

**AGREEMENT FOR DONATION OF PROPERTY FOR AFFORDABLE
HOUSING**

(Heroes' Commons at Jefferson Park Project)

between

THE CITY OF ORLANDO, FLORIDA

and

THE FLORIDA REAL ESTATE FOUNDATION, INC.

Dated as of _____

LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
“A”	Property
“B”	Equal Employment Opportunity Clause
“C”	Certification Regarding Lobbying
“D”	Section 3 Economic Opportunity
“E”	Drug Free Workplace Certification
“F”	FFATA Affidavit
“G”	Florida Real Estate Foundation Mortgage Restrictions And Recapture Provisions

AGREEMENT FOR DONATION OF PROPERTY FOR AFFORDABLE HOUSING

(Heroes' Commons at Jefferson Park Project)

This Agreement for Donation of Property for Affordable Housing ("Agreement") is made as of this _____ day of _____, 2014, by and between the **CITY OF ORLANDO, FLORIDA**, a municipal corporation existing and organized under the laws of the State of Florida (the "City"), and **THE FLORIDA REAL ESTATE FOUNDATION, INC.**, a Florida corporation not for profit (the "Foundation").

WITNESSETH:

WHEREAS, as a result of mortgage foreclosures and other economic decline impacting the United States, the United States Department of Housing and Urban Development (HUD) developed and funded the Neighborhood Stabilization Program (NSP) to help revitalize and stabilize communities;

WHEREAS, NSP is administered by HUD, from which the City has received NSP funds to help stabilize communities to reduce blight, restore stability, and strengthen targeted neighborhoods;

WHEREAS, in accordance with the requirements of the NSP and another grant program referred to as Economic Development Initiative ("EDI") grant authorized by Section 108(q) of the Housing and Community Development Act of 1974, as amended, the City wishes to donate certain property as herein defined to the Foundation to be used to provide housing for the "Project" known as "Heroes' Commons at Jefferson Park" in Orlando, Florida;

WHEREAS, the City is authorized to donate land for affordable housing purposes per Activity Number 3 of the City of Orlando NSP Substantial Amendment, Sixth Amendment;

WHEREAS, the parties desire to enter into this Agreement to set forth their respective duties and responsibilities for the donation, design, construction, completion and disposition of the property in connection with the Project, all as more particularly provided herein;

WHEREAS, the Project will fulfill the goals of providing affordable owner-occupied housing, in conformance with the goals and purposes of NSP; and

WHEREAS, the Foundation, acting as developer of the Project, has authorized and directed certain individuals to execute this Agreement on its behalf.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, the parties agree as follows:

ARTICLE 1 DEFINITIONS.

1.01 Definitions. The terms defined in this **Article 1** shall have the following meanings in this Agreement:

a. “Affordability Period” means the period of fifteen (15) years during which a Home will be subject to the Affordability Requirements, commencing at the time the Foundation conveys the Home to a Qualified Household.

b. “Affordability Requirements” means or refers to the annual income of an individual or household, determined at the time of a conveyance of a Home, which must be less than or equal to either eighty percent (80%) (for the EDI Homes) or one hundred twenty percent (120%) (for the NSP Homes), of the median income of the Orlando Metropolitan Statistical Area (“MSA”) published annually by HUD, as applied to each Home. Once the Affordability Requirements of a Home are established (at the time of conveyance thereof to a Qualified Household), the same income restriction shall apply for the entire Affordability Period.

c. “Agreement” means this Agreement for Donation of Property for Affordable Housing, including any Exhibits and any amendments hereto or thereto, all as amended and modified from time to time in accordance with this Agreement.

d. “Authorized Representative” means the individual or individuals designated and appointed from time to time as such by the Foundation or the City, respectively, pursuant to **Section 2.05** of this Agreement.

e. “Building Permit” means a permit issued by the City authorizing, allowing and permitting the commencement and completion of construction of a Home, to the extent provided in the permit.

f. “City” means the City of Orlando, Florida, a Florida municipal corporation, and any successors or assigns thereto.

g. “City Representative” means the individual selected as its authorized representative pursuant to **Section 2.05** of this Agreement.

h. “Closing Date” means the date on which title to the Property is conveyed to the Foundation in accordance with the provisions of **Article 4** hereof. The Closing Date shall be at a time and date mutually convenient to the parties, no later than one hundred eighty (180) days after the Effective Date.

i. “Contractor” means one or more individuals or firms constituting a general contractor or other type of construction contractor which, in compliance with applicable law, is properly licensed by the State of Florida or other appropriate jurisdiction to perform construction contractor services in the State of Florida.

j. “Declaration” means the Declaration of Restrictive Covenants containing the Owner/Occupancy and Affordability Requirements and Resale Restrictions of this Agreement

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that will be recorded in the Public Records along with the deed conveying the Property to the Foundation and also shall refer to a similar Declaration, which will be recorded when each Home is transferred to a Qualified Household by the Foundation.

k. “EDI Lot or Home” means the Lot or Home to which the EDI Affordability Requirements on income apply, i.e., the Lot or Home may be sold or conveyed to an individual or household whose annual income does not exceed eighty percent (80%) of the median income MSA.

l. “Effective Date” means the date of this Agreement as set forth in the preamble to this Agreement.

m. “Exhibits” means those agreements, diagrams, drawings, specifications, instruments, forms of instruments, and other documents attached hereto and designated as exhibits to and which are hereby incorporated in and made a part of this Agreement.

n. “Foundation” means the Florida Real Estate Foundation, Inc., a Florida corporation not for profit, and any successors and assigns thereof, to the extent of any such assignment approved by the City.

o. “Foundation Representative” means the individual or individuals selected as its authorized representative(s) pursuant to **Section 2.05** of this Agreement.

p. “HANDS” means Housing and Neighborhood Development Services of Central Florida, Inc. a Florida corporation not for profit.

q. “Home(s)” means each of the homes and the lots on which each home is to be constructed in accordance with the Site Plan and the Plans and Specifications.

r. “Housing Director” means the Director of the Housing and Community Development Department of the City or his designee.

s. “HUD” means the United States Department of Housing and Urban Development.

t. “Lot” means a lot to be conveyed to the Foundation upon which a Home will be built.

u. “NSP” means the Neighborhood Stabilization Program administered by the U.S. Department of Housing and Urban Development.

v. “NSP Lot or Home” means the Lot or Home to which the NSP Affordability Requirements on annual income apply, i.e., the Lot or Home may be sold or conveyed to an individual or household whose income does not exceed one hundred twenty percent (120%) of the median income of the MSA.

w. “Owner/Occupancy Requirements” means the owner of a Home (other than the Foundation) must, during the Affordability Period: 1) occupy the Home as his/her principal

residence; 2) not allow the Home to be rented at any time, and 3) may not own any other residence at the time a Home is transferred to such owner.

x. “Owner/Occupant” means an individual or household, which owns a Home and is subject to the Owner/Occupancy Requirements.

y. “Permits” means all zoning, variances, approvals, permits and consents required to be granted, awarded, issued, or given by any governmental authority or public utility entity in order for construction of the improvements within the Project, or any part thereof, to commence, continue and be completed.

z. “Plans and Specifications” means the plans and specifications for the Project as prepared by the Foundation and the Project Professionals, submitted to the City for review, and approved by the City for issuance of Building Permits to construct the Homes.

aa. “Program Income” means the NSP/EDI portion of any proceeds received from either the Foundation and paid to the City or proceeds derived from an activity related to the Project and paid to the City.

bb. “Project” means the “Heroes’ Commons at Jefferson Park” project located in Orlando, Florida.

cc. “Project Completion” means the date on which the last Home on the Property has been conveyed to a Qualified Household.

dd. “Project Financing” means the financing, if any, provided by a Project Lender to the Foundation for construction of the improvements within the Project, or any part thereof.

ee. “Project Lender” means the individuals or institutions providing Project Financing.

ff. “Project Professionals” means any firm(s) of architects, attorneys, brokers, engineers, consultants, planners, construction managers or any other persons, or combination thereof, retained or employed by the Foundation with primary responsibility for the planning, design, construction, permit applications, and/or completion of the Project.

gg. “Project Schedule” means the schedule of dates for commencement and completion of certain actions pertaining to the development, construction and completion of the Project, as set forth in **Article 6** of this Agreement.

hh. “Property” means real property described in **Exhibit “A”** attached, to be conveyed to the Foundation, upon which the Homes will be built.

ii. “Proposal” means the proposal submitted by the Foundation to the City to construct single-family housing on the Property consisting of six (6) Homes for conveyance to Qualified Households meeting either the EDI or NSP Affordability Requirements, as applicable.

jj. “Public Safety Employees” means those persons who are full-time, sworn employees of local police departments, sheriff’s office, corrections departments, or other law enforcement agencies; and members of local fire departments responsible for at least one of the following: fire suppression, emergency medical response and patient care, fire and injury prevention, arson investigation, hazardous materials incident response and management, and/or response to acts of terrorism.

kk. “Qualified Household(s)” means an individual or household whose annual income at the time of conveyance of a Home, is less than or equal to either eighty percent (80%) for an EDI Home or one hundred twenty percent (120%) for an NSP Home, of the median income of the MSA as published annually by HUD and also meets the Owner-Occupancy Requirements. The individual or household must also be eligible for a homestead exemption pursuant to Article VII, Section 6, Florida Constitution and Chapter 222, Florida Statutes. The foregoing requirements shall be verified by HANDS prior to the transfer of a Home to a Qualified Household.

ll. “Resale Restrictions” means the restrictions on resale of each Home, which requires that the Home shall be resold, during the Affordability Period, subject to either the same EDI or NSP Affordability Requirements and Owner-Occupancy Requirements as applied to the original conveyance of that Home to the first Qualified Household. Further, all subsequent owner(s) of the Home will also be subject to the same Resale Restrictions for the remainder of the Affordability Period applicable to that Home, i.e., if a Home was originally conveyed subject to the EDI Affordability Requirements and Owner-Occupancy Requirements, the EDI Affordability Requirements and Owner-Occupancy Requirements would apply to the sale of that Home until the expiration of the Affordability Period.

mm. “Sales Price” means the price at which a Home is to be offered for sale to a Qualified Household, which shall be applicable if the Home will be sold as opposed to being conveyed for nominal consideration. If a Home will be sold, the maximum gross sales price for a Home sold by the Foundation must be no greater than the Total Development Costs for that Home. The Sale Price must be approved by the Housing Director in his reasonable discretion.

nn. “Site Plan” means the depiction and description of the Project on the Property, including the conceptual depiction of the Project as amended from time to time.

nn. “Total Development Costs” as used in this Agreement means the cost to acquire the Lot and develop and construct the Home, which costs expressly include the Lot value, Lot acquisition and Lot and Home sale closing costs, costs associated with boarding, lawn care and maintenance of the Lot and Home, a developer fee of Three Thousand and No/100 Dollars (\$3,000.00), insurance costs, taxes, appraisal costs, reasonable sales and marketing fees and overhead. While the Foundation cannot earn a profit on the sale of the Property, it is understood that the developer fee is not profit.

