CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 10/9/2014

Action Requested By:
Community
Development

Agenda Item Type

Resolution

Subject Matter:

Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to commit HOME funds to Clarkston Square L.P. for Clarkston Square Senior Apartment Community.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

This resolution will allow the Mayor to commit HOME funds to Clarkston Square L.P. for the construction of 56 Senior Housing Apartments in the amount of $385,000.

Associated Cost: 0

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____ Date: 10/9/2014

revised 4/13/2011

ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Community Development** Council Meeting Date: **10/9/2014**

Department Contact: **Scott Erwin** Phone # **256-427-5423**

Contract or Agreement: **Agreement**

Document Name: **Resolution entering into an agreement with Clarkston Square, LP**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

Procurement Agreements

Select...	Select...

Grant-Funded Agreements

Federal HUD	Grant Name: HOME Investment Partnership Grant

Department	Signature	Date
1) Originating		9/11/14
2) Legal	Mary C Cates	10/7/14
3) Finance		10/7/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 14-_____

WHEREAS, the City of Huntsville, Alabama, received a grant under Title I of the Housing and Community Development Act of 1974, as amended, from the U.S. Department of Housing and Urban Development (HUD),

BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into the Agreement between the City of Huntsville, Alabama and Clarkston Square, LP, said Agreement being substantially similar in words and figures to that document identified as "HOME Investment Partnership Program Funding Agreement between the City of Huntsville, Alabama and Clarkston Square, LP" consisting of fifty -four (54) pages, including exhibit(s) A, B, C, D, E, F, & G with the signature of the Council President or President Pro tem, and the date October 9, 2014 appearing on the margin of the first page, a copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville.

Be it Further Resolved, that approval and execution of this Agreement as referenced above shall fulfill the previously approved Agreement, Resolution 12-1041 for the commitment of City of Huntsville Home Funds approved December 6, 2012.

ADOPTED this the 9th day of October, 2014.

_____
President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 9th day of October, 2014.

_____
Mayor of the City of Huntsville,
Alabama

HOME Investment Partnership Program

Funding Agreement
between
City of Huntsville, Alabama
and
Clarkston Square, LP (hereinafter referred to as "Participant")

Dated: October 9, 2014

In accordance with the final regulations for the HOME Investment Partnerships Program found in 24 CFR Part 92 and on the basis of the application submitted, the City of Huntsville, Alabama, a municipal corporation (hereafter referred to as "City") hereby awards to the above named Participant this Agreement for federal assistance under Title II of the National Affordable Housing Act of 1990, known as the HOME Investment Partnership Act (hereafter referred to as "the HOME Program"). By accepting this award, the Participant agrees to carry out the activities set forth in its approved application in accordance with this Agreement and in accordance with all applicable laws, regulations and all other Federal or State requirements now or hereafter in effect.

This Agreement shall remain in effect for the duration of the affordability period as described in this Agreement.

Section 1: General Terms and Conditions

The following terms and conditions include some requirements from the Code of Federal Regulations. The failure to include other requirements should not be construed as an omission of these requirements. The Participant agrees to comply with all requirements of the HOME Program as set forth in the Code of Federal Regulations, including but not limited to the following parts: 24 CFR Part 92 and 24 CFR Part 58 (as amended). In instances where the City's requirements as described in this Agreement are more restrictive than the Code of Federal Regulations, the City requirements shall take precedence over the Federal regulations.

1.1 Award Information: In its approved application, the Participant requested HOME funds to perform certain work which it will undertake using the HOME Program loan proceeds (hereafter referred to as the "Project"). The Award Information, attached as Exhibit A, provides Project details.

1.2 Project Schedule: In its application, the Participant described certain work which it will undertake using the HOME Program loan proceeds. The Project Schedule agreed to between the Participant and the City is a timetable for the Participant to follow in completing the work set forth in the approved application. The Project Schedule is attached as Exhibit B to this Agreement. The Project must progress according to the Project Schedule, subject to force majeure events, unless an extension is submitted to and approved by the City in writing.

President of the City Council of the
City of Huntsville, Alabama
Date: October 9, 2014

The Participant must also comply with the following:

a) All funds must be disbursed and Project close-out requirements must be completed as identified in the Program Schedule
b) Participants are required to submit quarterly performance reports on Project status and activities until the Project is completed.
c) The Participant agrees to execute and record the Form of Deed Restriction attached as Exhibit C

1.3 **Financial Commitments:** The City must receive written confirmation of all financial commitments upon receipt. The HOME Regulations prohibit the use of HOME funds with other federal funds in a manner that would result in excessive subsidy to the property. As such, the City has the right to review all funding for the Project to ensure that there is no impermissible layering.

1.4 **Release of Funds:** The following conditions must be met before any request for release of funds can be made and/or funds will be released:

a) The City will not release any funds until all financial commitments have been approved.
b) The Participant must submit an executed Promissory Note and Mortgage (attached hereto as Exhibits D and E) prior to the release of funds.
c) The Participant may not request a release of funds until the funds are needed for payment of eligible costs as described in this Agreement. All requests must be limited to the amount needed. Program income must be expended prior to a request
d) Prior to a release of funds, the City must approve cost estimates, final work write-ups (rehabilitation), plans and specifications (new construction), and construction contracts. The City will inspect for work in place prior to a release of funds.
e) The City may withhold funds, as allowed by the applicable statutes and regulations to ensure compliance with Davis-Bacon labor standards.
f) The City, at its discretion, reserves the right to withhold payments as necessary for any outstanding compliance issues.

1.5 **Eligible Project Costs (24 CFR 92.206):** The Participant agrees to conform to the development cost budget that was submitted and approved with the application and which is attached as Exhibit F to this Agreement. The Participant will ensure that the cost budget is in conformity with the eligible costs described below.

New Construction

The following are eligible Project costs:
a) The actual cost to construct the Project;
b) The actual cost to construct laundry and community facilities which are located within the same building as the housing and which are for the use of the Project residents and their guests;
c) The actual cost for site improvements in keeping with surrounding standard Projects to include sidewalks and driveways;

d) Demolition of existing structures may be funded only if construction will begin on the Project within 12 months.

Rehabilitation

The following are eligible Project costs:

a) The actual cost to rehabilitate the Project;
b) The actual cost to rehabilitate laundry and community facilities which are located within the same building as the housing and which are for the use of the Project residents and their guests;
c) The actual cost for site improvements in keeping with surrounding standard Projects to include sidewalks and driveways;
d) Demolition of existing structures may be funded only if construction will begin on the Project within 12 months;
e) The actual cost to include essential improvements or improvements necessary to permit use by persons with disabilities and the abatement of lead-based paint hazards.

Acquisition of Vacant Land

HOME funds may be used to acquire vacant land only if construction will begin on the Project within 12 months of purchase. Land banking is prohibited.

Acquisition of Property

HOME funds may be used to acquire existing improved or unimproved real property.

Related Soft Costs

Other ***reasonable and*** *necessary* costs incurred by the Participant and associated with the financing or development (or both) of new construction, rehabilitation or acquisition. These costs include but are not limited to:

a) Architectural. engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;
b) Costs to process and settle the financing for a Project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorney fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees;
c) Costs of a Project audit that the City will require with respect to the development of the Project;
d) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by 24 CFR 92.351;
e) Staff and overhead costs directly related to carrying out the Project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and home buyers;
f) Housing counseling may be charged to Project costs only if the Project is funded and the Participant becomes the owner or tenant of the HOME-assisted Project. For multi-unit Projects. such costs must be allocated among HOME-assisted units in a reasonable manner and documented;
g) Costs of an environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the Project.

Relocation Costs

The Uniform Relocation Act and Section 104(d) apply to all HOME-assisted properties. Both permanent and temporary relocation assistance are eligible costs. Relocation payments include:

a) Replacement housing payments;
b) Payments for moving expenses;
c) Payments for reasonable out-of-pocket costs incurred in the temporary relocation;
d) Staff and overhead costs directly related to providing advisory and other relocation services to persons displaced.

1.6 **Eligible Activities (24 CFR 92.205)**: The Participant must develop and support affordable rental housing through the acquisition (including assistance to homebuyers), new construction, reconstruction or rehabilitation of non-luxury housing with suitable amenities. If a Project is terminated before completion, either voluntarily or otherwise, any HOME funds invested in the Project and any accounts receivable must be transferred to the City. The Participant has thirty (30) days from the date of termination to repay the funds to the City or the Participant risks ineligibility for future funding by the City.

1.7 **Prohibited Activities (24 CFR 92.214):** The Participant must ensure that HOME funds are not used to do any of the following:

a) Provide Project reserve accounts or operating subsidies;
b) Provide tenant-based rental assistance for the special purposes of the existing Section 8 program;
c) Provide non-Federal matching' contributions required under any other Federal program;
d) Provide assistance authorized under Section 9 of the 1937 Act (Public Housing Capital and Operating Funds);
e) Provide assistance to eligible low-income housing under 24 CFR Part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;
f) Provide assistance (other than tenant-based rental assistance, assistance to a homebuyer to acquire housing previously assisted with HOME funds or assistance to preserve affordability of homeownership) to a Project previously assisted with HOME funds during its affordability period. However, additional HOME funds may be committed to a Project up to one year after its completion, but the amount of HOME funds in the Project may not exceed the maximum per-unit subsidy amount established under 24 CFR 92.250;
g) Pay for the acquisition of property already owned by the Participant, except for property acquired with HOME funds or property acquired in anticipation of carrying out a HOME Project;
h) Pay delinquent taxes, fees or charges on properties to be assisted with HOME funds;
i) Pay for any cost that is not an eligible cost

1.8 **Property Standards (24 CFR 92.251):** The Participant must ensure that the Project meets the property standards described below:

a) The Project must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of Project completion.

b) The Project must meet the written standards for rehabilitation to ensure HOME-assisted housing is decent, safe, and sanitary.
c) The Project must meet the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926.
d) New construction must meet the current edition of the Model Energy Code published by the Council of American Building Officials.
e) The Project must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act (42 U.S.C. 3601-3619).
f) Rental Housing must be maintained in compliance with all applicable State and local housing quality standards and code requirements. If there are no such standards or code requirements, the housing must the housing quality standards in 24 CFR 982.401 for the entire duration of the affordability period.

1.9 **Maximum HOME Funds Invested per Unit (24 CFR 92.250):** The amount of HOME funds awarded to the Project on a per-unit basis may not exceed the per-unit dollar limits established by HUD.

1.10 **Affordability (24 CFR 92.252):** The Participant agrees to enforce the affordability requirements under 24 CFR 92.252(e) as applicable and agrees to repay the HOME funds if the housing does not meet the affordability requirements for the specified time period.

The Participant also agrees to the following:
a) The affordability period in rental Projects shall be a minimum of twenty (20) years and will commence on the date after all HOME assisted units associated with the Project are first occupied by eligible applicants.

1.11 **Enforcement of Rent and Occupancy Requirements (24 CFR 92.252)**: The Participant agrees to enforce the Rent and Occupancy requirements found in 24 CFR 92.252, which will be enforced by the Form of Deed Restriction. The Participant must provide an Annual Occupancy Report to the City containing information on the rents and occupancy of HOME-assisted units to demonstrate compliance. Should the rent and occupancy requirements not be met, corrective action will be enforced and the Participant may be suspended from participating in the HOME program until such time that the Project is in compliance.

1.12 **Occupancy Requirements**: At initial occupancy, Projects with 5 or more HOME-assisted rental units must have 80% of the HOME assisted units occupied by tenants who have annual incomes that are 60% or less of the Area Median Income as determined by the U.S. Department of Housing and Urban Development, with adjustments for family size. The remaining 20% of the HOME assisted units must occupied by tenants who have annual incomes that are 50% or less of the Area Median Income.

During the remaining Affordability Period, all HOME assisted units (regardless of the number of HOME-assisted rental units within the Project) must be occupied by tenants who have annual

incomes that are 80% or less of the Area Median Income as determined by the U.S. Department of Housing and Urban Development, with adjustments for family size. In properties with 5 or more HOME-assisted rental units, at least 20% of the HOME assisted units must be occupied by tenants who have annual incomes that are 50% or less of the Area Median Income as determined by the U.S. Department of Housing and Urban Development, with adjustments for family size.

The Participant may agree to further restrict the occupancy of the HOME-assisted rental units. If the Participant has agreed to do so, the occupancy restrictions for the Project are indicated on Exhibit E which is attached to this Agreement.

1.13 **Rent Limitations**: Every HOME-assisted unit is subject to rent limits. The maximum rents are referred to as "HOME Rents". HUD provides the maximum HOME rent limits each year that provide for the high and low rent limits. These rent limits are recalculated on an annual basis after HUD determines fair market rents and median incomes and provided to the City. Regardless of changes in fair market rents and in median income over time, the HOME rents for a Project are not required to be lower than the HOME rent limits for the Project in effect at the time of Project commitment (hereafter referred to as the "floor rents"). The floor rents for the Participant's Project are itemized in Exhibit G which is attached to this Agreement. Annually, the City will provide the updated established maximum monthly rent limits.

The Participant must establish and maintain maximum monthly allowances for utilities and services (excluding telephone), which will be reviewed and updated annually by the Participant. The Participant must ensure that the owner updates the utility allowance annually for rental projects.

The City may permit adjustments to the rent structure if the financial feasibility of the Project is threatened. In these cases, the Participant must submit a written request for feasibility review. Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the Participant must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

1.14 **Income Determinations:** The income of each tenant must be determined initially in accordance with 24 CFR 92.203(a)(1)(i). In verifying incomes for potential HOME beneficiaries, Participants must use the Part 5 definition (24 CFR 5.609) as defined in the *"Technical Guide for Determining Income and Allowances for the HOME Program"* provided by the U.S. Department of Housing and Urban Development, a copy of which has been provided by the City.

In addition, each year during the period of affordability, the Participant must ensure that the owner reexamines each tenant's annual income using third party source documents (e.g., wage statement, interest statement, and unemployment compensation statement) for the family or individual.

1.15 **Over-income Tenants**: HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to City are being taken to ensure that all vacancies are filled until the noncompliance is corrected.

Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that tenants of HOME assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to Section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by Section 42. In addition, where Projects in which the HOME units are designated as floating, tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units.

1.16 Tenant and Participant Protections (24 CFR 92.253): The Participant must ensure that all leases with tenants of the Project are for not less than one year, unless by mutual Agreement between the tenant and the owner. The City must approve all leases that are not for the one year period prior to execution by the owner.

Prohibited Lease Terms

The lease may not contain any of the following provisions:

a) An Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

b) An Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an Agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has *moved* out of the unit. The owner may dispose of this personal property in accordance with State law;

c) An Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

d) An Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

e) An Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

f) An Agreement by the tenant to waive any right to a trial by jury;

g) An Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

h) An Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

Termination of Tenancy

The Participant must ensure that the owner does not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew the tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

Tenant Selection

The Participant must ensure that the owner adopts written tenant selection policies and criteria that:

a) Are consistent with the purpose of providing housing for *very* low-income and low- income families;
b) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;
c) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
d) *Give* prompt written notification to any rejected applicant of the grounds for any rejection.

1.17 Program Income: The Participant will conform to the program income requirements as described below. If program income is earned, the Participant is allowed to retain it to use for HOME eligible activities approved by the City with the understanding that these funds will be expended first prior to requesting additional funds from the City.

Program income means gross income received by the Participant which is directly generated from the use of HOME funds (including HOME program income). When program income is generated by housing that is only partially assisted with HOME funds, the income shall be prorated to reflect the percentage of HOME funds.

Following is a non-exclusive list of examples:

a) Gross income from the use or rental of real property owned by the City that was acquired, rehabilitated, or constructed with HOME funds, less costs incidental to generation of the income (Note: rental income from property owned by entities other than the City does not constitute program income);
b) Payments of principal and interest on loans made using HOME funds;
c) Proceeds from the sale of loans made with HOME funds;
d) Proceeds from the sale of obligations secured by loans made with HOME funds;
e) Interest earned on program income pending its disposition; and
f) Any other interest or return on the investment of HOME funds permitted under 24 CFR 92.20s(b).

Accounting & Record Keeping for Program Income

The Participant is responsible for ensuring compliance with the records and accounting requirements described below.

a) Participants must meet the standards for financial management systems of 24 CFR Part 85.20 or 24 CFR Part 84.21, as applicable.
b) Participants must maintain records which adequately identify the source and application of HOME program income as part of the financial transactions of their HOME program.
c) The Participant must have a financial management system that enables them to track program income receivable.
d) The accumulation of program income for the purpose of funding an entire Project, or for any other purposes is prohibited.

e) Upon expiration of this Agreement, the Participant agrees to return any program income on hand as well as any future program income (accounts receivable).

1.18 **Process for Amending the Agreement:** HOME activities and Projects may undergo changes during Project implementation which may necessitate changes in scope, schedule or budget. In those cases, the Participant may seek to amend this Agreement by the following process:

a) The Participant must submit a written request including the appropriate documentation and identifiers (i.e. participant number) regarding the Project.
b) The request will be reviewed by City staff for approval. In certain cases, a scope of the budget or cost change may merit additional underwriting or reviews for cost reasonableness.
c) If the request is approved, a written amendment that reflects the approved changes to the original executed Agreement will be provided to the Participant for execution and will be subject to the approval of the Huntsville City Council and the signature of the Mayor.

Section 2: Federal Requirements

The Participant agrees to conform to **all** Federal requirements, including but not limited to those described below.

2.1 **Nondiscrimination and Equal Opportunity**: The award and this Agreement is made available in conformity with the non-discrimination and equal opportunity requirements set forth in 24 CFR 5.105(a)

2.2 **Disclosure Requirements:** The Participant must ensure compliance with the disclosure requirements and prohibitions of 31 USC 1352 and its implementing regulations at 24 CFR part 87 and with the requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 USC 3531 *et seq.).*

2.3 **Debarred, Suspended, or Ineligible Contractors and Participants**: The Participant is subject to the prohibitions at 2 CFR Part 2424 on the use of debarred, suspended, or ineligible contractors and Participants.

2.4 **Drug-Free Workplace**: The Participant must ensure compliance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.)* and HUD's implementing regulations at 24 CFR Part 21. Participants and third party contractor/consultants failing to meet these requirements will be subject to penalties.

2.5 **Affirmative Marketing and Minority Outreach (24 CFR 92.351)**:

Affirmative Marketing

Each Participant will conform to the affirmative marketing procedures and requirements provided in the approved application and management plan. The affirmative marketing management plan must consist of the steps of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to

families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

The plan must include the following:

a) Methods for informing the public, owners, and potential tenants about Federal Fair Housing Laws and the City's Affirmative Marketing Policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);
b) Requirements and practices each owner must adhere to in order to carry out the Affirmative Marketing Procedures and Requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of Fair Housing poster);
c) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, Fair Housing groups, or housing counseling agencies);
d) Records that will be kept describing actions taken by the owners to affirmatively market units and records to assess the results of these actions; and
e) A description of how the owner will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

Minority Outreach

Participants will take necessary affirmative steps to ensure that minority firms and women's business enterprises are used to the maximum extent possible for all contracts awarded in conjunction with HOME-assisted Projects.

At a minimum, the following affirmative steps must be taken:

a) Placing minorities and women on solicitation lists;
b) Assuring that minority and women's firms are solicited whenever they are potential sources;
c) Dividing the total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business enterprises, and women business enterprises;
d) Where the requirement permits, establishing delivery schedules that encourage participation by small and minority business enterprises, and women business enterprises;
e) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
f) Requiring the prime contractor, if subcontractors are to be let, to take all the same actions.

2.6 **Section 3**: The work to be performed under this Agreement is subject to the requirements of Section3 of the Housing and Urban Development Act of 1968, as amended, 12 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. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, 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 135 regulations.

The Participant agrees to send to each labor organization or representative of workers with whom the Participant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Participant'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, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The Participant agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, 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 CFR Part 135. The Participant will not subcontract with any subcontractor where the Participant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The Participant will certify that any vacant employment positions, including training positions, that are filled (1) after the Participant is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Participant's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts. 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. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) 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).

2.7 **Environmental Review (24 CFR 92.352):** The Participant must ensure that the Project was assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR Parts 50 and 58.3.

2.8 **Displacement, Relocation, and Acquisition (24 CFR 92.353):** The Participant must ensure that

it takes all reasonable steps to minimize the displacement of persons (families, individuals, businesses. Nonprofit organizations, and farms) as a result of the Project The Participant agrees to follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 USC 4201·4655) and 49 CFR Part 24 (to include 104(d) (URA).

Temporary Relocation

The following policies *cover* residential tenants who will not be required to *move* permanently but who must relocate temporarily for the Project Such tenants must be provided:

a) Reimbursement for all reasonable out-of-pocket expenses Incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

b) Appropriate advisory services, including reasonable advance written notice of:

- The date and approximate duration of the temporary relocation;
- The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
- The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the Project; and
- The right to reimbursement of all reasonable out-of-pocket expenses incurred in connection with the temporary relocation.

Relocation Assistance for Displaced Persons

A displaced person means a person (family individual, business, nonprofit organization. or farm, including any corporation. partnership or association) that moves from real property or *moves* personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a Project assisted with HOME funds. The Participant must ensure that a displaced person is provided relocation assistance at the levels described in an in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)(42 USC 4201-4655) and 49 CFR Part 24 (to include 104(d) (URA). The displaced person must be advised of his rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

2.9 **Labor Requirements (24 CFR 92.354):** The Participant agrees to conform to **all** federal labor requirements regarding laborers and contracts, including but not limited to the following:

Davis-Bacon and Related Acts (40 USC 276a et. seq.)

Participants with Projects containing 12 or more HOME-assisted units must ensure compliance with the Davis-Bacon and related acts concerning the employment of mechanics and laborers under federally-assisted contracts being paid wages and benefits equal to those that prevail in the locality in which the work is performed.

The Participant agrees that it will conform to the requirements that include but are not limited to the following:

a) Contract(s) must contain the wage provisions, which includes construction and non-construction cost or housing.
b) Payrolls will be submitted weekly to the City.
c) Payroll compliance statements will be provided with official signature that is original.
d) Participants will identify first and final payroll for the Project.
e) Participants will provide payroll(s) to include the following: contractor/ subcontractor name, business address, Project name and number, week ending date, day and date for each day in the workweek, employee name (employee address and SSN the first time employee shows up on a payroll only),employee work classification, rate of pay, straight/overtime hours worked per day, per week on this Project, gross wages, deductions from wages, and net pay.

2.10 Lead-Based Paint (24 CFR 92.355): The Project is subject to the Lead-Based Paint Poisoning Prevention Act (42 U5C 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856) and the Participant will ensure compliance with these Acts and the regulations at 24 CFR Part 35 (Subparts A. B, J,K. M and R) and 40 CFR Part 745.

2.11 Conflict of Interest (24 CFR 92.356): The Participant agrees to comply with 24 CFR 85.36 and 24 CFR 84.42 where applicable. In all cases where the provisions of 24 CFR 85.36 and 24 CFR 84.42 do not apply, the provisions of this section apply.

a) The conflict of interest provisions described below apply to any person who is an employee, agent, consultant, officer, elected official or appointed official of City or the owner, developer or sponsor of the Project.
b) No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or Agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
c) Upon written request, an exception may be granted by HUD with regard to the provisions of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the City's program or Project. An exception may be considered only after the Participant has provided the following to the City:
   • A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made;
   • An opinion of the Participant's Attorney that the interest for which the exception is sought would not violate State or local law.
d) In determining whether to grant a requested exception after the Participant has satisfactorily met the requirements described above, HUD will consider the following:
   • Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or Project which would otherwise not be available;
   • Whether the person affected is a member of a group or class of low·income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such

person to receive generally the same interests or benefits as are being made available or provided to the group or class;

• Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

• Whether the interest or benefit was present before the affected person was in a position as described in number (3) of this Section;

• Whether undue hardship will result either to the Participant or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

• Any other relevant considerations.

e) No owner, developer or sponsor of a Project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a Project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing Project who occupies a housing unit as the Project manager or maintenance worker.

f) Upon written request, the City may grant an exception on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the HOME-assisted Project.

g) In determining whether to grant a requested exception, the City will consider the following factors;

• Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

• Whether the person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted housing in question;

• Whether the tenant protection requirements are being observed;

• Whether the affirmative marketing requirements are being observed and followed; and

• Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

h) The Participant must notify the City when a conflict of interest arises. If the Participant chooses to request an exception to the conflict, the Participant must follow the process described in this Section.

2.12 Consultant Activities (24 CFR 92.358): Consultant activities must be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. A person providing consultant services in an employer-employee type relationship may not receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event may such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level *IV* of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997,Pub. L. 104-204 (September 26, 1996». If consultant services are provided in an independent

contractor relationship, the services are not subject to the compensation limitation of Level *IV* of the Executive Schedule.

2.13 Site and Neighborhood Standards (24 CFR 92.202): The Participant must provide housing that promotes greater choice and is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4), the Fair Housing Act (42 U.S.C. 3601 et seq.), Executive Order 11063 (3 CFR, 1959-1963 Comp., p. 652) and HUD regulations. For new construction, the Participant must certify that the proposed site meets the requirements in 24 CPR 983.6(b).

2.14 Religious Activities (24 CFR 92.257): The Participant agrees to comply with the following requirements:

a) The Participant agrees not to engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the assistance funded under the HOME program.
b) The Participant agrees that any inherently religious activities it conducts will be offered separately from any assistance funded under the HOME program and that participation will be voluntary for the beneficiaries of the assistance provided.
c) The Participant agrees not to discriminate against program beneficiaries or prospective program beneficiaries based on religious character, belief or affiliation.
d) HOME 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.

2.15 Uniform Administrative Requirements (24 CFR 92.505): The Participant must comply with the applicable uniform administrative requirements as described below.

Governmental Entities

A Participant that is a governmental entity must comply with the requirements of OMB Circular No. A-87, 24 CFR 85.6, 24 CFR 85.12, 24 CFR 85.20, 24 CPR 85.22, 24 CPR 85.26, 24 CFR 85.32 through 85.34, 24 CPR 85.36, 24 CPR 85.43, 24 CPR 85.44, 24 CFR 85.51 and 24 CFR 85.52.

Non-profit Organization

A Participant that is a non-profit organization must comply with the requirements of OMS Circular No. A-122, 24 CFR 84.2, 24 CFR 84.5, 24 CFR 84.13 through 84.16, 24 CFR 84.21, 24 CFR 84.22, 24 CFR 84.26 through 84.28, 24 CFR 84.30, 24 CFR 84.31,24 CFR 84.34 through 84.37, 24 CFR 84.40 through 84.48,24 CFR 84.51. 24 CFR 84.60 through 84.62, 24 CFR 84.72 and 24 CFR 84.73.

Section 3: Accountability, Financial Management & Recordkeeping

3.1 General Audit Requirements (24 CFR 92.506): Audits will be conducted in accordance with 24 CFR 84.26 and 85.26.

Participants that expend $500,000 or more in total Federal financial assistance (including all federal funds received by the entity either directly from a Federal agency or which is passed through any state or local government or non-profit organization) in a year are responsible for obtaining an independent audit in accordance with the Single Audit Act of 1984 and OMB Circular A-133 as referenced at 24 CFR 84.26 and 85.26.

If a Participant expends less than $500,000 per year in Federal financial assistance, it is exempt from Federal audit requirements. However, the Participant must still have records available for review by the City.

If a Participant has expended more than $500,000 in a year under only one Federal program, the Participant may elect to have a program-specific audit conducted in lieu of a single audit.

3.2 Recordkeeping Requirements (24 CFR 92.508):

General Recordkeeping Requirements

The Participant must establish and maintain sufficient records to enable the City to determine whether the Participant has met Project requirements. At a minimum, the following records must be maintained:

a) A full description of the Project;
b) the source and application of funds for the Project, including supporting documentation in accordance with 24 CFR 85.20;
c) Records demonstrating that the Project meets the minimum and maximum per unit subsidy required by 24 CFR 92.205;
d) Records demonstrating that the Project meets the property standards required by 24 CFR 92.251 and the lead based paint requirements under 24 CFR 92.355;
e) Records demonstrating that each tenant is income eligible in accordance with 24 CFR 92.203;
f) Records demonstrating that the Project meets the affordability and income targeting requirements of 24 CFR 92.252 for each tenant that demonstrates that rent limitations and income restrictions have been met; and
g) For new construction, records demonstrating that a site and neighborhood standards review was conducted for the Project

Financial Records

The Participant must maintain the following financial records for inspection by the City:

a) Records identifying the source and application of program income; and
b) Records demonstrating adequate budget control, including evidence of periodic account reconciliations.

Program Administration Records

The Participant must maintain the following program administration records for Inspection by the City:

a) Records demonstrating compliance with this written Agreement;
b) Records demonstrating compliance with the applicable uniform administrative requirements under 24 CFR 92.505; and
c) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

Records Concerning Federal Requirements

The Participant must maintain the following records for inspection by the City:

a) Equal Opportunity and Fair Housing Records - including data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for or benefited from the Project, documentation of actions undertaken to meet the requirements of 24 CFR Part 135 and documentation of the actions taken to affirmatively further fair housing

b) Affirmative Marketing Records - including records demonstrating compliance with the affirmative marketing procedures and requirements of 24 CFR 92.351 and data on the steps taken to implement the Participants outreach programs to minority-owned (MBE) and female-owned (WBE) businesses.

c) Records demonstrating compliance with the environmental review requirements of 24 CFR 92.352 and 24 CFR Part 58

d) Records demonstrating compliance with the requirements of 24 CFR 92.353 regarding displacement, relocation, and real property acquisition

e) Records demonstrating compliance with the labor requirements of 24 CFR 92.354, including contract provisions and payroll records

f) Records demonstrating compliance with the lead-based paint requirements of 24 CFR Part 35, subparts A, B, J. K, M and R

Community Housing Development Organization (CHDOs) Recordkeeping Requirements

A participant that is a CHDO must maintain the following records in addition to the requirements discussed above:

a) Records concerning the use of funds for operating expenses to demonstrate compliance with the requirements of24 CFR 92.208, 92.300(e) and 92.300(f); and

b) Records concerning the low income participation plan required by 24 CFR 92.303.

Period of Record Retention

All records must be retained for a five year period, except as provided below:

a) Records may be retained for five years after the Project completion date; except the records of individual tenant income verifications, Project rents and Project inspections must be retained for the most recent five year period, until five years after the affordability period terminates;

b) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the Project have received the final payment to which they are entitled In accordance with 24 CFR 92.353; and

c) 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 period, whichever is later.

Access to Records

The Participant must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality. HUD and the Comptroller General of the United States or any of

their representatives have the right of *access* to any pertinent books, documents, papers or other records of the participant in order to make audits, examinations, excerpts, and transcripts.

3.3 **Performance Reports**: The Participant agrees to submit the following performance reports when required:

a) Quarterly Reports
b) Annual Occupancy Report
c) MBE/WBE Annual Report (HUD 2516)
d) Section 3 Summary Report
e) Project Completion Report

Upon request of the City, the Participant agrees to provide the City with periodic reports regarding the Participant's expenditure of monies expended on the Project. Such reports shall provide sufficient information to track the use to which HOME Loan Funds have been put as well as to provide information as to the Participant's success in accomplishing the work described in its Application.

3.4 **Performance Reviews and Sanctions (24 CFR 92.550 and 92.551):** Participant agrees to the following provisions related to performance reviews and sanctions:

Inspections and Monitoring

The City or its representatives reserve the right to inspect the Project to ascertain whether or not it has been completed in accordance with the Plans and Specifications. Participant agrees that the City, through its agents, servants, or employees, shall be given access to the Project during regular business hours for the purpose of inspecting the records, rent rolls, tenant records, books, accounts, and physical condition of the Project. Such monitoring of the Project and its operation shall be conducted without cost to the Project.

General Performance Reviews

The City will review the performance of the Participant to ensure compliance with this written Agreement whenever it determines it is necessary. The failure of the Participant to materially comply with any term of this Agreement may result in suspension or termination of the award in accordance with 24 CFR 85.43.

In conducting performance reviews, the City will rely primarily on information obtained from the Participant and, as appropriate, the Participant's records and reports, findings from on-site monitoring, audit reports and information generated from the IDIS system established by HUD. Where applicable, the City may also consider relevant information pertaining to a Participant's performance gained from other sources, including citizen comments, complaint determinations. audits and litigation. Reviews to determine compliance with specific requirements of this written Agreement will be conducted as necessary, with or without prior notice to the Participant

Comprehensive Performance Reviews

A Participant's performance will be comprehensively reviewed periodically to determine if the Participant has committed and expended funds in accordance with this written Agreement and has met the requirements of this Agreement such as eligible activities, income targeting, and affordability. Comprehensive performance reviews will be conducted after prior notice to the Participant.

3.5 **Corrective and Remedial Actions**: If the City determines preliminarily that a Participant has not met a requirement of this Agreement, the Participant will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by the City (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so. If the Participant fails to demonstrate to the City's satisfaction that it has met the requirement, the City will take corrective or remedial action in accordance with the following:

a) Corrective or remedial actions will be designed to prevent a continuation of the deficiency and to mitigate, to the extent possible, its adverse effects or consequences and prevent its recurrence.
b) The City may instruct the Participant to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, Including:
   • Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;
   • Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;
   • Canceling or revising activities likely to be affected by the performance deficiency, there by de-obligating the HOME funds for the activities;
   • Reimbursing the City any amount not used in accordance with this written Agreement;
   • Suspending Participant from participating in HOME and other City programs for a specific period of time.
c) Following notice and opportunity for consultation, the City may withhold, reduce or terminate the assistance where any corrective or remedial actions fail to remedy the Participant's performance deficiencies and the deficiencies are sufficiently substantial, in the judgment of City, to warrant sanctions.
d) The failure of the Participant to materially comply with any term of the Agreement may result in suspension or termination of the award in accordance with 24 CFR 85.43.

3.6 **Program Suspension/Debarment**: Any of the following actions may result in suspension for applying for or receiving funding from any of the City administered programs for a period of one (1) year:

a) Failure to complete a Project/development by the completion deadline specified in the Agreement, will disqualify the applicant for a period of one (1) year.
b) Failure to complete or comply with the environmental review requirements as specified by 24 CFR Parts 50 and 58 as amended will result in the disqualification of the applicant for the period of one (1) year.
c) Providing false or inaccurate certification that a development meets certain standards when, in fact, it does not, will result in the disqualification of the developer and the architect.

Any of the following actions may result in the permanent debarment from applying for or receiving funding from any of the City administered programs:

a) Any Participant who provides false or misleading information to the City with regard to a Project seeking HOME funds will be permanently debarred from further participation in the City's programs, in any capacity whatsoever, regardless of when such false or misleading information is discovered.
b) Any award allocation obtained on the basis of such false or misleading information shall be void.
c) Each Participant shall be given written notice by the City stating the reason for which the sanction of debarment was imposed.
d) Any partnership formation and/or developer Agreement, whether written or otherwise, that attempts to circumvent City requirements will result in the permanent debarment of all parties involved from further participation in the City programs, regardless of when the violation is discovered.

The City, in its sole discretion, may determine other acts to be infractions of the program that require suspension or debarment.

3.7 Terms Applicable to Community Housing Development Organizations (CHDOs)

Under 24 CFR Part 93.300 and 92.301. Participants who are designated CHDOs at the time of application and are the owners, developers or sponsors of the Projects awarded are funded from the City's CHDO set-aside funds.

CHDOs receiving assistance under the CHDO set-aside must adhere to the fair lease and grievance procedures approved by the City and follow their approved plan of tenant participation in management decisions.

1. **Operating Funds**: CHDOs awarded operating funds in conjunction with their Project may draw down operating funds proportionate to the progress of the Project. Eligible operating expenses are reasonable and necessary costs for the operation of the CHDO, including:
   - Salaries, wages, benefits and other employee compensation;
   - Employee education, training and travel;
   - Rent, utilities and communication costs;
   - Taxes and insurance; and
   - Equipment, materials and supplies

2. **CHDO Proceed and Repayment Requirements**: The Participant will conform to the CHDO proceed and repayment requirements as set forth in this section. If earned, the Participant is allowed to retain such proceeds to be used for City approved HOME eligible activities as allowed by 24 CFR Part 92.300.

Definition of CHDO proceeds; CHDO proceeds are funds resulting from: the permanent financing of a CHDO Project which is used to pay off a CHDO financed construction loan, the sale of CHDO sponsored rental housing to a second non-profit, the sale of CHDO developed homeownership housing or the principal and interest payments from a loan to a buyer of CHDO developed homeownership housing. Rental income which is generated by a CHDO-owned Project does not constitute CHDO proceeds.

Section 4: General Provisions and Obligations

4.1 **Obligations of Participant with Respect to Third Party Relationships**: The Participant is fully obligated under the provisions of the Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the program with respect to which assistance is being provided under this Agreement.

The Participant is responsible for ensuring that such third parties comply with all lawful requirements necessary to insure that the program with respect to which assistance is being provided under this Agreement is carried out in accordance with all applicable laws, regulations and other Federal requirements now or hereafter in effect.

4.2 **Financial Responsibility**: The Participant agrees to be financially responsible for any and all claims, liabilities, losses and causes of action which are in any way related to the Project. The Participant also agrees to be financially responsible for any and all costs, attorney fees, expenses and liabilities incurred in the investigation or defense of any claims or causes of action against the City which are in any way related to the Project.

4.3 **Publicity**: The Participant may publicize its receipt of an award from the City of Huntsville HOME Program provided, however, that copies of all news releases and other information shall be provided to the City and all news releases, on-site signs and other informational material utilized by the Participant must include the following language, conspicuously displayed:

City of Huntsville HOME Program
Administered by the Community Development Department of the City of Huntsville

4.4 **Insurance:** During the period of this Agreement, the Participant shall, at its own expense, procure and maintain all-risk property damage and liability insurance. For the term of the Agreement, the Participant shall list the City as an additional insured on said property insurance.

4.5 **Incorporation Into Loan Documents**: It is the intention of the parties that the terms and conditions of this Agreement shall become terms of the Promissory Note and Mortgage with respect to the Project as fully and to the same extent as though fully set forth therein.

4.6 **Assignability:** The Participant shall not assign or transfer any interest in this Agreement without the prior written consent of the City. Any assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

4.7 **Severability**: If any provision of this Agreement shall be held illegal or invalid by any court for any reason, the remaining provisions shall be unimpaired and such illegal or invalid provisions shall be construed and applied so as to most legitimately effectuate its intent.

4.8 **Amendments:** No amendment, change or modification of this Agreement shall be effective unless made in writing and signed by the City and the Participant. However, the City reserves the right to add or delete terms and conditions of this Agreement as are required by revisions, additions to or changes in the requirements, regulations, and laws governing the City and the HOME Program with prior written notification to the Participant.

4.9 **Termination**: The Agreement may be terminated by the City if the Participant shall fail to perform its obligations under this Agreement in a timely manner. In such an event, the City shall notify the Participant of such intent to terminate giving the reason(s) for termination. Participant shall have ten (10) days after such notice is provided to cure the stated reasons for the notice of termination. In the event this Agreement shall be terminated for any reason, the Participant shall return all funds to the City including those expended and those not expended to date on the Project.

4.10 **Limitations of City Liability – Disclaimer of Relationship:** The City shall not be liable to the Participant, or to any party, for completion of or failure to complete any improvements which are part of the Project. Nothing contained in this Agreement, nor any act or omission of the City or the Participant, shall be construed to create any special duty, relationship, third-party beneficiary, respondent superior, limited or general partnership, joint venture, or any association by reason of the Participant's involvement with the City.

4.11 **Applicable Law:** This Agreement shall be construed in accordance with the laws of the State of Alabama. By executing this Agreement, the Participant agrees to submit to the jurisdiction of the courts of the State of Alabama for all matters arising hereunder. Venue shall be in the Circuit Court of Madison County or the United States District Court for the Northern District of Alabama, Northeastern Division.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this 9th day of October, 2014.

CITY OF HUNTSVILLE, ALABAMA

By: _____
Tommy Battle, Its Mayor

ATTEST:

_____
Charles E. Hagood, City Clerk Treasurer

CLARKSTON SQUARE, LP
By: TBG Clarkston, LLC
Its: Managing General Partner
By: _____
Kevin Buckner, Manager

By: NCI Clarkston, LLC
Its: General Partner
By: Neighborhood Concepts, Inc.
Its: Manager

_____
Mary Ellen Judah, Executive Director

Exhibit A

HOME Investment Partnership Program Agreement

Award Information

Award Amount:	$ 385,000 Loan at 3.0%, 20 year term payable annually from 50% of cash flow in excess of 1.4 times coverage on first mortgage loan
Participant Name:	Clarkston Square, LP, an Alabama limited partnership
Participant Address:	3825 Paces Walk SE Suite 100 Atlanta, GA 30339
Participant Role:	Project Owner/Sponsor
Federal Tax ID:	

Project Information

Project Name:	Clarkston Square Apartments
Project Address:	Meadowbrook Drive Huntsville, AL 35803
Project Type:	Multifamily Rental
Activity Type:	New Construction
Funding Type:	LIHTC/HOME (State & Local)
Est. Development Cost:	$ 9,036,240
Total # of Units:	56
# of HOME-Assisted Units:	56
Special Needs Unit Type(s):	Elderly

Exhibit B

HOME Investment Partnership Program Agreement

Project Schedule

ACTIVITY	DATE
Land Acquisition	October 15, 2014
Construction Commencement	November 1, 2014
50% Construction Completion	May 1, 2015
Commence Leasing Activities	September 1, 2015
100% Construction Completion	November 30, 2015
100% Occupancy	May 30, 2016
Permanent Loan Conversion	October 30, 2016
State HOME Loan Closing	December 15, 2016

Exhibit C

PROMISSORY NOTE

FOR VALUE RECEIVED, CLARKSTON SQUARE, LP, an Alabama limited partnership (hereinafter "Promissor") promises to pay to the order of THE CITY OF HUNTSVILLE, ALABAMA, an Alabama municipal corporation, acting by and through the Department of Community Development, its successors and assigns (hereinafter "Holder"), the sum of Three Hundred Eighty-Five Thousand and No/100 Dollars ($385,000.00), or so much thereof as may be advanced and outstanding hereunder (the "Loan"), payable to the Holder at 120 Holmes Avenue, Huntsville, Alabama, or at such other place as Holder may from time to time designate, in the manner hereinafter set forth.

From and after _____, 2014, the effective date hereof, until the Project has placed in service no interest shall accrue on the Loan. After the Project has placed in service, interest on the Loan shall accrue at the rate of three percent (3.0%) per annum on the unpaid balance for the term of the Loan. No payments shall be due until the beginning of the first full year after the Project has placed in service.

This Note is payable on **DEMAND** in the event, but only in the event of a default under any of the Loan Documents, giving consideration to any grace or cure period that may be expressly provided for therein; otherwise, this Promissory Note is payable in full twenty (20) years after the date of this Promissory Note (the "Maturity Date").

Except as herein otherwise expressly provided, Promissor hereby waives all claims or future claims to any excess cash flow (hereinafter defined) and acknowledges the Holder's rights thereto. For purposes hereof, "excess cash flow" shall mean the amount by which actual rents plus other income from the Project exceed 1.4 times the Project's total actual operating expenses and debt service (including deposits to any reserves required by the lenders to the Project and any payments required under senior loans). Excess cash flow shall be determined as of the end of each calendar year. Fifty percent (50%) of the excess cash flow shall be remitted to Holder prior to May 1 of the immediately following calendar year to be applied against the outstanding balance of this Note and the remainder shall be retained by Promissor solely for distribution to its members. Payments of excess cash flow remitted to Holder shall be applied first to interest and then to the reduction of the outstanding principal balance.

After payments in accordance with the terms previously set forth herein, all remaining sums outstanding shall be due and payable in full on _____, 2034 (the "Maturity Date").

NONRECOURSE TO MAKER

(a) Except as otherwise provided below, notwithstanding anything to the contrary in this Note, in any action brought to enforce the obligations of the Promissor under this Note or any other instrument or agreement evidencing, securing or relating to the indebtedness evidenced by this Note (collectively the "Loan Documents"), the judgment or decree shall be enforceable against the Promissor only to the extent of its interests in any collateral security for the payment of the Note, and Holder shall not seek any deficiency judgment against the Promissor. The foregoing provisions shall not prevent recourse to the collateral security for the Loan or constitute a waiver, release or discharge of, or otherwise affect the obligation to pay any indebtedness evidenced by the Loan Documents or limit the right of any person to name the Promissor or any other person claiming an interest in or right to such collateral as party defendant in any action or suit for judicial foreclosure or in the exercise of any other remedy, including injunctive or other equitable relief, under any of the Loan Documents so long as no deficiency judgment shall be sought against the Promissor and/or any such other person.

(b) Notwithstanding the foregoing, Promissor shall, however, indemnify, defend, protect and hold Holder harmless from and against any and all loss, damage, liability, action, cause of action, cost or expense (including, without limitation, reasonable attorney's fees and expenses) incurred by Holder as a result of any (i) fraud or material misrepresentation under or in connection with the loan or any loan document; (ii) intentional bad faith waste of the real property more particularly described in the Mortgage; (iii) losses resulting from Promissor's failure to maintain insurance as required under the mortgage executed same day herewith (the "Mortgage"); and (iv) application of any rents, security deposits, insurance proceeds, condemnation awards or any other proceeds derived from the collateral security in a manner prohibited by the Loan Documents.

Promissor reserves the right to prepay this debt at any time, in whole or in part without payment of penalty, premium or fee. All payments made by Promissor shall be applied first to principal prior to application of payments to interest or other charges incurred.

In the event the undersigned shall fail to pay any sum herein required to be paid when due and if such failure be subsisting on the date the next installment payment under this Note becomes due and payable, the unpaid principal amount of this note, together with accrued interest, shall become immediately due and payable, at the option of the Holder, without notice to the undersigned. Failure of the Holder to exercise such option shall not constitute a waiver of such default.

If any scheduled payment is in default more than ten (10) days, the undersigned shall pay to the Holder a late charge not to exceed five percent (5.0%) per annum of the amount of such scheduled monthly payment in default. If said Note be reduced to judgment, such judgment shall bear the statutory interest rate on judgments.

Demand, protest and note of demand and protest are hereby waived, and the undersigned hereby waives, to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

Holder agrees to provide copies of any notices (including notice of an event of default) sent to Promissor to the Investment Limited Partner of Promissor at the following address: Regions Bank, 1900 5th Avenue North, 15th Floor, Birmingham, Alabama 35203, ATTN: Brian Coffee. Holder agrees that the Investment Limited Partner shall have the right, but not the obligation to cure any event of default. Holder will allow the investment Limited Partner at least thirty (30) days from the date notice is received by it to effect such cure should it elect to do so.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized representative, as of the _____ day of _____, 2014.

CLARKSTON SQUARE, LP

an Alabama limited partnership

By: TBG Clarkston, LLC

Its: Managing General Partner

By: _____
Kevin Buckner, Manager

By: NCI Clarkston, Inc.

Its: General Partner

By: Neighborhood Concepts, Inc.

Its: Manager

By: _____
Mary Ellen Judah,
Executive Director

Exhibit D

STATE OF ALABAMA	)	**NOTE TO CLOSING AGENTS: The property pledged as collateral by this mortgage is subject**
COUNTY OF MADISON	)	**to a 20 year HOME Loan Affordability Period.**

This instrument prepared by:

Chad W. Ayres

Wilmer & Lee, P.A.

100 Washington Street, Suite 200

Huntsville, Alabama 35801

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE is made on this the _____ day of _____, 2014, between **CLARKSTON SQUARE, LP, an Alabama limited partnership** whose address is 116 S. Jefferson St., Suite 207, Huntsville, Alabama 35801, (referred to as "Mortgagor") and **THE CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation, acting by and through the Department of Community Development, P.O. Box 308, Huntsville, Alabama 35804 (referred to as "Mortgagee").

Recitals

The Mortgagor has executed and delivered to the Mortgagee a Promissory Note in the amount of Three Hundred Eighty Five Thousand and No/100 Dollars **(385,000.00)** ("Note"), in which the Mortgagor promises to pay to the Mortgagee said sums, in lawful money of the United States, advanced or to be advanced by the Mortgagee to the Mortgagor, with interest on the principal sum at the rate and times, in the manner, and according to the terms and conditions specified in the Note. The $385,000.00 lent to the Mortgagee under the Note, or such sums that may be advanced from time to time under the Note, shall be referred to as the "Loan" and any outstanding balances, including fees and expenses, may be referred to as "Indebtedness." This Mortgage also secures the Mortgagor's obligations under the "Declaration of Land Use Restrictive Covenants for Huntsville, Alabama HOME Program"(the "HOME Covenants") which terms and obligations are hereby incorporated into this Mortgage by reference. **The total principal indebtedness secured shall not exceed the face amount of this Mortgage.**

NOW, THEREFORE, in consideration of the indebtedness, as security for payment to the Mortgagee of the principal and any interest, as well as all other sums provided for in the Note and in this Mortgage, in accordance with their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage, the HOME Covenants, and in the Note (which, along with all other documents or instruments relating to the Loan, shall be referred to collectively as the "Loan Documents"), the Mortgagor grants, conveys, and mortgages to the Mortgagee all the real estate described in Exhibit "A" attached to and made a part of this Mortgage;

TOGETHER WITH the following, which shall be referred to collectively with the real estate described in Exhibit "A" as the "Mortgaged Property":

(1) Any and all buildings and improvements erected or subsequently erected on the property (the "Improvements");

(2) Any and all fixtures, appliances, machinery, equipment, and other articles of personal property at any time installed in, attached to, or situated in or on the real estate or the buildings and improvements to be erected on the real estate, or to be used or intended to be used in connection with the real estate or in the operation of the buildings, improvements, plant, business, or dwelling on the real estate, whether or not the personal property is or shall be affixed to the real estate;

(3) All building materials, fixtures, building machinery, and building equipment delivered to the site of the real estate during the course of, or in connection with, construction of the buildings and improvements;

(4) Any and all tenements, hereditaments, and appurtenances belonging or in any way pertaining to the real estate or any part of the real estate mortgaged or intended to be mortgaged under this Mortgage;

(5) All streets, alleys, passages, ways, and water courses; all easements and covenants now existing or subsequently created for the benefit of the Mortgagor or any future owner or tenant of the mortgaged real estate over ground adjoining the mortgaged real estate; and all rights to enforce the maintenance of such accesses and rights;

(6) All other rights, liberties, and privileges; all reversions, remainders, income, rents, issues, and profits arising from them; and all the estate, right, title, interest, property, possession, claim, and demand, at law or in equity, of the Mortgagor in and to the real estate or any part of it; and

(7) The proceeds and replacements of any of the foregoing;

ALSO TOGETHER WITH any and all awards made to the present and subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for taking or damaging by eminent domain of all or any part of the Mortgaged Property or any easement in the property. The Mortgagor assigns such awards to the

Mortgagee, who is authorized to collect and receive the proceeds of any awards from the authorities, to give proper receipts and aquittances for those awards, and to apply them (after deduction of attorneys' fees and other costs incurred in connection with collecting the funds) toward the payment of the amount owing on account of this Mortgage and the accompanying Note, even though the amount owing may not then be due and payable. The Mortgagor agrees to make, execute, and deliver, on request, any and all assignments and other instruments sufficient for the purpose of assigning the awards to the Mortgagee, free, clear, and discharged of any and all encumbrances. The Mortgagor further agrees to give the Mortgagee immediate notice of the actual or threatened commencement of any proceedings in the nature of eminent domain affecting all or any part of the Mortgaged Property, and will deliver to the Mortgagee copies of any papers served on the Mortgagor in connection with any such proceedings. No settlement for the damages sustained shall be made by the Mortgagor without the Mortgagee's prior written approval. Approval shall not be unreasonably withheld.

