

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Community and Human Development
AGENDA DATE: October 27, 2015 (Consent)
CONTACT PERSON: Verónica R. Soto, AICP, Director, 212-0138
DISTRICT: 3 and 8

SUBJECT:

Discussion and action on a Resolution that City Council approve that the City Manager be authorized to sign a revised Investor HOME Written Agreement in a form substantially similar to the form contract specified in Exhibit A by and between the City of El Paso (the "City") and the following Tax Credit Project developers, as well any related contract document necessary to effectuate the awards and to secure and protect the City's lien interest, upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office: (1) Haymon Krupp, LP – 10200 Hedgerow, El Paso, TX - \$500,000 and (2) El Paso Tays, LP – 2114 Magoffin, El Paso, TX - \$100,000.

BACKGROUND / DISCUSSION:

The Department of Housing and Urban Development (HUD) required a change to the Investor HOME Written Agreements submitted earlier in the year that necessitate changes to the financing terms for the City's HOME loan.

**1. Paisano Housing Redevelopment Corp. – Haymon Krupp Development -10200 Hedgerow
District 3**

Project Type: The land will be obtained through a 75-year Ground Lease, with demolition and construction of 96 total units for low income households, consisting of 46 2-Bedrooms, 42 3-Bedrooms and 8 4-Bedrooms. Amenities include washers and dryers, energy star dishwashers and refrigerators, ranges, microwaves, stucco exterior, shingle roofs, as well as on-site daycare. There will be 15 HOME-funded units for the City's contribution, of which 12 units will be rented to households at $\leq 60\%$ AMI and 3 units will be rented to households at $\leq 50\%$ AMI. There will be 7 2-Bedrooms, 6 3-Bedrooms and 2 4-Bedroom HOME units that will be monitored by the City to ensure the 20 year affordability period remains in compliance with HUD regulations.

Total Development Cost:	\$12,168,520
City of El Paso Funding	\$500,000

Terms and Affordability:

Original: 80% Amortized Loan - \$400,000 @ 0% interest for 30 years AND 20% Forgivable Deferred Payment Loan - \$100,000 @ 0% interest for 30 years. Affordability Period: 20 years. City of El Paso in 2nd lien position.

Revised:

- 50% hard loan (\$250,000) at 0% interest, payable in generally equal annual installments for 30 years; will be subordinated to the primary lender permanent financing (2nd lien position)
- 50% soft loan (\$250,000) at 3% interest to be paid from available cash flow; this loan will be in front of the HACEP gap loan in priority for payments from the available cash flow

Affordability Period: 20 years

The City of El Paso will be in 2nd lien position.

2. Paisano Housing Redevelopment Corp. – Tays Development - 2114 Magoffin

District 8

Project Type: The land will be obtained through a 75-year Ground Lease, with demolition and construction of 198 total units for low income households, consisting of 40 1-Bedroom, 120 2-Bedrooms and 38 3-Bedrooms. Amenities include washers and dryers, energy star dishwashers and refrigerators, ranges, microwaves, stucco exterior, shingle roofs, as well as on-site commercial laundry room. There will be 5 HOME-funded units for the City's contribution, consisting of 1 1-Bedroom, 2 2-Bedrooms and 2 3-Bedroom units, of which 4 units will be rented to households at \leq 60% AMI and 1 unit will be rented to households at \leq 50% AMI. The HOME-funded units will be monitored by the City to ensure the 20 year affordability period remains in compliance with HUD regulations.

Total Development Cost:	\$14,238,215
City of El Paso Funding	\$100,000

Terms and Affordability:

Original: 50% Amortized Loan - \$50,000 @ 0% interest for 30 years AND 50% Forgivable Deferred Payment Loan - \$50,000 @ 0% interest for 30 years. Affordability Period: 20 years; City of El Paso will be in 3rd lien position. (First monthly payment due 90 days from project completion)

Revised:

- 50% hard loan (\$50,000) at 0% interest, payable in generally equal annual installments for 30 years; will be subordinated to the primary lender permanent financing (2nd lien position)
- 50% soft loan (\$50,000) at 3% interest to be paid from available cash flow; this loan will be in front of the HACEP gap loan in priority for payments from the available cash flow

Affordability Period: 20 years

The City of El Paso will be in 2nd lien position.

PRIOR COUNCIL ACTION:

January 7, 2014: City Council approved resolutions of support and financial assistance subject to an award of Low Income Housing Tax Credits from the 9% Statewide At-Risk application

February 25, 2014: City Council increased financial assistance commitment for Haymon Krupp to make the tax credit application more competitive.

June 23, 2015: City Council approved Resolution authorizing the City Manager to sign Investor Written Agreements after tax credits were awarded by Texas Dept. of Housing & Community Affairs.

AMOUNT AND SOURCE OF FUNDING:


These developments will be funded through HOME Entitlement grant funds and HOME Program Income and funds are available in accounts: 471-71150-2030- G7112HMO, G_7113HM, G7114HMO (Fiscal Years 2012 thru 2014) and G710RLFME (HOME Program Income).

BOARD / COMMISSION ACTION:

N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:


Verónica R. Soto, AICP, Director

Information copy to appropriate Deputy City Manager

RESOLUTION

WHEREAS, on June 23, 2015, the City entered into Investor HOME Written Agreements related to the Redevelopment of the Haymon Krupp and Tays Developments; and

WHEREAS, the parties now wish to revise the Investor HOME Written Agreements in order to reflect the revisions requested by the Department of Housing and Urban Development.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a revised Investor HOME Written Agreement in a form substantially similar to the form contract specified in Exhibit A by and between the City of El Paso (the "City") and the following Tax Credit Project developers, as well as any related contract document necessary to effectuate the awards and to secure and protect the City's lien interest, upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office: (1) Haymon Krupp, LP – 10200 Hedgerow, El Paso, TX - \$500,000 and (2) El Paso Tays, LP – 2114 Magoffin, El Paso, TX - \$100,000.

APPROVED this ____ day of _____, 2015.

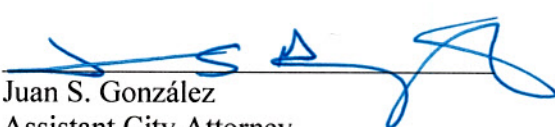
CITY OF EL PASO

ATTEST:

Oscar Leaser
Mayor


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Juan S. González
Assistant City Attorney

APPROVED AS TO CONTENT:



Verónica R. Soto, Director
Community and Human Development

STATE OF TEXAS }
 }
COUNTY OF EL PASO }

**INVESTOR HOME PROGRAM
WRITTEN AGREEMENT**
(Rental Housing Project, 5 or More Units)

THIS INVESTOR HOME PROGRAM WRITTEN AGREEMENT (the "HOME Program Written Agreement or this "Agreement") is entered into this _____ day of _____, 2015, by and between THE CITY OF EL PASO, hereinafter referred to as the "City" and HAYMON KRUPP, LP, hereinafter referred to as "Borrower."