1.02 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and words such as “it”. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word “person” shall include partnerships, corporations, associations or other

legal entities, including public bodies, as well as natural persons. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used. The words “party” or “parties” when referring to the initial signatory parties to this Agreement shall also mean and include any successor or assign of such party. References to “City” and “Foundation” may refer to and include the Authorized Representative thereof designated in accordance with **Section 2.05** of this Agreement to the extent the City or the Foundation has authorized its authorized representative to act on its behalf.

1.03 Florida Statutes. All references herein to Florida Statutes are to Florida Statutes (2013), as amended from time to time.

ARTICLE 2. PURPOSE; PROPOSAL.

2.01 Intent; Purpose of Agreement; Development Vision and Goals.

(a) The purpose of this Agreement is to implement the Project by providing for the conveyance of the Property to the Foundation and the development and construction by the Foundation of the Homes in accordance with the Site Plan, all with the goals of enhancing the quality of life, increasing home ownership and providing affordable housing to Qualified Households in the order provided in **Section 11.02**.

(b) The Property is to be developed according to the Plans and Specifications for the improvements. The City will donate the Property for development of the Project in accordance with the provisions of this Agreement.

(c) The Foundation will develop the Property, obtaining approvals by governmental authorities necessary for developing, constructing and conveying the Homes to Qualified Households.

(d) The parties agree that the goals of the Project are:

(1) To create Heroes’ Commons at Jefferson Park, a planned “village” of six (6) Homes to be conveyed to Qualified Households in the order provided in **Section 11.02** (**Section 10.03** shall apply to the extent applicable). (2) To construct six (6) Homes of which there will be three (3), 3-bedroom Homes and three (3), 2-bedroom Homes. All Homes will have two (2) bathrooms. The homes will range in size from no less than one thousand (1,000) square feet under heat and air to no more than sixteen hundred (1,600) square feet under heat and air.

2.02 The Foundation’s Proposal. The Proposal for the development of the Property, specifically including the acquisition of the Property and the preliminary and conceptual design, construction, equipping, completion and operation of the Project, and each component thereof, is hereby found by the City and acknowledged by the Foundation: (1) to be consistent with and in furtherance of the objectives of the Project, (2) to be in the best interests of the citizens of the City, and (3) to further the purposes and objectives of the City in providing affordable housing. The parties recognize that the design and construction costs of the Homes will be subject to

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modification as may be either agreed by the parties or required as provided herein or by the regulatory authority charged with enforcement of applicable building codes.

(e) Based upon and as a result of the findings set forth above, the Proposal, including such changes and revisions as are provided by this Agreement, is hereby affirmed by the Foundation and approved and accepted by the City.

2.03 City's Sole Contribution to Project. The City's sole contribution to the Project will be the conveyance of the Property to the Foundation in accordance with the terms of this Agreement. The City shall have no other obligation to provide money or other support, except to the extent specifically set forth in this Agreement.

2.04 Cooperation of the Parties. The parties recognize that the successful development of the Project and each component is dependent upon continued cooperation of the parties. Each agrees it shall act in a reasonable manner hereunder, not unreasonably withhold, condition or delay any approval required or contemplated by, under or in furtherance of this Agreement to develop the Project. Upon request, each shall provide the other party with complete and updated information from time to time, with respect to the conditions such party is responsible for satisfying hereunder. Each shall make its good faith reasonable efforts to ensure that such cooperation is continuous, that the purposes of this Agreement are carried out to the full extent contemplated hereby and that the Project is designed, constructed, equipped and completed as provided herein.

2.05 Authorized Representative.

(a) Each party shall from time to time designate one or more individuals to be its Authorized Representative to act on its behalf to the extent of the grant of any authority to such representative. Written notice of the designation of such a representative (and any subsequent change in the Authorized Representative) shall be given by the designating party to the other party in writing in accordance with the procedure set forth in **Section 17.04** hereof. Written notice of the Authorized Representative shall indicate the authority that may be exercised by the Authorized Representative. Notwithstanding anything to the contrary, each party agrees that no Authorized Representative (nor any other representative) of a party hereunder shall have any personal liability under this Agreement or any document executed in connection with the transactions contemplated by this Agreement.

(b) Except as otherwise expressly provided in this Agreement, whenever approval or action by the Foundation or the City is required, such action or approval may, in the discretion of the party considering such approval or action, be taken or given by the Authorized Representative thereof. A party to this Agreement may rely upon the representation of the other party's Authorized Representative that such person has the requisite authority to give the approval or take the action done by that Authorized Representative. A party may not later deny that its Authorized Representative had the authority represented to and relied upon by the other party or revoke or deny any action taken by such Authorized Representative, which was relied upon by the other party.

**ARTICLE 3.
LAND USE REGULATION.**

3.01 Variances. The parties acknowledge the variances needed to proceed with the Project have been granted.

3.02 Permits.

(a) The Foundation (or its agents or Contractors) shall prepare and submit to the appropriate governmental authorities, including the City, the applications for any and all necessary Permits and Building Permits for the construction, installation and completion of the Project, and shall bear all costs of preparing such applications, applying for and obtaining such permits, including payment of any and all applicable applications, inspections, regulatory and impact fees or other fees and charges of any kind.

(b) The City shall cooperate with the Foundation in obtaining all necessary Permits and Building Permits required for the construction, installation and completion of the improvements, including being the applicant as long as the City is the owner of the Property.

(c) The City's duties, obligations, or responsibilities under any section of this Agreement do not affect the City's right, duty, obligation, authority and power to act in its governmental or regulatory capacity in accordance with applicable laws, ordinances, codes or other building or project regulation.

(d) Except as specifically provided herein, the parties acknowledge and agree that any required permitting, licensing or other regulatory approvals shall be subject to the established procedures and requirements of the City with respect to review and permitting of a project of a similar or comparable nature, size and scope.

**ARTICLE 4.
PROPERTY.**

4.01 Findings; Representations. City is the fee simple owner of the Property. City purchased the Property approximately three (3) years ago. The current value of each of the Lots is not more than Fifteen Thousand and No/100 Dollars (\$15,000.00). As the owner, the City shall be responsible for the maintenance and upkeep of the Property until the Closing Date.

4.02 Agreement to Convey. The City will convey the Property to the Foundation by special warranty deed, and the Foundation will accept title to the Property from the City, upon the terms and conditions of this Agreement.

4.03 Real Estate Commission. The Foundation and the City represent to the other that no fee or commission is due as a result of any brokerage services rendered to such party with respect to the conveyance of the Property to the Foundation. Each party shall hold the other harmless and indemnify the other party, its respective successors, assigns, employees, directors and agents from any and all costs, damages, liabilities and expenses, including reasonable attorney's fees, incurred by reason of any claim for a fee or commission for brokerage services of

any kind based on the conveyance of the Property to the Foundation resulting out of brokerage services rendered to such party.

4.04 No Liens Prior to Closing Date. Each party covenants and agrees that, prior to the Closing Date, it shall not incur any indebtedness giving a right to a lien of any kind or character upon the right, title and interest of the other party in and to the Property, and that prior to Closing no person shall be entitled to any lien, directly or indirectly, derived through or under the other party, or its agents or servants, or on account of any act or omission of the other party. If prior to Closing, any third party files a construction lien against the Property for or on account of labor, services or materials provided to or at the request of the Foundation, the Foundation shall dispose of the claim and ensuing litigation as the Foundation deems appropriate at the Foundation's expense, provided that if such party commences a foreclosure action with respect to such lien, the Foundation shall transfer the lien to security as provided by Florida law or otherwise bond or cause the same to be discharged of record within thirty (30) days thereafter to prevent the foreclosure.

4.05 Closing Procedures and Documents for Conveyance of Property to the Foundation. At the time the Property is conveyed by the City to the Foundation, the Foundation will grant the City a first-priority mortgage on the Property securing a non-recourse promissory note (the "Note") for the estimated fair market value of the Property (as unimproved) as of the date of conveyance. The Note secured by the mortgage shall be in the form of a forgivable deferred loan at a zero (0%) interest rate for a term of fifteen (15) years. The Note will not bear interest or require repayment so long as all terms and conditions of this Agreement, the Note and mortgage are timely fulfilled by the Foundation. Notwithstanding anything to the contrary, the Note shall be secured solely by the mortgage. When the last Home is conveyed to a Qualified Household, the Note and mortgage shall be cancelled. The Property shall also be encumbered by a Declaration containing the restrictions and requirements as the City may reasonably determine in accordance with this Agreement. The terms of the Note and mortgage shall contain standard terms and conditions customarily provided in such documents in Orange County, Florida, and other provisions as the City deems appropriate which are provided for herein. The Foundation shall pay all closing costs, including, documentary stamps, recording fees, costs of title insurance, and title closing fees associated with the transfer of the Property; provided, however, the City will pay for the costs and expenses of the survey, preparation of City's Declaration, mortgage and Note and documentary stamp taxes and intangible taxes on the Note and Mortgage and recording costs of the Declaration and Mortgage. The City will also pay its own attorney. If the parties are not able to agree upon the terms and conditions of the Declaration, Note and mortgage prior to Closing, either party may terminate this Agreement without penalty.

4.06 Conditions Precedent to Commencement of Construction. Prior to the commencement of construction of a Home, the Foundation shall have acquired all of the funds and commitments necessary to complete the Home as determined in the reasonable discretion of the Housing Director. The Foundation shall submit to the Housing Director a written request for permission to commence construction on a Home. The Foundation shall also provide the Housing Director budgetary information and such other documentation as he may reasonably require establishing that the Foundation has on hand sufficient funds and commitments to complete construction of the Home. The Housing Director shall have ten (10) working days to approve or reject the request in writing, failing which the Foundation may proceed with

construction the same as if the Housing Director had approved commencement of construction. The consent of the Housing Director shall not be unreasonably withheld. Detailing the progress of the work, the Foundation shall provide monthly reports until construction completion, in form and substance reasonably requested by the Housing Director. The Foundation shall show/report all financial transactions for the Project under a separate classification number in the Foundation's accounting system so that financial transactions for the Project can be separately detailed and identified.

ARTICLE 5. PLANS AND SPECIFICATIONS

5.01 Requirements. The Foundation and Project Professionals shall prepare the final Plans and Specifications consistent with the building code of the City of Orlando, Neighborhood Stabilization Program 1 and otherwise in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability. The Foundation shall be solely responsible for the cost of preparing, submitting and obtaining approval of the final Plans and Specifications. The parties mutually acknowledge and agree the Project Professionals are not, individually or collectively, agents or representatives of the City.

5.02 Covenant of Compliance. The Foundation covenants and agrees with the City that each Home shall be constructed in accordance with the Site Plan and the Plans and Specifications. Notwithstanding anything to the contrary, (i) the Foundation may make non-material changes in the Plans and Specifications that the Foundation, the Project Professionals or Contractors reasonably deem appropriate to accommodate field construction needs or in response to requirements of local, state or federal governmental or quasi-governmental agencies or applicable utility and/or insurance providers, and (ii), additionally, if, in the Foundation's, the Project Professional's or Contractor's reasonable opinion, certain items (equipment, material, appliances, etc.) provided for in the Plans and Specifications are not available, the Foundation, the Project Professional, or Contractor may make substitutions for such items with items which in the Foundation's, the Project Professional's or Contractor's reasonable opinion are of equal or better quality (regardless of cost).

ARTICLE 6. PROJECT BENCHMARKS / PROJECT SCHEDULE.

6.01 Project Schedule. The Foundation shall develop the Project in accordance with the following schedule, unless such time periods or deadlines are waived or extended by the City:

(a) A Foundation fundraising campaign shall commence within thirty (30) days after the Effective Date of this Agreement.

(b) Subject to the terms and conditions in this Agreement, the Foundation covenants and agrees with the City that it will exercise its good faith efforts to commence construction of at least one Home by no later than November 1, 2014. "Commencement of construction" means the issuance of a Building Permit and the initiation of meaningful physical construction of a

Home as authorized by the Building Permits, which is thereafter continued and prosecuted with reasonable diligence to completion.

(c) By no later than nine (9) months following issuance of a Building Permit, or in any event by no later than November 1, 2015, a certificate of occupancy shall be obtained for at least one Home, unless extended by written consent of the City.

(d) All NSP Homes shall be conveyed to Qualified Households promptly after completion, but in any event no later than twenty-four (24) months after the Closing Date, unless consented to in writing by the Housing Director. All EDI Homes shall be conveyed to Qualified Households promptly after completion, but in any event no later than forty-eight (48) months after the Closing Date, unless consented to in writing by the Housing Director.

ARTICLE 7. PROJECT CONSTRUCTION/CONTRACTORS.

7.01 City Not in Privity with Contractors. The City shall not be deemed to be in privity of contract with any Contractor or provider of goods or services with respect to the construction of any part of the Project.

7.02 Bonding.

The Foundation shall require the Contractor to provide a performance bond and a labor and material payment bond each in an amount not less than the aggregate construction cost of the Project less amounts covered by any subcontractors bonds, provided that one hundred percent (100%) of the construction cost of the Project is bonded in the aggregate.

(a) To be acceptable as surety for performance bonds and labor and material payment bonds, a surety company shall:

(1) have a currently valid certificate of authority issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida;

(2) be named in the most recent listing of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 by the U.S. Department of the Treasury;

(3) be in full compliance with the provisions of the Florida Insurance Code; and

(4) have at least an “A-” financial strength rating in accordance with the most current A.M. Best Company ratings.

(b) If the surety on any bond furnished by the Contractor is declared bankrupt or becomes insolvent or if its assets are acquired by regulatory agencies or if liquidation proceedings begin or its license to do business in the State of Florida is terminated or it ceases to meet the requirements of Section 7.02 (a) of this Agreement, then the Foundation shall require the Contractor to substitute an acceptable surety and provide performance and labor and material

payment bonds to the City within ten (10) business days of obtaining actual knowledge of the occurrence of such event(s).

(c) The Foundation shall require each Contractor to warrant its work for at least one (1) year after completion.

ARTICLE 8. PROJECT FUNDING

8.01 Prohibition Against Mortgage Funding. The Foundation expressly promises and agrees that no loans secured by the Property or any part thereof shall be used to fund the Project.

8.02 Use of Funding. All funds designated for the Project by the donor(s) thereof shall be used solely for acquisition, design, construction, ownership, maintenance and sale of the six (6) Lots and Homes and related amenities (and costs and expenses associated with achieving or pursuing the same) as contemplated or described in this Agreement. After completion of the Project, any funds which were initially designated for the Project by the donor(s) thereof shall be used by the Foundation for other charitable projects or initiatives that it may sponsor from time to time so long as the donor has agreed.

8.03 Reporting Requirements. Commencing on the tenth (10th) day of the second quarter following the Effective Date and continuing until the conveyance of all Homes to Qualified Households, the Foundation shall file written status reports with the City's Housing and Community Development Department summarizing to date thereof: (i) Project planning and development, construction and completion of the Homes; (ii) all agreements between the Foundation and prospective applicants for the Homes; (iii) the progress and proposed times for closings of each conveyance of a Home to a Qualified Household; and (iv) other information as reasonably required by the City. The information provided should be a narrative summary of progress, including, but not limited to, the percentage of project completion, selection of contractors and Section 3 accomplishments and expenditures as described in **Exhibit "D"** attached. All quarterly reports shall be due the 10th day of the month following the end of the quarter for March, July, September and December.

The Foundation shall file, or cause to be filed with the Housing Director by a city-approved third party, quarterly reports providing information on the client data demonstrating client eligibility including, but not limited to, client name, address, ethnicity, race, gender, age, head of household, income level, or other basis for determining eligibility in a form provided by the City. The Foundation shall not be held responsible for reporting any information not otherwise required herein or which the City did not otherwise request prior to the occurrence of the event for which information was requested.

From time to time as requested by the City, the Foundation shall file or cause to be filed such other information as may be considered appropriate by the City to support the Foundations' service to low and moderate income persons.

8.04 Income Documentation. The Foundation shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and

heads of households in order to determine low and moderate-income benefit in a cumulative and individual manner as required by NSP requirements. Income qualification and documentation shall be in a form consistent with NSP requirements. While the Foundation ultimately remains responsible, the Foundation or its staff may delegate this obligation to a City-approved third party.

8.05 Records to be Maintained. The Foundation shall, for matters occurring subsequent to the date of this Agreement and with respect to information, activities and data pertaining to the Foundation's participation in the Project, maintain the records required by 24 CFR §570.506 for the Project. For purposes of clarity, the City is not delegating its reporting obligations under its other agreements with other governmental authorizes. The City shall answer any reasonable questions the Foundation may have on such matters. Such records shall include (to the extent applicable as aforesaid) but are not necessarily limited to:

- a.) Records providing a full description of each activity undertaken and its NSP eligibility, including its location; and the amount of NSP funds budgeted, obligated and expended for the activity;
- b.) Intentionally omitted,
- c.) Records required to determine the eligibility of activities;
- d.) Records for each activity carried out for the purpose of providing or improving services and programs which is determined to benefit low- and moderate-income persons including the total cost of the activity, including both NSP and non-NSP funds and the size and income and eligibility of each person or household;
- e.) Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with NSP assistance;
- f.) Records which demonstrate compliance with the requirements in 24 CFR §570.505 regarding any change of use of real property acquired or improved with NSP assistance;
- g.) Records that demonstrate compliance with citizen participation requirements;
- h.) Records which demonstrate compliance with requirements in 24 CFR §570.606 regarding replacement housing;
- i.) Records documenting compliance with all Fair Housing and Equal Opportunity regulations;
- j.) Financial records that document all transactions and that can be properly documented and audited;

- k.) Other records necessary to document compliance with Subpart K of 24 CFR part 570;
- l.) Copies of all bid documents, bids received, RFPS, RFQs and any other procurement documents;
- m.) Copies of all third-party contracts or subcontracts; and
- n.) Detailed records of the Foundation's organization, financial and administrative systems, and the specific NSP-funded project or activities.

Please note that the above descriptions are brief and provide only a summary of the records the Foundation is required to maintain under this section. The Foundation agrees to consult 24 CFR §570.506 for a detailed description of the records required to be maintained by the Foundation under this section.

8.06 Retention of Records. All records must be accurate, complete and orderly. The Foundation shall retain all accounting records, financial records, statistical records, supporting documents, and all other documents pertinent to the construction and sales activities of the Homes in the Project and this Agreement in accordance with the requirements of 24 CFR §570.506 for a period of at least five (5) years. This retention period begins on the later to occur of the Closing Date or the date of the submission of the City's annual performance and evaluation report (CAPER) to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if any records are the subject of litigation, a claim or audit, that started before the expiration of the five-year period, then such records must be kept until such litigation, claims or audit findings have been resolved or completion and resolution of all of the issues, for a period of five (5) years thereafter. Records for any displaced person must be kept for five (5) years after he/she has received final payment. Records for real property and equipment acquired with NSP funds shall be retained for five (5) years after final disposition.

All files and records shall be made available for review to the City's Housing and Community Development Department, the City's Office of Internal Audit and Evaluation, Comptroller General of the United States, HUD, the Inspector General of the United States and/or any of their authorized representatives, who shall have access to and the right to examine any of the records, documents or papers related to the Project during normal business hours and any other reasonable time requested by the City or HUD. This right also includes timely and reasonable access to the Foundation's personnel for the purpose of interviewing and discussion related to the documents. This same right to review and access will be imposed upon any third party or subcontractor and it is the Foundation's responsibility to ensure that any contract entered into with third parties contain all necessary clauses and language required by the City and/or HUD to ensure compliance with this Agreement and with all federal, state, and local laws and regulations. This section shall survive termination of this Agreement.

8.07 Monitoring /Access to Records. The Foundation agrees to provide the City, HUD, the Comptroller General of the United States, or any of their duly authorized representatives any books, documents, papers, and records of the Foundation or its contractors which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Such access shall be provided during normal business hours during Project implementation until five (5) years after the Project closeout for purposes of verifying compliance with NSP requirements and this Agreement. The Foundation shall monitor the progress of the Project covered by this Agreement and shall submit required reports to the City. The City shall monitor the Foundation's performance and financial and programmatic compliance. The Foundation shall allow on-site monitoring of the Project on as frequent a basis as the City deems necessary and at any other time that may be required by HUD to determine compliance with NSP regulations and this Agreement. The Foundation shall also furnish and cause each of its own subcontractors, if any, to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD, or any other authorized official or designee for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

8.08 Auditing. The City reserves the right to audit the records of the Foundation pertaining to the Project at any time during the performance of this Agreement and for a period of five years after the last Home is conveyed to a Qualified Household. If required by the City, the Foundation will provide HUD with a certified audit of the Foundation records representing the Fiscal Year during which the Project becomes complete.

8.09 Project Closeout. The Foundation's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments and provision of all reports and records required by the City.

ARTICLE 9. INSURANCE.

9.01 Insurance Requirements Generally. All insurance shall be obtained from financially responsible insurance companies either duly authorized under the laws of the State of Florida to do insurance business in the State of Florida (or subject to legal process in the State of Florida) with an insurer rating of A- or better by A.M. Best and shall be issued and countersigned by duly authorized representatives of such companies in the State of Florida.

(a) The insurance coverages and limits shall be evidenced by properly executed certificates of insurance, including certificates evidencing renewal of any such insurance as provided in **Section 9.01 (h)** of this Agreement below.

(b) All insurance policies must be issued as required by law and must be endorsed, where necessary, to comply with the minimum requirements contained herein.

(c) Renewal certificates of insurance which conform in every respect with the requirements of this **Article 9** are to be provided the City prior to expiration of current coverage.

(d) Reserved

(e) The insurance coverage and limits required of the Foundation under this Agreement are designed to be the minimum requirements of the Foundation.

(f) The Foundation alone shall be responsible for the sufficiency of its own insurance program. The City will in no way be responsible to the Foundation or any other party for any inadequacy of the Foundation's overall insurance program.

(g) The Foundation shall maintain and provide the following types and amounts of insurance:

(1) Commercial General Liability Insurance coverage in the minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death, One Million Dollars (\$1,000,000.00) for property damage, and an excess umbrella policy in a minimum coverage amount of One Million Dollars (\$1,000,000).

(2) Workers' Compensation Insurance Coverage as required by Florida law.

(h) The City shall be named as an additional insured on all insurance policies required by this Agreement (other than the Workers' Compensation Insurance).

9.02 Insurance During Construction of the Project. Prior to the commencement of construction and installation of the improvements and continuing until Project Completion, the Foundation shall provide, pay for and keep in full force and effect, or cause to be provided, paid for and kept in full force and effect, with insurance companies satisfying the requirements of **Section 9.01**, and also requiring the Contractor to carry builders risk insurance policy with copies of all endorsements added during the policy term.

9.03 Insurance on Improvements Post Construction. If not covered by a builder's risk insurance policy, the Foundation shall carry property insurance for the full insurable value of each Home after completion of construction and until transferred to Qualified Households.

9.04 Insurance on Home Following Conveyance to Qualified Households. The Foundation shall require the transferees of the Homes to carry property insurance on the Homes for the full insurable value thereof and name the Foundation and City as additional insureds for the entire Affordability Period.

9.05 Waiver of Subrogation Requirement. The Foundation or its Contractor, with respect to construction of the improvements, shall cause its insurance carriers to agree to a joint waiver of subrogation with respect to builders risk insurance covering the construction, which shall include the Contractors and all subordinate contractors.

9.06 Insurance Exclusive of Indemnity. The insurance obligations of the Foundation specified in this **Article 9** are exclusive of, and in addition to, any and all indemnity obligations of the Foundation under this Agreement.

9.07 No Waiver of Sovereign Immunity. Nothing in this **Article 9** is intended nor shall be deemed to constitute a waiver in whole or in part of any sovereign immunity applicable to and that may be asserted by the City.

ARTICLE 10. RESTRICTIONS ON HOMES

10.01 Affordable Housing.

(a) The Foundation covenants and agrees with the City to market the Homes for acquisition by Qualified Households. The two (2) EDI Homes will be conveyed to Qualified Households whose annual income is less than or equal to eighty percent (80%) of the median income of the MSA. The EDI Homes are identified as 1201 Polk Street and 1208 W. Jefferson Street. The four (4) NSP Homes will be conveyed to Qualified Households whose annual income is less than or equal to one hundred twenty percent (120%) of the median income of the MSA. The NSP Homes are identified as 1203, 1204 & 1207 W. Jefferson Street and 1205 Polk Street.

(b) Reserved.

(c) At the time a Home is conveyed to a Qualified Household, the Home shall be released from the lien of the mortgage given by the Foundation to the City, and replaced with a mortgage given by the new title holder and spouse, if married, to the City for the value of the Lot as unimproved. The mortgage shall secure a note for a term of fifteen (15) years with zero percent interest, which will be forgiven so long as the terms and conditions thereof and the Declaration are not violated. The mortgage shall be inferior to the lien of the Foundation mortgage only to the extent of the Total Development Costs, less the value of the Lot in question at the time of its conveyance to the Foundation. The notes and mortgages shall contain the terms and conditions in compliance with this Agreement and the standard terms and conditions found in notes and mortgages for property in Orange County, Florida.

(d) To determine if a prospective owner of a Home can qualify for homeownership, the Foundation will refer all prospects to HANDS for screening in accordance with the requirements of this Agreement. The Foundation has represented to the City that HANDS has agreed to review and certify Qualified Households and will notify the Foundation and City of those households which satisfy the Qualified Household requirement. In the selection of the final recipients to which Homes will be conveyed, Fair Housing guidelines and the other requirements set forth in this Agreement must be followed.

(e) Prior to transfer of a Home, the prospective owner must complete a homebuyers' education course program lasting at least eight (8) hours and a financial literacy course lasting at least two (2) hours. The programs must be approved by the Housing Director in its reasonable discretion.

10.02 Other Use Restrictions. Each Qualified Household acquiring a Home must agree or be subject to the Owner/Occupancy Requirements. At the time of conveyance of a Home by the Foundation, a Declaration shall be recorded encumbering the Home containing the Owner/Occupancy and Affordability Requirements for the entire Affordability Period.

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10.03 Maximum Sales Prices of Homes. In the event a Home is sold to a Qualified Household, rather than transferred for no consideration, the Sales Price shall not exceed the Total Development Costs of that Home and Lot.

10.04 Subsequent Home Transfers.

(a) The Owner/Occupancy Requirements and Affordability Requirements shall allow the transfer of a Home from Qualified Households to other Qualified Households in accordance with the Resale Restrictions applicable to such Home.

(b) The Foundation agrees to include in the Declaration for all conveyances of each Home that during the Affordability Period conveyances shall be made only to Qualified Households, which must also meet the other applicable requirements of this Agreement.

(c) In the event of the death of an individual who is the Qualified Household owning a Home, so long as there is an heir who was living in the Home at the time of the death, who wishes to continue living in the Home and fulfill the Owner/Occupancy Requirements, the heir(s) meeting these requirements may continue to live in the Home without otherwise meeting the Affordability Requirements at the time title to the Home passes to the heir(s). If there is no heir meeting these requirements, the Home must be transferred expeditiously to a third party meeting the requirements of the Declaration and all other documents encumbering title to the Lot and Home. When the heir(s) conveys the Home, the new owner must meet all of the requirements of the Declaration and other encumbrances against the Lot and Home.

10.05 Resale of Homes. In order to continue the charitable purposes for which the Project has been established, it is necessary to impose certain resale restrictions on each Home. In the event that a Home is resold, all associated costs of the sale shall be paid at the time of closing by the parties thereto and the remaining balance owed on the Foundation mortgage shall be paid to the Foundation and shall be used in other charitable projects it may sponsor from time to time. Any proceeds remaining after payment to the Foundation shall be paid to satisfy all other encumbrances in accordance with their legal priority after which any balance shall be paid to the seller. Any funds received by the City shall be considered to be Program Income. The Foundation shall require those who will acquire Homes to execute and record a mortgage in favor of the Foundation in accordance with the terms and conditions set forth in **Exhibit "G"**.

Notwithstanding the foregoing should the City's mortgage remain outstanding at the time of a conveyance of a Home from a Qualified Household to third party who is also a Qualified Household, the City mortgage need not be satisfied, so long as the obligations thereof are assumed by the new owner. On the other hand, should the City's mortgage also be paid in full, the Declaration shall remain in effect, during the entire Affordability Period.

ARTICLE 11.
CONVEYANCE OF HOMES TO QUALIFIED HOUSEHOLDS

11.01 Selection of Qualified Households. The Foundation shall be responsible for the preparation of all documentation needed for the qualification of all applicants. While the

Foundation ultimately remains responsible, the Foundation or its staff may delegate this obligation to a City-approved third party. The Foundation shall make the final selection of those to whom the Homes will be conveyed. The Foundation shall provide the City such documentation as the City may reasonably require to verify the parties to whom Homes will be conveyed will be Qualified Households agreeing to fulfill all of the terms and conditions of the Declaration(s).

11.02 Preference in Selection among Qualified Households. The final selection of Qualified Households who will acquire each Home shall be made in the following order (unless otherwise agreed by the City and the Foundation):

- (a) First offered to U.S. Veterans, but if no one in that category can be found wishing to, capable of and qualified to acquire the Home, then to
- (b) Local law enforcement officers/Public Safety Employees and retirees in such employment categories living in the City of Orlando, but if no one in that category can be found wishing to, capable of and qualified to acquire the Home, then to
- (c) Local law enforcement officers/ Public Safety Employees and retirees in such employment categories living outside the City of Orlando but within Orange County, Florida, but if no one in that category can be found wishing to, capable of and qualified to acquire the Home, then to
- (d) Local law enforcement officers/Public Safety Employees and retirees in such employment categories living outside of Orange County, Florida, but if no one in that category can be found wishing to, capable of and qualified to acquire the Home, then to
- (e) Any Qualified Households wishing to, capable of and qualified to acquire a Home.

NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE CONTAINED HEREIN, the provisions of this Agreement, including, but not limited to, this Article 11, shall not be a basis for any third party to claim that such third party is entitled to or has any right to be selected to acquire, receive, or purchase a Home, as these provisions are not and shall not be for the benefit of any third party. The rights and obligations with respect to any selection process and those either selected or rejected to receive a Home shall create enforceable rights solely in the parties to this Agreement. No third party shall have any rights pursuant to this Agreement, against either named party, any other party (including, but not limited to, HANDS, the Project Professionals or any Contractor), or any of its or their elected or appointed officials, officers, directors, boards or board members, committees or committee members, employees, agents, successors, or assigns.

11.03 Pre-closing Procedures for Homes to be Conveyed to Qualified Households. At least ten (10) days prior to closing on the conveyance of a Home to Qualified Household the Foundation shall provide the City's Representative notification of the closing date for the transaction and copies of all of the Foundation's closing documents and other supporting documentation as the City may request in form and substance acceptable in the City's reasonable discretion. The documentation shall include such certifications and supporting information the City may request to establish that each Home will be conveyed in compliance with the requirements of this Agreement.

11.04 Final Closing Obligations. The Foundation shall prepare all documents needed for closing as required per this Agreement, including but not limited to the Foundation's promissory note, mortgage for each Home closing; provided, that the City (at the City's cost and expense) shall prepare the City's Declaration, mortgage and promissory note. The Foundation (or purchaser of the Home) shall at no cost to the City pay all closing costs, including, but not limited to, documentary stamps and recording fees; provided that the City shall be required to pay all closing costs, including, but not limited to, documentary stamps and recording fees, to perfect the City's interest in the Home and restrictions on use.

11.05 Post-Closing Obligations. The Foundation shall provide the City annual reports of the status of each Home and compliance with the Affordability Requirements and Owner/Occupancy Requirements. Should a Home fail to be used in compliance with the restrictions on use, the Foundation shall enforce the agreements of the Qualified Household under the Foundation's promissory note, mortgage, Declaration and City's Declaration (provided that the Foundation is granted rights to enforce the City's Declaration and then only to the extent of such enforcement rights), at no cost to the City. Notwithstanding the foregoing, the City shall be entitled to enforce the City's Declaration against the homeowner at any time.

11.06 Resale of Homes During Affordability Period. Should a Qualified Household elect to sell a Home during the Affordability Period, the Foundation shall take such steps as are necessary to qualify and approve the new prospective owner. Each party to this Agreement shall fulfill its respective obligations to the other in that regard as set forth in this **Article 11** of this Agreement.

ARTICLE 12 INDEMNIFICATION.

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration herein provided, the receipt of which is hereby acknowledged by the Foundation, the Foundation agrees to indemnify, defend and hold harmless, the City, its elected and appointed officials, agents, and employees, from any and all liabilities, damages, penalties, judgments, claims, demands, costs, losses, expenses or attorneys' fees for all pre-litigation, trial and through all appellate and bankruptcy proceedings, for personal injury, bodily injury, death or property damage by reason of any act or omission of the Foundation, its agents, employees or contractors arising out of, in connection with or by reason of, the performance of any and all services contemplated by this Agreement.

The Foundation's indemnity hereunder is not and shall not be interpreted as an insuring agreement between or among the parties to this Agreement, nor as a waiver of sovereign immunity for any party entitled to assert the defense of sovereign immunity.

ARTICLE 13

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE FOUNDATION.

13.01 Representations and Warranties. The Foundation represents and warrants to the City that each of the following statements is currently true and accurate as of the Effective Date (unless otherwise set forth herein) and agrees the City may rely upon them:

(a) The Foundation is a Florida corporation not for profit duly organized and validly existing under the laws of the State of Florida, has all requisite power and authority to carry on its business as now conducted, to own or hold its properties and to enter into and perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is a party, is qualified to do business in the State of Florida, and has consented to service of process upon a designated agent for service of process in the State of Florida.

(b) This Agreement and, to the extent such documents presently exist in a form accepted by the City and the Foundation and all Exhibits hereto, have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the Foundation, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof: (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the Foundation, (3) contravenes or results in any breach of, default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the Foundation under any indenture, mortgage, deed of trust, bank loan or credit agreement, the Foundation's articles of incorporation, or, any other agreement or instrument to which the Foundation is a party or by which the Foundation may be bound, a default of which would cause a default under this Agreement.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the City and the Foundation, each document contemplated or required by this Agreement to which the Foundation is or will be a party constitutes, or when entered into will constitute, a legal, valid and binding obligation of the Foundation enforceable against the Foundation in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or, to the knowledge of the Foundation, threatened actions or proceedings before any court or administrative agency, against the Foundation, or against any officer, employee or agent of the Foundation, which question the validity of this Agreement or any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the Foundation.

(e) The Foundation has filed or caused to be filed all federal, state, local and foreign tax returns, if any, which were required to be filed by the Foundation, and has paid, or caused to be paid, all taxes currently shown to be due and payable on such returns or on any assessments currently levied against the Foundation.

(f) All financial information and other documents, including that pertaining to the Project or the Foundation, delivered by the Foundation to the City are true and correct.

(g) The principal place of business and principal executive offices of the Foundation are in Orlando, Florida.

(h) As of the Closing Date, the Foundation will have a financial plan to carry out its obligations and responsibilities in connection with the development of the Project as contemplated by this Agreement.

(i) The Foundation has the experience, expertise, and capability, or will cause others with the experience, expertise and capability, to develop, cause the construction, and complete the improvements.

13.02 Covenants. The Foundation covenants with the City as follows:

(a) The Foundation shall timely perform or cause to be performed all of the obligations contained in this Agreement which are the responsibility of the Foundation to perform.

(b) While this Agreement and the obligations of the Foundation under this Agreement shall be in effect, the Foundation shall cause to be executed and to continue to be in effect all instruments, documents, certificates, permits, licenses and approvals it is obligated to fulfill or abide by, and shall cause to occur those events contemplated by this Agreement that are the responsibility of the Foundation.

(c) Subject to and in accordance with this Agreement, the Foundation shall develop the Project and will not violate any laws, ordinances, rules, regulations, orders, contracts or agreements that are or will be applicable thereto.

(d) Subsequent to the Effective Date, the Foundation shall maintain its financial plan to develop, construct and complete the improvements and shall promptly notify the City of any event, condition, occurrence, or change in its financial condition which materially adversely affects, or with the passage of time is likely to adversely affect, the Foundation's financial capability to successfully and completely develop, construct and complete the improvements as contemplated hereby.

(e) Prior to Project Completion, the Foundation shall promptly cause to be filed when due all federal, state, local and foreign tax returns required to be filed by it, and shall promptly pay when due any tax required thereby so as to avoid an uncured tax lien against the Project improvements.

(f) Prior to Project Completion, the Foundation shall not sell, lease, transfer or otherwise dispose of all or substantially all its assets without adequate consideration and will otherwise take no action which shall have the effect, singularly or in the aggregate, of rendering the Foundation unable to continue to observe and perform the covenants, agreements, and conditions hereof and the performance of all other obligations required by this Agreement.

(g) Prior to Project Completion, the Foundation shall not dissolve and will not consolidate or merge into another corporation, limited partnership, or other entity or permit one or more other corporations or other entities to consolidate with or merge into it, upon prior written approval of the City, which shall not be unreasonably withheld.

ARTICLE 14 REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY.

14.01 Representations and Warranties. The City represents and warrants to the Foundation that each of the following statements is currently true and accurate as of the Effective Date and agrees that the Foundation may rely on each of the following statements:

(a) The City is a validly existing Florida municipal corporation and has all requisite corporate power and authority to carry on its business as now conducted and to perform its obligations hereunder and under each document or instrument contemplated by this Agreement to which it is or will be a party.

(b) This Agreement and, to the extent such documents presently exist in form accepted by the City and the Foundation, and all Exhibits hereto, have been duly authorized by all necessary action on the part of, and have been or will be duly executed and delivered by, the City, and neither the execution and delivery thereof, nor compliance with the terms and provisions thereof or hereof (1) requires the approval and consent of any other party, except such as have been duly obtained or as are specifically noted herein, (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on the City, (3) contravenes or results in any breach of, or default under or, other than as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of the City under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other agreement or instrument to which the City is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of the City outstanding on the Effective Date.

(c) This Agreement and, to the extent such documents presently exist in form accepted by the City and the Foundation, each document contemplated or required by this Agreement to which the City is or will be a party constitute, or when entered into will constitute, legal, valid and binding obligations of the City enforceable against the City in accordance with the terms thereof, except as such enforceability may be limited by public policy or applicable bankruptcy, insolvency or similar laws from time to time in effect which affect creditors' rights generally and subject to usual equitable principles in the event that equitable remedies are involved.

(d) There are no pending or threatened actions or proceedings before any court or administrative action against the City, or against any officer of the City, which question the validity of any document contemplated hereunder, or which are likely in any case, or in the aggregate, to materially adversely affect the consummation of the transactions contemplated hereunder or the financial condition of the City.

14.02 Covenants. The City covenants with the Foundation as follows:

(a) The City shall timely perform or cause to be performed all of the obligations contained herein which are the responsibility of the City to perform.

(b) While this Agreement and the obligations of the City under this Agreement shall be in effect, the City shall cause to be executed and to continue to be in effect those instruments, documents, certificates, permits, licenses and approvals it is obligated to fulfill or abide by, and shall cause to occur those events contemplated by this Agreement that are applicable to and are the responsibility of the City.

(c) The City shall assist and cooperate with the Foundation to accomplish the development of the improvements in accordance with this Agreement and the Plans and Specifications, will carry out its duties and responsibilities contemplated by this Agreement, and will not violate any laws, ordinances, rules, regulations, orders, contracts, or agreements that are or will be applicable thereto, and, to the extent permitted by law, the City will not enact or adopt or urge or encourage the adoption of any ordinances, resolutions, rules, regulations or orders or approve or enter into any contracts or agreements, including issuing any bonds, notes, or other forms of indebtedness, that will result in any provision of this Agreement to be in violation thereof.

(d) The City will maintain title to the Property until it is conveyed to the Foundation on the Closing Date.

ARTICLE 15 DEFAULT; TERMINATION.

15.01 Default by the Foundation. There shall be a material “event of default” by the Foundation upon the occurrence of any one or more of the following:

(a) After commencement of construction, the Foundation stops work on the improvements for forty-five (45) consecutive days. (For purposes of this paragraph (1), “stops work” means, expressly subject to force majeure, the Foundation, or any Contractor, after commencement of construction is not diligently prosecuting work in a reasonable and effective manner.)

(b) Failure to close on conveyance of a Home provided the conditions to closing have been satisfied or waived.

(c) Failure to obtain or maintain the insurance or failure to cause others to obtain or maintain the insurance required by **Article IX**, unless waived in writing by the City.

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(d) The Foundation files for bankruptcy or an involuntary petition in bankruptcy is filed against the Foundation.

(e) Any of the Property is seized through legal process due to foreclosure of a lien or other cause such that title has been transferred from the Foundation to a third party or the Foundation no longer has control or use of any Homes, which have not been properly conveyed in accordance with this Agreement.

(f) Dissolution of the Foundation or assignment of the Foundation's rights other than as permitted by **Section 17.01**, without approval of the City.

(g) The Foundation fails to indemnify the City as required by **Article 12**.

(h) The Foundation fails to meet any deadline set forth in **Article 6** hereof.

(i) The Foundation sells or conveys a Home or Lot to someone who is not a Qualified Household meeting all other applicable requirements set forth in this Agreement.

(j) The Foundation fails to abide by or otherwise fulfill any other material provision of this Agreement.

Notwithstanding the foregoing, suspension of or delay in performance by the Foundation during any period in which the City is in default of this Agreement will not constitute an event of default by the Foundation.

15.02 Remedies for a Foundation Default. If a Foundation event of default should occur, the City shall provide written notice thereof to the Foundation, and, if the Foundation does not cure the event of default within thirty (30) days after written notice from the City specifying in reasonable detail the event of default (provided, however, if the event reasonably requires more than thirty (30) days to cure and the Foundation proceeds to cure during such thirty (30) day period and thereafter diligently pursues such cure, then the Foundation shall have such additional time as is reasonable under the circumstances to cure), then the City may pursue the following default remedy (as the City's sole and exclusive remedies), :

(i) Terminate this Agreement and require the Foundation to re-convey to the City any Lots and Homes, which the Foundation has not conveyed to Qualified Households. The Foundation shall re-convey the property within thirty (30) days after delivery to the Foundation of a demand for re-conveyance. **TIME IS OF THE ESSENCE.** The Foundation shall convey the property by special warranty deed, free of any mortgages, liens or encumbrances (other than those held by the City) and subject to only such title matters as existed at the time the Foundation acquired title from the City (or those which were joined in or consented to by the City). In the event improvements have been constructed on Lots to be re-conveyed to the City, the City shall have no obligation to pay for the improvements, and the Foundation shall indemnify and hold City harmless against all liens, debts or other obligations with respect to those Lots. . The City may enforce this obligation through an action for specific performance, foreclosure of the City's mortgage and as otherwise allowed by law. Upon such timely re-conveyance, the Note and mortgage and each party's respective obligations thereunder shall be automatically deemed satisfied, terminated and released, except to the extent otherwise provided in this Section.

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(b) For the benefit of the City, the Foundation agrees to enforce the Foundation's Declaration in accordance with its terms in a timely manner. The Foundation's Declaration shall at all times include the Affordability Requirements and the Owner/Occupancy Requirements as defined in this Agreement, except upon written consent of the City. If after conveyance of a Home, should the Foundation fail to enforce or initiate good faith efforts to enforce the Foundation's Declaration within twenty (20) days after a written request by the City, the City shall be entitled to pursue against the Foundation any and all remedies as allowed by law and in equity as a result of such failure. Notwithstanding anything herein to the contrary, the City's remedies at law shall be limited to actual damages (consequential, speculative, punitive and other non-actual damages are hereby waived).

15.03 Default by the City. There shall be an "event of default" by the City under this Agreement should the City shall fail to perform or comply with any material provision of this Agreement applicable to it; provided, however, suspension of or delay in performance by the City during any period in which the Foundation is in default of this Agreement will not constitute an event of default by the City.

15.04 Remedies for City Default. If a City event of default should occur, the Foundation shall provide written notice thereof to the City, and, if the City does not cure the event of default within thirty (30) days after written notice from the Foundation specifying in reasonable detail the event of default, then the Foundation may pursue any of the following default remedies:

(a) Should the default occur prior to the conveyance of the Property to the Foundation, the Foundation may terminate this Agreement or institute an action to compel specific performance as the sole and exclusive remedies available under this Agreement. All actions for damages or expenses of any kind are expressly waived.

(b) Should the City event of default occur after the conveyance of the Property to the Foundation, the Foundation may pursue an action for specific performance to the extent allowed in equity or damages to the extent not limited or waived herein. The Foundation may not pursue any default remedies if the event of default is of such a nature that it cannot be completely cured within thirty days after notice thereof, in which event the City shall within sixty (60) days promptly, diligently and in good faith proceed to cure the event of default after receipt of the notice from the Foundation.

15.05 Damages Limitations and Waivers. It is specifically understood and agreed that neither party will be responsible to the other for any indirect, special, incidental, exemplary, punitive or consequential loss or damage whatsoever (including lost profits, loss of use and opportunity costs), arising out of this Agreement or anything done in connection herewith. Further, there shall be no recovery of any such indirect, special, incidental, exemplary, punitive or consequential loss or damage whether based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise. In no event shall this waiver limit the protections afforded by any indemnification provisions contained in this Agreement.

15.06 Attorneys' Fees and Costs. The prevailing party in any litigation arising out of or in any manner relating to this Agreement shall be entitled to recover from the other party reasonable attorneys' fees and costs for all pre-litigation, trial, appellate and bankruptcy proceedings, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

15.07 Non-Action on Failure to Observe Provisions of this Agreement. The failure of the City or the Foundation to promptly or continually insist upon strict performance of any term, covenant, condition or provision of this Agreement, or any Exhibit hereto, or any other agreement, instrument or document of whatever form or nature contemplated hereby shall not be deemed a waiver of any right or remedy that the City or the Foundation may have, and shall not be deemed a waiver of a subsequent default or nonperformance of such term, covenant, condition or provision.

ARTICLE 16

COMPLIANCE WITH OTHER FEDERAL, STATE & LOCAL LAWS

16.01 Federal, State and Local Laws, Rules and Regulations. The Foundation covenants and warrants in favor of the City that it will comply with and work with the City to comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto. City agrees to cooperate with the Foundation answering any questions and providing any guidance needed to meet the Foundation's responsibilities. Since the Property was acquired with NSP funds, the Foundation shall comply with the requirements of the NSP program as provided in Title III of Division B of the Housing and Economic Recovery Act (HERA) of 2008 (Public Law 110-289), as implemented by Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008-October 6, 2008 (FR-5255—01); Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections -- June 19, 2009 (FR-5255-N-02); and Notice of Neighborhood Stabilization Program Reallocation Process Changes -- August 23, 2010 (FR-5435-N-01). The Foundation shall comply with each of these and other laws and regulations governing the use of these funds, whether set forth herein or not, and any amendments or policy revisions thereto which shall become effective during the term of this Agreement. It is the Foundation's and City's responsibility to read, understand, and comply with these laws and regulations. In addition, the Foundation and City shall abide by any and all other applicable federal or state laws, rules, regulations, and policies governing the funds provided under this Agreement, whether presently existing or hereafter promulgated. The Foundation shall also comply with all applicable provisions of the City's Code, including the Land Development Code and Building Code.

Notwithstanding anything to the contrary, the Foundation's obligations under the foregoing and following provisions of this Article 16 are for matters occurring subsequent to the date of this Agreement and otherwise applicable to the Foundation. The City shall provide answers to any questions the Foundation may have in fulfilling the Foundation's obligations.

Heroes' Commons Donation Agreement
02-13-14

The City shall in good faith provide whatever advice the Foundation may reasonably request so that the Foundation can fulfill the compliance obligations set forth herein.

16.02 **Non-Discrimination.** In accordance with Section 109 of the Housing and Community Development Act of 1974, no person in the United States shall on the ground of race, color, religion, natural origin, or sex, 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 CDBG funds. The parties shall comply with 42 U.S.C. §5309, et. seq., 24 CFR §570.602 and 24 CFR Part 6. The parties shall at all times comply with sections 104(b), 107 and 109 of the Housing and Community Development Act of 1974, as amended; Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000 d, et seq.); and implementing regulations in 24 CFR Part 1. HUD's Title VI regulations specify types of prohibited discrimination. The parties must not, for example, based on race, color, or national origin deny a person housing or services; provide different housing or services than those provided others; subject a person to segregation or separate treatment in the receipt of housing or services; use different admission or eligibility requirements for housing or services; or select a housing site or location with the purpose or effect of excluding or denying benefits to persons in protected classes.

The parties shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et. seq.) and the implementing regulations contained in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973, and the implementing regulations contained in 24 CFR Part 8. Any contracts entered into by the Foundation shall include a provision for compliance with these regulations. The Foundation and the City shall keep records and documentation demonstrating compliance with these regulations.

16.03 **Equal Employment Opportunity.** The parties shall comply with 24 CFR §570.607, Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith Based Community Organizations) and the implementing regulations in 41 CFR Part 60, and the provisions of the Equal Employment Opportunity Clause attached hereto as **Exhibit "B"**, and made a part hereof by this reference. Any contracts or subcontracts entered into by the Foundation or its contractors shall include a provision for requiring compliance with these regulations and will, in all solicitations or advertisements for employees state that is an Equal Opportunity/Affirmative Action employer. The Foundation shall keep records and documentation demonstrating compliance with these regulations.

16.04 **Land Covenants.** This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Foundation shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease, or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, provided that the City and the United States are beneficiaries of and entitled to enforce such covenants. The Foundation, in undertaking its obligation to carry out the

program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

16.05 **Copeland “Anti-Kickback” Act.** The parties shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. §874) as supplemented by the Department of Labor regulations contained in 29 CFR Part 3. Any construction contracts entered into by the Foundation shall include a provision for compliance with these regulations. The Foundation shall maintain documentation and records which demonstrate compliance with these regulations. Such documentation maintained by the Foundation shall be submitted to the City for review on a monthly basis.

16.06 **Handicapped Accessibility Requirements.** The Foundation shall design, construct, and rehabilitate the Project so that it is accessible to and useable by individuals with handicaps, in compliance with the Architectural Barriers Act of 1968 (42 U.S.C. §§ 4151-4157), the Uniform Federal Accessibility Standards, as set forth in 24 CFR §570.614, the Americans with Disabilities Act of 1990 (42 U.S.C. §12131), Section 504 of the Rehabilitation Act of 1973 and the implementing regulations in 24 CFR Part 8, and all state and local laws requiring physical and program accessibility to people with disabilities. Any contracts entered into by the Foundation shall include a provision for compliance with these regulations. The Foundation shall keep records demonstrating compliance with these regulations.

16.07 **Utilization of Minority/Women’s Business Enterprises.** The Foundation will use its best efforts to ensure that minority/women’s business enterprises are afforded the opportunity and included for consideration for participation in all construction, supply or service contracts or in the performance of this Agreement. The Foundation shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (Women’s Business Enterprise). Any contracts entered into by the Foundation shall include a provision for compliance with these regulations. The Foundation shall keep records demonstrating compliance with this provision.

16.08 **Political Activities.** The parties shall comply with 24 CFR §570.207(a)(3) regarding political activities. CDBG funds shall not be used for lobbying or political patronage activities. The Foundation further agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent be engaged in the conduct of political activities in violation of Chapter 15 of Title V, United States Code (Hatch Act), or 24 CFR §570.207(a)(3).

16.09 **Anti-Lobbying Provision.** The Foundation shall comply with the requirements set forth in 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87. The Foundation and any contractors who apply or bid for an award of \$100,000 or more shall execute and comply with the "Certification Regarding Lobbying" attached hereto as **Exhibit "C"** and made a part hereof by this reference. If applicable to the Foundation, the Foundation shall execute the "Certification Regarding Lobbying" and a copy shall be kept in the files of each of the parties of this Agreement.

16.10 **Conflict of Interest.** The Foundation shall comply with the conflict of interest provisions contained in 24 CFR §570.611. Although this summary does not intend to replace 570.611, essentially this rule states that no officer or employee of City or its designees or agents or consultants, no member of City Council, and no other public official who exercised any functions or responsibilities with respect to activities assisted CDBG funds or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure of for one year thereafter. The Foundation agrees and warrants that it will establish and adopt safeguards to prohibit members, officers, employees and the like from using positions for a purpose that is or gives the appearance of being motivated for private gain for themselves or others with whom they have family, business, or other ties. The Foundation shall also keep records supporting requests for waivers of conflicts.

16.11 **Section 3 of the Housing and Urban Development Act of 1968/Equal Opportunity.** The Foundation shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701 u) and its implementing regulations contained in 24 CFR Part 135 regarding economic opportunities for low income persons and the use of local businesses, if applicable. The Foundation shall comply with the provisions of the “Section 3 Clause”, attached hereto as **Exhibit “D”** and made a part hereof by this reference, and require all subcontracts to contain a copy of the Section 3 clause. The Foundation shall also keep records demonstrating compliance with these regulations, including 24 CFR §570.506(g)(5).

16.12. **Faith-Based Activities.**

(a) **Equal treatment of program participants and program beneficiaries.** Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the NSP program. Neither the Federal Government or a State or local government receiving funds under the NSP program shall discriminate against an organization on the basis of the organization’s religious character or affiliation.

(b) **Separation of inherently religious activities.** Organizations that are directly funded under the NSP program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part, and participation must be voluntary for the program beneficiaries of the HUD-funded programs or services provided.

(c) **Religious Identity.** A faith-based organization that is a recipient or subrecipient of NSP program funds will retain its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, state, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct NSP funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide NSP-funded services, without removing or altering religious art, icons,

scriptures, or other religious symbols. In addition, a NSP-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) Beneficiaries. An organization that participates in the NSP program shall not in providing program assistance discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(e) Structures. NSP funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. NSP funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, NSP funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to NSP funds. Sanctuaries, chapels, or other rooms that a NSP -funded religious congregation uses as its principal place of worship, however, are ineligible for NSP -funded improvements.

16.13. **Drug Free Workplace.** The Foundation will provide a drug-free workplace. The Foundation shall comply with the Drug-Free Workplace Act of 1988 and implementing regulations in 2 CFR Part 2429 regarding maintenance of a drug-free workplace. The Foundation shall complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Exhibit "E"** and made a part hereof by this reference. The Foundation shall ensure that the provisions of the clauses in **Exhibit "E"** are included in all third party contracts, subcontracts, and purchase orders that exceed ten thousand dollars (\$10,000), so that the provisions will be binding upon each subcontractor or vendor. The Foundation will complete this certification and a copy shall be kept in the files of each of the parties of this Agreement.

16.14. **Program Requirements.** The Foundation agrees to comply and carry out all of its activities in accordance with the program requirements set forth in 24 CFR 570, subpart K.

16.15. **Fair Housing Act and Nondiscrimination and Equal Opportunity in Housing under E.O. 11063.** The Foundation shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing) and their implementing regulations in 24 CFR Part 107 and shall keep records demonstrating compliance with this provision.

16.16 **Resident Aliens.** The Foundation shall comply with the requirements set forth in 24 CFR §570.613 regarding eligibility restrictions for certain resident aliens.

16.17. **Debarment and Suspension.** The Foundation shall comply with the debarment and suspension requirements set forth in 24 CFR §570.609, which requires compliance with 24 CFR Part 5 and 2 CFR Part 2424. The Foundation shall not enter into a contract with any person, agency or entity that is debarred, suspended or otherwise excluded from or ineligible for

participation in federal assistance programs under Executive Order 12549 or 12689, “Debarment and Suspension,” which is made a part of this Agreement by reference. In the event that the Foundation has entered into a contract or subcontract with a debarred or suspended party, no CDBG funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Foundation shall keep copies of the debarment and suspension certifications required by 2 CFR Parts 2424 and a copy of the sheet documenting that the federal debarment list was checked.

16.18. **Building, Zoning, and Permits.** The Foundation agrees to comply with all laws of the State of Florida and the Orlando City Code. In particular, the Foundation shall comply with all applicable building and zoning laws and regulations and obtain all necessary permits for intended improvements or activities for the Project.

16.19. **Agreement between City and HUD.** The Foundation agrees that it shall be bound by the standard terms and conditions used in the CDBG/NSP Agreement between the City and HUD, and such other rules, regulations or requirements as HUD may reasonably impose in addition to the conditions of this Agreement or subsequent to the execution of this Agreement by the parties hereto.

16.20. **Fees for Use of Facilities.** Reasonable fees may be charged for the use of any facilities assisted with NSP funds, but charges such as excessive membership fees, which have the effect of precluding low- and moderate-income persons for using the facilities are not permitted.

16.21. **Registration.** The Foundation agrees to maintain a current registration in the federal System for Award Management (“SAM”) database (<http://www.sam.gov>) pursuant to the Federal Funding Accountability and Transparency Act, P.L. 109-282, as amended by section 6202(a) of P.L. 110-252. If the Foundation is not currently registered, it must do so within ten (10) days of the date the Foundation executes this Agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is required for registration. The Foundation shall also complete and sign the Affidavit attached hereto as **Exhibit “F”** in conjunction with its execution of this Agreement and provide any supporting documentation, if required.

16.22. **Environmental Review Requirements.** In accordance with 24 CFR §570.604 and 24 CFR Part 58, the activities under this Agreement are subject to environmental review requirements. The Foundation is not required to assume responsibility for an environmental review or assessment of this program pursuant to 24 CFR Part 58, nor responsibility for initiation of an intergovernmental review of this program and its activities (24 CFR §570.604). However, the Foundation is required to provide information about its activities in order for the City to comply with its responsibility under 24 CFR Part 58. The Foundation shall submit to the City any changes to the original proposed scope of work or any changes to the cost of the work so that the City may evaluate this new information and conduct any further environmental review. This information must be submitted to the City for approval at least 45 days prior to any commencement of work. The Foundation also agrees to assist the City in addressing environmental issues that may arise during the City’s review process.

16.23. **Environmental Protection.** The Foundation shall comply with all applicable standards, orders or regulations of the Clean Air Act (42 U.S.C. §7401 et. seq.); Section 306 of the Clean Air Act (42 U.S.C. 1857 (h)); Section 508 of the Clean Water Act (33 U.S.C. Section 1368); Executive Order 11738; the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251, et. seq.); EPA regulations pursuant to 40 CFR Part 50; National Environmental Policy Act of 1969; standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act; and HUD Environmental Review Procedures at 24 CFR Part 58. Violations shall be reported to the City, HUD and EPA.

16.24. **Flood Disaster Protection.** The Foundation shall comply with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. §4106) and implementing regulations in 44 CFR Parts 59 through 79 in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of this Agreement, as it may apply to the provisions of this Agreement. In accordance with the requirements of this Act, the Foundation shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation.)

16.25. **Flood Insurance Program.** Should any construction or rehabilitation of existing structures with assistance provided under this Agreement occur in an area identified as having special flood hazards by the Director of Federal Emergency Management, the Foundation agrees to comply with all relevant and applicable provisions of 24 CFR §570.605 concerning the National Flood Insurance Program. The Foundation agrees that if any portion of the any property improved in connection with this Project is located in a special flood hazard area that flood insurance will be required by the City and must be provided by the Foundation.

16.26. **Lead-Based Paint.** Lead-based paint is prohibited in the construction or rehabilitation of any properties assisted under this Agreement. The Foundation agrees that any construction or rehabilitation of residential structures with assistance provided under this contract shall be subject to HUD Lead-Based Paint Regulations at 24 CFR §570.608, which requires compliance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations at 24 CFR Part 35, of which subparts A, B, J, K, and R apply to the CDBG Program. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice shall also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and-or abatement may be conducted. The Foundation shall maintain records demonstrating compliance with these requirements.

16.27. **Historic Preservation.** The Foundation agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470) and the procedures set forth in 36 CFR §800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. The Foundation shall notify the City NSP representative immediately upon determining that a property may fall into this category.

ARTICLE 17 MISCELLANEOUS

17.01 **Assignments.** The Foundation may not sell, convey, assign or otherwise dispose of any or all of its right, title, interest and obligations in and to this Agreement or any part thereof, except as provided herein or upon the prior written consent of the City, which may be withheld for any or no reason in its sole and absolute discretion.

17.02 **Successors and Assigns.** The terms herein contained shall bind and inure to the benefit of the City, and its successors and assigns, and the Foundation, and its successors and assigns, except as may otherwise be specifically provided herein.

17.03 **No Third-party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to nor shall be construed to confer upon any person, firm or corporation other than the parties hereto, any right, remedy, or claim, legal or equitable, under or by reason of this Agreement or any provision hereof. It is the intent of the parties to this Agreement that this Agreement and all of its provisions are intended to be and are for the sole and exclusive benefit of the parties hereto.

17.04 Notices.

(a) All notices, demands, requests for approvals or other communications given by either party to another shall be in writing to the office for each party indicated below and addressed as follows:

To the Foundation:	Florida Real Estate Foundation, Inc. 1330 Lee Road Orlando, Florida 32810 Attention: Eileen C. Elliott a/k/a Frankie Elliott
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With copy to:	Baker & Hostetler LLP SunTrust Center, Suite 2300 200 S. Orange Avenue Orlando, FL 32801 Attention: David L. Evans, Jr.
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To the City:	City of Orlando City Hall, 7th Floor Housing Department 400 S. Orange Avenue
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Orlando, FL 32802
Attention: Director of Housing

With copy to:

City Attorney's Office
City Hall, 3rd Floor
400 S. Orange Avenue
Orlando, FL 32802
Attention: City Attorney

(b) Any notice required or permitted to be given under this Agreement shall be delivered by hand, by nationally recognized overnight air courier service (such as Federal Express) or by United States Postal Service, registered or certified mail, return receipt requested, in each case addressed to the respective Party at the Party's notice address. A notice shall be deemed to have been delivered and received on the earlier of the date actually received (by whatever means sent, including means not authorized by this article) or on the date of transmittal by telecopier, or the first (1st) business day after having been delivered to a nationally recognized overnight air courier service for "next business day" delivery, or on the third (3rd) business day after having been deposited with the United States Postal Service registered or certified mail, return receipt requested. If any communication is returned to the addressor because it is refused, unclaimed, or the addressee has moved, or is otherwise not delivered or deliverable through no fault of the addressor, effective notice shall still be deemed to have been given.

17.05 Severability. If any term, provision or condition contained this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable, shall not be affected thereby, and each term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17.06 Document Interpretation. This Agreement has been negotiated by the City and the Foundation, and the Agreement, including, without limitation, the Exhibits, shall not be deemed to have been prepared by the City or the Foundation, but by the parties together.

17.07 Applicable Law; Venue; Submission to Jurisdiction.

(a) The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement.

(b) For purposes of any suit, action, or other proceeding arising out of or relating to this Agreement, the parties hereto do acknowledge, consent, and agree that venue thereof is Orange County, Florida.

(c) Each party to this Agreement hereby submits to the jurisdiction of the State of Florida, Orange County, and the courts therein, for the purposes of any suit, action, or other proceeding arising out of or relating to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that

the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

17.08 Agreement Not a Statutory Development Agreement. The Foundation and the City acknowledge, agree and represent that this Agreement, including, without limitation, any of the Exhibits, is not a development agreement as described in Sections 163.3220-163.3243, Florida Statutes.

17.09 Estoppel Certificates. The Foundation and the City shall at any time and from time to time, upon not less than twenty (20) days prior notice by another party hereto, execute, acknowledge and deliver to the other party a statement certifying that this Agreement has not been modified and is in full force and effect (or if there have been modifications that the Agreement as modified is in full force and effect and setting forth a notation of such modifications), and that to the knowledge of such party, neither it nor any other party is then in default hereof (or if a party is then in default hereof, stating the nature and details of such default), it being intended that any such statement delivered pursuant to this **Section 17.09** may be relied upon by any prospective purchaser, mortgagee, successor, assignee of any mortgage or assignee of the respective interest in the Project.

17.10 Complete Agreement; Amendments.

(a) This Agreement, and all the terms and provisions contained herein, including without limitation the Exhibits hereto, constitute the full and complete agreement between the parties to the date hereof, and supersedes and controls over any and all prior agreements, understandings, representations, correspondence and statements whether written or oral.

(b) This Agreement cannot be changed or revised except by written amendment signed by the parties, which amendments shall be effective as provided therein.

17.11 Captions. The article and section headings and captions of this Agreement are for convenience and reference only and in no way define, limit, describe the scope or intent of this Agreement or any part thereof, or in any way affect this Agreement or construe any article, section, subsection, paragraph or provision hereof.

17.12 Holidays. It is hereby agreed and declared that whenever a notice or performance under the terms of this Agreement is to be made or given on a Saturday, Sunday or a legal holiday observed by the City, it shall be postponed to the next following business day.