TO HAVE AND TO HOLD for its own use forever, the Mortgagee is granted, under this Mortgage, the interests and rights in the Mortgaged Property as described above;

PROVIDED ALWAYS, and this Mortgage is executed on the express condition that, if the Mortgagor pays to the Mortgagee the principal sum of the Note, the interest, and all other sums that are secured by this Mortgage and that are payable by the Mortgagor to the Mortgagee, in accordance with the provisions of the Note and this Mortgage, at the times and in the manner specified, and without deduction, fraud, or delay, and if the Mortgagor performs and complies with all the agreements, conditions, covenants, provisions, and stipulations contained in this Mortgage and in the Note, and the HOME Covenants then this Mortgage and the estate granted by it shall cease and become null and void, except for the provisions which explicitly survive the satisfaction of this Mortgage, if any.

As part of the consideration for the indebtedness secured hereby and to protect the security of this Mortgage, THE MORTGAGOR COVENANTS and agrees as follows:

ARTICLE I

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

1.01. Status of Collateral.

(a) The Mortgagor has good and marketable fee simple title to the Mortgaged Property, free and clear of all liens, encumbrances, charges, and all other conditions except, **a mortgage in favor of Regions Bank in the amount of $1,090,000 and a mortgage in favor of the Alabama Housing Finance Authority in the amount of $1,353,380**, ad valorem taxes not yet due and payable,

restrictions and easements of record as of the date hereof and any restrictive covenants associated with the HOME loan to be made by the Alabama Housing Finance Authority ("AHFA") and with the low income housing tax credits allocated to the Mortgagor (the "Permitted Encumbrances").

(b) The Mortgaged Property is free from all defects which would materially interfere with the value of the Mortgaged Property and is constructed in compliance with all laws, ordinances, covenants, conditions, restrictions, and reservations including, without limitation, zoning ordinances affecting the Property.

(c) There are presently in effect all material licenses, certificates of occupancy and permits as may be required for the present and proposed operation and use of the Mortgaged Property.

(d) To the best of Mortgagor's knowledge after due inquiry, the Property and Improvements are zoned to permit the present and proposed operation and use thereof, or of a pre-existing non-conforming use which can be continued under the applicable zoning ordinance, and under such applicable zoning ordinance the Property and Improvements can be restored to their presently existing condition and use in the event of a casualty.

(e) To the best of Mortgagor's knowledge after due inquiry, no material structural defects or dangerous conditions exist with respect to any Improvements.

1.02 Survival of Representations and Warranties. Mortgagor covenants and agrees with Mortgagee that all representations and warranties of Mortgagor contained in the Loan Documents shall be true at the time of the execution of each of the Loan Documents, and shall survive the execution, delivery and acceptance thereof by the parties thereto and the closing of the transactions described therein or related thereto.

ARTICLE II

COVENANTS OF MORTGAGOR

2.01. Payment and Performance. The Mortgagor shall pay to the Mortgagee, in accordance with the terms of the Note and this Mortgage, the principal, interest, and other sums, and shall perform and comply with all the agreements, conditions, covenants, provisions, and stipulations of the Note and this Mortgage.

2.02. Maintenance of Mortgaged Property. The Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property. The Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on the Mortgaged Property without the prior written consent of Mortgagee. The Mortgagor shall not permit the Mortgaged Property to become vacant, deserted, or unguarded, and shall maintain the Mortgaged Property in good condition and repair, with reasonable wear and tear excepted, making all repairs of every nature whenever necessary.

2.03. Insurance. The Mortgagor shall maintain such insurance as the Mortgagee may reasonably require and as set forth in any of the Loan Documents.

2.04. Taxes and Other Charges.

(a) The Mortgagor shall pay, when due and payable and before interest or penalties accrue, all taxes, assessments, water and sewer rents, and other charges or claims that may be assessed, levied, or filed at any time against the Mortgagor, against all or any part of the Mortgaged Property, or against the interest of the Mortgagee in the Mortgaged Property; or that, by any present or future law, may have priority over the indebtedness secured by this Mortgage either in lien or in distribution out of the proceeds of any judicial sale. The Mortgagor shall produce receipts for payment of these amounts to the Mortgagee not later than the payment dates.

(b) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Mortgagor immediately shall pay any increased taxes if allowed by law, and if Mortgagor fails to pay such additional taxes, or if Mortgagor is prohibited from paying such taxes, or if Mortgagee in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Mortgagee.

2.05. Installments for Insurance, Taxes, and Other Charges. Intentionally Omitted.

2.06. Condemnation.

(a) Mortgagor's Responsibilities: Proceedings. The Mortgagor, immediately upon obtaining knowledge thereof, shall notify the Mortgagee of any pending or threatened proceedings for the condemnation of any of the Mortgaged Property or of the exercise of any right of eminent domain with respect thereto, or any other pending or threatened proceedings arising out of injury or damage to any of the Mortgaged Property. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time shall execute and deliver to the Mortgagee all instruments requested by the Mortgagor to permit such participation. The Mortgagor shall, at the Mortgagor's expense, diligently prosecute any such proceedings, deliver to the Mortgagor copies of all papers served in connection therewith and consult and cooperate with the Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings.

(b) Mortgagee's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be paid to the Mortgagee (subject to the rights of superior lien holders). The Mortgagor authorizes the Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

2.07. Inspections. The Mortgagee, and any persons authorized by the Mortgagee, shall have the right at any time, on reasonable notice to the Mortgagor, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair.

2.08. Defaults and Right to Remedy. The Mortgagee, at its option and without notice to the Mortgagor, shall have the right to make any payment or expenditure that the Mortgagor should have made, or that the Mortgagee deems advisable, to protect the security of this Mortgage or the Mortgaged Property, if the Mortgagor fails to pay taxes, assessments, water and sewer charges, other claims for which liens may be attached to the Mortgaged property (except in case of contest), or insurance premiums; fails to make necessary repairs; permits waste; or otherwise fails to comply with its obligations under this Mortgage, the Note, the HOME Covenants, or any other document executed in connection with this Mortgage. Any payment by the Mortgagee shall be without prejudice to any of the Mortgagee's rights or remedies under this Mortgage, at law, or in equity. All sums, as well as costs, advanced by the Mortgagee pursuant to this Mortgage, shall be due immediately from the Mortgagor to the Mortgagee, shall be secured by this Mortgage, and shall bear interest at two (2) percent annually in excess of the rate otherwise provided in the Note from the date of payment by the Mortgagee until the date of repayment.

2.09. Sale, Lease or Transfer, Etc.

(a) Real Property. Except for Permitted Encumbrances, the Mortgagor shall not sell, assign, transfer, convey, lease with an option to purchase, exchange or otherwise dispose of, any of the Mortgaged Property or any interest therein; or subject any of the Mortgaged Property or any interest therein to any additional lien, either voluntarily or involuntarily.

(b) Equity Interest in Mortgagor. The Mortgagor (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Mortgagor, or any other transaction whereby the legal or beneficial ownership of the Mortgagor is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Mortgagor, the merger or consolidation of the Mortgagor with any other person, or the participation by the Mortgagor in a statutory share exchange with any other

person, shall be treated as a transfer of the Mortgaged Property for purposes of this Section. Notwithstanding the foregoing, none of the following shall be treated as a transfer for purposes of this Section: (i) the pledge by the General Partner of Mortgagor of its interest in Mortgagor to Regions Bank in connection with the construction loan obtained by Mortgagor from Regions Bank, (ii) the transfer of the limited partners' interest in the Mortgagor to another entity whether or not affiliated with or controlled by the current limited partners and (iii) the removal of the General Partner by the Special Limited Partner pursuant to the terms and conditions of that certain Amended and Restated Agreement of Limited Partnership of the Mortgagor. Notwithstanding the foregoing, none of the following shall be treated as a transfer for purposes of this Section: (i) the pledge by the General Partner of Mortgagor of its interest in Mortgagor to Regions Bank in connection with the construction loan obtained by Mortgagor from Regions Bank, (ii) the transfer of the limited partners' interest in the Mortgagor to another entity whether or not affiliated with or controlled by the current limited partners and (iii) the removal of the General Partner by the Special Limited Partner pursuant to the terms and conditions of that certain Amended and Restated Agreement of Limited Partnership of the Mortgagor.

ARTICLE III

DEFAULT AND REMEDIES

3.01. Events of Default. Any one or more of the following shall constitute an ``Event of Default'':

(a) The failure of the Mortgagor to pay an installment of principal or interest, or any other sum, on the date it is due under the Note or this Mortgage; provided, however, the Mortgagor shall give notice of such failure to the Special Limited Partner of Mortgagor as provided below and allow the Special Limited Partner an additional thirty (30) days to make such payment. The Special Limited Partner shall have the right, but no obligation, to make such payment.

(b) The Mortgagor's nonperformance of or noncompliance with any of the other agreements, conditions, covenants, provisions, or stipulations contained in the Note, in this Mortgage, the HOME Covenants, or in any other document executed in connection with this Mortgage but only if such nonperformance or noncompliance is not cured within thirty (30) days of Mortgagee's written notice to Mortgagor and its Special Limited Partner.

(c) The entry of a decree or order for relief by a court that has jurisdiction of the Mortgaged Property in respect to the Mortgagor in an involuntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official for any substantial part of the Mortgagor's property; or the ordering of the winding-up or liquidation of the Mortgagor's affairs.

(d) The commencement by Mortgagor of a voluntary case under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency, or other similar law; the consent by the Mortgagor to the appointment of, or the taking of possession by, a receiver, liquidator, assignee, trustee, custodian, sequestrator, or similar official for any substantial part of the Mortgagor's property; the making by either the Mortgagor or any guarantor of any assignment for the benefit of creditors; or the failure of either the Mortgagor or a guarantor generally to pay its debts as they become due.

(e) The failure, within sixty (60) days after the entry of a final judgment for the payment of money that is rendered against the Mortgagor.

(f) In the event the Mortgagor herein sells, transfers or conveys the real estate described herein other than as allowed by any Loan Documents.

3.02. **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire balance of the Indebtedness (including but not limited to the Loan) secured hereby (or such parts as Mortgagee may elect) with interest accrued thereon (or such parts as Mortgagee may elect) shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.03. **Right of Mortgagee to Enter and Take Possession.**

(a) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Mortgagee or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking possession, the Mortgagee, as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, presently and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Mortgagee) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Mortgagee) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or

terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be its best advantage; and the Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or an portion thereof selected by Mortgagee), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest under the Note; second to the payment of ad valorem taxes upon the property currently due; third to the payment of any other sums required to be paid by the Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; and the balance, if any, as otherwise required by law.