WHEREAS, the City has received a formula grant for Fiscal Year 2012 from the U.S. Department of Housing and Urban Development ("HUD") under the HOME Investment Partnerships Program, hereinafter referred to as "HOME," as enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625, approved November 28, 1990); and

WHEREAS, the El Paso City Council meeting in regular session on February 25, 2014, adopted a Resolution establishing a Fiscal Year 2014 HOME project for the City, which allows the use of funds by Borrower under the project designated; and

WHEREAS, the Director of the City's Department of Community and Human Development (the "Director") has recommended approval of an amortizing loan and a non-amortizing loan to Borrower, subject to the terms specified herein below, and the El Paso City Council, meeting in regular session on October ___, 2015, by sufficient vote approved such loans to Borrower, subject to the terms specified herein below; and

WHEREAS, the City has determined to award HOME funds to Borrower to assist in the development of the Project, subject to the conditions and terms herein, and Borrower agrees to comply with all applicable HOME Program requirements;

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by Borrower from the City, the parties hereto do mutually agree to be bound by all terms and conditions of this Agreement, and all documents incorporated by reference herein, as follows:

WITNESSETH:

I. DESCRIPTION OF PROPERTY AND PROJECT

The subject matter property (the "Property" is located at **10200 HEDGEROW CT., El Paso, Texas** and legally described in **Exhibit "A"**, attached

The City hereby agrees to lend Borrower funds not to exceed the total amount of FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$500,000.00) subject to the terms hereinafter specified, to be drawn from FY 2012 HOME funds.

A. Borrower agrees to fully and completely comply with all of the applicable terms and conditions of this Agreement. Borrower further agrees to take all necessary action to perfect and protect City's lien position as specified in Section III of this Agreement for the life

of the Deed of Trust (With Power of Sale), attached as **Exhibit "B"** or in a form acceptable to the City. City's lien being evidenced by said Deed of Trust (With Power of Sale) so attached as **Exhibit "B,"** and the Declaration Concerning Covenants and Restrictions Running with the Leasehold Interest, attached hereto as **Exhibit "C"** (the "Declaration"), are both to be recorded in the El Paso County Real Property Records. Borrower expressly acknowledges that it will be Borrower's obligation to procure any additional private funding (in excess of the above-referenced amount) for completion of the development and construction of Project and if additional private funding not originally anticipated becomes available for the Project, which shall mean Borrower has received a firm commitment from the applicable source of funding, Borrower will promptly notify the City so that the City's public financing may be reduced in the amount of such funding if and when funded to Borrower.

B. City hereby agrees to provide HOME funds in the amount of THIRTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE DOLLARS AND 33/100THS DOLLARS \$33,333.33 per unit of the eligible construction costs according to all terms and conditions as specified in the Agreement, including, but not limited to, the following terms and conditions:

(1) The City hereby agrees to provide a portion of the HOME funds allocated to the Project pursuant to the terms of a non-amortizing loan in the amount of TWO HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$250,000.00) using HOME Investment Partnerships funds, in accordance with and as evidenced by a Non-Amortizing Promissory Note of even date herewith, attached as **Exhibit "D"** and incorporated by reference herein (the "Non-Amortizing Loan Note").

(2) The City hereby further agrees to provide the remainder of the financing required to fund the eligible construction costs as an amortizing loan in the amount of TWO HUNDRED FIFTY THOUSAND AND NO/100THS DOLLARS (\$250,000.00) in accordance with and as evidenced by the Amortizing Loan Promissory Note attached hereto as **Exhibit "E"** and incorporated by reference herein (the "Amortizing Loan Note"), as more fully specified in the Amortizing Loan Note.

(3) HOME funds shall be approved and funds shall be advanced to Borrower as reflected on the Disbursement Schedule attached hereto as **Exhibit "F"**, and subject to the terms described herein, to include but not be limited to those contained in Sections III. and IV. below, as well as any other terms and conditions specified in the Agreement. Notwithstanding the foregoing, in the event that closing on the City loan(s) as contemplated herein should be delayed such that the dates reflected on **Exhibit "F"** become unviable, the City and Borrower covenant and agree to utilize commercially reasonable efforts to revise the Disbursement Schedule as may be necessary to effectuate the intent of this Agreement.

(3)(a) Disbursement of public funds shall be made within ten (10) business days upon Receipt by City of Borrower's written request for such, the documentation as required herein has been provided and upon the approval of the Director. Borrower shall not request disbursement of HOME funds until they are needed to pay eligible costs and each disbursement request shall be limited to the amount needed. Such disbursement may be withheld by the Director if, in the reasonable exercise of Director's discretion, Borrower has failed to fulfill the requirements of this Agreement. Disbursements shall be made in accordance with Borrower's Project Budget, attached hereto as **Exhibit "G"** (the "Project Budget"),

which may be updated and revised upon prior approval of the Director, provided however, the revised Project Budget for the FIFTEEN (15) HOME-Assisted Units may not exceed FIVE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$500,000.00). Pursuant to Title 24 of the Code of Federal Regulations ("24 CFR") 92.206(d), estimated project delivery costs allocated for the Project are \$10,000.00 and are included in the Project Budget. Disbursement of HOME funds for project delivery costs will be at the Director's discretion and in accordance with the Project Budget; provided however, if the Project construction schedule is extended or delayed, the project delivery costs budget item will be proportionately increased with the additional cost being drawn from the construction contingency budget item, thereby reducing the construction contingency funds set-aside for the Project.

(b) Loan payments on the Non-Amortizing Loan Note and Amortizing Loan Note shall be due as specified in the Amortizing Loan Note.

(c) Borrower shall have not more than THIRTY (30) years from the due date of the first payment in which to repay in full all principal and interest due and owing on such loans in accordance with the terms and conditions of the Non-Amortizing Loan Note and the Amortizing Loan Note.

(d) The purpose of the loan(s) is to provide Borrower with funds to construct FIFTEEN (15) HOME-assisted rental units ("HOME-Assisted Units") on Borrower's Property located at 10200 HEDGEROW CT., as more fully described in **Exhibits "A" and "B."** Borrower agrees that within EIGHTEEN (18) months from the date of this Agreement the FIFTEEN (15) HOME-Assisted Units will be completed and occupied by tenant households with incomes that do not exceed sixty percent (60%) of the area median income and paying no more than the High HOME rent. There is no other use of said funds authorized by the City, and the use of the City's funds by Borrower for any other purpose shall constitute a breach of contract by Borrower for which the City may pursue any and all remedies, whether at law or equity, which are available to the City, subject to Borrower's rights to cure any default following THIRTY (30) day written notice, as provided in Section V in this Agreement.

(e) Borrower shall maintain the Project Schedule attached as **Exhibit "H"** for carrying out the required tasks to complete the Project, which may be updated and revised upon prior approval of the Director, which shall not be unreasonably withheld, conditioned or delayed.

(f) The plans and specifications approved by the City for the construction and/or rehabilitation of the Project are incorporated by reference herein.

