

**HOME PROGRAM  
AGREEMENT BETWEEN  
CITY OF ORLANDO  
AND  
HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.  
(OWNER, DEVELOPER, SPONSOR)**

---

This **HOME Program Agreement** (hereinafter referred to as the "Agreement") is entered into on June 30<sup>th</sup>, 2016, by and between the **CITY OF ORLANDO**, a Florida municipal corporation with a principal address of 400 South Orange Avenue, Orlando, Florida 32801 (hereinafter referred to as "City" or "Lender") and **HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.**, a Florida non-profit corporation, with a principal address of 4116 Silver Star Road, Orlando, FL, 32808 (hereinafter referred to as "HABITAT" or "Borrower").

**WITNESSETH:**

**WHEREAS**, pursuant to Title II of the Cranston Gonzalez National Affordable Housing Act of 1990, as amended, the United States Department of Housing and Urban Development ("HUD") has designated the City as a participating jurisdiction under the HOME Investment Partnerships Program (hereinafter referred to as "HOME") and has allocated HOME funds to the City in furtherance of its goal of encouraging the production of decent, safe, sanitary, and affordable housing for all of the citizens of Orlando;

**WHEREAS**, Butler's Preserve is a 59 unit affordable subdivision in the City of Orlando and HABITAT, the owner of the land, has submitted a proposal to the City for HOME funds in the amount of *Six Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (\$687,395.00)* to construct sixteen (16) homes in the subdivision and each of the 16 homes will be "HOME-assisted" units. Butler's Preserve is generally located at Willie Mays Parkway and College Drive, Orlando, FL, 32811, and more particularly described in the legal description on the attached **Exhibit "A"** (hereinafter referred to as the "Property");

**WHEREAS**, HABITAT is the fee-simple owner of the Property;

**WHEREAS**, the new construction of these 16 HOME-assisted units for sale to First Time Homebuyers who are Low-income families as Affordable housing is an eligible activity under the HOME program; and

**WHEREAS**, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME program and to secure other covenants and promises from HABITAT regarding the use of funds to benefit Low-income families, as defined under the standards of eligibility established by HUD and adjusted annually, a copy of which eligibility income levels for the current year is attached hereto as **Exhibit "B"** and is incorporated herein by this reference.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the City and HABITAT agree as follows:

## SECTION 1. DEFINITIONS

As used herein, the following words and terms, whether capitalized or not, shall have the following meanings, unless the context of the HOME regulations demands otherwise:

1. Affordability Period - means that the HOME-assisted unit shall meet the Affordable housing requirements for fifteen (15) years commencing from Project Completion.
2. Affordable housing - means, as set for the in §92.254 and Section 3 herein, single-family housing that is for purchase by an Eligible Person and that:
  - (a) Has an initial purchase price that does not exceed ninety five percent (95%) of the median purchase price for the area as determined by HUD pursuant to 24 CFR §92.254 for newly constructed housing;
  - (b) Is the principal residence of a Low-income person who is a First Time Homebuyer for the fifteen (15) year Affordability Period; and
  - (c) Is subject to recapture restrictions for the Affordability Period of fifteen (15) years.
3. Annual Income - means the projected annual income for the household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §92.203 and 24 CFR §5.609.
4. Displaced Homemaker - means an individual who:
  - (a) is an adult;
  - (b) has not worked full-time or for a full year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
  - (c) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
5. Displaced Person - means a person (family or individual, business, nonprofit organization or farm) that moves from real property, or moves personal property from real property permanently, as a direct result of acquisition, rehabilitation or demolition for a project assisted with HOME funds, and as further defined by 24 CFR Part 92.
6. Eligible Person or Eligible Household - means one or more natural persons or a family who is determined by the City to be Low-income and First Time Homebuyers who have completed 8 hours of housing counseling for each of the sixteen (16) Home-assisted units; all in the manner as described herein and the Budget and all according to the income limits published annually by HUD based upon the Annual Income of the household.

7. First Time Homebuyer - means an individual or an individual and his or her spouse who have not owned a home during the three-year period prior to the purchase of a home assisted pursuant to this Agreement, except that (i) any individual who is a Displaced Homemaker may not be excluded from consideration as a first time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; (ii) any individual who is a single parent may not be excluded from consideration as a first time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse; (iii) an individual may not be excluded from consideration as a first time homebuyer on the basis that the individual owns or owned, as a principal residence during the three-year period before the purchase of a home assisted pursuant to this Agreement, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations; or (2) not in compliance with State, local, or model building codes, or other applicable codes, and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure; or (iv) future Parramore neighborhood residents, teacher/OCPS Administrators, and public safety personnel may not be excluded from consideration as a first time homebuyer on the basis that the individual owns or owned a principal residence during the three-year period before the purchase of a home.
8. HUD - means the United States Department of Housing and Urban Development, its successors or assigns.
9. Loan Documents - means this HOME Agreement, the Note, the Mortgage, Declaration of Restrictive Covenant and all agreements, exhibits, or attachments to each of the foregoing, referenced therein or executed by HABITAT or delivered pursuant hereto or in connection with or arising under the loan contemplated hereby.
10. Low-income - means one or more natural persons or a family who has a total Annual Income that does not exceed eighty percent (80%) of the median income within the Orlando metropolitan statistical area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. An individual does not qualify as a low-income family if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR §5.612.
11. Note - means that certain promissory note of even date herewith executed by HABITAT in favor of the City evidencing the loan contemplated by this Agreement.
12. Project - means the new construction of sixteen (16) detached, single family units in which HOME funds will be used for the purchase of materials as listed in the Budget. These HOME-assisted units are to be constructed as follows: fifteen (15) units will be 3 bedroom/1 bath and approximately 1100 square feet and one (1) unit will be 5 bedroom/2 bath and approximately 1500 square feet. HABITAT shall sell each of these HOME-assisted units and convey fee simple title to Low-income families (80% of median income or less within the Orlando Metropolitan Statistical Area as determined by HUD) who are First Time Homebuyers at a sales price that qualifies it as Affordable housing with payments that are also affordable to the

homebuyer. This Eligible Person must occupy the HOME-assisted unit as their principal residence for the Affordability Period or the HOME assistance is subject to recapture. The sales price of the home must qualify as Affordable housing as defined by HUD, approved by the City of Orlando's Housing and Community Development Department, and as described herein and the Budget.

13. Project Completion - means that all necessary title transfer requirements and construction work has been completed; the Project meets all HOME program regulations and the requirements of 24 CFR Part 92; the Project passes the required property standards under §92.251; the final drawdown of HOME funds has been disbursed for the Project; and project completion information has been entered in the Integrated Disbursement and Information System established by HUD.

Other terms herein which have not been defined shall have the definition, meaning and intent given them in the HOME regulations or 24 CFR Part 92, or as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

## SECTION 2. USE OF HOME FUNDS AND LOAN AMOUNT

1. Recitals. The recitals set forth above are true and correct and are incorporated herein and made a part of this Agreement.
2. Use of HOME Funds. Under the terms and conditions of this Agreement and the other documents executed in connection with this Agreement, the City agrees to loan HABITAT HOME funds in the amount of **Six-Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (\$687,395.00)** towards the purchase of materials for the construction of the Project. An overview description of the Project is attached as **Exhibit "C"**.

A complete budget for the use of these HOME funds and other funds in the Project is described on **Exhibit "D"**, which is attached hereto and made a part hereof by this reference. HABITAT shall expend the HOME funds only for those materials as set forth in the Budget and as permitted under the HOME regulations as eligible costs set forth in 24 CFR §92.206 and 24 CFR §92.207. HABITAT shall not use any HOME funds for prohibited purposes as set forth in 24 CFR §92.214 or other HOME regulations. HABITAT acknowledges and agrees that any HOME funds not used in accordance with this Agreement and permitted HOME regulations must be repaid to the City.

As part of the HABITAT model, community residents, staff, volunteers, and partner families will assist in building the Project. HABITAT agrees to complete the Project in accordance with the following timetable. HABITAT shall have a building permit and begin construction on the Project within 90 days of the Effective Date. HABITAT shall be fifty percent (50%) complete with the construction of the Project within twelve (12) months of the Effective Date. HABITAT shall have finished 100% of the construction of the Project and a certificate of completion issued for each of the HOME-assisted units within eighteen (18) months of the Effective Date. Each HOME-assisted unit must be sold to an Eligible Person on the terms described herein with eight (8) months of the completion of construction of that HOME-assisted unit. If the HOME-assisted units are not sold as described herein within six (6) months of the completion of construction of each HOME-assisted unit, HABITAT shall submit

marketing information and an enhanced marketing plan to the City. Timely completion of the Project is an integral and essential part of performance. The expenditure of HOME funds is subject to federal deadlines and could result in loss of funds. Accordingly, HABITAT understands and agrees that the Project will be completed as expeditiously as possible and HABITAT will ensure that the Project will not be delayed. HABITAT's failure to meet these deadlines can result in cancellation of this Agreement and revocation of the HOME funds. Time is of the essence.

HABITAT will obtain an independent appraisal of these HOME-assisted units to determine its fair market value which price HABITAT will reduce to qualify the HOME-assisted unit as Affordable housing for Eligible Persons who will purchase the homes through HABITAT's interest free mortgage program. Each of the HOME-assisted units must be sold to Eligible Persons at sales prices as set forth in this Agreement. Any amount that reduces the price of the HOME-assisted unit below the fair market value to make the housing Affordable shall be secured by a note and mortgage as described in §92.254(a)(5)(ii), which will result in a direct subsidy to the Eligible Person. The estimated appraised value of the 3 bedroom/1 bath HOME-assisted units is \$140,000 and the estimated appraised value of the 5 bedroom/2 bath is \$153,500; however, HABITAT will obtain an appraisal to determine the actual appraised value of each HOME-assisted unit. The amount of the City's HOME subsidy for each of the three (3) bedroom/1 bath HOME-assisted units is \$42,481.00 and the subsidy for the five (5) bedroom/2 bath HOME-assisted unit is \$50,174.00. HABITAT will reduce the appraised fair market value by \$42,481.00 or \$50,174.00, as applicable, so that the HOME-assisted units qualify as Affordable housing as described in this Agreement. This \$42,481.00 for the 3 bedroom units and the \$50,174.00 for the 5 bedroom units as the reduction in the purchase price are considered a direct subsidy to the Eligible Persons subject to recapture by the City.

HABITAT agrees to have each Eligible Person execute a promissory note and mortgage payable to the City for the full amount of the direct subsidy assistance (\$42,481.00 for the 3 bedroom/1 bath HOME-assisted units and \$50,174.00 for the 5 bedroom/2 bath HOME-assisted unit). HABITAT shall also require each Eligible Person to execute a declaration of restrictive covenant and HOME Program Homebuyer Agreement detailing the terms of the HOME assistance, the sales price, and the HOME subsidy, and imposing recapture provisions of the HOME subsidy. This note, mortgage, and HOME Program Homebuyer Agreement provide that if the HOME-assisted unit is no longer the primary residence of the Eligible Person or upon sale, transfer, or lease of the HOME-assisted unit, the entire HOME subsidy of the homebuyer assistance loan must be paid in full, subject to the limitation that when the recapture is triggered by a sale (voluntary or involuntary), the amount recaptured cannot exceed the net proceeds, if any, as more fully described herein.

As the primary lender for the Eligible Persons, HABITAT will place a first mortgage on each HOME-assisted unit anticipated to be approximately \$97,519.00 (\$140,000.00 - \$42,481.00) for the 3 bedroom/1 bath HOME-assisted units and \$103,326.00 (\$153,500.00 - \$50,174.00) for the 5 bedroom/2 bath HOME-assisted unit. HABITAT will ensure that the City's homebuyer mortgage will be recorded in a second lien position as a second mortgage. No other loans or financing is permitted.

Prior to each closing with each Eligible Person, HABITAT will provide the City the preliminary settlement statement, along with the draft note, mortgage, HOME agreement, and

restrictive covenant to be executed by the Eligible Person.

HABITAT understands that the HOME regulations have specific requirements for terminated projects. HABITAT acknowledges and agrees that pursuant to 24 CFR §92.205(e) if this Project is terminated before completion, for whatever reason, whether involuntary or voluntary, HABITAT must repay all HOME funds to the City and any HOME funds reserved but not expended under this Agreement will revert to the City. HABITAT acknowledges and agrees that if the Project does not meet the requirements of Affordable housing, the City must terminate the Project and HABITAT must repay all HOME funds to the City. Also, although HABITAT is required to construct and sell all of the HOME-assisted units within 18 months of the Effective Date, if HABITAT does not complete the Project within 4 years of the date of commitment of funds, the Project is considered to be terminated and HABITAT must repay all funds invested in the Project to the City.

3. **Deferred Loan - Execution of Note, Mortgage, and Restrictive Covenant.** The loan of these HOME funds to HABITAT for the purpose of constructing the Project as Affordable housing for sale to Eligible Persons shall be provided in the form of a deferred forgivable loan with 0% interest rate on the terms set forth in this Agreement. HABITAT shall execute a promissory note, mortgage, restrictive covenant and other loan documents (the "Loan Documents") as required by the City. Accordingly, HABITAT shall execute a promissory note in favor of the City substantially in the form attached hereto as **Exhibit "E"** (the "Note") and incorporated herein by reference. The Note shall be secured by a mortgage (the "Mortgage") on the Property substantially in the form attached hereto and incorporated herein, by reference, as **Exhibit "F"**. HABITAT shall execute a declaration of covenants and restrictions ("Declaration of Covenants and Restrictions") for the Project which sets for various covenants ensuring that the HOME-assisted units are sold to Eligible Persons as Affordable housing for the Affordability Period. HABITAT shall execute the Declaration of Covenants and Restrictions substantially in the form as **Exhibit "G"**.

No payment shall be due to the City as long as HABITAT does not commit or there does not exist an Event of Default and is full compliance with this Agreement. However, upon the occurrence or existence of an Event of Default, the City is free to exercise all remedies including those contained in this Agreement, which includes having all amounts disbursed to HABITAT repaid to the City and accelerating the loan to maturity, whereupon the outstanding principal balance of the loan shall become immediately due and payable.

This Note, Mortgage, and Declaration of Restrictive Covenant executed by HABITAT will be partially released as the HOME-assisted units are sold to Eligible Persons, at which time each Eligible Person will be required to accept a similar note, mortgage, and restrictive covenant.

4. **Disbursement of the Funds.** The City shall reimburse payment to HABITAT in accordance with the Budget attached hereto as "**Exhibit D**". For construction or rehabilitation related projects, the City shall reimburse HABITAT the HOME loan proceeds only after receipt of appropriate invoices and documentation, and specific itemization of expenses incurred. Reimbursement of HOME proceeds will be made to HABITAT only after approval by the City, in its sole discretion, of invoices submitted for reasonable costs, payroll records, copies of paid bills, cancelled checks, and verification of work completed in accordance with this Agreement

and applicable HOME regulations. The City will inspect all work to ensure that the materials have been purchased at a reasonable cost and the work completed before processing the reimbursement. If Davis Bacon applies to the Project, all certified payrolls must be submitted in weekly increments. All progress reports must also be submitted with any request for payment. HABITAT may not request disbursement of HOME funds under this Agreement until the funds are needed for payment of eligible HOME costs and the amount of each disbursement request shall be limited to only the amount needed. Costs may be incurred by HABITAT and reimbursed, provided the required environmental review was done before HABITAT incurred the cost. Advance disbursements of HOME funds are not allowed under this Agreement. Requests for partial payment shall be made on a form substantially similar to **Exhibit "H"**, attached hereto and incorporated herein by reference. HABITAT shall submit a Contractor's Invoice on a form substantially similar to **Exhibit "I"**, attached hereto and incorporated herein by reference.

HABITAT agrees that the City shall retain ten percent (10%) of each reimbursement request for a total of ten percent (10%) of the loan funds (the "Retainage") until HABITAT provides the City with releases of liens from all contractors, subcontractors and suppliers and otherwise demonstrates that it has fully complied with Part 1, Construction Liens, Chapter 713, Florida Statutes, and all of the terms of this Agreement, including correction of all work and materials found to be deficient by the City and the full provision of other funds into the Project as described in the Budget. Also, City will not release the Retainage until completion of all punch-list items, issuance of a certificate of occupancy or certificate of completion, completion of a final inspection from both the City's Building Inspectors and the City's Housing and Community Development Department to verify that the Project is completed in accordance with all approved plans, local codes and property standards, and each HOME-assisted unit sold to Eligible Persons. Along with each request for payment, HABITAT shall submit the corresponding partial or final release of lien. Requests for final payment and the Retainage shall be made on a form substantially similar to **Exhibit "J"**, attached hereto and incorporated herein by reference. Line item amendments may be made by HABITAT (except for increases in profit) with prior written approval from the Director of the City's Housing and Community Development Department.

Notwithstanding anything to the contrary in this Agreement, the City also reserves the right to request and approve documentation supporting any requests for reimbursement to verify the reasonableness and validity of such costs.

### **SECTION 3. AFFORDABILITY**

1. **Units to be Assisted.** HABITAT has designated sixteen (16) detached, single family units of the 59 units in Butler's Preserve to be assisted with HOME funds and each of these 16 units are "HOME-assisted units" as listed on the attached **Exhibit "K"**. HABITAT must provide the specific street address of each HOME-assisted unit no later than the time of initial occupancy.
2. **Income Qualification.** HABITAT shall undertake the initial review of income eligibility of prospective homebuyers for all of the Home-assisted units. HABITAT shall comply with all income determinations and affordability requirements of the HOME program as set forth in HUD Regulations 24 CFR §92.203 and §92.254. In determining income eligibility,

HABITAT must examine source documents evidencing the prospective homebuyer's Annual Income, in accordance with 24 CFR § 92.203(a)(1)(i). In conducting such review, HABITAT shall determine if each family is income eligible by determining the family's Annual Income in accordance with Annual Income as defined in 24 CFR § 5.609 which is an allowable methodology under 24 CFR § 92.203. In determining the Annual Income of the family, HABITAT must include the income of all persons in the household. HABITAT must obtain from each prospective homebuyer the information contained in the Homebuyer Qualification package attached hereto as **Exhibit "L"** and the Housing Assistance Application attached hereto as **Exhibit "M"**. Income qualification and all documentation must comply with the requirements stated in the HUD "Technical Guide for Determining Income and Allowances for the HOME Program. Third Edition, January 2005". Income determinations under the HOME program must be dated no earlier than 6 months prior to receipt of assistance. HABITAT is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six (6) months has elapsed since HABITAT determined that the family qualified as income eligible.

Pursuant to 24 CFR § 92.254(e), although HABITAT will undertake the initial review of income qualification, before the closing, HABITAT must forward the income information to the City for review and approval. The City must verify and approve that the family is income qualified as an Eligible Person and must inspect the housing for compliance with the property standards in 24 CR § 92.251.

3. **Low-income Homebuyer/Principal Residency.** HABITAT shall sell each Home-assisted unit to an Eligible Person (i.e. First Time Homebuyer who is a Low-income family) whose income does not exceed eighty percent (80%) of the Orlando Metropolitan Statistical Area ("MSA") Median Income as determined by HUD, and the housing must be the principal residence of the Eligible Person throughout the 15 year Affordability Period.
4. **Sale of the Home-assisted unit/ Maximum Purchase Price.** As described in 24 CFR § 92.254, the maximum purchase price of the HOME-assisted units shall not exceed 95 percent of the median purchase price for the metropolitan area as determined by HUD using FHA's Single Family Mortgage program data for newly constructed housing. Although this is the maximum allowed by HUD, the City is requiring HABITAT to sell the HOME-assisted units at less than this maximum. The purchase price of the HOME-assisted units must qualify as Affordable housing and must not exceed the purchase prices determined by the City as set forth in the Budget. HABITAT must obtain an independent appraisal of each HOME-assisted unit to assist in establishing the fair market value of the HOME-assisted unit and reduce the purchase price of the home to make the housing Affordable to the Eligible Person. Each Eligible Person's mortgage payments must also be affordable, which means the monthly mortgage payments, including taxes and insurance, do not exceed thirty percent (30%) of that amount which represents the percentage of the median Annual Income limits for Low-income families.

HABITAT shall provide the City with a copy of an executed contract within seven (7) days of execution and shall notify the City of the scheduled closing date at least ten (10) days prior to closing so that the City may verify that the sale of the HOME-assisted unit meets the terms of this Agreement, meets the Affordable housing criteria, prepare any



applicable partial release of HABITAT's Mortgage, and arrange for the execution and recording of the new loan and recapture documents with the Eligible Person.

5. **Affordability Period/Recapture.** As required in 24 CFR §92.254(c)(3)(ii), housing assisted with HOME funds is required to meet the affordability requirements of 24 CFR §92.254 and requires the repayment of HOME funds if the housing does not meet the affordability requirements for the specified time period. Accordingly, each HOME-assisted unit must meet the requirements of Affordable housing for the 15 year Affordability Period, which time period begins after Project Completion. If the HOME-assisted unit does not continue to be the principal residence of the Eligible Person for the duration of the Affordability Period, the City must recapture the HOME assistance. The amount subject to recapture is based on the entire amount of HOME assistance that enabled the Eligible Person to buy the HOME-assisted unit. This includes any HOME assistance that reduced the purchase price from fair market value to an Affordable housing price. Recaptured funds must be returned to the City.

Accordingly, at the closing of each HOME-assisted unit to an Eligible Person, HABITAT shall ensure that the Eligible Person executes a promissory note and mortgage for the entire amount of HOME assistance that reduced the purchase price from fair market value to an affordable price to qualify as Affordable housing. These promissory notes are deferred, forgivable loans with a 0% interest rate. Each Eligible Person must also execute a declaration of restrictive covenant and HOME Program Homebuyer Agreement detailing the recapture provisions. The terms of the note, mortgage, declaration of restrictive covenant, and HOME Program Homebuyer Agreement will provide that if the Eligible Person sells the home, rents the home, or fails to keep the home as their principal residence for the duration of the Affordability Period, then the City shall recapture the entire HOME assistance, subject to the limitation that when the recapture is triggered by a sale (voluntary or involuntary), the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan repayments (other than HOME funds) and any closing costs. If any sales proceeds remain after the superior loan repayments, closing costs, and the City's entire HOME assistance is repaid, then the homebuyer can keep any remaining proceeds. However, if there are no net proceeds, then no repayment will be required. At the end of the Affordability Period, if the Eligible Person has complied with all of the terms of the note, mortgage, declaration of restrictive covenant, and HOME Program Homebuyer Agreement, the note and mortgage lien will be released. The City will provide HABITAT these forms. The mortgage and declaration of restrictive covenant must be recorded in the Public Records of Orange County, Florida.

6. **Conversion to Rental.** If HABITAT does not have a ratified sales contract with an Eligible Person for each of the HOME-assisted units within nine (9) months of the date of completion of construction, HABITAT must rent the HOME-assisted unit to an eligible tenant in accordance with 24 CFR §92.252 and 92.253. HABITAT must notify the City that the HOME-assisted unit remains unsold for the nine month period. No later than thirty (30) days after the nine-month period, HABITAT agrees to execute a rental agreement with the City for these rental units in compliance with HOME regulations. This Agreement serves as acceptance by HABITAT to execute a new agreement, and of the responsibilities of a rental project under the HOME regulations should HABITAT fail to sell the HOME-assisted units

as required herein. Failure or refusal to execute a new rental agreement with the City for these rental units will result in HABITAT repaying the entire award of HOME funds.

7. **Housing Counseling.** In accordance with 24 CFR §92.254 (a) (3), all Eligible Persons must receive a minimum of 8 hours of housing counseling. HABITAT shall require each Eligible Person to obtain a certificate of completion that they received the counseling and provide these certificates to the City. All counseling must be provided by a HUD certified housing counselor. Eligible Persons may be charged reasonable fees to cover the cost of housing counseling.
8. **Providing Homeownership Assistance through Lenders.** HABITAT will provide first mortgage loan financing to the Eligible Persons for the HOME-assisted units. Before HABITAT provides any HOME homeownership assistance to a family for a HOME-assisted unit, the City must approve and verify all terms, conditions, forms, and amounts of homeownership assistance and verify that the family is a Low-income Eligible Person and must inspect the HOME-assisted unit for compliance with the property standards in 24 CFR §92.251.

No fees may be charged (i.e. origination fees, administrative fees, construction management fees, loan servicing fees, loan processing fees, inspection fees, underwriting fees, points, or other similar fees for the cost of providing homeownership assistance) for any HOME homeownership assistance. No fees may also be charged for the first mortgage financing provided by HABITAT. The only fees that HABITAT may charge for is the cost of a credit report or appraisal, and the City must determine that any amount charged is reasonable.

9. **Homebuyer Program Policies.** HABITAT must have underwriting standards for homeownership assistance that must address housing debt, overall household debt, the appropriateness of the amount of assistance, recurring household expenses, assets available to acquire the housing, monthly expenses of the household, and financial resources available to the household to sustain homeownership. HABITAT must have a policy to protect against predator lending similar to those issued by the Consumer Financial Protection Bureau (CFPB) to protect homebuyers. HABITAT must ensure that all financing provided to the borrower is reasonable and will result in affordable mortgage payments.

#### **SECTION 4. HOME PROJECT REQUIREMENTS**

1. **Applicable Laws.** HABITAT shall comply with all HOME project requirements of 24 CFR Part 92, including subpart F. HABITAT shall comply or shall assist the City in complying with all applicable federal and state laws, rules and regulations dealing with this Project, whether presently existing or hereafter promulgated, including but not limited to 24 CFR 200. HABITAT agrees to comply with all the HOME program requirements, HUD regulations, 42 U.S.C. §§12701-12839 and 24 CFR Part 92, as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance therewith. HABITAT also shall comply with all other applicable federal, state and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Land Development and Building Codes. If any HOME or federal

regulations change during the term of the Affordability Period, HABITAT shall comply with the new rules, regulations and procedures.

2. **Minimum and Maximum Per Unit Subsidy Amount.** The minimum amount of HOME funds that must be invested in a project is \$1000 times the number of HOME-assisted units in the project. The amount of HOME funds that a participating jurisdiction may invest on a per unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under Section 221(d)(3)(ii) of the National Housing Act (12 USC §17151 (d)(3)(ii)) for elevator type projects that apply to the area in which the housing is located.
3. **Underwriting/Subsidy Layering Review.** Pursuant to 24 CFR §92.250, before committing funds to a Project, the City must evaluate the Project in accordance with guidelines it has adopted for determining a reasonable level of profit or return on HABITAT's investment in the Project and must not invest any more HOME funds, alone or in combination with other governmental assistance, than is necessary to provide quality affordable housing that is financially viable for the affordability period and that will not provide a profit or return on HABITAT's investment that exceeds the City's standards for the size, type, and complexity of the Project. The initial review of the Project was done taking into consideration the Sources and Uses Statement and Pro-forma along with the funding application submitted by HABITAT and approved by the Housing Review Committee. HABITAT must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was approved. HABITAT will complete the Certification of Other Financial Assistance attached hereto as **Exhibit "N"**.

## **SECTION 5. PROPERTY STANDARDS**

1. **Property Standards.** HABITAT shall comply with the property standards requirements set forth in 24 CFR §92.251. HABITAT must construct the HOME-assisted units in conformance with all state and local codes, ordinances, zoning requirements, the City's Building Code, and the City's standards set forth in the City of Orlando Housing and Community Development Department's Rules, Regulations, and Specifications for Contractors. These standards provide the minimum acceptable material, equipment, and workmanship standards for items to be furnished and installed under the construction specifications. These construction standards are intended to ensure that the HOME-assisted units are decent, safe, sanitary and non-luxury housing with suitable amenities. In addition to these construction standards, the HOME-assisted units must also meet other property standards required under the HOME regulations, which includes HABITAT's compliance at Project Completion with the following:
  - City's – HOME policies and procedures and compliance with 24 CFR §92.251
  - Accessibility – Accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131-12189) implemented at 28 CFR parts 35 and 36, as applicable. The Project must also be decent, safe and sanitary as described in 24 CFR §5.703 (Uniform Physical Conditions Standards).
  - Disaster Mitigation – All housing must be constructed to mitigate the impact of potential disasters (e.g. earthquakes, hurricanes, flooding, and wildfires) in accordance with State and

local codes, ordinances, or other state and local requirements, or such other requirements as HUD may establish.

- State and local codes, ordinances, and zoning ordinances.
- UPCS – The housing must be free of deficiencies identified in the Uniform Physical Condition Standards (UPCS), in accordance with 24 CFR §5.703. UPCS is an inspection protocol that is used to evaluate the condition of housing.
- Written cost estimates, construction contracts, and construction documents. HABITAT must provide the City with all construction contracts and construction documents for each of the HOME-assisted units for approval by the City. These documents must describe the work to be undertaken in adequate detail so that inspections can be conducted. The City must also review and approve written cost estimates for construction and determine that the costs are reasonable.
- Construction inspections – The City will conduct on-site progress inspections and final completion inspections of the construction to ensure that the work is done in accordance with applicable codes, the construction contract, the construction documents, and property standards. The HOME-assisted units will be inspected based on procedures, checklists, and inspection forms established by the City. Before completing the Project in the IDIS system, the City must perform an on-site inspection of each HOME-assisted unit at Project Completion to ensure the contracted work has been completed and that the HOME-assisted unit meets §92.251 property standards.

All HOME-assisted units must meet these property standards upon Project Completion. HABITAT shall keep also records to document compliance with these property standards.

## SECTION 6. AFFIRMATIVE MARKETING

1. **Affirmative Marketing.** HABITAT shall comply with the provisions of 24 CFR §92.351 and the City's affirmative marketing requirements and procedures. A copy of the City's affirmative marketing procedures is attached hereto as **Exhibit "O"** and is incorporated herein by this reference. Additionally, HABITAT shall develop and provide the City's Housing and Community Development Director with an affirmative marketing plan to sell the HOME-assisted units within fifteen days of the Effective Date. HABITAT shall affirmatively market the HOME-assisted units in a manner to attract homebuyers without regard to race, color, national origin, sex, religion, familial status or disability in accordance with this plan and the City's requirements and procedures. HABITAT shall keep records of its efforts to provide information and to attract eligible persons from all racial, ethnic and gender groups.