(c) whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.04. Receiver.

(a) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(b) The Mortgagor shall pay to Mortgagee upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 3.04; and all such expenses shall be secured by this Mortgage.

3.05. Power of Sale. At the option of said Mortgagee, this Mortgage may be foreclosed as now provided by law in case of past due Mortgages; and the Mortgagee shall be authorized to take possession of the premises hereby conveyed, and after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the county wherein said property is located, to sell the same in front of the courthouse door of the county wherein said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the Mortgagor.

And the undersigned further agrees that said Mortgagee, its successors, or assigns, may bid at any sale had under the terms of this Mortgage, and purchase the Mortgaged Property, if the highest bidder therefor; and the undersigned further agrees to pay a reasonable attorney's fee to said Mortgagee, its successors or assigns for the foreclosure of this Mortgage, either under the power of sale contained herein or by virtue of the decree of any court of competent jurisdiction, said fee to be a part of the debt herein secured, and the purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

In the event of a sale hereunder, the Mortgagee, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the undersigned a good and sufficient deed to the property sold.

3.06. Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, or now or hereafter existing at law or in equity or by statute.

ARTICLE IV

ADDITIONAL PROVISIONS

4.01. Notices. All notices permitted or required under this Mortgage or the Note shall be in writing, and shall be personally delivered, or sent by registered or certified mail, postage prepaid, and addressed to the addressee, at the address set forth above or at such other address as the addressee may designate in writing from time to time. A copy of any notice sent to Mortgagor shall also be provided by Mortgagee to Mortgagor's Special Limited Partner at RB Affordable Housing, Inc., 1900 5th Avenue North, 15th Floor, Birmingham, AL, 35203, ATTN: Brian Coffee

4.02. Amendment. This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

4.03. Parties Bound. This Mortgage shall be binding on and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns. For purposes of this Mortgage, as well as the other Loan Documents, the neuter gender shall include the masculine and the feminine, the singular shall include the plural, and the plural shall include the singular, as the context may require.

4.04. Interest Rate. Notwithstanding any provision contained in this Mortgage or in the Note, the Mortgagor's liability for interest shall not exceed the limits now imposed by the applicable usury law. If any clause in the Note or this Mortgage requires interest payments in excess of the highest rate permitted by the applicable usury law, the clause in question shall be deemed to require payment at the highest interest rate allowed by the applicable usury law.

4.05. Captions. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction, or effect.

4.06. Financial Statements. As long as the debt secured by this Mortgage remains unpaid in whole or in part, the Mortgagor covenants to furnish each year to the Mortgagee such financial statements as required by the agreement entitled "Agreement between the City of Huntsville, Alabama and Clarkston Square, LP for HOME Investment Partnership Funds."

4.07. Waiver. The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any waiver option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default.

4.08. Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in any of the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note and in the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

4.09. Conflict in Loan Documents. In the event of conflict in the terms of any provision in this Mortgage, the Note, or any of the other Loan Documents, the terms of the provision most favorable to the Mortgagee shall apply.

4.10. **Loan Documents.** Wherever reference is made herein to this Mortgage, the Note, or the other Loan Documents, such reference shall include all renewals, extensions, modifications and refinancings thereof.

4.11. **Definitions.** Any capitalized term not defined in the Mortgage shall be assigned the meaning defined elsewhere in the Loan Documents.

4.12. **Future Advances, Revolving and Open-End Loans, and Other Debts.** It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, being defined as any and all obligations and liabilities, direct or contingent, of the Borrower to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancing of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

IN TESTIMONY WHEREOF, Mortgagor has caused this instrument to be executed on its behalf by its duly authorized officers on the day and year first above written.

MORTGAGOR:

CLARKSTON SQUARE, LP

an Alabama limited partnership

By: TBG Clarkston, LLC

Its: Managing General Partner

By: _____
Kevin Buckner, Manager

By: NCI Clarkston, LLC

Its: General Partner

By: Neighborhood Concepts, Inc.

Its: Manager

By: _____
Mary Ellen Judah,
Executive Director

STATE OF ALABAMA)

:

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of TBG Clarkston, LLC, the General Partner of **Clarkston Square, LP,** an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such _____, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as General Partner of said limited partnership.

Given under my hand and official seal this _____ day of _____, 2014

(SEAL)

_____

Notary Public

My commission expires: _____

STATE OF ALABAMA)

:

COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of NCI Clarkston, LLC, the General Partner of **Clarkston Square, LP,** an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such _____, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as General Partner of said limited partnership.

Given under my hand and official seal this _____ day of _____, 2014

(SEAL)

_____

Notary Public

My commission expires: _____

Exhibit E

HOME Investment Partnership Program Agreement

Form of Deed Restriction

STATE OF ALABAMA

COUNTY OF MADISON

DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HUNTSVILLE, ALABAMA HOME PROGRAM

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HUNTSVILLE, ALABAMA HOME PROGRAM, dated as of _____ ___, 2014, by and between Clarkston Square, LP, an Alabama limited partnership and City of Huntsville, Alabama, a municipal corporation, joined in by Regions Bank ("Mortgagee"). Certain capitalized terms are defined in Section 1 of this Declaration.

WITNESSETH:

WHEREAS, the OWNER is or shall be the OWNER of the Project, an affordable multi-family development located or to be located on lands in the City of Huntsville, Alabama, County of Madison, State of Alabama, more particularly described in Exhibit A hereto, known as or to be known as Clarkston Square Apartments; and

WHEREAS, the OWNER has represented to City in the Application that OWNER shall lease the Units in the Project to Low-Income Tenants as indicated in Section 4 of this Declaration; and

WHEREAS, the OWNER agrees to maintain the HOME Program rent and income restrictions for the Affordability Period; and

WHEREAS, the HOME Program requires, as a condition precedent to the allocation of the HOME Program funds, that the OWNER and City execute, deliver and record this Declaration in the real estate records of the Probate Office of the county in which the Project is located in order to create certain covenants running with the Project for the purpose of enforcing the requirements of the HOME Program, the Project Occupancy Restriction, and the Building Occupancy Restriction by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the OWNER, by this Declaration, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the Declaration Term and are binding upon all subsequent OWNERs of the Project for such term, and are not merely personal covenants of the OWNER; and

WHEREAS, Mortgagee joins in this Declaration for the purpose of acknowledging the restrictions and covenants herein and the requirements of the HOME Program;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 – DEFINITIONS

The following terms shall be defined as follows:

a) "Act" means the National Affordable Housing Act of 1990, as from time to time amended and the regulations relating thereto.

b) "Affordability Period" means the 20-year period commencing upon the Completion of the Project.

c) "Application" means OWNER's HOME Program Application to the City of Huntsville, Alabama dated _____.

d) "Area Median Income" means "area median income" as determined by the Secretary of HUD with adjustments for smaller or larger households.

e) "Building" means any building that is or is to be part of the Project.

f) "City" means the City of Huntsville, Alabama, a municipal corporation, and any successor to its function.

g) "Completion of the Project" means the date of issuance of both the permanent certificate(s) of occupancy for the entire Project and certificates from the OWNER's architect that the Project has been built to code and according to the plans, drawings, and specifications which are approved in writing by City.

h) "Declaration" means this Declaration of Land Use Restrictive Covenants for Huntsville HOME Program as from time to time amended, restated or supplemented.

i) "Declaration Term" means the term of this Declaration, namely, the Affordability Period.

j) "HOME Program" means the federal housing program created by Title II of the National Affordable Housing Act of 1990, as from time to time amended, and applicable regulations including, without limitation 24 CFR Parts 58 and 92, and all amendments thereto.

k) "HUD" means the United States Department of Housing and Urban Development and any successor thereto.

l) "Low-Income Requirement" means the requirement that tenants of Low-Income Units have incomes not exceeding the maximum income set out in Section 4 of this Declaration and made applicable by the Project Occupancy Restriction.

m) "Low-Income Tenant" means an individual or household whose income satisfies the Low-Income Requirement.

n) "Low-Income Unit" means a Unit as to which HOME Program funds were expended at any time during the Affordability Period and includes all Units that must be leased to a Low-Income Tenant to satisfy the Project Occupancy Restriction.

o) "OWNER" means Clarkston Square, LP, an Alabama limited partnership, and any person now or hereafter owning any interest (other than solely as a creditor) in the Project or any portion thereof.

p) "Project" means the certain tract of land in the City of Huntsville, County of Madison, State of Alabama, more particularly described in Exhibit A hereto, and an affordable multi-family development located or to be located on such land, known as or to be known as Clarkston Square Apartments, including the Building.

q) "Project Occupancy Restriction" means the obligation of the OWNER to restrict occupancy of a percentage of the Units in the Project to satisfy Section 4(a) of this Declaration.

r) "Project Rent Restriction" means the obligation of the OWNER that rents charged Low-Income Tenants in Low-Income Units shall not exceed the maximum rent that may be imposed on occupancy of such Unit, pursuant to 24 CFR Section 92.252.

s) "Transfer", and any derivation thereof, includes a sale or exchange other than a technical assignment of title pursuant to a mortgage (but a foreclosure of a mortgage is a "transfer").

t) "Unit" means a residential apartment unit/single household home of the Project as determined in accordance with the HOME Program.

All words and phrases defined in the HOME Program and HUD regulations pertaining thereto and/or promulgated thereunder shall have the same meanings in this Declaration.

SECTION 2 – RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

a) Upon execution and delivery by the parties hereto, the OWNER shall cause this Declaration and all amendments hereto to be recorded and filed in the real estate records in the Probate Office of the county in which the Project is located and shall pay all fees and charges incurred in connection therewith. Prior to recording, the OWNER shall provide City with an executed copy of this Declaration. Upon recording, the OWNER shall provide City with the executed original of the recorded Declaration showing the Probate Office's time and date stamp and all pertinent recording data.

b) The covenants contained in this Declaration (i) shall be and are covenants running with the Project, encumbering the Project for the Declaration Term, binding upon the OWNER's successors in title and all subsequent OWNERs and operators of the Project or of any part thereof, (ii) are not merely personal covenants of the OWNER, and (iii) shall bind the OWNER and its successors and assigns during the Declaration Term. All parties hereto hereby agree that any and all requirements of the laws of the State of Alabama to be satisfied in order for the provisions of this Declaration to constitute valid, binding and enforceable restrictive covenants running with the Project shall be deemed to be satisfied in full or in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the Project.

c) For the Declaration Term, each and every mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof shall expressly provide that such conveyance and encumbrance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof provides that such conveyance is subject to this Declaration.

SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The OWNER hereby represents, covenants and warrants to City as follows:

a) The OWNER is a (i) Limited Partnership, duly organized, existing and in good standing under the laws of the State of Alabama, and is qualified to transact business under the laws of the State of Alabama, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration.

b) The execution, delivery and performance of this Declaration by the OWNER (i) will not violate any provision of law, rule or regulation, or any order of any court or other agency or governmental body and (ii) will not violate any provision of any indenture agreement, mortgage, mortgage note, or other instrument to which the OWNER is a party or by which it or the Project is bound.

c) The OWNER has good and marketable fee simple title to the Project and the covenants imposed on the Project by this Declaration are not inconsistent with the terms of any lien, mortgage, or other encumbrance or restrictive covenant, easement or servitude.

d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the OWNER, threatened against or affecting the OWNER or the Project, or any of the OWNER's properties or rights, which, if adversely determined, would materially impair the OWNER's right to carry on business substantially as now conducted (and as contemplated by this Declaration) or which would materially and adversely affect its financial condition or which would impair the use of the Project as contemplated by this Declaration.

e) Throughout the Affordability Period, the Project shall constitute a qualified low-income housing project, as required in Section 4 of this Declaration.

f) Each Unit shall, throughout the Affordability Period, contain complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy or transitional housing for the homeless under the HOME Program) which are to be used on other than a transient basis.

g) During the Affordability Period, each Low-Income Unit shall be suitable for occupancy and shall be used only other than on a transient basis.

h) The OWNER shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Affordability Period unless required by law.

i) If during the Affordability Period the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the OWNER shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration. If the Building or any Units are damaged, destroyed, acquired for public use, or condemned and not rebuilt, the Project Occupancy Restriction shall be applied to the remaining Units in the Project as though no reduction in the total number of Units had occurred.

j) The OWNER has not executed, and shall not execute, any other agreement with provisions contradictory to, or in opposition to this Declaration. This Declaration is paramount and controlling as to the rights and obligations herein set forth and supersedes any other requirements in conflict herewith.

k) Throughout this Declaration Term, the OWNER shall not evict or terminate the tenancy of a Low-Income Tenant other than for good cause or increase gross rent with respect to a Low-Income Unit other than as permitted under the HOME Program.

SECTION 4 – EXTENDED LOW-INCOME HOUSING COMMITMENT

In order to satisfy the Project Occupancy Restriction, the OWNER shall assure that throughout the Affordability Period and by no later than the last day of the first year of the Affordability Period:

a) At least twenty percent (20%) of the rental residential units in this project shall be designated as HOME assisted Units. At least twenty percent (20%) of the HOME assisted Units shall be rent restricted and occupied by individuals whose income is fifty percent (50%) or less of the Area Median Income.

The Project Rent and Income Restrictions are applied on a Project basis.

b) The determination of whether a Low-Income Tenant meets the Low-Income Requirement shall be made by the OWNER at least annually on the basis of the then current income of such Low-Income Tenant and the guidelines established by the HOME Program.

SECTION 5 – ENFORCEMENT OF OCCUPANCY RESTRICTIONS

a) The OWNER shall permit, during normal business hours and upon reasonable notice, any duly authorized representative or designated agent of City to inspect any books and records of the OWNER regarding the Project with respect to the incomes of Low-Income Tenants or which pertain to compliance with the occupancy restrictions specified in this Declaration.

b) The OWNER shall submit any other information, documents or certifications requested by City which City shall deem necessary to substantiate the OWNER's continuing compliance with the provisions of the Project Occupancy Restriction and any other Occupancy Restrictions specified in this Declaration.

SECTION 6 – ENFORCEMENT TO HOME PROGRAM RESTRICTIONS

a) The OWNER covenants that it shall not knowingly take or permit any action that would result in a violation of the requirements of the HOME Program, or this Declaration. Moreover, OWNER covenants to take any lawful action (including amendment of this Declaration as may be necessary) to comply fully with the HOME Program, and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by HUD or other governmental agency from time to time pertaining to OWNER's obligations under the HOME Program and affecting the Project.

b) The OWNER and City each acknowledge that the primary purpose for requiring compliance by the OWNER with the restrictions provided in this Declaration is to assure compliance of the Project and the OWNER with the HOME Program, AND BY REASONS THEREOF, THE OWNER IN CONSIDERATION FOR RECEIVING FUNDING UNDER THE HOME PROGRAM FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT CITY SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE OWNER OF ITS OBLIGATIONS UNDER THIS DECLARATION IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION. The OWNER hereby further specifically acknowledges that the beneficiaries of the OWNER's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.

c) The OWNER hereby agrees that the representations and covenants set forth herein may be relied upon by City and all persons interested in Project compliance under the HOME Program and this Declaration.

SECTION 7 – MISCELLANEOUS

a) Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

b) Notices. All notices to be given pursuant to this Declaration shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing.

TO THE CITY: City of Huntsville, AL
P. O. Box 308

Huntsville, AL 35804

TO THE OWNER: Clarkston Square, LP
116 S. Jefferson Street, Suite 207
Huntsville, Alabama 35801

TO THE MORTGAGEE: Regions Bank
1900 5th Avenue North, 15th Floor
Birmingham, AL 35203
Attn: C. Reed Dolihite

TO LIMITED PARTNER: Regions Bank
1900 5th Avenue North, 15th Floor
Birmingham, AL 35203
Attn: Brian Coffee

City and OWNER may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

c) Amendment. The OWNER agrees that it shall take all actions necessary to effect amendment of this Declaration as may be necessary to comply with the HOME Program and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the HOME Program.

d) Governing Law. This Declaration shall be governed by the laws of the State of Alabama and, where applicable, the laws of the United States of America.

e) Survival of Obligations. The obligations of the OWNER as set forth herein and in the Application shall survive the funding of the HOME Program loan and shall not be deemed to terminate or merge with the funding of the loan.

f) Recovery of Attorney's Fees. If City shall incur legal fees or other expenses in enforcing its rights and/or remedies, or the OWNER's obligations, under this Declaration, the OWNER shall reimburse City for those fees and other expenses within ten (10) days of receipt of written demand therefor.

g) Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

h) Construction. This Declaration shall be construed and enforced to preserve the purposes of the HOME Program.

i) Other Declaration. This Declaration is in addition to, and is not in lieu of, any other declaration of restrictive covenants (the "Other Declaration") which the OWNER may have heretofore executed, or may simultaneously herewith or hereafter execute, with respect to the Project. The OWNER must abide by this Declaration and by the Other Declaration, if any, each of which stands on its own.

IN WITNESS WHEREOF, the parties have caused this Declaration to be signed by their respective duly authorized representatives, as of the day and year first written above.

CLARKSTON SQUARE, LP
an Alabama limited partnership

By: TBG Clarkston, LLC
Its: Managing General Partner

By: _____
Kevin Buckner, Manager

_____

By: NCI Clarkston, LLC
Its: General Partner

By: Neighborhood Concepts, Inc.
Its: Manager

By: _____
Mary Ellen Judah,
Executive Director

CITY OF HUNTSVILLE, AL

By: _____
_____
Its _____

REGIONS BANK

By: _____
_____
Its _____

STATE OF ALABAMA)
:
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of TBG Clarkston, LLC, the General Partner of **Clarkston Square, LP,** an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such _____, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as General Partner of said limited partnership.

Given under my hand and official seal this _____ day of _____, 2014.

(SEAL) _____

Notary Public
My commission expires: _____

STATE OF ALABAMA)
:
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of NCI Clarkston, LLC, the General Partner of **Clarkston Square, LP,** an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, (s)he, as such _____, and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as General Partner of said limited partnership.

Given under my hand and official seal this _____ day of _____, 2014.

(SEAL)

_____
Notary Public
My commission expires: _____

STATE OF ALABAMA)
:
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that _____, whose name as _____ of **City of Huntsville, Alabama,** a public municipal, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, _he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this _____ day of _____, 2014.

(SEAL)

_____
Notary Public
My Commission Expires: _____

STATE OF ALABAMA)
:
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that

_____, whose name as _____ of _____, an _____ banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this _____ day of _____, 2014.

(SEAL)

_____
Notary Public
My Commission Expires: _____

Exhibit F

HOME Investment Partnership Program Agreement

Development Cost Budget

Sources of Funds		Uses of Funds	
1st Mortgage (Regions Bank)	$1,090,000	Predevelopment Costs	$337,549
2nd Mortgage (AHFA HOME)	$1,353,380	Land Acquisition	$580,440
3rd Mortgage (City of Huntsville HOME)	$385,000	Land Improvements	$906,000
LIHTC Equity Investment	$5,963,280	Construction (Hard)	$4,500,000
Deferred Developer Fee	$244,580	Construction Contingency	$156,800
		Construction Financing	$272,960
		Professional Services	$320,205
		Local Government Fees	$208,000
		Permanent Financing Fees	$104,850
		AHFA Related Costs	$198,809
		Equity Costs	$15,000
		Developer Fee	$1,250,000
		Start-Up & Reserves	$185,627
	$9,036,240		$9,036,240

Exhibit G

HOME Investment Partnership Program Agreement

Occupancy & Rent Restrictions

If the Participant has agreed to further restrict the occupancy of the HOME-assisted rental units beyond the minimum requirements of the City, the occupancy restrictions for the Project are indicated in the charts below.

Occupancy Restrictions

At Initial Occupancy

20% of units shall be restricted for families earning 50% or less of AMI

80% of units shall be restricted for families earning 60% or less of AMI

During the Remaining Affordability Period

20% of units shall be restricted for families earning 50% or less of AMI

80% of units shall be restricted for families earning 60% or less of AMI

Rent Floor Limits

The rent floor limits for a Project are the HOME rents which are in effect at the time of Project commitment. The following table includes the current rent limits for the Project. Regardless of changes in fair market rents and in median income over time, the rents for the Project are not required to be lower than the rent floor limits.

At Initial Occupancy

UNIT SIZE	RENT LIMIT	
	Low HOME Rent (20% of units)	High HOME Rent (80% of units)
1 bedroom	462	462
2 bedroom	563	563

During the Remaining Affordability Period

UNIT SIZE	RENT LIMIT	
	Low HOME Rent (20% of units)	High HOME Rent (80% of units)
1 bedroom	462	462
2 bedroom	563	563