(g) The Rehabilitation Act of 1973 (29 U.S.C. § 794) and the implementing regulations at 24 CFR Part 8 apply to this Project. All common spaces in the Project must be made accessible in accordance with the Uniform Federal Accessibility Standards (UFAS). For new construction of multifamily rental projects of five (5) or more units, a minimum of five percent (5%) of the total number of dwelling units in a project (but not fewer than one (1) unit) must be accessible to individuals with mobility impairments in accordance with the UFAS. An additional two percent (2%) of the dwelling units (but not fewer than one (1) unit) must be accessible to individuals with hearing or vision impairments. The calculation of accessible units is based on the total number of units in the Project, not just the HOME-Assisted Units. Further all covered units must be built to conform to the design and constructions requirements of the Fair Housing Act.

(5) No HOME funds will be advanced and no reimbursable costs can be incurred until the City has conducted an environmental review of the Property sites as required under 24 CFR Part 58. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58. The parties further agree that the provision of any funds to the Project is conditioned on the City's determination to proceed with, modify, or cancel the Project based on the results of a subsequent environmental review (HUD Community Planning and Development (CPD) Notice 01-11).

C. Borrower may prepay at any time all or part of the current balance of the Non-Amortizing Loan Note or the Amortizing Loan Note. Such prepayment, if any is made, will be applied first to any interest due or late payment fees and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Agreement. Prepayment will not release Borrower from fulfilling the HOME covenants described in Section IV of this Agreement, including but not limited to the HUD-mandated minimum affordability period.

D. It is expressly understood and agreed by the parties hereto that the City's obligations under this Section I. are contingent upon the actual receipt of adequate federal funds to meet the City's obligations under this Agreement. The City anticipates that it will receive adequate federal funds to meet the City's obligations under the Agreement; however, if adequate funds are not available to make payments under this Agreement, the City shall notify Borrower in writing as soon as practicable after such fact is determined. The City shall thereupon terminate this Agreement, will not be liable for failure to make payments to Borrower under this Agreement, and will release Borrower of all obligations under this Agreement and any and all related documents.

E. Borrower will be required to provide the following additional sources of funding for the Project:

- a. Approximately SEVEN MILLION NINE HUNDRED NINETY-NINE THOUSAND TWO HUNDRED AND NO/100THS DOLLARS (\$7,999,200.00) in equity generated from the sale of federal low income housing tax credits related to the Project ("LIHTC Equity");
- b. A first priority construction loan from Bank of the West in the amount of approximately NINE MILLION EIGHT HUNDRED THOUSAND AND NO/100THS DOLLARS (\$9,800,000.00) ("First Mortgage Construction Loan");
- c. A first priority permanent loan from Bank of the West in the amount of approximately FOUR MILLION TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$4,025,000.00) ("First Mortgage Permanent Loan");
- d. Third priority construction and permanent loan in the amount of approximately FOUR MILLION FOUR HUNDRED FIFTY THOUSAND TEN AND NO/100THS DOLLARS (\$4,450,010.00) from the Paisano Housing Redevelopment Corporation acting under a grant agreement for such funds from the Housing Authority of the City of El Paso ("Public Housing Funds Construction Loan"); and

- e. Fourth priority permanent loan in the amount of approximately _____ (\$_____) from the Paisano Housing Redevelopment Corporation acting under a grant agreement for such funds from the Housing Authority of the City of El Paso.

Additional sources may include federal funds, state or local funds, developer equity, and/or donations from other entities; specific uses of the funds might include land development, construction, professional fees, management fees, financing, and construction contingency costs.

To the extent permitted by HUD regulations during the term of this Agreement, Borrower agrees to pay a reasonable annual fee for compliance monitoring during the affordability period, to cover the City's cost of ongoing monitoring and physical inspection of the HOME-Assisted Units. If and when HUD regulations permit such a fee for monitoring costs, the first annual fee shall be \$300.00 ("base fee amount") for all 15 units, which will be subsequently adjusted annually thereafter to reflect any increase in inflationary costs above the base fee amount.

F. Any proceeds from the HOME Units will be considered Investor proceeds that may be retained by Borrower and must be used in conformance with 24 CFR § 92.503, for other housing activities to benefit low-income families.

G. The Borrower shall place in a segregated Replacement Reserve Account funds in the amount of THREE HUNDRED FORTY AND NO/100THS DOLLARS (\$340.00) per unit per year in accordance with the Partnership Agreement. The funds shall be used for the expressed purpose of assuring the safety and long term viability of the Project properties and shall be limited to capital replacement improvements as follows:

Replacement of existing items to include: appliances (stoves, refrigerators of same or comparable models); screen doors (same or comparable styles); exterior and interior doors (same or comparable styles); gutters/downspouts; windows (same or comparable styles); hot water tanks (same or comparable styles); HVAC System to include Roof Jacks, evaporative units, motors (pumps-filters and pads excluded) (same or comparable styles); carpet-VTC or ceramic floorings; bathtubs/sinks/showers/toilets (same or comparable styles); roofing (repair and/or replacement); concrete sidewalks, parking areas (repair and/or replacement); painting (exterior only); Stucco or other structural repairs/replacements; and Irrigation System.

(1) Borrower shall have the right to withdraw funds from the Replacement Reserve Account as deemed necessary and appropriate to address the replacement/repair of the aforementioned items. Documentation of unit, item replaced, costs, and proof of payment must be maintained by Borrower and is subject to review by the City's Community and Human Development Department during the periodic monitoring of the Property or at other times as deemed necessary and appropriate by the City.

(2) Borrower shall prepare on an annual basis, no later than the 30th day of November, a "Proposed Capital Expenditure Plan" ("Plan"). Such Plan will forecast items or costs that may include use of Replacement Reserve funds and shall be submitted to the Director for review and approval. If the Director does not approve or otherwise reject such Plan and forecasted items and costs within a reasonable period of time, the Plan and forecasted items and costs shall be deemed approved. In the event that emergency repair(s) to necessitate the safe living environment

of the tenant(s) is needed, Borrower may make such repairs and shall inform the Director in writing within seven (7) business days of such repairs. Repairs of this nature may include, but are not limited to, replacement of HVAC system, hot water tank replacement, electrical and plumbing issues, or structural damages that would cause harm to the tenant(s).

(3) Borrower shall on a semi-annual basis (July 31, for the period of January 1 to June 30 and January 31, for the period of July 1 to December 31) issue to the Director a report indicating: (a) the amount of funds deposited into the Replacement Reserve Account (to include bank statements); (b) the amount of funds withdrawn from the Replacement Reserve Account; and (c) documentation of expenses related to the withdrawals from the Replacement Reserve Account. Such documentation shall include receipts, proof of payment (e.g., cancelled check) and other support documentation as requested. Such report shall be filed on the approved form and shall bear the signature of Executive Director and/or President of Borrower. Such report shall only be issued in the event Replacement Reserve funds were utilized during the applicable period. It shall be Borrower's responsibility to maintain within its corporate offices documentation of such expenditures for review and monitoring by the City, HUD, or their authorized representatives or designees.

II. REPRESENTATIONS AND WARRANTIES

A. Borrower represents that the information furnished to the City upon which the City relied to make this loan(s) is correct and true as of the date given. Borrower hereby represents that each of said Borrower's representatives have the authority and capacity to commit to a financial obligation on behalf of Borrower. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations to construct the HOME-Assisted Units. Borrower further represents that it will own any and all buildings in the Project, subject to any and all restrictions, easements, covenants, and other matters of record.

B. Borrower agrees and understands that approval of the loan(s) has been made by consideration of and in reliance upon various data furnished by Borrower, and agrees that should any of said data prove to be false or materially misleading in any way, subject to Borrower's rights to cure any default following thirty (30) day written notice, as provided in Section V in this Agreement, the City shall have the right to unilaterally terminate this Agreement for unremedied breach thereof and demand repayment in full of all principal advanced and all accrued interest under the terms of the Non-Amortizing Loan Note, as evidenced by **Exhibit "D"**, and of all principal advanced and all accrued interest, if any, under the terms of the Amortizing Loan Note, as evidenced by **Exhibit "E,"** plus all costs of collection.

C. This Agreement is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

III. CONDITIONS PRECEDENT

Borrower agrees to fully comply with the following terms and conditions, as a condition precedent to Borrower's receipt of any and all public financing described herein:

A. Borrower shall execute all documents necessary to impose the Declaration required by the HOME program described in the Code of Federal Regulations; a copy of the

Declaration to be recorded in the El Paso County Real Property Records is attached hereto as **Exhibit "C"** and incorporated herein by reference. The Declaration shall run with the Property and shall inure to the benefit of the City. If the City succeeds in enforcing or enjoining the violation of any restriction, the City shall be reimbursed for its court costs and reasonable attorneys' fees incurred in such action.

B. Borrower agrees to provide the City with the Collateral Assignment of Promissory Note, Deed of Trust (Power of Sale), and Declaration Concerning Covenants and Restrictions Running with the Leasehold Interest in the form attached as **Exhibit "O-1"** hereto.

C. Borrower agrees to take any and all necessary action to perfect such lien(s) and to protect its assigned subordinate lien position in the leasehold interest on the property described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Agreement.

D. Borrower agrees to provide the City with sufficient documentation as requested to satisfy all HOME requirements related to construction of the HOME-Assisted Units.

E. Borrower shall furnish to the City acceptable evidence of liability and casualty insurance on the Project which shall insure the replacement cost of the entire Project. This insurance coverage shall name the City as an additional insured.

F. Borrower agrees to obtain all necessary permits, licenses, and special privileges that may be required by the City prior to conducting the construction work on the Project subject to this Agreement. In the event Borrower must pay any fees for obtaining any of the above items, Borrower agrees to require Borrower to pay such to the City. Borrower shall also comply with any County, State or Federal requirements that apply to its construction activities.

G. Borrower agrees to name the City as an insured in both the performance and payment bonds, if such bonds are required under the terms of the contract between Borrower and the selected contractor(s) for the construction of the Property described herein.

If Borrower breaches any term or condition of this Section III., entitled "Conditions Precedent," and fails to cure the breach after written notice and a thirty (30) day opportunity to cure period, the entire outstanding principal amount advanced and all accrued interest under the terms of the Non-Amortizing Loan Note, as evidenced by **Exhibit "D"**, and of all principal advanced and all accrued interest, if any, under the terms of the Amortizing Loan Note, as evidenced by **Exhibit "E"**, shall immediately be declared due and payable, and the City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

IV. COVENANTS

The following covenants in Subsections A-Z of this Section IV shall apply as long as any amounts are outstanding under the Non-Amortizing Loan Note and Amortizing Loan Note, unless a longer period is specified:

A. Borrower agrees that HOME funds shall be used only for eligible acquisition and construction costs. Borrower hereby acknowledges and agrees that the HOME funds may not be used for any other purpose.

B. "Eligible construction cost(s)" as the term is used herein shall include the actual acquisition and construction cost, required appraisals, title searches, insurance, attorney's fees, architectural fees, escrow charges, tax recordation costs, and credit reports, all in the amounts associated directly with the construction of the structure, as well as relocation payments made by the property owners, in accordance with the City's Tenant Assistance Policy, to tenants who are displaced or temporarily relocated as a result of HOME projects.

C. Borrower shall take all necessary steps possible to minimize displacement as a result of this Project. Borrower also agrees to comply fully with all requirements of the Tenant Assistance Policies as developed by the City. A copy of the City's Tenant Assistance Policy has been provided to Borrower during the application process and Borrower hereby acknowledges receipt thereof. Borrower further agrees to comply with 24 CFR § 92.353 regarding displacement, relocation, and acquisition; the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. § 4201 et seq.), as applicable; and the implementing regulations at Title 49 CFR Part 24 (Relocation).

D. Borrower agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. Borrower agrees to comply with 24 CFR § 92.252, specifically to include, but not limited to, subsection (d) "Nondiscrimination against rental assistance subsidy holders".

E. Borrower hereby further agrees that for the entire HUD-mandated minimum affordability period of TWENTY (20) years from the date of project completion, the newly constructed Property will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnerships Program. Borrower further agrees to continuously comply with 24 CFR § 92.250 regarding Maximum Per Unit Subsidy; 24 CFR § 92.251 regarding Property Standards; 24 CFR § 92.252 regarding Qualification as Affordable Housing: Rental Housing, 24 CFR § 92.203 regarding Tenant Income, 24 CFR § 92.355 regarding lead-based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

1. Borrower will fulfill the HOME occupancy requirements by reserving TWELVE (12) of the HOME units that are identified as "High" HOME rent units for tenants whose income is no more than sixty percent (60%) of the City's median income for their household size and THREE (3) of the HOME units that are identified as "Low" HOME rent units for tenants whose income is no more than fifty percent (50%) of the City's median income for their household size.

2. The initial rent schedule for each HOME-Assisted Unit in the Project (as identified by bedroom size) is attached hereto as **Exhibit "I"** and incorporated by reference. The rent schedule specifies the maximum rents that can be charged, taking utilities into account,

for High HOME rent units and for Low HOME rent units. Borrower covenants that it will use the rent schedule for HOME-Assisted Units promulgated by HUD.

3. The current HOME rent limitations are outlined in **Exhibit "J"**, attached hereto and incorporated by reference are subject to periodic adjustments by HUD and will be provided to Borrower by the City as such is updated and Borrower shall provide such same information to the City. Further, the City will provide updated utility allowances to Borrower on at least an annual basis.

4. The terms and conditions regarding subsequent rent increases and HUD median income adjustments are specified in **Exhibit "K"**, "HOME Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein. The City reserves the right to amend said attachment and to notify Borrower of the changes, with a written amendment to this Agreement.

