.

THE AFFIRMATIVE MARKETING PLAN

The Developer's Affirmative Marketing Plan must consist of a written marketing strategy designed to provide information and to attract eligible persons in the housing market area to the available units without regard to race, color, national origin, sex, religion, marital and familial status, disability, medical condition, sexual orientation, or ancestry. It must describe initial advertising, outreach (community contacts) and other marketing activities, which will inform potential buyers of the availability of the units. It shall also outline an outreach program which includes special measures designed to attract those groups identified as least likely to apply without special outreach efforts, (because of existing neighborhood racial or ethnic patterns, location of housing or other factors) and other efforts designed to attract persons from the total eligible population.

The Developer must do the following:

1. Insert Equal Housing Opportunity logotype, statement or slogan on all written outreach tools (i.e., signs, advertisements, brochures, direct mail solicitations, press releases, etc.)
2. In addition to the above, the Affirmative Fair Housing Marketing Plan shall outline:
 - a. Commercial and Social Media to be used (i.e., community newspapers and newspapers, radio, television, billboards, religious or local real estate publications, etc.).
 - b. Marketing efforts to be used (i.e., brochures, letters, handouts, direct mail, signs, etc.)
 - c. Community Contacts to supplement formal communications media for the purpose of soliciting group(s) least likely to purchase the available housing

without special outreach efforts. They should be individuals or organizations (i.e., service agencies, community organizations, places of worship, etc.) that have direct and frequent contact with those identified as least likely to apply. The contacts should also be chosen on the basis of their positions of influence within the general community and the particular target group. The Property Owner must agree to establish and maintain contact with the identified contacts.

- d. In accordance with the City's Limited English Proficiency (LEP) Plan, all advertising and program information must also be available in Spanish.

BUYER SELECTION

1. The Developer must maintain records of all prospective homebuyer applicants, including their race, ethnicity and gender (if provided voluntarily by the applicant), reasons for denial of application, placement on a waiting list, etc.
2. The Developer must provide for the selection of applicants from a written waiting list in the chronological order of their application and provide prompt written notification to any rejected applicants of the grounds for any rejection: