**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY HOME MATCH**

**HOME MATCH CONTRACT #Insert Contract Number**

**Uniform Application Number:** Insert Application Number(s)

**TDHCA Award Year:**

This Multifamily Direct Loan Contract #Insert Contract Number (the “**Contract**”), in connection with a HOME Match Investment Partnerships Program (“**HOME Match**”) is made and entered into by and between the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “**Department**”), and **DEVELOPMENT OWNER NAME**,  (the “**Development Owner**”), (herein collectively referred to as the “**Parties**”), [**OPTIONAL: (DEVELOPMENT OWNER HAS LEASEHOLD INTEREST/ GROUND LEASE**): joined and consented to by **FEE TITLE OWNER NAME**, ,as fee title owner (the “**Fee Title** **Owner**”),] to be effective on the Effective Date defined herein.

**RECITALS**

WHEREAS, the Development Owner agrees to administer a HOME Match Development in accordance with the HOME Match Investment Partnerships Program (“**HOME Match Program**”) under the applicable provisions of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. §12701 *et seq*.) (the “**Federal Act**”), its implementing federal regulations at 24 CFR Part 92 (the “**Federal HOME Regulations**”),andthe applicable federal notices issued by the United States Department of Housing and Urban Development (“**HUD**”) or other applicable federal agencies, Chapter 2306 of the Texas Government Code (the “**State Act**”), its implementing state administrative rules at Title 10, Part 1, Chapter 1 of the Texas Administrative Code (the “**Administrative Rules**”), Title 10, Part 1, Chapter 2 of the Texas Administrative Code (the “**Enforcement Rules**”), Title 10, Part 1, Chapter 10 of the Texas Administrative Code (the “**Uniform Multifamily Rules**”), Title 10, Part 1, Chapter 11 of the Texas Administrative Code (the “**Qualified Allocation Plan**”), [**OPTIONAL** FOR 4% TDHCA BOND DEALS: Title 10, Part 1, Chapter 12 of the Texas Administrative Code (the “**Multifamily Bond Rule**”)] and Title 10, Part 1, Chapter 13 of the Texas Administrative Code (the “**Multifamily Direct Loan Rule**”) (collectively referred to as the “**State Multifamily Rules**”), respectively, in addition to the following selections and/or requirements outlined in the: application package for the HOME Match Program, Uniform Multifamily Application #\_\_\_\_\_\_\_\_\_\_\_ (the “**Application**”);

 WHEREAS, the Development Owner is or will be upon the closing of the Multifamily Bonds, the **[OPTIONAL**: leasehold**]** owner [**OPTIONAL:** , pursuant to a ground lease by and between Development Owner and Fee Title Owner,] of certain improvements (the “**Improvements**”) that will consist of a Unit ■[**OPTIONAL** ■ Supportive Housing, general] rental housing [■development OR ■OPTIONAL Elderly Development]known as INSERT Development Name (the “**Development**”) situated on real property (the “**Land**”) located in the City of [INSERT Development City], County of [INSERT Development County], State of Texas, more fully described in Exhibit A attached hereto and incorporated herein by reference (the Land and Improvements are hereinafter collectively referred to as the “**Property**”);

 WHEREAS, the Development Owner has agreed to contribute the HOME Match Amount defined herein to perform theactivities under this Contract;

 WHEREAS, the Development Owner agrees that the Department will utilize $ [ ] for HOME Match Units;

 WHEREAS, as of the Effective Date of this Contract, a term sheet for all the necessary financing for the Property has been secured, as evidenced by the “**Budget/Rent Schedule**”attached asExhibit B to this Contract and incorporated herein for all relevant purposes, as said exhibits may be revised, updated or amended from time to time; therefore, this Contract, including the exhibits attached to the Contract as amended, constitutes a legally binding agreement;

 WHEREAS, pursuant to the Federal Act, State Act, Federal HOME Regulations, and State Multifamily Rules (Federal HOME Regulations and State Multifamily Rules collectively referred to as the “**HOME Regulations**”), as amended from time to time, Development Owner, as a condition to the Department awarding tax credits, must agree to comply with: (1) certain occupancy, rent, and other restrictions under the Federal Act, and Federal HOME Regulations during the Federal Affordability Period (hereinafter defined), and (2) additional certain occupancy, rent, and other restrictions required under the State Act and State Multifamily Rules during the State Affordability Period (hereinafter defined); and

 WHEREAS, pursuant to the State Multifamily Rules, as amended from time to time, Development Owner, as a condition to the Department awarding tax credits, must agree to comply with certain occupancy, rent and other restrictions under the State Act, and the Parties shall enter into a Land Use Restriction Agreement [**OPTIONAL**: joined and entered into by Fee Title Owner] (the “**LURA**”), to evidence the Development Owner’s agreement to comply with such restrictions, and said LURA shall be recorded in the official public records of the county where the Property is located to evidence covenants running with the land.

 NOW, THEREFORE, for and in consideration of the promises herein made, and the mutual benefits derived and to be derived, the Parties hereto agree and by execution hereof are bound to the mutual obligations and to the performance and accomplishment of the tasks which are the substance of this Contract and any and all attachments to this Contract, incorporated herein for all relevant purposes.

**AGREEMENT**

# SECTION I. HOME MATCH

**Section 1.1 Award Amount**

Development Owner shall implement the Multifamily Direct Program in accordance with this Contract and pursuant to the Federal Act, HOME Regulations, State Act, Application, and applicable Texas statutes and rules utilizing \_\_\_\_ and No/100 United States Dollars (U.S. $     .00) (the “**HOME Match Amount**”) for activities that include [**OPTIONAL:** acquisition of the Property, acquisition of the Improvements, or new construction, or acquisition/new construction, or Rehabilitation, or Reconstruction, or acquisition/Rehabilitation, or acquisition/Reconstruction, or acquisition/Adaptive Reuse, or Adaptive Reuse] [relocation][demolition] of the Property. As determined in the Department’s reasonable discretion, changes made to this Contract or the Property without prior written consent of the Department, which shall not be unreasonably withheld, conditioned, or delayed, that affect the terms or otherwise materially impact implementation of this Contract or the Property, may result in termination of this Contract.

## Section 1.2 Match Funds

The Development will use Match funds in accordance with the requirements of CPD Notice 97-03 or its successors, the Multifamily Direct Loan Rule, the Qualified Action Plan, and the Multifamily Application.

# SECTION II. CONTRACT TERM

Contract Term begins on the Effective Date of this Contract as defined herein and terminates at the end of the Federal Affordability Period, as may from time to time be amended or extended in writing and signed by both Parties (the “**Contract Term**”).

**SECTION III.** **DEFINITIONS**

## Section 3.1 General

Capitalized terms used in this Contract shall have the meanings specified in this Section III of the Contract, unless the context clearly requires otherwise. Certain additional terms may be defined elsewhere in this Contract. If the definition and terms of this Contract conflict with the definition and terms of the Application, underwriting report(s) issued by the Department’s Real Estate Analysis Division, or related preliminary program documents, then this Contract shall control unless it would make the Contract void by law. Any capitalized terms not specifically mentioned in this Contract (including any and all addendums or exhibits to this Contract) shall have the meaning as defined in 10 TAC §11.1(d) of the Qualified Allocation Plan, 10 TAC §13.2 of the Multifamily Direct Loan Rule, the State Act, the Federal Act, and the Federal HOME Regulations, as applicable.

1. “**Adaptive Reuse**” means the change in use of an existing building not, at the time of Application, being used, in whole or in part, for residential purposes into a building which will be used, in whole or in part, for residential purposes. Adaptive Reuse requires that at least seventy-five percent (75%) of the original building remains at completion of the proposed Development. Ancillary non‐residential buildings, such as a clubhouse, leasing office or amenity center may be newly constructed outside the walls of the existing building or as detached buildings on the Development Site. Adaptive Reuse Developments will be considered New Construction for purposes of the Construction Standards in Section 8.1.

1. “**Affordability Period**” means [**OPTIONAL:** NEW CONSTRUCTION/RECONSTRUCTION: the period commencing on the date of Project Completion and ending on the date which is [CHOOSE one thirty (30) thirty-five (35) or forty (40)] years from the date of such Project Completion][OCCUPIED REHAB HOME: that is thirty-five (35) years or greater: the period commencing on the effective date of the LURA and ending on the date which is () years from the effective date of the LURA] and isinclusive of both the Federal Affordability Period and the State Affordability Period.
2. “**Area Median Income**” or “**AMI**”means the median income, adjusted for family size, for the area where the Property is located, as such median income is established by HUD at least annually in accordance with the Federal Act, or as otherwise established by the Department.
3. "**Construction Completion**” means the time allowed to complete construction, which includes, without limitation, that necessary title transfer requirements and construction work has been fully performed, and the certificate(s) of occupancy (if New Construction or reconstruction), Certificate of Substantial Completion (AIA Form G704), Form HUD-92485 (for instances in which a federally insured HUD loan is utilized), or equivalent notice has been issued.
4. “***De Minimis* Amounts**” means any Hazardous Materials either (a) being transported on or from the Property or being stored for use by Development Owner or a tenant on the Property in connection with Development Owner’s or such tenant’s operations or tenancy, or (b) being used by Development Owner or a tenant on the Property, in either case in such quantities and in a manner that both (i) do not constitute a violation or threatened violation of any Environmental Laws and Regulations, Governmental Requirements or require any reporting or disclosure under any Environmental Laws and Regulations or Governmental Requirements, and (ii) are consistent with customary business practice for such operations in Texas.
5. “**Department Monitoring Procedures**” means procedures and requirements adopted or imposed by the Department or HUD for the purpose of monitoring and auditing the Property and the books and records of the Development Owner for compliance with this Contract, the Federal HOME Regulations, Subchapter B of the Administrative Rules; the Enforcement Rules, and Subchapters E, F, and G of the Uniform Multifamily Rules, as may be amended from time to time.
6. “**Efficiency Unit**” means a Unit without a separately enclosed Bedroom.
7. “**Environmental Laws and Regulations**” means any state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended, state laws or ordinances; including but not limited to, Chapter 26 of the Texas Water Code regarding Water Quality Control, Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7), Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code), County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code), Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code) and Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code), and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes and regulations, and such statutes, regulations, rules, guidelines, and standards, as amended from time to time.
8. “**Extremely Low-Income Families”** means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the AMI in the area in which the Property is located, or such other income limits as established by HUD or as otherwise determined by the Department. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.
9. **"Federal Affordability Period**" means the period commencing on [**NEW CONSTRUCTION/RECONSTRUCTION**: the date of Project Completion and ending on the date which is [**CHOOSE ONE:** fifteen/twenty] [(15/20)] years from the date of Project Completion in accordance with the applicable parts of the Federal Act and Federal HOME Regulations][**OCCUPIED REHAB**: the effective date of the LURA and ending on the date which is ■[**OPTIONAL** ■thirty-five/forty ■[(35/40)] years from the effective date of LURA].
10. “**Governmental Authority**” means the United States of America, the State of Texas, the County of INSERT Development County, Texas, and the City of INSERT Development City, Texas, and any political subdivision of any of the foregoing, and any other political subdivision, agency, or instrumentality exercising jurisdiction over Development Owner or the Property.
11. “**Governmental Requirements**” means all federal, state and local laws, statutes, notices, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances under this Contract.
12. “**Hazardous Substance**”or “**Hazardous Material**” means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in CERCLA (42 U.S.C. §9601 *et seq*.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901 *et seq*.); or any similar applicable federal, state or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time, other than *De Minimis* amounts of any such substances.
13. "**HOME Match-Eligible Unit**" means a Unit in the Development that [**OPTIONAL:** is not assisted with HOME Program funds from the Department or any other Participating Jurisdiction as defined under 24 CFR Part 92, but] would qualify as affordable rental housing under 24 CFR Part 92 (a Unit occupied by families and individuals whose Annual Incomes do not exceed eighty percent (80%) of AMI), and that is eligible to be considered for Match under 10 TAC §13.10(c) and 24 CFR Part 92. **[OPTIONAL**: No HOME Match-Eligible Unit may have a Project-Based Voucher issued under 24 CFR Part 983.**]** **OR** **[OPTIONAL**: As long as the Development remains all-utility bills paid, a HOME Match-Eligible Unit may have a Project-Based Voucher issued under 24 CFR Part 983.**][OPTIONAL**: A HOME Match-Eligible Unit may have a Project-Based Voucher issued under 24 CFR Part 983.]
14. “**Low-Income Families**” means families and individuals whose Annual Incomes do not exceed eighty percent (80%) of the AMI, or such other income limits as established by HUD in accordance with the Federal Act, or as otherwise determined by the Department. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.
15. “**LURA Term**”means the Affordability Period as defined herein.
16. “**Project Completion**” has the meaning as defined in 24 CFR Part 92.
17. “**Project Documents**” means all tenant lists, applications, (whether accepted or rejected), leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, utility allowance documentation, income examinations and re-examinations relating to the Property and other documents otherwise reasonably required by the Department.
18. “**Qualified Tenant(s)**” **or** “**Qualified Resident(s)**” Intentionally deleted.
19. “**Qualifying Unit**” Intentionally deleted.
20. **[OPTIONAL:** “**Single Room Occupancy (SRO)**”means an Efficiency Unit that meets all the requirements of a Unit except that it may, but is not required, to be rented on a month to month basis to facilitate transitional housing [**OPTIONAL only when the Development has 100% SROs or Efficiencies**: and meets the requirements for single room occupancy under 24 CFR §92.2]. Buildings with SRO Units have extensive living areas in common and are required to be Supportive Housing and include the provision for substantial supports from the Development Owner or its agent on site.] [Intentionally deleted]
21. “**State Affordability Period**” means the LURA Term as defined herein and as required by the Department in accordance with the State Act and State Multifamily Rules.
22. **[OPTIONAL:** “**Supportive Housing**” means a residential rental development intended for and targeted to be occupied by households in need of specialized and specific non-medical services in order to maintain housing or transition into independent living. The Development Owner, General Partner, an Affiliate of the Development Owner, or a Third Party must provide supportive services for members of a household with specific needs such as homeless, or persons-at risk of homelessness; persons with physical, intellectual, or developmental disabilities; youth aging out of foster care; persons eligible to receive primarily non-medical home or community-based services; persons transitioning out of institutionalized care; persons unable to secure permanent housing elsewhere due to specific, non-medical, or other high barriers to access and maintain housing; individuals who have alcohol or drug addictions; persons with Violence Against Women Act Protections (domestic violence, dating violence, sexual assault, and stalking); HIV/AIDS; veterans with a disability; or [**optional** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_served by \_\_\_\_\_\_\_\_federal or state housing program] [**optional** Chronically Homeless (as defined 24 CFR §576.8 or subsequent definition)]. The Development Owner, General Partner, Affiliate of the Development Owner, or Third Party provider must be able to demonstrate a record of providing substantive services similar to those proposed in the Application in residential settings for at least three (3) years prior to the beginning of the Application Acceptance Period, or Application Acceptance Date for Multifamily Direct Loan Applications. The provider must also secure sufficient funds necessary to maintain the Supportive Housing Development’s operations throughout the entire Affordability Period and provide evidence of fundraising activities reasonably deemed to be sufficient to access any unanticipated operating losses and a fully executed guaranty agreement whereby the Development Owner or its Affiliate assume financial responsibility of any outstanding operating deficits, as they arise, and throughout the entire Affordability Period. These supportive services must be offered regularly and frequently to all residents, be primarily on-site, easily accessible and offered at times that residents are able to use them; they must include readily available resident services and/or service coordination that either aid in addressing debilitating conditions, or assist residents in securing the skills, assets, and connections needed for independent living. A resident may not be required to access supportive services in order to qualify for or maintain tenancy in a Unit in which the household otherwise qualifies. **Choose one of the 2 options:** [The Development must not be financed, except for construction financing, or a deferred-forgivable or deferred-payable construction-to-permanent Direct Loan from the Department, with any debt containing foreclosure provisions or debt that contains scheduled or periodic repayment provisions. A loan from a local government or instrumentality of local government is permissible if it is a deferred-forgivable or deferred-payable construction-to-permanent loan, with no foreclosure provisions or scheduled or periodic repayment provisions, and a maturity date after the end of the Affordability Period. Permanent foreclosable debt that contains scheduled or periodic repayment provisions (including payments subject to available cash-flow) is permissible if sourced by federal funds and otherwise structured to meet valid debt requirements for tax credit eligible basis considerations. Additionally, permanent foreclosable, cash-flow debt or provided by an Affiliate of the Development Owner, if originally sourced from charitable contributions or pass-through local government non-federal contributions or pass-through local government non-federal funds. This restriction may not be changed except as a part of an approved Asset Management Division work out arrangement.] **OR** [Twenty-five percent (25%) of the Units must be supported by project-based rental or operating assistance, as evidenced by an executed agreement with an unaffiliated or governmental third party able to make such a commitment. The Application must include documentation of how resident feedback has been incorporated into the design of the proposed Development that is located less than half (1/2) a mile from regularly scheduled public transportation, including evenings and weekends. At least ten percent (10%) of the Units in the proposed Development must meet the 2010 ADA standards with the exceptions listed in “Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities” (79 Federal Register 29671 for persons with mobility impairments) and multiple systems must be in place for resident feedback. A resident must be a member of the Development Owner’s or social service provider’s board of directors. The Development’s Tenant Selection Criteria must include a clear description of any credit, criminal conviction or prior eviction history that may disqualify a potential resident. The criminal screening criteria must not allow residents to reside in the Development who are subject to a lifetime sex offender registration requirement; and provide at least for a temporary denial for a minimum of seven (7) years from the date of conviction based on criminal history or recertification of any felony conviction for murder related offense, sexual assault, kidnapping, arson, or manufacture of a controlled substance (as defined in §102 of the Controlled Substances Act (21 U.S.C. 802)) and a minimum of three (3) years from the date of conviction based on criminal history or recertification of any felony conviction for aggravated assault, robbery, drug possession, or drug distribution. The screening criteria must also include provisions for approving applications and recertification despite the tenant’s criminal history on the basis of mitigation evidence. Applicants/tenants must be provided written notice of their ability to provide materials that support mitigation. Mitigation may be provided during initial tenant application or upon appeal after denial. Mitigation may include personal statements/certifications, documented drug/alcohol treatment, participation in case management, letters of recommendation from mental health professionals, employers, case managers, or others with personal knowledge of the tenant. The criteria must also include provisions for individual review of permanent or temporary denials if the conviction is more than seven (7) years old, or if the applicant/resident is over fifty (50) years of age, and the prospective resident has no additional felony convictions in the last seven (7) years. The criteria must prohibit consideration of any felony previously accepted criminal history or mitigation at recertification, unless new information becomes available. Criminal screening criteria and mitigation must conform to federal regulations and official guidance, including HUD’s 2016 Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records. This disqualification cannot be a total prohibition unless such a prohibition is required by federal statute or regulation (i.e. the Development must have an appeal process for non-federally required criteria). The Development must have a comprehensive written eviction prevention policy that includes an appeal process. The Development must have a comprehensive written services plan that describes the available services, identifying whether they are provided directly or through referral linkages, by whom, and in what location and during what days and hours. A copy of the services plan must be readily accessible to residents.] **OR** [Intentionally deleted.]
23. “**Unit**” means any residential rental unit in a Development consisting of an accommodation, including a single room used as an accommodation on a non-transient basis that contains complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation.
24. **“Very-Low Income Families”** means families and individuals whose Annual Incomes do not exceed fifty percent (50%) of the AMI, or such other income limits as established by HUD in accordance with the Federal Act, or as otherwise determined by the Department. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612. Also known as “**Very-Low Income Household**”.

## Section 3.2 Generic Terms

Unless the context clearly indicates otherwise, where appropriate, the singular shall include the plural, and the masculine shall include the feminine or gender neutral, and vice versa, to the extent necessary to give the terms defined in this Section III of this Contract or the terms otherwise used in this Contract their proper meanings.

# SECTION IV. Intentionally deleted.

# SECTION V. CLOSING

## Section 5.1 LURA

The LURA is required by the Department, executed by Development Owner and recorded in the appropriate county office for property records, and restricts the Property to certain occupancy and rent requirements for the Affordability Period. During the Federal Affordability Period of the LURA, the Property will be subject to all applicable federal laws and regulations regarding affordability requirements. During the State Affordability Period, the Property will be subject to applicable state affordability requirements. Among other restrictions, the LURA requires the Development Owner of the Property to continue to accept subsidies which may be offered by the federal government, provide notice when exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the Property as affordable housing on a case-by-case basis. The LURA may be amended in accordance and subject to the requirements under Section 10.405(b) of the Uniform Multifamily Rules, as may be amended from time to time. Development Owner acknowledges and agrees that the LURA is a superior restrictive covenant running with this Land and any conveyance or sale to subsequent owners or buyers are subject to the requirements of the LURA. Development Owner further agrees that the LURA shall not be extinguished upon foreclosure or deed in lieu of foreclosure.

**Section 5.2 Survey**

Development Owner agrees to provide the Department, at Development Owner’s expense, a current survey of the Property, showing any improvements as built and otherwise satisfactory to Department. The survey must be a class 1A urban survey, a Class 1A As-built survey, or ALTA survey and must be accompanied by a description of the Property and a surveyor's certificate, both of which must be satisfactory to Department, Department's counsel, and the title company. The survey must be sufficient to allow the title company to amend the title policy survey exception to provide for shortages in area only and those matters specifically set forth on such survey. The survey must also show whether any portion of the Property is located within a designated 100-year Floodplain. The survey must show any and all encroachments. If there are any encroachments, the Department reserves the right to hold or condition the LURA until the encroachment issues have been resolved.

**Section 5.3 Attorney’s Opinion**

A written opinion of Development Owner’s attorney dated as of the Effective Date of this Contract, shall state the following:

1. If Development Owner is a corporation, that Development Owner is duly organized, validly existing and in good standing under the laws of the state of their incorporation, and has the power and authority to transact business in the state of Texas and that there are no provisions in the documents creating or controlling any of them which prohibit the execution and delivery of this Contract.
2. Development Owner is not in violation of its respective charters or bylaws (if a corporation) nor in default in any material respect in the performance of any obligation, agreement or condition contained in any bond, debenture, promissory note or any other evidence of indebtedness to which such Development Owner is a party.
3. That the execution and delivery of this Contract, and the performance by Development Owner hereunder, have been duly authorized by all necessary action, and do not and will not require any consent or approval (except those which have been supplied) and do not and will not violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Development Owner (including, but not limited to applicable usury laws).
4. That the execution, delivery and performance of and under this Contract and the consummation of the transactions contemplated herein will not conflict with or constitute a breach of any of the terms of, or a default under this Contract, creating or controlling Development Owner and will not cause a material breach of any agreement, indebtedness indenture or other instrument to which Development Owner is a party.
5. That this Contract constitutes valid, legal and binding obligations of Development Owner, enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency or other laws affecting enforceability or creditors’ rights generally).
6. That there are no actions, suits or proceedings, including environmental actions, pending or, to such attorney’s knowledge, threatened against Development Owner which, if adversely decided, would have a material adverse effect upon Development Owner, or that this opinion describes such actions, suits, or proceedings.
7. The Property is not subject to any state or federal environmental liens.
8. That Development Owner has represented to attorney, neither Development Owner nor its principals are knowingly in default with respect to any requirement of a governmental agency.
9. That Development Owner acknowledges that acts constituting fraud, false filings, misrepresentation or omission may subject the alleged offender to criminal prosecution and may also result in the alleged offender being barred from further participation in the Department's programs.

## Section 5.4 Violation of the Agreement

Development Owner shall not sell, transfer, or convey the Property in whole or in part without Department’s prior written consent, which shall be subject to the Department’s established policies and procedures, which may be updated and amended from time to time, and shall not otherwise be unreasonably withheld or delayed. Upon a sale, transfer, or conveyance that is without the Department’s consent, the Department, at its option, may seek damages under this Contract up to the Amount of the HOME Match Amount.

# SECTION VI. USE, OCCUPANCY, AND RENT OF THE PROPERTY

**Section 6.1 Occupancy Requirements**

Pursuant to 10 TAC §13.10(b) and24 CFR §92.252(j), Units must be set aside for income eligible individuals and families as set forth below and pursuant to the LURA.

1. Long Term Occupancy Requirements for HOME Match-Eligible Units. Pursuant to this Section 6.1 of the Contract and the LURA, during the Contract Period or LURA Term, whichever period is longer, Development Owner will make available for occupancy to be treated by the Department as HOME Match-Eligible Units for the Department’s purposes under the HOME Match Program as follows:

At least \_\_\_\_ (\_\_) [floating][fixed] Units of the \_\_\_\_ (\_\_) HOME Match-Eligible Units [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program [**OPTIONAL IF FIXED UNITS-**specifically Units Nos. \_\_\_\_\_] must be occupied by Low Income Families whose Annual Incomes do not exceed eighty percent (80%) of the AMI;

At least \_\_\_\_ (\_\_) [floating][fixed] Units of the \_\_\_\_ (\_\_) HOME Match-Eligible Units [acquired] [rehabilitated] [constructed] with funds provided under the HOME Program [**OPTIONAL IF FIXED UNITS-**specifically Units Nos. \_\_\_\_\_] must be occupied by Very Low-Income Families whose Annual Incomes do not exceed fifty percent (50%) of the AMI; and

**[AND]**

**[OPTIONAL:** [None*][Insert # of other Personal Jurisdiction (“****PJ****”) HOME Assisted Units:* \_\_\_\_ (\_\_)] of these HOME Match-Eligible Units can be assisted with HOME Match funds from [*insert name of Participating Jurisdiction*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or other federal funds]

1. Unit Mix. Subject to subsection (a) of this Section 6.1 of the Contract, during the Affordability Period Development Owner will make all HOME Match-Eligible Units available for occupancy with the following mix of Unit Types as defined in the Qualified Allocation Plan:

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with SRO Unit including one (1) bath [**OPTIONAL IF FIXED UNITS**-specifically Units Nos. \_\_\_\_\_];

**[OR]**

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with Efficiency Unit including one (1) bath [**OPTIONAL IF FIXED UNITS-**specifically Units Nos. \_\_\_\_\_];

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with one (1) Bedroom, one (1) bath [**OPTIONAL IF FIXED UNITS**-specifically Units Nos. \_\_\_\_\_];

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with two (2) Bedrooms, \_\_\_ (\_) bath(s) [**OPTIONAL IF FIXED UNITS**-specifically Units Nos. \_\_\_\_\_];

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with three (3) Bedrooms, \_\_\_ (\_) bath(s) [**OPTIONAL IF FIXED UNITS**-specifically Units Nos. \_\_\_\_\_];

\_\_\_\_ (\_\_) [floating][fixed] Units of the HOME Match-Eligible Units with four (4) Bedrooms, \_\_\_\_ (\_) bath(s) **[OPTIONAL IF FIXED UNITS**-specifically Units Nos. \_\_\_\_\_]; and

At least five percent (5%) of the HOME Match-Eligible Units will be designed and built to be accessible to persons with mobility impairments, meeting the accessibility requirements of construction requirements of 2010 ADA standards with the exceptions listed in Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities *Federal Register 79 FR 29671* and at least two percent (2%) of the HOME Match-Eligible Units will be designed and built to be accessible to persons with vision and hearing impairments. If the HOME Match-Eligible Units required to be accessible under the terms of this Section are not spread out proportionally, said HOME Match-Eligible Units must be at least equal in size to the largest Bedroom/bath Unit available.

1. Concentration of Low-Income Families. Development Owner shall use commercially reasonable efforts to distribute [floating][fixed] HOME Match-Eligible Units reserved for **[Select:** Low-Income Families, Very Low-Income Families, and Extremely Low-Income Families**]** among Unit sizes in proportion to the distribution of Unit sizes in the Development, and with regard for the Development and Unit requirements and amenities provided for the total Development, pursuant to 10 TAC §13.10(a), and to avoid concentration of **[Select:** Low-Income Families, Very Low-Income Families, and Extremely Low-Income Families**]** in any area or areas of the Property.
2. Elderly Development. [Intentionally deleted.] **OR** [Throughout the Affordability Period, unless otherwise permitted by the Department, this Development must conform to the Federal Fair Housing Act and must be an elderly limitation development as defined below which:
3. as determined by the Secretary of HUD, is specifically designed and operated to assist elderly persons as defined in and provided under any State or Federal program;
4. is intended for, and solely occupied by persons sixty-two (62) years of age or older; or
5. is intended and operated for occupancy by at least one (1) person fifty-five (55) years of age or older per Unit, where at least eighty percent (80%) of the total housing Units are occupied by at least one (1) person who is fifty-five (55) years of age or older; and adheres to policies and procedures which demonstrate an intent by Development Owner and manager to provide housing for persons fifty-five (55) years of age or older.]

**OR** [The Development receives federal funds from \_\_\_\_that require \_\_\_\_\_\_\_.]

1. Other Preference or Limitation on Resident Population. **OPTIONAL**: **insert one or more or preference required**: Persons who are experiencing homelessness, Persons who were formerly homeless but housed with temporary resources, Persons With Disabilities, Persons With Violence Against Woman Act (“**VAWA**”) Protections and Human Trafficking Protections, Persons who are Chronically Homeless, Veterans who are Homeless or At-Risk of Homelessness (including Wounded Warriors as defined by the Caring for Wounded Warriors Act of 2008), Families with Children who are Homeless or At-Risk of Homelessness, Persons At-Risk of Homelessness, Persons Exiting Institutions or Systems of Care/Reentry, Persons referred through Coordinated Entry.]**or** [Intentionally deleted.]

## Section 6.2 Accessibility

1. Pursuant to 24 CFR §§92.251(a)(2)(i) and (b)(1)(iv),Development Owner must ensure the Property will meet or exceed the accessibility requirements under (1) [24 CFR Part 8](https://www.federalregister.gov/select-citation/2013/07/24/24-CFR-8), which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); (2) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189), as implemented by the applicable Department of Justice regulations at 28 CFR Parts 35 and 36; the (3) the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100.
2. The Development must also meet the specification and accessibility requirements provided in the Department’s Accessibility rules in 10 TAC §11.101(b)(8) and Title 10, Part 1, Chapter 1, Subchapter B of the Texas Administrative Code, as may be amended from time to time. Moreover, Sections §2306.257 and §2306.6705(7) of the State Act require that the Development Owner is and will remain in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601 et seq.); the Civil Rights Act of 1964 (42 U.S.C. §§2000a et seq.); the Americans with Disabilities Act of 1990 (42 U.S.C. §§12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §§701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, and the Texas Accessibility Standards.
3. For the purposes of determining the appropriate distribution of accessible Units across Unit Types, the definition of Unit Type, as defined in the Qualified Allocation Plan, will be used. Alternative methods of calculating the number of accessible Units required in a Development must be approved by the Department prior to award or allocation.
4. In accordance with Section 504 of the Rehabilitation Act of 1973 and implemented at 24 CFR Part 8, the Development Owner will ensure that at least [five percent (5%)] **OR [OPTION B SUPPORTIVE HOUSING ONLY:** ten percent (10%)] of all dwelling Units will be designed and built to be accessible for persons with mobility impairments. A Unit that is on an accessible route and is adaptable and otherwise compliant with the 2010 Standards under the Americans with Disabilities Act meets this requirement. In addition, at least two percent (2%) of all dwelling Units will be designed and built to be accessible for persons with hearing or vision impairments.

**[AND, IF APPLICABLE]**

1. **[SELECT FOR NEW CONSTRUCTION OR REHABILITATION OF SINGLE FAMILY UNITS OR DUPLEXES/TRIPLEXES:** If the Development includes the new construction, Rehabilitation, or Reconstruction of single family Units (one (1) to three (3) Units per building), the Development Owner will ensure that every Unit meets or exceeds the accessibility requirements of Section 2306.514 of the State Act, as it may be amended. **[Delete if all buildings were occupied for residential use on or before March 13, 1991:** Regardless of building type, all Units accessed by the ground floor or by elevator (“affected units”) must comply with the Visitability requirements in 10 TAC §11.101(b)(8)(B) of the Qualified Allocation Plan, for which Design specifications for each item must also comply with the standards of the Fair Housing Act Design Manual produced by HUD.] **[ADD (if applicable):** If the townhome Units of a Rehabilitation development do not have a bathroom on the ground floor, the Development Owner will not be required to add a bathroom to meet the feature requirements as provided in 10 TAC §11.101(b)(8)(B)(iii).**]**

## Section 6.3 Use of the Property

The Development Owner shall continuously use the Property as rental housing during the Contract Term or Affordability Period, whichever is longer, in order to meet the occupancy requirements of this Contract.

## Section 6.4 Common Areas

During the Affordability Period, Development Owner agrees that any common areas, including, without limitation, any laundry or community facilities on the Property shall be for the exclusive use of the tenants and their guests and shall not be available for use by the general public.

**Section 6.5 Rent Limitations**

1. Rent Limitations for Extremely and Very Low-Income Families. The maximum monthly rent charged by Development Owner for HOME Match-Eligible Units occupied by Extremely Low-Income and Very Low-Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(b), as may be amended or modified from time to time. In general, the tenant’s portion of rent, plus an allowance for utilities, plus rental assistance payments, cannot exceed the Low HOME rent limits. All HOME Match-Eligible Units occupied by Very Low-Income Families must be rented at the Low HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time. All HOME Match-Eligible Units occupied by Extremely Low-Income Families shall also satisfy 24 CFR §92.252, and must be rented at a gross rent limit that does not exceed thirty percent (30%) of the income limitation imputed using one (1) person for Units with no separate Bedrooms and one and a half (1.5) persons per Bedroom of all other Units pursuant to Section 42(g)(2)(A) and (B) of the Internal Revenue Code, where the combined tenant paid portion of the rent and applicable Utility Allowance does not exceed said limit.
2. [**INSERT (HOME Match-Eligible Units at Very Low-Income Rent Levels if Project Based Subsidy in project**): Rent Limitations for Very-Low Income Families. The maximum monthly rent charged by Development Owner for HOME Match-Eligible Units occupied by Very Low-Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(b), as may be amended or modified from time to time.**]**
3. [**INSERT (HOME Match-Eligible Units at Low-Income Rent Levels**): Rent Limitations for Low-Income Families. The maximum monthly rent charged by Development Owner for HOME Match-Eligible Units occupied by Low-Income Families other than Very Low-Income Families and Extremely Low Income Families shall not exceed the limits determined by the applicable calculations required by HUD or the Department in accordance with 24 CFR §92.252(a), as may be amended or modified from time to time. In general, the tenant’s portion of rent, plus an allowance for utilities, plus rental assistance payments cannot exceed the High HOME rent limits. All HOME Match-Eligible Units occupied by Low-Income Families may be rented at the High HOME Rents as defined under 24 CFR §92.252, as may be amended or modified from time to time.**]**

## Section 6.6 Income Determination

The Development Owner is required to determine that all tenants occupying a HOME Match-Eligible Unit meet the Occupancy Requirements in Section 6.1 of this Contact, in accordance with the procedures set forth in 10 TAC §10.611 and the HOME Regulations or as otherwise determined by the Department, as may be amended from time to time. Moreover, Development Owner must maintain record of all Income Determinations in accordance with 10 TAC §10.612 and the HOME Regulations or as otherwise determined by the Department, and as provided herein:

1. The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a HOME Match-Eligible Unit complies with the requirements for Extremely Low Income Families or Very Low Income Families or Low Income Families shall be made by Development Owner prior to admission of such family or individual to occupancy in a HOME Match-Eligible Unit (or to designation of a Unit occupied by such family or individual as a HOME Match-Eligible Unit). Thereafter, such determinations shall be made by Development Owner annually.
2. If the Annual Income of a tenant which previously was classified as Very Low Income or Extremely Low Income Families shall be determined upon reexamination to exceed the applicable income limit for Very Low Income Families, but does not exceed eighty percent (80%) of AMI (the applicable income limit for Low Income Families), the Unit occupied by such family or individual shall continue to be counted as occupied by a tenant of a HOME Match-Eligible Unit during such family's or individual's continuing occupancy of such Unit, and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided Development Owner shall hold the next available Unit available for occupancy by Very Low Income Families or as otherwise may be necessary to comply with the occupancy requirements of Section 6.1 of this Contract.
3. If the Annual Income of a tenant which previously was classified as Extremely Low Income Families, Very Low Income Families or Low Income Families shall be determined upon reexamination to exceed eighty percent (80%) of AMI (the applicable income limit for Low Income Families), the Unit occupied by such family or individual shall continue to be counted as occupied by a tenant of a HOME Match-Eligible Unit during such family's or individual's continuing occupancy of such Unit and the Development Owner shall not be considered out of compliance with the occupancy requirements of Section 6.1 of this Contract, provided: (A) such family or individual pays as rent the lesser of: (i) thirty percent (30%) of such family's or individual's Monthly Adjusted Income; or (ii) comparable market rent, as recertified **]**except that tenants of HOME Match-Eligible Units where the Unit has also 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) (“**Section 42**”) must pay rent governed by Section 42; and (B) Development Owner shall hold the next available Unit available for occupancy by Extremely Low Income Families, Low Income Families or Very Low Income Families, whichever is necessary to comply with the occupancy requirements of Section 6.1 of this Contract.
4. [Except as described in Subsection (i) of this Section 6.6, if,] [If] the initial determination made in Section 6.6(a) of this Contract results in such family or individual exceeding the applicable income limit, such family or individual shall not be considered a tenant of a HOME Match-Eligible Unit.
5. Development Owner shall be responsible for determination of the Annual Income and family composition of tenants of HOME Match-Eligible Units at initial occupancy of a Unit, and for reexamination of Annual Income and family composition of tenants of HOME Match-Eligible Units at least annually, based on information collected, verified and certified by Development Owner, in accordance with procedures set forth in 10 TAC §10.611 or as otherwise required by the Department.
6. As a condition of admission to occupancy of a HOME Match-Eligible Unit, Development Owner shall require the head of household and other such household members as it designates to execute a Department approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Development Owner and to the Department such information as Development Owner or Department determines to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a tenant of a HOME Match-Eligible Unit, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Contract.
7. Development Owner shall not be deemed to be in violation of this Section 6.6 of the Contract if, in determining Annual Income and family composition of a tenant of a HOME Match-Eligible Unit, (i) Development Owner has relied in good faith upon information which is supplied to Development Owner by the tenant, (ii) Development Owner has no reason to believe such information is false, and (iii) Development Owner complied with all requirements of the Department with respect to verification of household income and family composition.
8. Development Owner shall make a determination regarding current student status at least annually in accordance with 10 TAC §10.612(b)(2) for HOME Match-Eligible Units.
9. **[OPTIONAL FOR OCCUPIED HOME REHAB:** Anything to the contrary notwithstanding, Development Owner will not terminate the occupancy of any Low-Income Families in occupancy on the effective date hereof that are not a tenant of a HOME Match-Eligible Unit for purposes of meeting the requirements of Section 6.1 of this Contract. In the event Development Owner is unable to comply with the occupancy requirements of Section 6.1 of this Contract because of the occupancy as of the effective date hereof of any Units by tenants who are not Extremely Low-Income Families, Very Low-Income Families or Low-Income Families, or who have not been determined to be a tenant in a HOME Match-Eligible Unit, Development Owner will be in compliance with this Section 6.6 of the Contract if each Unit which thereafter becomes vacant is occupied or held available for occupancy by Extremely Low-Income Families, Very Low-Income Families or Low-Income Families as the case may be, in accordance with the requirements of this Section 6.6 of the Contract until the Low-Income occupancy requirements of Section 6.1 of this Contract are met.**]** **[OR]** **[**Intentionally deleted.**]**

## Section 6.7 Lease Provisions

* + - * 1. Development Owner shall meet the applicable requirements of 10 TAC §10.613 related to Lease Requirements for at least those tenant leases entered into with tenants of HOME Match-Eligible Units during the Affordability Period. Moreover, any such lease must also contain provisions consistent with the State Multifamily Rules, HOME Regulations as applicable to the HOME Match-Eligible Unit, and the rent and income requirements provided in Section 6.6 and this Section 6.7 of the Contract. Provisions prohibited under the HOME Regulations shall not be permitted in any such lease during the Affordability Period, whichever is longer.
				2. All tenant leases entered into with the tenants of HOME Match-Eligible Units during the Affordability Period, whichever is longer, shall be in writing and for one (1) year, unless mutually agreed upon by Development Owner and the tenant, and must contain provisions where each individual tenant:

certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and in connection therewith, agrees to execute an Income Certification form prescribed by the Department; and

agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of tenancy, tenant will comply promptly with all requests for information with respect thereto from Development Owner or the Department, and that tenant’s failure to provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of tenant’s tenancy and constitute cause for immediate termination thereof.

* + - * 1. All tenant leases entered into with the tenants of a HOME Match-Eligible Unit during the Affordability Period shall be supplemented and amended by an addendum to lease in a form prescribed by the Department.
				2. Tenant lease terms must be for one (1) year unless mutually agreed upon by the Development Owner and the tenant. Development Owner may not terminate the tenancy or refuse to renew the lease of a tenant except for serious or repeated violations of the terms and conditions of the lease; violation of applicable federal, state, or local law; or for other good cause. Good cause does not include an increase in the tenant’s income. To terminate or refuse to renew tenancy for a HOME Match-Eligible Unit, the Development Owner must serve written notice upon the tenant specifying the grounds for the action at least thirty (30) days before the termination or nonrenewal.
				3. Tenant leases entered into with tenants of HOME Match-Eligible Units during the Affordability Period shall not contain provisions prohibited by 24 CFR §92.253.

**Section 6.8 Fair Lease and Grievance Procedure; Tenant Participation**

Development Owner shall maintain and abide by the fair lease and grievance procedures approved by the Department and shall have any changes in said procedures approved by the Department prior to the effective date of said changes. Development Owner agrees to maintain and abide by a program of tenant participation in management decisions as set forth in the HOME Regulations.

**Section 6.9 Certification by Development Owner**

Development Owner shall, at least annually during the Affordability Period, or as the Department may otherwise approve, submit to the Department in a form prescribed by the Department, a certificate of continuing compliance with all occupancy standards, terms, and provisions of this Contract and a report on the financial condition of the Development. The certification will also include statistical data relating to persons with special needs, race, ethnicity, income and fair housing opportunities and other information requested by the Department including reports required by Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code (“**Compliance Monitoring**”) and Title 10, Part 1, Chapter 1, Subchapter B of the Texas Administrative Code (“**Accessibility and Reasonable Accommodations**”).

## Section 6.10 Maintaining Affordability

It is the Development Owner’s responsibility to ensure that the affordability of the Property shall remain in place for the entire Affordability Period. In the event that the affordability will not be maintained during the Federal Affordability Period, Development Owner will be required to repay the outstanding balance to the Department. Nothing herein shall serve to waive, modify, supersede, abridge, suspend, or otherwise limit Development Owner’s obligation to cause the Property to be operated in compliance with applicable Federal requirements for the entirety of the Federal Affordability Period required under the LURA, regardless of the status of the Loan, including any situation in which it has been prepaid or discharged.

**Section 6.11 Additional Use and Amenities Requirements**

During the Affordability Period, Development Owner agrees that the Property will have the amenities specified in, and as certified by the execution of, the “Additional Use Requirements; Amenities Requirements” attached hereto as Addendum C and incorporated herein for all relevant purposes, in accordance with Section 11.101(b) of the Qualified Allocation Plan.

**Section 6.12 Written Policies and Procedures**

1. Development Owner shall maintain written documentation of policies and procedures required by the Uniform Multifamily Rules, as may be amended from time to time. Said policies and related documentation must be made available in the leasing office or wherever applications are taken.
2. Development Owner must follow the Written Policies and Procedures of 10 TAC §10.802, the lease requirements set forth in 10 TAC §10.613, and the federal, state, and local landlord-tenant laws.

**Section 6.13 Tenant File Requirements**

At initial occupancy and periodically thereafter throughout the Affordability Period or Contract Term, whichever is longer, Development Owner must create and maintain a file that, at a minimum, contains tenant file information, leases and certifications required under and in accordance with the Uniform Multifamily Rules, as may be amended from time to time.

**Section 6.14. Veteran Identification in Tenant Lease Applications**

The tenant lease applications must provide a space for applicants to indicate if they are a veteran as required by Section 434.214 of the Texas Government Code. In addition, the application must include the following statement: "Important Information for Former Military Services Members. Women and men who served in any branch of the United States Armed Forces, including Army, Navy, Air Force, Marines, Coast Guard, Reserves or National Guard, may be eligible for additional benefits and services. For more information please visit the Texas Veterans Portal at <https://veterans.portal.texas.gov/>.”

**SECTION VII. REPRESENTATION AND WARRANTIES**

**Section 7.1 Development Owner's Representations**

1. Department is relying on the accuracy of all information, representations and documents submitted by Development Owner in connection with its Application. By execution and acceptance of this Contract, Development Owner agrees to perform all activities in accordance with the provisions herein including the certifications provided herein and attached hereto as exhibits, all such exhibits incorporated herein for all relevant purposes, the assurances, certifications, and all other statements made by Development Owner in its Application. Development Owner represents and warrants to Department that there has been no material adverse change to Development Owner's financial status or any change in Development Owner's organizational structure, including the makeup of Development Owner's board of directors, if any. DEPARTMENT MAY TERMINATE THIS CONTRACT IF ANY INFORMATION RELATIVE TO THIS TRANSACTION HAS BEEN OR IS MISREPRESENTED BY DEVELOPMENT OWNER. Department may also terminate this Contract if there is any adverse change with respect to Development Owner's representations in the Application or with respect to the Property. If Development Owner or Department is unable or unwilling to comply with any law, state or federal, or any governmental regulations which affect this transaction beyond the expiration of all applicable notice/cure periods, then this Contract shall terminate. The Department, in its reasonable and sole discretion, may terminate this Contract for any failure of the Development Owner to comply with any terms within this Contract, which is continuing beyond the expiration of all applicable notices and cure periods.
2. Development Owner represents and warrants that Development Owner possesses the legal authority to enter into this Contract, to contribute funds authorized by this Contract, and to perform the services Development Owner has obligated itself to perform under this Contract.
3. Development Owner does hereby represent and warrant that the person(s) signing and executing this Contract on behalf of Development Owner is duly authorized by Development Owner to execute this Contract on behalf of Development Owner and to validly and legally bind Development Owner to all the terms, performances, and provisions of this Contract.
4. Development Owner does hereby represent and warrant that neither the Development Owner nor any of its principals are presently debarred, suspended, proposed for debarment, suspension, declared ineligible, or voluntarily excluded from participation in this transaction of the Multifamily Direct Loan or HOME Match Program by any federal department or agency.
5. Development Owner shall not employ, award contracts to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD on the Exclusions Extract on SAM.gov and/or the Department. In addition, Department shall have the right to suspend or terminate this Contract if Development Owner is debarred, suspended, proposed for debarment under 2 CFR Part 180 or 2 CFR Part 2424, or is otherwise ineligible from participating by HUD or the Department. Development Owner acknowledges and agrees that this Section 7.1 of the Contract specifically includes, but is not limited to, consultants hired by Development Owner to assist Development Owner in any aspect relative to the activities of this Contract.
6. Development Owner represents and warrants that it will incorporate all applicable provisions from this Contract into its agreements with its partners, contractors, and other impacted parties.

## Section 7.2 No Conflict or Contractual Violation

To the best of Development Owner's knowledge, the execution and acceptance of this Contract and Development Owner's obligations hereunder:

1. will not violate any contractual covenants or restrictions (A) between Development Owner or any third party or (B) affecting the Property;
2. if Development Owner is other than an individual, will not conflict with any of the instruments that create or establish Development Owner's authority;
3. will not conflict with any applicable public or private restrictions to which the Development Owner or Property is subject;
4. do not require any consent or approval of any public or private authority which has not already been obtained; and
5. is not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Development Owner, without regard to capacity, (B) any person with whom Development Owner may be jointly or severally liable, or (C) the Property or any part thereof.

## Section 7.3 Prior Warranties, Representations, and Certifications

All warranties, representations and certifications made and all information and materials submitted or caused to be submitted to the Department in connection with the Development are true and correct in all material respects, and there have been no material changes in or conditions affecting any of such warranties, representations, certifications, materials or information prior to the effective date hereof.

## Section 7.4 Reserve Account

Development Owner covenants that the deposits to the Reserve Account required under Section 8.5 of this Contract, if applicable, and the repairs and maintenance of the Development required under Section 8.5 of this Contract, if applicable, fulfill and comply with the requirement of Section 2306.186 of the State Act and the implementing regulations at 10 TAC §10.404. This Section 7.4 of the Contract does not apply to a Property for which a Development Owner is required to maintain a reserve account under any other provision of federal or state law.

## Section 7.5 Intentionally deleted.

## Section 7.6 Intentionally deleted.

## Section 7.7 Certification Regarding Undocumented Workers

Pursuant to Chapter 2264 of the State Act, by execution of the Contract, Development Owner hereby certifies that the Development Owner, or a branch, division or department of Development Owner does not and will not knowingly employ an undocumented worker, where undocumented worker means an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States. If, after receiving a public subsidy, Development Owner, or a branch, division, or department of Development Owner is convicted of a violation under 8 U.S.C. §1324a(f), Development Owner shall repay the amount of the public subsidy with interest, at the rate of five percent (5%) per annum, not later than the one hundred twentieth (120th) day after the date Department notifies Development Owner of the violation.

# SECTION VIII. CONSTRUCTION REQUIREMENTS, SCHEDULE & INSPECTION

## Section 8.1 Construction Standards

* 1. Each Unit must, at a minimum, meet or exceed the requirements of the Texas Property Code relating to security devices and other applicable requirements for residential tenancies and will adhere to all state and local codes, ordinances, and standards. Pursuant to the State Multifamily Rules, the 2015 International Existing Building Code (“**IEBC**”) or International Building Code (“**IBC**”), as applicable, will apply should the IEBC be more restrictive than local codes, or local building codes not exist. Regardless, all applicable property standards required in accordance with the HOME Regulations shall apply (inclusive of the broadband requirements in 24 CFR Part 5 and 24 CFR §92.251(a)(2)(vi) and §92.251(b)(1)(x)), in addition to the property and construction requirements under 10 TAC §10.621 and 10 TAC §13.9. The Property must also meet disaster mitigation construction requirements as outlined in Section 8.7 of this Contract, and the Accessibility standards as outlined in Section 6.2 of this Contract.
	2. [**OPTIONAL** IF HOME REHAB: If the Property triggers the rehabilitation requirements of the HOME Regulations, the Property must meet all applicable state and local codes, ordinances, and standards, or as applicable, the 2015 IEBC or IBC, as well as the property and construction requirements under 10 TAC §10.621 and 10 TAC §13.9 of the State Multifamily Rules.**]** [Intentionally deleted.]

## Section 8.2 Right of Inspection and Access

Department representatives, agents, and contractors shall have the right to review the plans and specifications and to inspect the Improvements periodically during and after construction. Subject to the rights of tenants under residential leases, Development Owner will permit the Department, its agents, employees and representatives, and any interested Governmental Authority, during business hours, to enter upon and inspect the Development and all materials to be used in the [Rehabilitation] [construction] thereof and to examine and copy all of Development Owner's books, records, contracts and bills pertaining to the Development. Development Owner will also cooperate and cause all Contractors to cooperate with the Department and its agents, employees and representatives during such inspections; provided, however, nothing herein shall be deemed to impose upon the Department any duty or obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. Development inspections shall be conducted at least once every three (3) years.

## Section 8.3 Inspections

The Development Owner must have a final development inspection performed after Construction Completion, in accordance with 10 TAC §10.606. The final development inspection request must be sent to the Department within the Development Period. Evidence of Construction Completion must be submitted within thirty (30) days of completion and shall be provided in a format prescribed by the Department to the Compliance Division. The Closed Final Development Inspection Letter, including that all deficiencies identified in the final inspection letter have been corrected, must be received by Project Completion. Extensions of any of the above time periods may only be made for good cause and approved by the Department if commencement of construction was timely.

## Section 8.4 Site Inspection/Monitoring

Department reserves the right, from time to time, to carry out field inspections and desk reviews to ensure compliance with the requirements of the Contract and the LURA. After each monitoring visit, Department shall provide Development Owner with a written report of monitor’s findings. If the monitoring reports note deficiencies in Development Owner’s performance under the terms of any of the Contract and the LURA, the monitoring report shall include requirements for the timely correction of such deficiencies by Development Owner. Failure by Development Owner to take the action specified within the time period specified in the monitoring report may be considered an Event of Default under this Contract and LURA and may be cause for debarment of the Development Owner from Department programs.

## Section 8.5 Reserve Accounts for Repairs (Replacement Reserve Account)

[**New Construction:** Development Owner shall create a reserve for any necessary repairs for the Property by depositing (1) not less than Two Hundred Fifty and No/100 Dollars ($250.00) per Unit per year for newly constructed or reconstructed Units, or (2) the greater of the amount per Unit per year either established by the information presented in a Scope and Cost Review Report (“**SCR**”) in conformance with Subchapter D of the Qualified Allocation Plan (relating to Underwriting and Loan Policy).] [**Rehabilitation, Reconstruction, or Adaptive Reuse:** Development Owner shall create a reserve for any necessary repairs for the Property by depositing the greater of the amount established by information presented in the Scope and Cost Review Report (“**SCR**”) in conformance with Subchapter D of the Qualified Allocation Plan (relating to Underwriting and Loan Policy) or Three Hundred and No/100 ($300.00) per Unit per year for Units for Rehabilitation, Reconstruction, or Adaptive Reuse,] beginning on the date that occupancy of the Property stabilizes (as defined by first lien lender or if no first lien lender, the date the Property is ninety percent (90%) occupied) or the date that permanent financing for the Property is executed and funded, whichever occurs later, in an account in a federally insured bank or savings and shall continue making deposits until the end of the Affordability Period, or the Property ceases to be used as multifamily rental property. If the Department is the subordinate lender and said reserve account is not required by the first lien lender, Development Owner shall set aside the repair reserve amount as a reserve for capital improvements for each Unit in the Development. The Department should be listed as a party to receive notice under any reserve account for repairs (replacement reserve) agreement entered into by the Development Owner. This requirement and condition to create a reserve account for repairs is statutorily required and cannot be waived unless Development Owner is required to maintain a reserve account under any other provisions of Federal or State law. The Department shall assess administrative penalties for Development Owner’s failure comply with the reserve account for repairs (replacement reserves) requirements in Section 8.5 of this Contract. The Office of the Texas Attorney General may assist in the enforcement of this Section 8.5 and the collection of any administrative penalties assessed hereunder.

**Section 8.6 Third Party Scope of Work and Cost Review**

Development Owner shall contract for a third-party Physical Needs Assessment (“**PNA**”), specifically a SCR, in accordance with TAC §11.205 and 10 TAC §11.306, at appropriate intervals that are consistent with the first lien lender requirements. If said third-PNA/SCR is not required by the first lien lender, Development Owner shall contract with a third party to conduct a PNA/SCR at least once during each five (5) year period beginning the eleventh (11th) year after the Effective Date of this Contract. Development Owner shall submit the third-party needs assessment to the Department as well as any response to the assessment, and repairs made in response, and information on any necessary changes to the required reserve based on the assessment within thirty (30) days of completion of the SCR, as such term is defined in the State Multifamily Rules. The Department may complete the necessary repairs if Development Owner fails to do so and Development Owner shall pay for those repairs directly or through a reserve account. If the Department is notified of health and safety violations in the report, the Department may complete the repairs and pay for them through a reserve account. This requirement to contract with a third party to conduct a PNA is statutorily required and cannot be waived. The Department shall assess administrative penalties for Development Owner’s failure to conduct the inspection, to make the identified repairs or to otherwise comply with the reserve account for repairs (replacement reserves) requirements in Section 8.5 or with this Section 8.6 of this Contract. The Office of the Texas Attorney General may assist in the enforcement of this Section 8.6 and the collection of any administrative penalties assessed hereunder.

**Section 8.7 Disaster Mitigation**

Pursuant to 24 CFR §92.251(a)(2)(iii), Development Owner must ensure that this Property will be constructed to mitigate the impact of potential disasters such as earthquakes, hurricanes, flooding and wildfires, in accordance with State and local codes, ordinances, or other State and local requirements, or such other requirements as HUD may establish. Properties in Catastrophe Areas specified in 28 TAC §5.4008 must comply with 28 TAC §5.4011 (related to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008), in accordance with the Multifamily Direct Loan Rule.

**Section 8.8 Violence Against Women Act**

Development Owner must comply with:

1. The notification requirements 24 CFR §92.359(c)(1), and 24 CFR §5.2005;
2. The bifurcation of lease requirements 24 CFR §92.359(d)(1) and 24 CFR §93.356(c);
3. The VAWA lease term/addendum and the emergency transfer plan, as further described in 10 TAC §10.613, as may be amended from time, 24 CFR §92.359(e) and 24 CFR §93.356(d); and
4. The requirements apply for the duration of the Federal Affordability Period and the State Affordability Period (as defined herein).

# SECTION IX. CROSS-CUTTING FEDERAL REQUIREMENTS.

**Section 9.1 Nondiscrimination, Fair Housing, Equal Access, and Equal Opportunity**

1. The Development Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, sexual orientation, or gender identity, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Contract. The Development Owner shall follow Title VI, “Safe Homes for Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking” of the Violence Against Women Reauthorization Act of 2022 (42 U.S.C. §13925 *et seq*.) as implemented by HUD at 24 CFR Part 5, Subpart L, Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq*.), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq*.) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131-12189; 47 U.S.C. §§155, 201, 218 and 255), as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act ([12 U.S.C. §1701](http://api.fdsys.gov/link?collection=uscode&title=12&year=mostrecent&section=1701&type=usc&link-type=html)z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq*.), Fair Credit Reporting Act (15 U.S.C. §1681 *et seq*.), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and it implementing regulations at 24 CFR Part 107, The Fair Housing Act (42 U.S.C. §3601 *et seq.*), as implemented by HUD at 24 CFR Part 100-115, 24 CFR §92.202 and §92.250, and 24 CFR §5.105(a). By execution of this Contract, Development Owner agrees to affirmatively further fair housing by using funds in a manner that follows the “State of Texas Analysis of Impediments” and by maintaining records in this regard.
2. Development Owner must comply with:
	1. The notification requirements set forth in 24 CFR §92.359(c)(1) and 24 CFR §5.2005;
	2. The bifurcation of lease requirements set forth in 24 CFR §92.359(d)(1) and 24 CFR §93.356(c);
	3. VAWA Lease term/addendum and emergency transfer plan, as further described in 10 TAC §10.613, as may be amended from time to time, 24 CFR §92.359(e) and 24 CFR §93.356(d); and
	4. The requirements apply for the duration of the Federal Affordability Period and State Affordability Period (as defined herein).

**Section 9.2 Flood Hazard**

In accordance with 10 TAC §11.101(a) and 10 TAC §11.302(g) and Section 202 of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106 *et. seq.*), funds provided under this Contract may not be used in connection with acquisition or Rehabilitationof a unless the locality in which the site is located is participating in the National Flood Insurance Program (“**NFIP**”) or less than a year has passed since FEMA notification regarding such hazards and flood insurance for the buildings that are located in the 100-year Floodplain and have not been elevated above the Floodplain and for the tenant’s contents in those same buildings is obtained as a condition of approval of the Contract. Development Owner must determine if the locality participates in the NFIP during the preliminary stages of the environmental clearance process.

**SECTION X. RECORDS AND REPORTING**

**Section 10.1 Records**

Development Owner must establish and maintain sufficient records required under the Uniform Multifamily Rules, as determined by the Department. Development Owner agrees that the Department, Comptroller General of the United States, or any of their duly authorized representatives, shall have the right to access and examine all books, accounts, records, reports, files, and other papers or property belonging to or in use by Development Owner pertaining to this Contract. Electronic or digital copies of all records pertinent to this Contract shall be retained by Development Owner for a period of five (5) years following the expiration of the Contract with the Administration Rules and 24 CFR §92.508(c), and as further described in Section 10.6 of this Contract with the following exceptions:

1. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has 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.
2. Records covering displacement and acquisitions must be retained for five (5) years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Development have received the final payment to which they are entitled in accordance with the Federal HOME Regulations.
3. For rental housing developments, records must be retained for five (5) years after the date of Project Completion; except that records of individual tenant income verifications, development rents and development inspections must be retained for the most recent five (5) year period after the tenant moves out, until five (5) years after the State Affordability Period terminates, in accordance with Section 10.6 of this Contract and as provided in the LURA.

**Section 10.2 Reporting Requirements**

1. Development Owner shall submit to Department reports required under the Qualified Allocation Plan and the Uniform Multifamily Rules and such other reports on the operation and performance of this Contract as may be required by Department, including but not limited to the reports specified in this Section 10.2 of this Contract. Development Owner shall provide Department with all reports necessary for Department's compliance with the Federal HOME Regulations.
2. In addition to the limitations on liability otherwise specified in this Contract, it is expressly understood and agreed by the Parties hereto that if Development Owner fails to submit to the Department in a timely and satisfactory manner any report required by this Contract, the Department may, in its sole discretion, determine that the failure constitutes default under this Contract, HOME Regulations, and may pursue all available remedies.
3. In addition to other reports, the Development Owner shall provide reports to the Department regarding program activities to evidence progress of performance in accordance with the requirements of the Federal Act, State Act, HOME Regulations, and this Contract.

**Section 10.3 Reports**

Development Owner shall deliver to the Department:

1. A Construction Status Report or Unit Status Report, as applicable, within ten (10) days after the last day of each quarter in each fiscal year, or as requested by the Department, as applicable, in accordance with 10 TAC §10.402(h) and 10 TAC §10.607(f). The Department may require electronic submission of the applicable Construction Status Report and/or Unit Status Report.
2. From time to time and promptly upon each request, such Project Documents including data, certificates, reports, statements, documents, or further information regarding the assets or the business, liabilities, financial position, projections, results of operations, or business prospects of Development Owner or such other matters concerning Development Owner's compliance with the HOME Regulations as the Department may reasonably request in accordance with this Contract during the Contract Term or Affordability Period, whichever is longer, or in accordance with the LURA during the LURA Term; or as necessary to assist the Department in meeting its recordkeeping and reporting requirements during the applicable period, including, without limitation, the following:

i. Records that demonstrate the Development meets the Property Standards and applicable requirements under 24 CFR §92.251.

* + 1. Records that demonstrate the Development meets the requirements under 24 CFR §92.252 for the Contract Term or Affordability Period, whichever is longer.
		2. Records that demonstrate compliance with the requirements of 24 CFR §92.253 related to tenant protections.
		3. Records that indicate whether the Development is mixed-income, mixed-use, or both.
		4. Records that indicate Unit substitutions and filling vacancies, of floating Units pursuant to 24 CFR §92.504(c)(3)(vi).
		5. Records of certifications concerning debarment and suspension required by 2 CFR Part 180 and 24 CFR Part 2424.

**Section 10.4 Information and Reports Regarding the Development**

Development Owner shall deliver to the Department, at any time within thirty (30) days after notice and demand by the Department but not more frequently than once per month, (a) a statement in such reasonable detail as the Department may request, certified by Development Owner, of the leases relating to the Development, and (b) a statement in such reasonable detail as the Department may request, certified by a certified public accountant or, at the option of the Department, by the Development Owner, of the income from and expenses of any one (1) or more of the following: (i) the conduct of any business on the Development, (ii) the operation of the Development, or (iii) the leasing of the Development or any part thereof, for the last twelve (12) month calendar period prior to the giving of such notice, and, on demand, Development Owner shall furnish to the Department executed counterparts of any such tenant leases and any other contracts and agreements pertaining to facilities located on the Property or which otherwise generate ancillary income for the Development, for the audit and verification of any such statement. Development Owner may not accept another source of funds, including but not limited to Project-Based Vouchers, without written Department approval.

**Section 10.5 Other Information**

Development Owner shall deliver to the Department, at any time within thirty (30) calendar days after notice and demand by the Department, any information or reports required by the laws of the State of Texas or as otherwise reasonably required by the Department.

**Section 10.6 Maintenance of Documents**

Electronic or digital copies of all Project Documents and any other report or records which Development Owner is required to prepare and/or provide to the Department pursuant to this Contract, 10 TAC §11.205, 10 TAC §10.607, 10 TAC §10.608, or the HOME Regulations must be retained for the periods set out in the HOME Regulations, or if no specific period is set out, for five (5) years after the end of the State Affordability Period under the LURA, or as otherwise specified by law or required by the Department including but not limited to as described in Section 10.1 of this Contract. All Project Documents shall at all times be kept separate and identifiable from any other business of Development Owner which is unrelated to the Property, and shall be maintained in compliance with the applicable HOME Regulations, and any other requirements of the Department, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the Department, HUD, or the United States Comptroller General. Development Owner agrees and acknowledges that any and all of the Project Documents are confidential in nature. Development Owner agrees not to disclose the Project Documents or any of the terms, provisions or conditions thereof, or any other information that is deemed confidential under federal law or state law related to tenants' or applicants' income, social security number, employment status, disability, or other related matters to any party outside of Development Owner's organization, to Development Owner’s management company for the Development, or to Development Owner’s lenders, investors, attorneys, or accountants, except as otherwise expressly required in this Contract, or by the applicable HOME Regulations. Development Owner further agrees that within its organization, the Project Documents and other confidential information will be disclosed and exhibited only to those persons within Development Owner's organization whose position and responsibilities make such disclosure necessary.

**Section 10.7 Public Information**

Pursuant to Section 2306.6717 of the State Act, Development Owner acknowledges that Department is subject to the Texas Public Information Act under Chapter 552 of the Texas Government Code and the posting requirements for the Department’s website pursuant to Section 2306.6717 of the State Act and Development Owner agrees that funds received from the Department are subject to the Texas Public Information Act and the exceptions to disclosure as provided under the Texas Public Information Act. Development Owner understands that the Department will comply with the Texas Public Information Act interpreted by judicial rulings and opinions of the Attorney General of the State of Texas. In accordance with Section 2252.907 of the Texas Government Code, Development Owner is required to make any information created or exchanged with the State of Texas pursuant to this Contract, available in a format that is accessible by the public at no additional charge to the State of Texas. A request to the Development Owner for public information shall be communicated to the Department’s contact identified in this Contract, by the close of business on the following business day after the request is received. Development Owner shall not provide to the requestor any information that was written, produced, collected, assembled, or maintained under this Contract, but shall respond to the requestor that the request has been forwarded to the Department for processing. After gathering all information that is responsive to the request, but in no event later than five (5) business days after receiving the information request, Development Owner shall send the information to the Department. Development Owner shall timely contact the Department if there will be any delay in sending the information request or responsive documents to the Department.

**Section 10.8 Protected Health Information**

If Development Owner or its management company, employees or representatives collects or receives documentation for disability, medical records or any other medical information in the course of conducting any business on the Development, operating the Development, or leasing the Development, Development Owner and its management company, employees or representatives shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) (Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996) the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164).

**Section 10.9 Hazardous Materials: Indemnification.**

1. Owner agrees (i) that Owner shall not receive, store, dispose or release any Hazardous Materials on or to the Property or transport any Hazardous Materials to or from the Property or permit the existence of any Hazardous Materials Contamination; (ii) to give written notice to the Department promptly upon Owner's acquiring knowledge of the presence of any Hazardous Materials on the Property or the transport of any Hazardous Materials to or from the Property or of the existence of any Hazardous Materials Contamination, with a full description thereof; (iii) promptly, at Development Owner's sole cost and expense, to comply with any Environmental Laws and Regulations and Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide the Department with satisfactory evidence of such compliance; (iv) to provide the Department, within thirty (30) days after demand by the Department, with financial assurance evidencing to the Department's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Property as a result thereof; and (v) to ensure that all leases, licenses, and agreements of any kind now or hereafter executed which permit any party to occupy, possess, or use in any way the Property or any part thereof, whether written or oral, include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Property, and a provision that failure to comply with such prohibition shall expressly constitute a default under any such agreement.
2. Owner shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Materials in or about the Property, including any so‑called state, federal or local "Superfund" lien relating to such matters.
3. OWNER SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT (AS DEFINED IN SECTION 6.1 OF THIS AGREEMENT) SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT OF THE PROPERTY ARE EXERCISED BY THE DEPARTMENT, OWNER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE DEPARTMENT FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY), SUITS, ACTIONS, CLAIMS, DEMANDS, PENALTIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES AND MONETARY SANCTIONS), LOSSES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS) (THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") WHICH MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE DEPARTMENT BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF OWNER CONTAINED OR REFERRED TO IN THIS SECTION 4.7 OR WHICH MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY ENVIRONMENTAL LAWS AND REGULATIONS AND GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF OWNER OR THE DEPARTMENT.

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL, ON, FROM OR UNDER THE PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF DEVELOPMENT OWNER OR FEE TITLE OWNER OR DEVELOPMENT OWNER OR FEE TITLE OWNER'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE FOREGOING INDEMNITY SHALL NOT APPLY TO (I) MATTERS RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF DEPARTMENT, OR ANY EMPLOYEE, AGENT OR INVITEE OF DEPARTMENT, OR (II) matters resulting from the actions of DEPARTMENT, or any employee, agent or invitee of DEPARTMENT taken after DEPARTMENT or any third party has taken title to, or exclusive possession of, the property.

The covenants and agreements contained in this Section 10.8 shall survive the consummation of the transactions contemplated by this Agreement.

# SECTION XI. DEPARTMENT MONITORING; AUDITS

**Section 11.1 Department Monitoring**

During the Contract Term or Affordability Period, whichever is longer, Development Owner agrees to permit the Department and HUD (during any applicable Federal Affordability Period or federal recordkeeping period), or its designated representative, access to the Property for the purpose of performing Department Compliance Monitoring Procedures in accordance with Subchapter F of the Uniform Multifamily Rules. The Department or HUD will periodically monitor and audit Development Owner's compliance with the requirements of this Contract, the requirements for Reserve Account under Subchapter E of the Uniform Multifamily Rules, and any and all other Governmental Requirements, in accordance with Department Monitoring Procedures under this Contract. In conducting its compliance review, the Department and HUD will rely primarily on information obtained from the Development Owner's records and reports, findings from onsite monitoring in accordance with 10 TAC §10.618 and 10 TAC §10.803, and audit reports. The Department and HUD may also consider relevant information gained from other sources, including litigation and citizen complaints. In accordance with Section 2306.231 of the State Act, and to the extent permitted by the Federal Act and its implementing regulations, Development Owner shall reimburse the Department or HUD, as appropriate, on demand for their respective costs incurred in connection with monitoring, auditing, inspecting and examining the Development Owner's compliance with the requirements of this Contract.

**Section 11.2** Intentionally deleted.

**Section 11.3** Intentionally deleted.

**SECTION XII. Default, Enforcement, and Remedies**

**Section 12.1 Events of Default**

Occurrence of one (1) or more of the following events will, at the sole election of the Department, subject to any applicable Notice and cure periods, constitute an event of default (“**Event of Default**”) under this Contract:

1. Breach of Contract. Development Owner defaults in the performance of any of its obligations under this Contract or breaches any covenant, agreement, restriction, representation or warranty set forth herein, and such default remains uncured for a period of thirty (30) calendar days after written notice thereof shall have been given by the Department (or for an extended period approved by the Department if the default or breach stated in such notice can be corrected, but not within such thirty (30) calendar day period, unless Development Owner does not commence such correction or commences such correction within such thirty (30) calendar day period but thereafter does not diligently pursue the same to completion within such extended period.
2. Bankruptcy. Development Owner is adjudged bankrupt or insolvent, or a petition or proceeding for bankruptcy or for reorganization shall be filed against it and it shall admit the material allegations thereof, or an order, judgment or decree shall be entered approving such petition and such order, judgment or decree shall not be vacated or stayed within sixty (60) calendar days of its entry or a receiver or trustee shall be appointed for the Development Owner or the Property, Land or any part thereof and remain in possession thereof for sixty (60) calendar days.
3. Transfer or Sale of Property. Development Owner sells or otherwise transfers the Property, in whole or in part (except leases of individual Units for a period not to exceed two (2) years and otherwise in accordance with this Contract), without the prior written consent of Department, which shall not be unreasonably withheld.
4. False Representations. If any representation, statement or warranty made by Development Owner or others in, under or pursuant to any affidavit or other instrument executed in connection with this Contract is false or misleading in any material respect as of the date made.
5. Destruction or Loss of Property.
	* 1. If the Property is demolished, destroyed or substantially damaged so that (in Department's reasonable judgment) it cannot be substantially restored or rebuilt with available funds to the condition existing immediately prior to such demolition, destruction or damage within a reasonable period of time; or
		2. Development Owner fails to notify Department of the occurrence of any casualty loss of the Property within thirty (30) calendar days from the occurrence; or
		3. Development Owner fails to restore Property or replace Property with substantially similar items due to casualty within a time period approved by Department not to exceed two (2) years.
6. Change in Financial Condition. If the Department reasonably determines that the likelihood of payment of the Loan or performance of the obligations under the this Contract is threatened by reason of a material adverse change in the financial condition or credit standing of Development Owner or, if Development Owner is a partnership, joint venture, trust or other type of business association, of any of the parties comprising Development Owner, or if the estate held by Development Owner in the Land is a leasehold estate, of the ground lessor.
7. Foreclosure of Other Liens. If the holder of any lien or security interest on the Property (without hereby implying Department's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
8. Performance of Obligations. If Development Owner fails, refuses or neglects to perform and discharge fully and timely any of the obligations under this Contract or the LURA as and when called for and such failure, refusal or neglect is either incurable or, if curable, remains uncured for a period of thirty (30) calendar days after the earlier to occur of (i) the date Department gives written notice thereof to Development Owner or (ii) the date upon which Development Owner had actual knowledge of the obligation to be performed; provided, however, that if such default is curable but requires work to be performed, acts to be done or conditions to be remedied which, by their nature, cannot be performed, done or remedied, as the case may be, within such thirty (30) calendar day period, no Event of Default shall be deemed to have occurred if Development Owner commences same within such thirty (30) calendar day period and thereafter diligently and continuously prosecutes the same to completion within sixty (60) calendar days after such notice or date of actual knowledge.
9. Property Use, Occupancy and Rent. If the Development Owner fails to develop, use, maintain or rent the Property in accordance with the provisions and restrictions under Section 6 of this Contract, and as provided under and in accordance with the LURA.
10. Merger. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Texas, and such is not cured prior to causing material harm to Development Owner’s ability to repay the indebtedness under this Contract or perform the contractual obligations hereunder.
11. Events of Noncompliance. If Development Owner is found to be in noncompliance for compliance monitoring purposes in accordance with the State Multifamily Rules.
12. Information Security and Privacy Requirements. If Development Owner fails to comply with the information security and privacy requirements under 10 TAC §1.24, ensuring the security and privacy of Protected Information (as said term is defined under 10 TAC §1.24). If prior to performing any work under this Contract, Development Owner either (i) fails to have an effective, fully executed ISPA, as required by 10 TAC §1.24, on file with the Department, or (ii) fails to execute and submit to the Department an ISPA in accordance with instructions found on the Department’s website at the “Information Security and Privacy Agreement” link.

**Section 12.2 Debarred and Suspended Parties**

By signing this Contract, Development Owner certifies that neither it nor its current principle parties are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency as provided in the Certification Regarding Debarment, Suspension and Other Responsibility Matters attached hereto as Addendum B and incorporated herein for all relevant purposes. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in the certification attached as Addendum B, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. Development Owner also certifies that it will not make any award provided by this Contract to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549. Development Owner agrees that prior to entering into any agreement with a potential subcontractor that the verification process to comply with this requirement will be accomplished by checking the System for Award Management (“**SAM**”) at www.sam.gov and including a copy of the results in its project files. After said verification, Development Owner may decide the frequency by which it determines the eligibility of its subcontractors during the term of the subcontractor’s agreement. Development Owner may subsequently rely upon a certification of a subcontractor that is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless Development Owner knows that the certification is erroneous. Failure of Development Owner to furnish the certification attached hereto as Addendum B or an explanation of why it cannot provide said certification shall disqualify Development Owner from participation under this Contract. The certification or explanation will be considered in connection with the Department’s determination whether to continue with this Contract. Development Owner shall provide immediate written notice to Department if at any time Development Owner learns that the certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Development Owner further agrees by executing this Contract that it will include the certification provision titled “Certification Regarding Debarment, Suspension and Other Responsibility Matters” “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusive-Subcontracts,” as set out in Addendum B, without modification, and this language under this Section 12.2 of the Contract, in all its subcontracts.

**Section 12.3 Remedies**

Upon an occurrence and continuation of an Event of Default, beyond any applicable notice and/or cure period, the Department, in its sole discretion may, (i) apply to any court having jurisdiction of the subject matter for specific performance of this Contract, or for an injunction against any violation of this Contract, or (ii) take any action authorized under the State Multifamily Rules, or (iii) take any and all action at law, in equity, or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Development Owner's obligations thereunder cannot be adequately compensated by monetary damages in the event of Development Owner's default. The Department shall be entitled to its reasonable attorneys' fees in any such judicial action in which the Department shall prevail. The Department shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon a default by Development Owner hereunder.

**Section 12.4 Reliance Upon Information**. In carrying out its obligations hereunder, Development Owner shall be entitled to rely upon information provided by the Department with respect to (i) income limits applicable to Lower Income Individuals and Families, Very Low Income Families and Extremely Low Income Families, (ii) the method for calculating the incomes of such individuals and families and (iii) the maximum rents which may be charged to such individuals and families pursuant to Section 6.5 hereof.

**Section 12.5 Cumulative and Concurrent Remedies**

Each right, power and remedy of the Department provided for in this Contract now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the Department of any one (1) or more of the rights, powers or remedies provided for in this Contract or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Department of any or all such other rights, powers or remedies.

**Section 12.6 Purchase Options, Rights of First Refusal, and Preemptive Rights to Purchase**

The Department has the option to utilize purchase options, rights of first refusal, or any other preemptive rights to purchase Property in accordance with the applicable provisions of 24 CFR §92.503 and 24 CFR §92.252 in order to preserve the affordability requirements under Section 6 of this Contract during the Federal Affordability Period or Contract Term, whichever is longer. Pursuant to Section 2306.185(f) of the State Act, Development Owner must provide written notice to the Department at least twelve (12) months before the date of any attempt to dispose of the Property or prepay any loan insured by HUD to enable the Department to attempt to locate a buyer who will conform to this Contract as well as the LURA. Development Owner further acknowledges and agrees that the LURA will be a superior restrictive covenant running with the Land, and any conveyance or sale to subsequent owners or buyers shall also be subject to the requirements under the LURA.

**SECTION XIII. GENERAL PROVISIONS**

**Section 13.1 Independent Contractor**

It is expressly understood and agreed by the Parties hereto that Department is contracting with Development Owner as an independent contractor, and that Development Owner, as such, agrees to hold Department harmless and to the extent allowed by law indemnify Department from and against any and all claims, demands, and causes of action of every kind and character which may be asserted by any third party occurring or in any way incident to, arising out of, or in connection with the services to be performed by Development Owner under this Contract.

**Section 13.2 Subcontracts**

1. Development Owner shall only subcontract for performance of activities described in this Contract after Development Owner has obtained the appropriate documentation verifying the subcontractor’s eligibility, as specified by Department, for each such proposed subcontract. Development Owner, in subcontracting for any activities described in this Contract, expressly understands that in entering into such subcontracts, Department is in no way liable to Development Owner's subcontractor(s).
2. In no event shall any provision of this Section 13.2 of the Contract constitute adoption, ratification, or acceptance of Development Owner's or subcontractor's performance hereunder. Department maintains the right to insist upon Development Owner's full compliance with the terms of this Contract, and by the act of approval under this Section 13.2 of the Contract, Department does not waive any right of action which may exist or which may subsequently accrue to Department under this Contract.
3. Development Owner shall comply with all applicable federal, state, and local laws, HOME Regulations, and ordinances for making procurements under this Contract.
4. Development Owner shall include language in any subcontract that provides the Department and HUD the authority to directly review, monitor, and audit the operational and financial performance and records of work performed under this Contract by any third-party, including subcontractors, contractors and consultants or service providers.
5. Development Owner shall include in any subcontracts that failure to adequately perform under this Contract may result in penalties up to and including debarment from performing additional work for the Department.

**Section 13.3 Budget/Rent Schedule**

The final sources and uses for the Development, with respect to the eligible use of HOME Match funds as evidenced in the Department’s Budget/Rent Schedule, attached hereto as Exhibit B, and incorporated herein for all relevant purposes, which may be updated, revised and amended from time to time. Development Owner may not use HOME Match funds for other unidentified or otherwise ineligible uses. Development Owner may not use other funds not reflected in Exhibit B on the Property during the Development Period, or have a project-based voucher during the Affordability Period unless reflected in Exhibit B, without prior written Department approval.

**Section 13.4 Notices**

All notices required or permitted to be given under this Contract must be in writing. Notice will be deemed effective three (3) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the Parties shall, until changed as hereinafter provided, be as follows:

 Department: Physical Address: 221 E. 11th Street, Austin, TX 78701

 Mailing Address: P.O. Box 13941, Austin, Texas 78711-3941

 Attention: Director of Multifamily Finance Division

 With copy to: Texas Department of Housing and Community Affairs

 P.O. Box 13941

 Austin, Texas 78711-3941

 Attention: Director of Compliance

 Development Owner:

 **[Insert:** Registered Entity Name

 Street Address

 City, State Zip**]**

 Attention: **[Insert:** Authorized Agent/Primary Contact Name**]**

 **[**With copy to: Fee Title Owner:

 **[Insert:** Registered Entity Name

 Street Address

 City, State Zip**]**

 Attention: **[Insert:** Authorized Agent/Primary Contact Name**]**

Any party may change its address for notice purposes by giving ten (10) calendar days' notice to the other Parties in accordance with this Section 13.4 of the Contract.

**Section 13.5 Conflicting Agreements**

Development Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that in any event, the requirements of this Contract are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

**Section 13.6 Amendments**

1. Except as specifically provided otherwise in this Contract or in the State Multifamily Rules, any changes, additions, or deletions to the terms of this Contract shall be in writing and executed by both Parties and shall comply with the amendment requirements in the State Multifamily Rules, as amended from time to time.
2. Any changes, additions, or deletions to the terms of this Contract which are required by changes in federal or state law, or regulations, are automatically incorporated into this Contract without the requirement of a written amendment hereto, and shall become effective on the date designated by such law or regulation.
3. Any extensions to the Development Period up to thirty-six (36) months shall be incorporated into this Contract without the requirement of a written amendment hereto, and shall become effective on the date the amendment reflecting the extended Development Period is executed.

## Section 13.7 Severability

If any provision of this Contract is held invalid, the remainder of the Contract shall not be affected thereby and all other parts of this Contract shall nevertheless be and remain in full force and effect and construed so as best to effectuate the intent of the Parties.

## Section 13.8 Counterparts and Facsimile Signatures

This Contract may be executed in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile or electronic transmission, and any such signature shall have the same legal effect as an original. An executed facsimile or email copy approved by the Department will be sufficient to evidence the Parties’ agreement to any amendment, revision, or change to this Contract if it is made on a form provided by the Department. If any party returns a copy by facsimile machine, the signing party intends the copy of its authorized signature printed by the receiving machine to be its original signature. If any party returns a copy by email, the signing party intends the copy of its authorized signature emailed to the receiving email to be its original signature.

**Section 13.9 Captions**

The captions used herein are for reference purposes only and shall not define, limit, extend, or describe the scope of this Contract or the intent of any provisions hereof.

**Section 13.10 Number, Gender**

Whenever used herein the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders.

**Section 13.11 Jurisdiction**

This Contract is delivered and is intended to be performed in the State of Texas.

**Section 13.12 Venue**
For purposes of litigation pursuant to this Contract, venue shall lie in Travis County, Texas.

## Section 13.13 Litigation and Claims

1. No action, litigation, investigation or proceeding is now pending or, to the best of Development Owner's knowledge, threatened against Development Owner which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation or enforceability of this Contract.
2. Development Owner shall give Department prompt notice, in writing, of the occurrence of any of the following events:
	* 1. Any action, including any proceeding before an administrative agency, filed against Development Owner in connection with this Contract; and
		2. Any claim against Development Owner, the cost and expense of which Development Owner may be entitled to be reimbursed by Department.
3. Except as otherwise directed by Department, Development Owner shall furnish promptly to Department copies of all pertinent papers received by Development Owner with respect to such action or claim.

**Section 13.14 No Bankruptcy**

There is not pending or, to Development Owner's best knowledge, threatened against Development Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Development Owner under any federal, state or other stature, law, regulation relating to bankruptcy, insolvency or relief for debtors.

**Section 13.15 Compliance with Applicable Law**

This Contract is expressly subject to Development Owner's compliance to Department's satisfaction with all applicable laws, federal, state and local, and with all governmental regulations, rules and ordinances, as well as Department's program guidelines relating to the Loan and HOME Match Program, HOME Regulations, and affecting the Development, or its use, all of which may be modified or amended from time to time. Development Owner shall not violate any federal, state, or local laws, stated herein or otherwise, nor commit any illegal activity in the performance of or associated with the performance of this Contract. No funds under this Contract shall be used for any illegal activity or activity that violates any federal, state or local laws.

**Section 13.16 Assignment and Assumptions of Liens**

* + - * 1. Assignment This Contract is made by Department to Development Owner only. Accordingly, it is not assignable without the written consent and agreement of Department, as provided in the Multifamily Direct Loan Rule, for which consent may be withheld at Department's sole discretion.
				2. Assumption. This Loan cannot be assumed without the approval of the Department in accordance with the Multifamily Direct Loan Rule. Any request for an assumption of loan following an approval of a transfer of ownership in accordance with the Uniform Multifamily Rules must be submitted to the Department for approval.

**Section 13.17 Alternative Dispute Resolution**

In accordance with Section 2306.082 of the State Act, it is the Department’s policy to encourage the use of appropriate Alternative Dispute Resolution procedures (“**ADR**”) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Texas Government Code), to assist in the fair and expeditious resolution of internal and external disputes involving the Department and the use of negotiated rulemaking procedures for the adoption of Department rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by Department’s ex parte communications policy, Department encourages informal communications between Department staff and the Administrator, to exchange information and informally resolve disputes. Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Administrator would like to engage Department in an ADR procedure, the Administrator may send a proposal to Department’s Dispute Resolution Coordinator. For additional information on Department’s ADR policy, see Department’s Alternative Dispute Resolution and Negotiated Rulemaking in the Administration Rules and the ADR Policy in the Qualified Allocation Plan.

**Section 13.18 Additional Terms and Conditions**

1. General. Development Owner understands and hereby acknowledges that this Contract does not address all of the terms and conditions of the Loan. All information, documents and reports required must be satisfactory to Department in its sole discretion. Any change which occurs after the final acceptance of the Application and subsequent award of HOME Match funds by the Department, and not agreed to by the Department in writing, may result in a reduction of the Loan Amount or the termination of this Contract.
2. Underwriting Report Conditions. Development Owner will be responsible for fulfilling all of the additional terms and conditions required within the Department Budget/Rent Schedule attached hereto as Exhibit B, as may be amended. In the event any of the conditions listed herein cause the Development Owner to become an ineligible applicant or the Development to become an ineligible awardee or recipient, Development Owner must inform the Department, and the Department reserves the right to terminate this Contract.
3. Special Conditions.
	* 1. [**OPTIONAL**: Development Owner must provide the following specific environmental and mitigation measures: [INSERT (environmental or special Board Conditions as provided in the Board Action Item/Transcript or determined to be required for federal compliance and regulatory purposes).]

* + 1. [**OPTIONAL**: *List any other additional REA conditions*]

**Section 13.19 Time is of the Essence**

Time is of the essence with respect to Development Owner's compliance with all covenants, agreements, terms and conditions of this Contract.

**Section 13.20 Oral and Written Agreements**

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

b. The attachments enumerated and denominated below are incorporated herein by reference for all purposes and are a part of this Contract and constitute promised performances under this Contract:

* + 1. Addendum A, Intentionally Deleted
		2. Addendum B, Certification Regarding Debarment, Suspension and Other Responsibility Matters.
		3. Addendum C, Additional Use Requirements; Amenities Requirements.
		4. Exhibit A, Legal Description.
		5. Exhibit B, Budget/Rent Schedule.

**Section 13.21. Acceptance**

This Contract is not valid until executed by Development Owner and Department. Development Owner must deliver this Contract to the Department within thirty (30) calendar days of receipt. If a copy of the executed Contract is not in Department’s possession by such time and date, this Contract shall terminate and become null and void unless Department, in its sole discretion, shall choose to extend this date in writing.

**Section 13.22 Effective Date**

The Effective Date of this Contract shall be the date identified below.

**THIS CONTRACT WAS APPROVED BY THE BOARD OF DIRECTORS ON     , 20      (the “Board Approval Date”) AND IS NOT EFFECTIVE UNLESS SIGNED BY THE EXECUTIVE DIRECTOR OF THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS OR ITS DULY AUTHORIZED DESIGNEE.**

**THIS CONTRACT IS APPROVED, ACCEPTED AND MADE EFFECTIVE ON** **, \_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) AND WILL TERMINATE AT THE END OF THE CONTRACT PERIOD AS DEFINED IN SECTION II OF THIS CONTRACT, ON BEHALF OF DEPARTMENT:**

**TEXAS DEPARTMENT OF HOUSING AND**

**COMMUNITY AFFAIRS**, a public and official

agency of the State of Texas

By:

Name: Cody Campbell

Title: Its duly authorized officer or representative

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

**WITNESS OUR HAND EFFECTIVE:**

**DEVELOPMENT OWNER:**

**,**

By: , , its

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

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

**[OPTIONAL: THIS CONTRACT IS JOINED AND CONSENTED TO BY:**

**FEE TITLE OWNER:**

,

By: , , its

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date: **]**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY DIRECT LOAN PROGRAM**

**HOME MATCH CONTRACT #**

**ADDENDUM A**

**Intentionally deleted**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY DIRECT LOAN PROGRAM**

**HOME MATCH CONTRACT #**

**ADDENDUM B**

**Certification Regarding Debarment, Suspension and Other Responsibility Matters**

The undersigned certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State or local) terminated for cause or default.

Where the undersigned Development Owner is unable to certify to any of the statements in this certification, such Development Owner shall attach an explanation of why it cannot provide said certification to this Contract.

The undersigned Development Owner further agrees and certifies that it will include the below clause titled Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Subcontracts/Lower Tier Covered Transaction, without modification, in all subcontracts and in all solicitations for subcontracts:

***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Subcontracts/ Lower Tier Covered Transactions***

*(1) The prospective lower tier participant/subcontractor certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.*

*(2) Where the prospective lower tier participant/subcontractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.*

|  |  |
| --- | --- |
| ***LOWER TIER PARTICIPANT/ SUBCONTRACTOR:*** | *Entity Name, Entity Type**By:* *Name:* *Title:* |
|  |  |
|  | *Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |

This certification is a material representation of fact upon which reliance is placed when the Department awards the grant. If it is later determined that Development Owner knowingly rendered an erroneous certification, in addition to any other remedies available to the Federal Government, the Department may terminate this Contract for cause or default.

|  |  |
| --- | --- |
| **DEVELOPMENT OWNER:** | Entity Name, Entity TypeBy: Name: Title:  |
|  |  |
|  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY DIRECT LOAN PROGRAM**

**HOME MATCH CONTRACT #**

**ADDENDUM C**

**Additional Use Requirements;**

**Amenity Requirements**

This Addendum C identifies the number of amenities elected at the time of application or opted into after application for which points were awarded or otherwise required, and for which the Texas Governing Statute at §2306.187, and 2024 Qualified Allocation Plan shall apply for these amenities.

Accordingly, the undersigned Development Owner hereby represents the Property will have the amenities required under this Contract throughout the entire Affordability Period. Development Owner further acknowledges it was awarded points based on providing specific amenity and quality features in every Unit at no extra charge to the resident(s). Therefore, no rent or fees shall be charged to the Residents for any of the amenities. Residents must also be provided written notice of the applicable required amenities for the Development. Moreover, Development Owner is responsible for making all selected amenities available for the benefit of all residents.

**MANDATORY DEVELOPMENT AMENITIES**

The Development must provide the following Mandatory Development Amenities pursuant to 10 TAC §11.101(b)(4). [New Construction, Reconstruction or Adaptive Reuse not Supportive Housing: The Development must include all of the amenities listed in (A) through (O).] [Rehabilitation (excluding Reconstruction): The Development must provide the amenities listed in (D) – (L), (N) and (O).] [Supportive Housing: Development New Construction or Reconstruction is not required to provide the amenities listed in (B), (E), (F), (G), (H), or (N); however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents.] [Supportive Housing Rehabilitation: The Development is not required to provide the amenities listed in (E), (F), (G), (H), or (N); however, access must be provided to a comparable amenity in a Common Area. All amenities listed below must be at no charge to the residents.] Residents must be provided written notice of the applicable required amenities for the Development. [**OPTIONAL FOR HISTORIC TAX CREDITS IN THE SOURCES AND USES HOME ONLY** The Board may waive, before Loan Closing, one (1) or more of the Mandatory Development Amenities otherwise required under this Contract for Developments that will include Historic Tax Credits, with evidence submitted with the request for amendment that the amenity has not been approved by the Texas Historical Commission or National Park Service, as applicable, but such waiver must be incorporated into this Contract.]

(A) All Bedrooms, the dining room and living room in Units must be wired with current cabling technology for data and phone;

(B) Laundry connections;

(C) Exhaust/vent fans (vented to the outside) in the bathrooms;

(D) Screens on all operable windows;

(E) Disposal (not required for USDA Rehabilitation);

(F) Energy-Star or equivalently rated dishwasher (Rehabilitation Developments exempt from dishwasher if one was not originally in the Unit);

(G) Energy-Star or equivalently rated refrigerator;

(H) Oven/Range;

(I) Blinds or window coverings for all windows;

(J) At least one (1) Energy-Star or equivalently rated ceiling fan per Unit;

(K) Energy-Star or equivalently rated lighting in all Units;

(L) All areas of the Unit (excluding exterior storage space on an outdoor patio/balcony) must have heating and air-conditioning;

(M) Adequate parking spaces consistent with local code, unless there is no local code, in which case the requirement would be [**OPTIONAL:** for non-Elderly: one and a half (1.5) spaces per Unit or for Elderly: one (1) space per Unit]. The minimum number of required spaces must be available to the tenants at no cost. If parking requirements under local code rely on car sharing or similar arrangements, the LURA will require the Owner to provide the service at no cost to the tenants throughout the Affordability Period. If a waiver or variance of local code parking requirements has been requested then evidence to that effect must be included in the Application;

(N) [*New Construction:* Energy-Star or equivalently rated windows (for Rehabilitation Developments, only if windows are planned to be replaced as part of the scope of work)] [**if windows are not planned to be replaced as part of the scope of work**: Intentionally deleted]; and

(O) Adequate accessible parking spaces consistent with the requirements of the 2010 ADA Standards with the exceptions listed in "Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities" 79 FR 29671, [**OPTIONAL:** HUD's Fair Housing Act Design Manual], and the Texas Accessibility Standards.

**COMMON AMENITIES**

The Development must include sufficient common amenities to qualify for at least a minimum of \_\_\_\_\_\_\_\_\_\_ (\_\_) points in accordance with 10 TAC §11.101(b)(5). These points are not associated with any selection criteria points. The amenities must be for the benefit of all residents and made available throughout normal business hours and maintained under this Contract throughout the Affordability Period. Residents must be provided written notice of the elections made by the Development Owner. If fees or deposits in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy the requirement. All amenities must meet all applicable accessibility standards, including those adopted by the Department, and where a specific space or size requirement for a listed amenity is not specified then the amenity must be reasonably adequate based on the Development size. Non-contiguous scattered site housing, excluding non-contiguous single family sites, will have the test applied based on the number of Units per individual site and the amenities selected must be distributed proportionately across all sites. In the case of additional phases of a Development any amenities that are anticipated to be shared with the first phase development cannot be claimed for purposes of meeting this requirement for the second phase. The second phase must include enough points to meet this requirement as provided on each Development Site. For example, if a swimming pool exists on the phase one Property and it is anticipated that the second phase residents will be allowed it use it, the swimming pool cannot be claimed for points for purposes of this requirement for the second phase Development. All amenities must be available to all Units via an accessible route.

**The common amenities and respective point values are listed in 10 TAC §11.101(b)(5)(A)(i) through (vi) and are grouped primarily for organizational purposes. Development Owner] is not required to select a specific number of amenities from each section. Development Owner can only count an amenity once; therefore combined functions (*e.g.* a library which is part of a community room) will only qualify for points under one (1) category:**

**(i) Community Space for Resident Supportive Services:**

[(I) Intentionally Omitted.] OR [(I) Except in Applications where more than ten percent (10%) of the Units in the proposed Development are Supportive Housing SRO Units, an Application may qualify to receive half of the points required under §11.101(b)(5)(A)(i)-(vi) by electing to provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of items (-a-) through (-c-) of this subclause.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building codes for school facilities.

(-b-) Educational Provider Agreement. The Applicant must enter into an agreement, addressing all items as described in subitems (-1-) through (-5-) of this item, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Carryover Agreement for Competitive HTC Applications.

(-1-) The agreement must be between the Owner and the Educational Provider.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-) of this subclause.

(-c-) If an Education Provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in subitem (-b- )(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least thirty (30) days prior to ending the agreement to seek out any other eligible parties listed in subitem (b-)(-1-) of this subclause above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal fifteen (15) square feet times the total number of Units, but need not exceed two thousand (2,000) square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal ten (10) square feet times the total number of Units, but need not exceed one thousand (1,000) square feet in total. This space must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points); and

(IV) Service provider office in addition to leasing offices (1 point).

**(ii) Safety amenities:**

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four (24) hour, seven (7) days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four (24) hour, seven (7) days a week recorded camera / security system in each building (1 point); and

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points).

**(iii) Health/Fitness/Play amenities:**

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one (1) item for every forty (40) Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one (1) item for every twenty (20) Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

(IV) [**OPTIONAL:** One Children's Playscape Equipped for five (5) to twelve (12) year olds, or one (1) Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if subclause (V) of this clause is not selected] [Intentionally deleted];

(V) [**OPTIONAL:** Two Children's Playscapes Equipped for five (5) to twelve (12) year olds, two (2) Tot Lots, or one (1) of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, and provide shade and ultraviolet protection. This item can only be selected if clause (IV) of this subparagraph is not selected] [Intentionally deleted];

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (5 points);

(VIII) Splash pad/water feature play area (3 points); and

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points).

**(iv) Design/Landscaping amenities:**

(I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (2 points);

(IV) Shaded rooftop or structural viewing deck of at least five hundred (500) square feet (2 points);

(V) Porte-cochere (1 point);

(VI) Lighted pathways along all accessible routes (1 point); and

(VII) A resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point).

**(v) Community Resources amenities:**

(I) Community laundry room with at least one (1) washer and dryer for every forty (40) Units (2 points);

(II) Barbecue grill and picnic table with at least one (1) of each for every fifty (50) Units (1 point). Grill must be permanently installed (no portable grills);

(III) Business center with workstations and seating internet access, one (1) printer and at least one (1) scanner which may be integrated with the printer, and either two (2) desktop computers or laptops available to check-out upon request (2 points);

(IV) Furnished Community room (2 points);

(V) Library with an accessible sitting area (separate from the community room) (1 point);

(VI) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

(VII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(VIII) Community Theater Room equipped with a fifty-two (52) inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);

(IX) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 or more with coverage throughout the clubhouse and/or community building (1 point);

(X) High-speed Wi-Fi with advanced telecommunications capacity as determined under 47 U.S.C. 1302 with coverage throughout the Development (2 points);

(XI) Bicycle parking that allows for, at a minimum, one (1) bicycle for every five (5) Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(XII) Package Lockers or secure package room. Automated Package Lockers or secure package room provided at a location within the complex that can be accessed by residents twenty-four (24) hours, seven (7) days a week and at no charge to the resident. To qualify, there would need to be at least one (1) locker for every eight (8) residential units (2 points);

(XIII) Recycling Service (includes providing a storage location and service for pick-up) (1 point); and

(XIV) Community car vacuum station (1 point); and

(XV) Access to onsite bike sharing services, provided tenants have short-term, autonomous access to community-owned bicycles, with at least one bicycle per twenty-five (25) units (1 point).

**UNIT, DEVELOPMENT CONSTRUCTION, AND ENERGY AND WATER EFFICIENCY FEATURES**

The Development must include sufficient Unit, Development Construction, and Energy Efficiency Features (sometimes referred to as “amenities”) to qualify for at least a minimum of five (5) points, as selected at Application pursuant to 10 TAC §11.101(b)(6)(B) and identified in the corresponding list below. Development owner must maintain the points associated with those amenities selected at Application for scoring purposes by maintaining the amenity selected or providing substitute amenities with equal or higher point values. Additionally, those points selected at Application and corresponding list of amenities must be maintained under this Contract, throughout the Federal Affordability Period or Contract Term, whichever is longer. Similarly, the points selected at Application and the corresponding list of amenities will be required to be identified in the LURA and maintained as required therein.

Importantly, each feature or amenity shall be for every Unit at no extra charge to the tenant. **[IF APPLICABLE:** Scattered site Developments must have a specific amenity located within each Unit to count for points.**]** **[IF APPLICABLE:** Rehabilitation Developments and Supportive Housing Developments will start with a base score of five (5) points.**]** At least two (2) points must be selected from the Energy and Water Efficiency Features listed in clause (iii) below.

**(i) Unit Features:**

(I) Covered entries (0.5 point);

(II) Nine foot (9’) ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Storage room or closet, of approximately nine (9) square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VI) Covered patios or covered balconies (0.5 point);

(VII) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(VIII) Built-in (recessed into the wall) shelving unit (0.5 point);

(IX) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);

(X) Walk-in closet in at least one (1) Bedroom (0.5 point);

(XI) Forty-eight inch (48") upper kitchen cabinets (1 point);

(XII) Kitchen island (0.5 points);

(XIII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);

(XIV) Natural stone or quartz countertops in kitchen and bath (1 point);

(XV) Double vanity in at least one (1) bathroom (0.5 point); and

(XVI) Hard floor surfaces in over fifty percent (50%) of unit Net Rentable Area (NRA) (0.5 point).

**(ii) Development Construction Features:**

(I) Covered parking (may be garages or carports, attached or freestanding) and include at least one (1) covered space per Unit (1.5 points);

(II) Thirty (30) year roof (0.5 point);

(III) Greater than thirty percent (30%) stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);

(IV) Electric Vehicle Charging Station (0.5 points);

(V) An Impact Isolation Class (IIC) rating of at least fifty-five (55) and a Sound Transmission Class (“**STC**”) rating of sixty (60) or higher in all Units, as certified by the architect or engineer of record (3 points); and

(VI) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Four (4) points may be selected from only one (1) of the categories described in items (-a-)-(-d-) of this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at http://www.greencommunitiesonline.org.

(-b-) Leadership in Energy and Environmental Design (“**LEED**”). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard (“**NGBS**”). The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

(-d-) 2018 International Green Construction Code.

**(iii) Energy and Water Efficiency Features:**

(I) Energy-Star or equivalently rated refrigerator with icemaker (0.5 point);

(II) Energy-Star or equivalently rated laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(III) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(IV) Energy-Star or equivalently rated ceiling fans in all Bedrooms (0.5 point);

(V) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);

(VI) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);

(VII) [New Construction or Reconstruction: 15 SEER HVAC [**OPTIONAL:** or in Region 13, an efficient evaporative cooling system.] [As applicable: For Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided (1 point)];

(VIII) 16 SEER HVAC, for New Construction, Reconstruction, or Rehabilitation (1.5 points);

(IX) A rainwater harvesting/collection system and/or locally approved greywater collection system (0.5 points);

(X) Wi-Fi enabled, Energy-Star or equivalently rated “smart” thermostats installed in all units (1 point); and

(XI) Solar panels installed, with a sufficient number of panels to reach a rated power output of at least 300 watts for each Low-Income Unit (2 points).

**RESIDENT SUPPORTIVE SERVICES**

The Development must include sufficient Resident Supportive Services to qualify for at least a minimum of \_\_\_\_\_\_\_\_\_\_ (\_\_) points, as selected at Application pursuant to 10 TAC §11.101(b)(7). The supportive services include those listed in subparagraphs (A) - (E) of this paragraph, which are grouped primarily for organizational purposes. Applicants are not required to select a specific number of services from each section. The points selected and complete list of supportive services are provided in this section and must be maintained under this Contract throughout the Affordability Period or Contract Term, whichever is longer. Moreover, the points selected and complete list of supportive services will be required to be identified in the LURA and the timeframe by which services are offered must be in accordance with 10 TAC §10.619 (relating to Monitoring for Social Services) and maintained under the LURA as required therein.

The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. A Development Owner may be required to substantiate such service(s) if requested by staff. Should the Qualified Allocation Plan in subsequent years provide different services than those listed in (A) - (E) below, the Development Owner may request an Amendment as provided in 10 TAC §10.405(a)(2). The services provided should be those that will directly benefit the Target Population of the Development. Residents must be provided written notice of the elections made by the Development Owner. No fees may be charged to the residents for any of the services, there must be adequate space for the intended services and services offered should be accessible to all (e.g. exercises classes must be offered in a manner that would enable a person with a disability to participate). Unless otherwise specified, services must be provided on-site or transportation to those off-site services identified on the list must be provided. The same service may not be used for more than one (1) scoring item. These services are intended to be provided by a qualified and reputable provider in the specified industry such that the experience and background of the provider demonstrates sufficient knowledge to be providing the service. In general, on-site leasing staff or property maintenance staff would not be considered a qualified provider. Where applicable, the services must be documented by a written agreement with the provider. Unless otherwise noted in a particular clause below, courses and services must be offered by an onsite instructor(s).

**(A) Transportation Supportive Services:**

(i) Shuttle, at least three (3) days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points); and

(ii) Monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point).

**(B) Children Supportive Services**:

(i) Provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I). (Half of the points required under 10 TAC §11.101(b)(7)); and

(ii) Twelve (12) hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, character building programs, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points).

**(C) Adult Supportive Services:**

(i) Four (4) hours of weekly, organized, in-person, hybrid, or virtual classes accessible to participants from a common area on site to an adult audience by persons skilled or trained in the subject matter being presented, such as English as a second language classes, computer training, financial literacy courses, homebuyer counseling, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);

(ii) Annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);

(iii) Contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; may include resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) External partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(v) Reporting rent payments to credit bureaus for any resident who affirmatively elects to participate, which will be a requirement of the LURA for the duration of the Affordability Period (2 points); and

(vi) Participating in a non-profit healthcare job training and placement service that includes case management support and other need-based wraparound services to reduce barriers to employment and support Texas healthcare institution workforce needs (2 points).

**(D) Health Supportive Services:**

(i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) Annual health fair provided by a health care professional (1 point);

(iii) Weekly exercise classes (offered at times when most residents would be likely to attend) (2 points); and

(iv) Contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points).

**(E) Community Supportive Services:**

(i) Partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) Twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) Twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) Specific service coordination services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) Weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) Any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) A part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of fifteen (15) hours or more of weekly resident supportive services at the Development (2 points); and

(ix) Provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

**COMMUNITY SPACE FOR OUTREACH SERVICES AND EDUCATION**

Applicant will contact local nonprofit and governmental providers of services that would support the health and well-being of Development residents, and will make Development community space available to them on a regularly-scheduled basis to provide outreach services and education to the tenants, pursuant to 10 TAC §11.9(c)(3)(B). Applicants may contact service providers on the Department list, or contact other providers that serve the general area in which the Development is located (1 point).

**DEVELOPMENT OWNER:**

,

By: , , its

By:

Name:

Title:

Date: **]**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY DIRECT LOAN PROGRAM**

**HOME MATCH CONTRACT #**

**EXHIBIT A**

**Legal Description**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**MULTIFAMILY DIRECT LOAN PROGRAM**

**HOME MATCH CONTRACT #**

**EXHIBIT B**

**Budget/Rent Schedule**