5. All HOME-Assisted Units must be maintained in compliance with the applicable state and local housing quality standards and code requirements throughout the affordability period, as required by 24 CFR § 92.251(c). If none exist, the housing must meet Housing Quality Standards (HQS) found at 24 CFR § 982.401.

6. For rehabilitation projects involving housing units that were built prior to 1978, housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K and R.

7. For purposes of this Agreement, "project completion" means that Borrower has a valid leasehold interest in the Property; construction of the Project has been completed; the Project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR § 92.251); the final drawdown has been disbursed for the Project; Borrower has submitted all necessary demographic and financial information to the City for initial occupancy of all HOME-Assisted Units; and the project completion information (which includes the demographic and financial information) has been entered into the Integrated Disbursement and Information System (IDIS) established by HUD. Once the requisite information is provided, the City agrees to use its best efforts to enter that information into IDIS within thirty (30) days of receipt.

F. Borrower agrees to comply with 24 CFR § 92.216 regarding Income Targeting:

1. Initial Occupancy --at least EIGHTY percent (80%) of the HOME-Assisted Units in this Project must be occupied by tenants with annual incomes at sixty percent (60%) or less of median income and at least TWENTY percent (20%) of the HOME-Assisted Units in this Project must be occupied by tenants with annual incomes at fifty percent (50%) or less of median income.

2. Annual reexamination.

3. It is the further intention of this Agreement that all applicable HOME requirements and conditions be fulfilled in order to assist Low and Very Low- Income persons in

obtaining suitable housing. Borrower agrees to comply with 24 CFR § 92.253 regarding Tenant and Participant Protections regarding the leases, federally-prohibited lease terms specifically identified in 24 CFR § 92.253 (b), and adoption of written tenant selection policies and criteria that conform to HUD requirements outlined in 24 CFR § 92.253(d). Further, Borrower agrees to comply with all applicable state and local tenant-landlord laws.

4. In a project containing HOME-Assisted Units and other units, the City may designate fixed or floating HOME units at the time of project commitment. The City hereby designates the HOME-Assisted Units in this Project as FIXED HOME units. At no time may a unit be both a Public Housing Unit and a HOME-Assisted Unit.

G. In order to assure compliance with the Project Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Borrower agrees to submit annually the following documentation to the City for review and approval, provided that if the City does not approve or otherwise reject such documentation within a reasonable period of time, the documentation shall be deemed approved:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that Borrower will utilize to verify tenant incomes.

2. A copy of the lease agreement form that will be utilized for the Property at 10200 HEDGEROW CT., El Paso, Texas. Borrower agrees to attach to its standard lease agreement form for the HOME-Assisted Units the Mandatory Lease Addendum to control over any conflicting prohibited lease terms, a copy of which is attached hereto as **Exhibit "L,"** which must be completed by Borrower and every tenant household in connection with the execution of the lease and upon the City's request.

3. For the HOME- Assisted Units, Borrower hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in **Exhibit "K", "HOME Program Rents and Tenant Eligibility."** Further, Borrower shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").

4. A copy of Borrower's plan for tenant participation in management decisions and fair lease and grievance procedures.

5. If applicable, a copy of Borrower's procedures for marketing the availability of accessible units to eligible persons such that reasonable, nondiscriminatory steps are taken in making sure the accessible units that become available are offered to persons who require the accessibility features.

H. Borrower agrees it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed or rehabilitated structure. Borrower further agrees to participate with the City in making all good faith efforts necessary to attract as tenants any and all classes of

individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR § 92.351 (Affirmative Marketing Policy and Procedures). For the duration of this Agreement, Borrower agrees to comply with all requirements of the City's Affirmative Marketing Policy and Procedures, attached hereto as **Exhibit "M"**. The City reserves the right to amend said attachment and to notify Borrower of the changes, with written amendment to this Agreement. Further, the City reserves the right to review on an annual basis the records that document Borrower's affirmative marketing actions. Borrower agrees to take corrective actions when the affirmative marketing requirements are not met, in accordance with 24 CFR § 92.351(a)(2)(v).

I. Furthermore, Borrower understands and agrees to reflect in legal documents that for the entire HUD-mandated minimum affordability period of TWENTY (20) years commencing on the date of Project completion of the newly constructed Property ("HUD-mandated minimum affordability period") that the HOME-Assisted Units shall remain affordable to Low- and Very Low-income individuals and/or households without regard to the term of any loan or mortgage or transfer of ownership pursuant to 24 CFR § 92.252, as evidenced by and enforced through the Declaration. Definitions of Low- and Very Low Income individuals and/or households are attached as **Exhibit "J"** and are adjusted by HUD on a periodic basis. Subject to Borrower's rights to cure any default following thirty (30) day written notice, as provided in Section V in this Agreement, failure to meet the affordability requirements for the HUD-mandated minimum affordability period shall constitute an event of default requiring immediate repayment to the City of all principal advanced and all accrued interest under the terms of the Non-Amortizing Loan Note and of all principal advanced and all accrued interest, if any, under the terms of the Amortizing Loan Note (the "HOME Funds") and additionally, the City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

J. Borrower agrees that within **ninety (90)** days after the date the City of El Paso, Housing Programs Division, approves Borrower's Acceptance Form for the newly constructed Property, as described herein, to furnish to the City data on the demographic characteristics of tenants occupying the newly constructed structure initially after construction. Such data must be of a quality acceptable to the Director.

K. Borrower further agrees to comply with subpart H – "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, and the federal regulations at 24 CFR Part 87, related to lobbying. Borrower hereby agrees to sign the Certification, attached hereto and made a part of this Agreement as **Addendum A**, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City. Borrower shall require the language of the Certification and disclosure be included in all construction contracts and subcontracts and that all contractor(s) and subcontractor(s) shall certify and disclose accordingly.

L. Borrower agrees to comply with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended and implementing regulations at Title 24 CFR Part 100), including applicable design and construction standards and other Federal Rules, regulations, and policies applicable to the performance of this Agreement. Further, Borrower agrees to assist in the City's compliance with the requirements of 24 CFR § 92.202 Site and Neighborhood Standards.

M. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape, or form in employment or under projects or activities funded in whole or in part with funds made available to Borrower pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and implementing regulations at Title 24 CFR Part 146; § 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at Title 24 CFR Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35.