17.13 Exhibits. Each Exhibit referred to and attached to this Agreement is an essential part of this Agreement. The Exhibits and any amendments or revisions thereto, even if not physically attached hereto shall be treated as if they are part of this Agreement.

17.14 Not an Agent. During the term of this Agreement, the Foundation shall not be an agent of the City, with respect to any and all services to be performed by the Foundation (and any of its agents, assigns, or successors) with respect to the Project, and the City is not an agent of the Foundation (and any of its agents, assigns, or successors).

17.15 Force Majeure. Notwithstanding any other provision of this Agreement to the contrary, all of the obligations of the City and the Foundation (whether or not a specific reference to this Section has been made) shall be subject to an excuse for the period of delay in the performance of its obligations under this Agreement when such delay is occasioned by cause or causes beyond the control of such party and the time for performance shall be automatically extended for a like period. Such causes shall include, without limitation, all labor disputes, casualty (whether or not insured), materials shortages, civil commotion, war, war-like operations, sabotage, terrorism, governmental or judicial regulations, legislation, inability to obtain any necessary materials or services, inability to obtain (after using reasonable efforts) any approvals or permits of any applicable governmental authority or utility company or other authority for the issuance of permits or licenses, acts of God, but shall not include unavailability of financing or funds.

IN WITNESS WHEREOF, the parties hereto have set their hands and their respective seals affixed as of the ____ day of _____, 2014.

THE CITY OF ORLANDO, FLORIDA

By: _____

Print Name: _____,

As Mayor/Pro Tem

Executed on _____, 2014

ATTEST:

By: _____

City Clerk

TWO WITNESSES:

Print Name: _____

Print Name: _____

Approved as to form and legality for the use
and reliance of the City of Orlando only

By: _____
Assistant City Attorney

TWO WITNESSES:

Print Name:_____

Print Name:_____

**THE FLORIDA REAL ESTATE
FOUNDATION**, a Florida corporation not for
profit

By:_____

Print Name:_____

Title:_____

Executed on _____, 2014

EXHIBIT “A”
(Legal Description of Property)

EXHIBIT "B"

EQUAL EMPLOYMENT OPPORTUNITY CLAUSE FOR THE FOUNDATION AND THEIR CONTRACTORS AND SUBCONTRACTORS STANDARD SOLICITATION FOR BID AND CONTRACT LANGUAGE CONSTRUCTION OVER \$10,000

A. Equal Opportunity Clause:

The Foundation agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulation of the Secretary of Labor 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee or undertaken pursuant to any Federal Program involving such grant, contract, loan insurance, or guarantee, the following equal opportunity clause:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by on or behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The contractor will send to each labor union or representative of workers with which the contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the contractor's noncompliance with the discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be

canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

7. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 504 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work; provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts, pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency of the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

EXHIBIT "C"

CERTIFICATION REGARDING LOBBYING

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

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

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

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant, and contracts under grants, and cooperative agreements) and that the Foundation shall certify and disclose accordingly.

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

THE FLORIDA REAL ESTATE FOUNDATION

By: _____

President

Print Name: _____

Attest:

Corporate Secretary

Print Name: _____

(CORPORATE SEAL)

EXHIBIT "D"

Heroes' Commons Donation Agreement
02-13-14

SECTION 3 ECONOMIC OPPORTUNITY

SECTION 3 CLAUSE

- A. The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701 u. The purpose of section 3 is to ensure that to the greatest extent feasible, opportunities for training and employment be given to low and very low income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the Project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder as evidenced by the execution of this contract. The parties to this contract certify and agree that they are under no contractual agreement or other disability which would prevent them from complying with these requirements.
- C. The Foundation will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers’ representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Foundation will include this Section 3 Clause in every subcontract for work in connection with the Project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Foundation is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Foundation will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- E. The Foundation will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 25 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR part 135.

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its subrecipients, and its successors, and assigns to those sanctions specified by the CDBG Program Agreement or contract through

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which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

EXHIBIT "E"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The certification set out below is a material representation upon which reliance is placed by the City of Orlando and the U.S. Department of Housing and Urban Development in awarding the grant. If it is later determined that the Foundation knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the City and/or the U.S. Department of Housing and Urban Development, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. The Foundation will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Foundation certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Foundation's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. the dangers of drug abuse in the workplace;
 2. The Foundation's policy of maintaining a drug-free workplace;
 3. any available drug counseling, rehabilitation, and employee assistance programs; and
 4. the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - C. Making it a requirement that each employee to be engaged in the performance of this grant be given a copy of the statement required by paragraph (A);
 - D. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment, the employee will:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

- E. Notify the City's Housing and Community Development Department and/or the U.S. Department of Housing and Urban Development in writing within ten (10) calendar days after receiving notice under subparagraph (D) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
 - F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D) (2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency;
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E), and (F).
2. The Foundation shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Foundation further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the grant, it shall notify the City's Housing and Community Development Department and/or the U.S. Department of Housing and Urban Development immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

PLACE OF PERFORMANCE

FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Name: The Florida Real Estate Foundation

Program Name: Heroes' Commons at Jefferson Park

Grant : NSP

Date: _____, 2014 through _____

Insert in the space provided below the site(s) expected to be used for the performance of work under this Agreement:

Place of Performance (include street address, city, county, state, zip code for each site):

Check ____ if there are work places on file that are not identified here.

The Florida Real Estate Foundation

By: _____

Print Name: _____

Date signed: _____, 2014

**EXHIBIT “F”
AFFIDAVIT**

Federal Funding Accountability and Transparency Act (FFATA)

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

The FFATA Subaward Reporting System (FSRS) is the reporting tool Federal prime awardees (i.e. prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime contract awardees will report against sub-contracts awarded and prime grant awardees will report against sub-grants awarded. The sub-award information entered in FSRS will then be displayed on www.USASpending.gov associated with the prime award furthering Federal spending transparency.

The Transparency Act requires information disclosure concerning entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants, and sub-grants.

Specifically, the Transparency Act’s section 2(b)(1) requires the City to provide the following information about each Federal award:

- Name of the entity receiving the award;
- Amount of the award;
- Information on the award including transaction type,
- Location of the entity receiving the award and primary location of performance under the award;
- Unique identifier of the entity receiving the award and the parent entity of the recipient;
- Names and total compensation of the five most highly compensated officers of the entity if the entity

In the preceding fiscal year received 80 percent or more of its annual gross revenues in Federal awards; and \$25,000,000 or more in annual gross revenues from Federal awards; and the public does not have access to this information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

I, _____ (print name), hereby swear or affirm that:

I read and understand the information provided above.

I have personal knowledge of the facts I am attesting to in this affidavit.

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(please check one of the following)

_____ I attest that _____(agency name) **does not** meet the above threshold requiring names and total compensation of the five most highly compensated officers of the entity if the entity.

_____ I attest that _____(agency name) **does** meet the above threshold* requiring names and total compensation of the five most highly compensated officers of the entity if the entity.

*If agency meets the above threshold, the agency **MUST** attach a spreadsheet with the names and total compensation of the five most highly compensated officers of the entity, signed and dated by the one of the following: President; Executive Director; CEO; Board Chairperson; Finance Director; CFO; or Treasurer.

I understand that the submission of a false affidavit is punishable as a second-degree misdemeanor under Florida law.

Signature of President/Executive Director/Board Chair

Printed Name of President/Executive Director/Board Chair

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing Affidavit was acknowledged before me this ___ day of _____
_____, 20___, by _____ on _____ behalf _____ of
_____ (agency name) and is personally known to me or has
produced _____ as identification.

Notary Public
My Commission Expires:

EXHIBIT "G"
FLORIDA REAL ESTATE FOUNDATION MORTGAGE
RESTRICTIONS AND RECAPTURE PROVISIONS

At the time of closing on the conveyance of a home, the Florida Real Estate Foundation ("FREF") will file an interest-free first mortgage on the property and obtain a certified appraisal of the improved property at time of closing. The mortgage amount shall be no greater than the Total Development Costs (as defined in the Agreement to which this exhibit is attached), less the value of the Lot in question at the time of its conveyance to the Foundation.

The FREF mortgage shall contain standard mortgage provisions customarily found in residential home mortgages in Orange County, Florida, and as further described herein. The FREF mortgage will require the homeowner to establish an escrow account and make monthly payments in sufficient amounts to cover costs of taxes and insurance. Owners will be required to provide proof of homeowner's insurance to the holders of the mortgages for the full insurable value of the home to protect, repair and replace the structure in the event of a casualty loss. FREF and the City shall be named as "additional insureds" on the homeowners' policy and provided copies of the policy and subsequent updates/renewals.

The mortgage debt shall be amortized over a 20-year period. This period runs simultaneously with the City's 15-year affordability restriction. The homeowners will receive an amortized benefit based on the number of years they own the homes as more particularly described herein. While occupancy for 15 years is required by the City's affordability restriction, a full FREF amortization benefit will require the homeowner to occupy the home for 20 years.

Any home sold to a buyer meeting the City's qualifications, but who is not a U.S. disabled veteran, U.S. veteran, law enforcement/Public Safety Employees and retirees in such employment categories will not receive a mortgage subsidy from FREF. The home will be sold as a typical transaction whereby the buyer will be required to secure his/her own financing and meet the City's qualified homebuyer requirements.

Should the homeowner sell the home during the affordability/recapture periods, he/she will be responsible for paying off the remaining balance of FREF's first mortgage, and the balance of the second mortgage if required by City.

A FREF amortization benefit shall be provided to a homeowner fulfilling all of the requirements of the FREF mortgage, the City's mortgage and declaration of restrictive covenants. The benefit shall consist of a forgiveness of the FREF mortgage debt based upon the number of years successfully meeting all of the foregoing requirements as follows:

FREF Amortization Schedule for Heroes' Commons at Jefferson Park

Complete 5 years of ownership:	25% of original mortgage balance forgiven.
Year 5 to 6	30%
Year 6 to 7	35%
Year 7 to 8	40%
Year 8 to 9	45%
Year 9 to 10	50%
Year 10 to 11	55%
Year 11 to 12	60%
Year 12 to 13	65%
Year 13 to 14	70%
Year 14 to 15	75%
Year 15 to 16	80%
Year 16 to 17	85%
Year 17 to 18	90%
Year 18 to 19	95%
Year 19 to 20	100%

A completed year is defined as 364 days after the date of closing. After the initial 5 year period is complete, the value of the mortgage benefit for any year thereafter will be prorated from the first day of the month the home is sold.

NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE CONTAINED HEREIN, THE FOUNDATION AND CITY MAY AGREE TO MODIFICATIONS OF THE FOREGOING REQUIREMENTS FROM TIME TO TIME AS THEY DEEM APPROPRIATE AND THE ACTUAL FORM OF MORTGAGE APPROVED BY THE FOUNDATION AND THE CITY SHALL SUPERSEDE AND CONTROL OVER THE TERMS AND CONDITIONS OF THIS EXHIBIT G.