N. Borrower hereby agrees to hold itself out as an equal opportunity employer in all solicitations for employment applications. Furthermore, Borrower shall comply with all the equal opportunity requirements in Title 24 CFR § 5.105, the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Part 60, and the requirements of Executive Orders 11063 and 12259 (Equal Opportunity in Housing) and the implementing regulations at Title 24 CFR Part 107. Borrower shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon Act (40 U.S.C. § 276a-276a-5) compensation requirements, if applicable, to Borrower, pursuant to 24 CFR § 92.354. The Project, regardless of the number of HOME-Assisted Units or HOME funding amount, is subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S. §§ 327-332), the requirements of the Copeland (Anti-Kickback) Act (40 U.S.C. § 276c), and Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201 et. seq.). Further, Borrower agrees to comply with the following project requirements, as applicable:

1. Every contract (including subcontracts) for the construction (rehabilitation or new construction) of housing that includes twelve (12) or more units assisted with HOME funds (for any eligible project costs under 24 CFR § 92.206) must contain a provision requiring the payment of not less than the prevailing wages for El Paso County, as pre-determined by the Secretary of Labor pursuant to the Davis Bacon Act, to all laborers and mechanics employed in the development of any part of the housing. If this subsection applies, Borrower shall stipulate in all construction contracts with its general contractor(s) engaged in furtherance of the execution of this Agreement that said general contractor(s) pay and cause its subcontractor(s) to pay not less than the prevailing wage rate for its workers and shall comply with all 24 CFR § 92.354 requirements. The Project's contractors and subcontractors shall submit required payroll certification documentation to the City for inspection, review, and certification prior to making any disbursement for the construction work. Borrower is expressly prohibited from arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions herein.

2. It is agreed that the work to be performed under this Agreement is subject to the employment and contracting requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u and the regulations issued pursuant thereto by the Secretary of HUD (the "Secretary") set forth in 24 CFR Part 135 and all applicable rules and orders of HUD issued thereunder. Section 3 requires that, to the greatest extent feasible, and consistent with existing federal, state and local laws and

regulations, opportunities for training and employment, contracting and other economic opportunities generated by the expenditure of this assistance be given to low and very low income persons and to business concerns that provide economic opportunities for these persons. The requirements of Section 3 apply to contractors and subcontractors performing work on Section 3 covered projects for which the amount of assistance is or exceeds TWO HUNDRED THOUSAND AND NO/100THS DOLLARS (\$200,000.00); and the contract or subcontract is or exceeds ONE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$100,000.00). Every Section 3 covered contract and subcontract must include the City's **Exhibit "N"** attached hereto, entitled "Section 3-Area Business and Workforce Agreement," incorporated by reference herein, and also comply with all terms and conditions of **Exhibit "O,"** attached hereto and incorporated by reference herein, entitled "Affirmative Action Plan." When applicable, **Exhibits "N"** and **"O"** will be completed and submitted to the City prior to commencement of any construction. Borrower will include or cause to be included in every contract or subcontract in connection with the project the Section 3 clause and will, at the direction of the City, take appropriate action pursuant to the contract upon a finding that the contractor or subcontractor is in violation of regulations issued by the Secretary, 24 CFR Part 135.

O. With respect to HOME-Assisted Units, Borrower shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR § 92.203; record keeping requirements of 24 CFR § 92.508; records demonstrating compliance with the applicable uniform administrative requirements of 24 CFR § 92.505; records demonstrating compliance with the labor requirements of 24 CFR § 92.354; records demonstrating compliance with the lead-based paint requirements of 24 CFR § 92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR § 92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME funds.

Pursuant to 24 CFR § 92.508, Borrower shall keep and maintain adequate records to demonstrate compliance with HOME requirements:

1. Borrower shall maintain Project records to verify at a minimum: the source and application of HOME funds, including supporting documentation; the minimum per-unit subsidy amount and maximum per-unit subsidy amount for the Project; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. Borrower shall maintain tenant records to verify at a minimum that: the HOME-Assisted Units are satisfying the affordability and income targeting requirements for the required period; tenants are income eligible; the HOME-Assisted Units are in compliance with tenant and participant protections of 24 CFR § 92.253. Such documentation must be kept for each HOME-Assisted Unit household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

3. For general rental housing projects, records must be retained for five (5) years after the Project completion date; except that records of individual tenant income verifications, Project rents, and Project inspections must be retained for the most recent five-year period or until five (5) years after the HUD-mandated minimum affordability period terminates, whichever date is later.

4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required record, whichever is later.

5. Borrower further agrees to allow the City to conduct periodic Project monitoring and evaluation activities as determined necessary by the City and HUD and/or their designees. Borrower agrees that it will make its premises and records available for such on-site, physical inspection and monitoring upon advance notice during regular business hours.

P. Borrower agrees to execute any and all notes, security agreements, financing statements, affordability covenants, builder's and mechanic's liens and deeds of trust and any other documents or amendments that are consistent with this Agreement and are reasonably necessary for perfection of the City's lien or lien interests in the form submitted by Counsel for the City. Borrower further agrees to cooperate with the City in re-signing any documents to correct errors or omissions, if any, in any form or legal document required by the City or HUD.

Q. Borrower agrees to use all best good faith efforts to close on the City loan(s) advanced herein within ONE HUNDRED TWENTY (120) consecutive calendar days from the date of approval by the City Council. Where justified, the anticipated closing date may be extended for a reasonable time period, as determined by the Director and at the Director's sole discretion. Notwithstanding the foregoing, in the event that closing on the City loan(s) as contemplated herein shall not have occurred by April 30, 2016, Borrower shall give prompt written notice of such failure to the Director and this Agreement shall automatically terminate and be of no further force or effect whatsoever.

R. Upon reasonable request and reasonable prior notice, City shall have the right at all times to inspect Borrower's business premises, and its books and records relating to employment. Borrower agrees that, upon reasonable request and reasonable prior notice, it will make its premises and records available for such inspection by City. Borrower further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Borrower for the purpose of making an audit, examination, excerpts, and transcriptions.

S. Borrower is prohibited from assigning this Agreement in whole or in part in any manner without the written consent of the City. Borrower hereby understands and agrees that if the newly constructed Property, as described herein, is voluntarily or involuntarily sold or transferred in whole or in part within the HUD-mandated minimum affordability period, as further described hereinabove the City shall declare the entire balance of all principal advanced and all accrued interest under the terms of the Non-Amortizing Loan Note, as evidenced by **Exhibit "D"**, and of all principal advanced and all accrued interest, if any, under the terms of the Amortizing Loan Note, as evidenced by **Exhibit "E,"** immediately due and payable following Borrower's failure to cure the breach after written notice and a thirty (30) day

opportunity to cure period.

T. Borrower hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan(s).

U. This Agreement may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

V. RISK ALLOCATION – LIMITATION OF LIABILITY

1. No Indemnification. The parties expressly agree that neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

2. Governmental Function. The parties expressly agree that, in all things relating to this Agreement, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function. The parties also agree that Borrower is entering into this Contract as part of its mission to provide El Paso residents with access to low income housing.

3. Exclusion of Incidental and Consequential Damages. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind – including lost profits, loss of business, or other economic damage, and further including injury to property, mental and emotional distress – as a result of breach of any term of this Contract, regardless of whether the party was advised had other reason to know, or in the fact knew of the possibility thereof.

4. Maximum Aggregate Liability. Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, IN NO EVENT SHALL THE CITY AGGREGATE LIABILITY TO BORROWER (INCLUDING LIABILITY TO ANY PERSON OR PERSONS WHOSE CLAIM OR CLAIMS ARE BASED ON OR DERIVED FROM A RIGHT OR RIGHTS CLAIMED BY BORROWER), WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF CONSIDERATION ACTUALLY PAID BY THE CITY UNDER THE TERMS OF THIS AGREEMENT.

5. Intentional Risk Allocation. Borrower and the City each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

W. No member, officer, or employee of the City, or its designees or agents, no member of the governing body of the City and no other public official of the City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Agreement during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Agreement. Borrower further agrees to comply with all provisions contained in 24 CFR § 92.356 "Conflict of Interest." Unless expressly permitted by the City in writing, no developer, officer, employee, agent or consultant of Borrower, may occupy a HOME-Assisted Unit in the Property.

X. Borrower certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Borrower shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the nonprocurement debarment and suspension standard. Borrower will verify and document that none of the contractors engaged by the Borrower for construction of the Project are debarred, suspended, or otherwise excluded from participation through the effective use engaged by Borrower for construction of the Project of the List of Parties Excluded from Federal Procurement or Nonprocurement programs ("List"). Borrower may request assistance from the City to access the List and document results.

Y. Borrower and the City agree that the anticipated construction will involve FIFTEEN (15) HOME-Assisted Units. No HOME-Assisted Units constructed under this Agreement will be exempt from the requirements and conditions noted herein. Notwithstanding anything in this Agreement to the contrary, including without limitation, the covenants of this Section IV., Borrower shall be entitled to operate EIGHTY ONE (81) units (the "Exempt Units") without regard to the covenants herein. Without limitation on the foregoing, the City agrees that the Exempt Units shall be exempt from all of the above referenced rental and other restrictions.

Z. If applicable, Borrower must meet conditions and limitations for use of HOME funds involving faith-based activities, as specified in 24 CFR § 92.257:

1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the Federal government nor a State or local government receiving funds under the HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

2. Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this Program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this Program, and participation must be voluntary for the beneficiaries of the assistance provided.

3. A religious organization that participates in the HOME Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it

does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. An organization that participates in the HOME Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. HOME Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. To the extent allowed by applicable federal regulations for the HOME Program, and to the extent allowed by this Agreement, HOME Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the applicable federal regulations for this HOME Program. Where a structure is used for both eligible and inherently religious activities, HOME Program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds under the Title 24, Code of Federal Regulations. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

6. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, these requirements apply to all of the commingled funds.

If Borrower breaches any term or condition of this Section entitled "Covenants," subject to Borrower's rights to cure such breach following thirty (30) day written notice as provided in Section V in this Agreement, the entire outstanding principal advanced and all accrued interest under the terms of the Non-Amortizing Loan Note, as evidenced by **Exhibit "D"**, and of all principal advanced and all accrued interest, if any, under the terms of the Amortizing Loan Note, as evidenced by **Exhibit "E"**, may immediately be declared due and payable, and the City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement, entitled "Events of Default."

V. EVENTS OF DEFAULT

A. Upon breach of this Agreement by Borrower and following Borrower's failure to cure the breach after written notice to Borrower and a thirty (30) day opportunity to cure period, the City has the right to accelerate the payment of the loan, as evidenced by **Exhibits "D,"** and **Exhibit "E"**, respectively, and the City further has the right to declare the entire outstanding principal advanced and all accrued interest under the terms of the Non-Amortizing Loan Note and the entire outstanding principal advanced and all accrued interest,

if any, under the terms of the Amortizing Loan Note are immediately due and payable by Borrower to the City at the time of the contract breach. The City's right to accelerate the loan shall apply to all events as specifically designated in Sections III. And IV. of this Agreement, and to the following events, but shall not be limited to these events:

- (1) material errors in the representations and warranties given to City by Borrower;
- (2) Borrower's failure to perform any of the covenants or conditions precedent as stated in this Agreement which failure has, or is likely to have, a material adverse effect on the City, Borrower, or the Project;
- (3) any new or unstayed judgment or unsatisfied lien against Borrower in an amount which, in the City's reasonable judgment, may impair its security or perfection of its security status regarding the collateral subject to this Agreement;
- (4) failure to pay principal on the date due;
- (5) Borrower's timely payment of principal, interest or any other amount due by check or automatic check withdrawal for which insufficient funds exist;
- (6) Borrower's failure to comply with the timelines required for completion of the construction of the HOME-Assisted Units, specified this Agreement and in **Exhibit "H"** (Project Schedule); or
- (7) Borrower's failure to comply with the Declaration and the HUD-mandated minimum affordability period, so long as such affordability period is in effect.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Borrower's breach of this Agreement. It is hereby understood and agreed that in the event the City agrees to a settlement of any breach of contract by Borrower, this shall not preclude the City from exercising its rights for any further or additional breaches of this Agreement. This shall also apply to any instances in which the City allows a period of time to pass in excess of thirty (30) days so that Borrower has an opportunity to remedy any breach of this Agreement.

C. Notwithstanding anything to the contrary herein and in addition to any other cure provision contained herein, any limited partner of Borrower shall have the right, but not the obligation, to cure any defaults of Borrower herein, and the Lender agrees to accept cures tendered by such limited partner on behalf of Borrower within the applicable cure period.

VI. BORROWER'S LIABILITY

Borrower understands and agrees that if Borrower fails to comply with any term or condition, as specified in Section III. entitled "Conditions Precedent" or Section IV. entitled "Covenants," any other term or condition of this Agreement, or any other term or condition of any document incorporated by reference herein, such that the City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Agreement. Borrower will bear sole liability for all obligations in any way related to the

construction of the Property described herein, and the City shall be entitled to all rights and remedies reserved herein.

VIII. NOTICES

Any communications or notices regarding this Agreement shall be effective only if sent postage prepaid by (i) certified mail, return receipt (effective upon receipt or denial of receipt); (ii) regular U.S. Mail (deemed effective three (3) business days after deposit with the United States Postal Service); (iii) nationally-recognized overnight courier (effective upon receipt or denial of receipt); or (iv) hand delivery (effective upon receipt or denial of receipt), to the following addresses, unless either party notifies the other in writing of a change of address:

CITY: City of El Paso
Attn: Director, Community and Human Development
P.O. BOX 1890
El Paso, TX 79950-1890

BORROWER: Haymon Krupp, LP
c/o Housing Authority of the City of El Paso
Attn: Gerald W. Cichon, Chief Executive Officer
5300 E. Paisano Drive
El Paso, Texas 79905

With a copy to: Alden Capital Partners, LLC
Attn: Jeffrey N. Weiss
15260 Ventura Boulevard, Suite 600
Los Angeles, California 91403

And a copy to: Nixon Peabody LLP
Attention: Gary A. Band
799 9th Street NW, Suite 500
Washington, DC 20001

IX. DURATION OF AGREEMENT

This Agreement shall be effective on the date first above written and shall remain in effect for the HUD-mandated minimum affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following Project completion until terminated, and for five (5) years thereafter or until full repayment of the Loan Notes under the terms of the particular notes, whichever date is later.

X. COLLATERAL DOCUMENTS

The following Exhibits "A" –"O," Addendum A, and Addendum B are attached and incorporated by reference for all purposes.

Exhibit "A"	Legal Description
Exhibit "B"	Builder's and Mechanic's Lien Contract/Deed of Trust (With Power of Sale)/Deed of Trust (with Power of Sale)
Exhibit "C"	Declaration Concerning Covenants and Restrictions Running with

	the Leasehold Interest
Exhibit "D"	Non-Amortizing Loan Note
Exhibit "E"	Amortizing Loan Note
Exhibit "F"	Disbursement Schedule
Exhibit "G"	Project Budget
Exhibit "H"	Project Schedule
Exhibit "I"	Initial Rent Schedule
Exhibit "J"	Home rent limitations
Exhibit "K"	HOME Program Rents and Tenant Eligibility
Exhibit "L"	Mandatory Lease Addendum
Exhibit "M"	Affirmative Marketing Policy and Procedures
Exhibit "N"	Section 3-Area Business and Workforce Agreement
Exhibit "O"	Affirmative Action Plan
Exhibit "P"	Collateral Documents
Exhibit "O-1"	Collateral Assignment of Promissory Note, Deed of Trust (Power of Sale), and Declaration Concerning Covenants and Restrictions Running with the Leasehold Interest
Exhibit "O-2"	Home Loan Agreement
Exhibit "O-3"	Home Loan Note
Addendum A	Certification
Addendum B	Equal Opportunity Clause

XI. NONRECOURSE

Neither Borrower nor the direct and indirect equity owners of Borrower, including without limitation Borrower's general and limited partners, shareholders, members and/or venturers (collectively, the "Borrower Parties"), will assume or be held to any personal liability for the payment of the amounts due under, or evidenced or secured by, this Agreement, the Note and the other HOME Loan Documents, or for the performance or the breach of any of the other obligations, covenants, representations, and warranties contained in the HOME Loan Documents. In the event of any default or Event of Default under any of the HOME Loan Documents, including without limitation this Agreement, Lender's sole recourse will be limited to such collateral as may then be held by Lender pursuant to the terms of the HOME Loan Documents, and Lender will take no personal or direct action against Borrower or any of the Borrower Parties.

XII. LIMITS ON TRANSFERS

Notwithstanding anything to the contrary contained herein, the Borrower and the City agree that no prior approval is required for (i) the transfer of any limited partner interest of Borrower, (ii) the removal of a general partner of Borrower, as such transfer or removal is permitted in the Partnership Agreement, or (iii) the removal of the management agent, as permitted in Borrower's Partnership Agreement.

XIII. ENTIRE AGREEMENT

This Agreement embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties. This Agreement may only be amended by written

instrument signed by duly authorized representatives of the parties. If any term, covenant or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms, covenants and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, covenant, or provision held to be invalid.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.


THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Juan S. González
Assistant City Attorney

APPROVED AS TO CONTENT:


Verónica R. Soto, AICP, Director
Community and Human Development

BORROWER:

HAYMON KRUPP, LP, a Texas limited partnership

By: Paisano Haymon Krupp GP, LLC,
a Texas limited liability company,
its general partner

By: Paisano Housing
Redevelopment Corporation,
a Texas nonprofit corporation,
its sole member

By: _____
Gerald W. Cichon
Secretary

(The foregoing representative(s) of Borrower expressly represents that Borrower has lawfully authorized execution of this Agreement).

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this _____ day of _____, 2015, by Tomás González, as City Manager of **THE CITY OF EL PASO**, on behalf of said municipal corporation.

Notary Public, State of Texas

Notary's Commission Expires:

Notary's name (printed)

ACKNOWLEDGMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

I HEREBY CERTIFY that on or about this _____ day of _____, 2015, before me, a Notary Public for the state aforesaid, personally appeared Gerald W. Cichon, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing Ground Lease, who acknowledged that he is the Secretary of Paisano Housing Redevelopment Corporation, a Texas nonprofit corporation, the sole member of Paisano Haymon Krupp GP, LLC, a Texas limited liability company, the sole general partner of **HAYMON KRUPP, LP**, a Texas limited partnership; that he has been duly authorized to execute, and has executed, such instrument on its behalf for the purposes therein set forth; and that the same is its act and deed.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, the day and year first above written.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's Name (Printed)

Exhibit A

Property Description

[TO BE ATTACHED]

Exhibit B

Deed of Trust

[TO BE ATTACHED]

Exhibit C

Declaration Concerning Covenants and Restrictions Running with the Leasehold Interest

[TO BE ATTACHED]

Exhibit D

Non-Amortizing Loan Note

[TO BE ATTACHED]

Exhibit E

Amortizing Loan Note

[TO BE ATTACHED]

Exhibit F

Disbursement Schedule

Haymon Krupp

10200 Hedgerow

Project amount: \$500,000.00

The Borrower may request loan disbursements in accordance with the following schedule:

Disbursement #1	\$80,000.00	December 2015
Disbursement #2	\$80,000.00	March 2016
Disbursement #3	\$80,000.00	June 2016
Disbursement #4	\$80,000.00	September 2016
Disbursement #5	\$80,000.00	December 2016
Disbursement #6 (Final)	\$90,000.00	Upon completion of construction

NOTE: \$10,000.00 will be allocated for City of El Paso Project Delivery Costs.

Exhibit G

Project Budget

[TO BE ATTACHED]

Exhibit H

Project Schedule

Activity

Commencement Date

Completion Date

Closing

[INSERT]

Construction Start

Lease up

Exhibit I

Initial Rent Schedule

[TO BE ATTACHED]

Exhibit J

Home Rent Limitations

[TO BE ATTACHED]

Exhibit K

HOME Program Rents and Tenant Eligibility

[TO BE ATTACHED]

Exhibit L

Mandatory Lease Addendum for HOME Units

[TO BE ATTACHED]

Exhibit M

Affirmative Marketing Policy and Procedures

[TO BE ATTACHED]

Exhibit N

Section 3 – Area Business and Workforce Agreement

[TO BE ATTACHED]

Exhibit O

Affirmative Action Plan

[TO BE ATTACHED]

Exhibit P

Collateral Documents

[TO BE ATTACHED]

Exhibit P-1

Collateral Assignment from Paisano to City

[TO BE ATTACHED]

Exhibit P-2

Home Loan Agreement

[TO BE ATTACHED]

Exhibit P-3

Home Loan Note

[TO BE ATTACHED]

ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements The

undersigned certifies, the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

GRANTEE:

HAYMON KRUPP, LP, a Texas limited partnership

By: Paisano Haymon Krupp GP, LLC,
a Texas limited liability company,
its general partner

By: Paisano Housing
Redevelopment Corporation,
a Texas nonprofit corporation,
its sole member

By: _____
Gerald W. Cichon
Secretary

ADDENDUM B

EQUAL OPPORTUNITY CLAUSE

24 CFR § 130.15. Equal Opportunity clause.

(a) Government contracts. Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(sic)

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

(e) Incorporation by operation of the order and departmental regulations. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the

Department and the contractor.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.