At a minimum HABITAT shall: (a) inform the public and potential homebuyers about Federal fair housing laws and indicate in its promotional material (i.e. all advertising, applications, and marketing tools) that the Project provides fair housing opportunities by using the Equal Housing Opportunity logotype or slogan in all advertising press releases, and solicitations; (b) display a Fair Housing poster in the sales office; (c) inform and solicit applications from homebuyers who aren't likely to apply without special outreach (e.g. provide

notice of the availability of the units to community groups and non-profit service organizations, such as places of worship, employment centers, fair housing groups, or housing counseling agencies); (d) where appropriate, advertise and use media, including minority outlets, likely to reach persons unlikely to apply for the housing; and (e) verify all information concerning the applicant or family members. HABITAT shall keep records necessary to comply with 24 CFR § 92.351 and 92.508 (a)(7) to show that HABITAT affirmatively marketed the units in accordance with their approved plan and the City's requirements and keep records to assess the results of these actions. The City will annually assess the success of these affirmative marketing actions and advise of the corrective action to be taken if affirmative marketing requirements are not met. If the City amends its affirmative marketing procedures during the term of this Agreement, HABITAT will be notified and be obligated to comply with the new procedures.

## **SECTION 7. RECORDS AND REPORTS**

1. **Records.** HABITAT shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. HABITAT shall maintain sales and income records of all families who purchase any HOME-assisted unit. HABITAT shall maintain such records and accounts, including but not limited to: program records; project records including the name of each homebuyer, homebuyers' income, location (address) of each unit, form of assistance and units assisted with HOME funds; financial records, including source and application of funds and supporting documentation in accordance with 2 CFR §200.302; records to document the eligibility and permissibility of the costs, including the documentation of the actual HOME-eligible development costs of each HOME-assisted unit (through allocation of costs, if permissible, under §92.205(d) where HOME funds are used to assist less than all of the units in a multi-unit project; records reflecting compliance with minimum per-unit subsidy amount of 24 CFR §92.205(c), maximum per-unit subsidy limits of 24 CFR §92.250(a) and subsidy layering and underwriting evaluation records; property standards records including records (e.g. inspection reports) demonstrating that each unit meets property standards in 24 CFR §92.251 at project completion and records demonstrating compliance with the property standards and reviews and actions pursuant to §92.504(d); records demonstrating that each family meets income eligibility requirements of §92.203; records demonstrating that the purchase price of each HOME-assisted unit does not exceed 95% of the median purchase price for the area in accordance with 24 CFR §92.254 and the procedures and how this value was determined; records demonstrating that the Project meets the affordability requirements of §92.254 for each family assisted; records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of §92.212; records demonstrating that a site and neighborhood standards review was conducted for the Project in accordance with §92.202; records and written agreements demonstrating compliance with the written agreements requirements of §92.504 for each family assisted; program administration records, including records demonstrating compliance with the applicable uniform administrative requirements and records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns; equal opportunity and fair housing records including data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in or benefited from any program or activity funded in whole or in part with HOME funds; records demonstrating compliance with 24 CFR 135; records demonstrating affirmatively furthering fair housing and affirmative marketing and MBE/WBE records including records demonstrating compliance with the affirmative

marketing procedures and requirements of 24 CFR §92.351 and documentation and data on the steps taken to implement the City's outreach programs to MBE and WBE businesses including data indicating the racial /ethnic or gender character of each business activity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract and documentation of the affirmative steps to assure minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services; records demonstrating compliance with the environmental review requirements of §92.352 and 24 CFR part 58, including flood insurance requirements; records demonstrating compliance with the requirements of §92.353 regarding displacement, relocation and real property acquisitions; records demonstrating compliance with the labor requirements of §92.354 including contract provisions and payroll records; records demonstrating compliance with the lead-based paint requirements of §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to §92.356; records demonstrating compliance with debarment and suspension requirements in 2 CFR 2424 including certifications required by 24 CFR parts 24 and 91; records demonstrating compliance with the written agreements requirement in §92.504 and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME funds. In the event the City determines that such records are not being adequately maintained by HABITAT, the City may cancel this Agreement.

2. **Access to Records.** HABITAT shall allow citizens, public agencies, and other interested parties reasonable access to these records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

HABITAT shall also allow the City, HUD, and the Comptroller General of the United States and any of their respective representatives, access to any and all books, documents, papers, or other records and make all such records available to during normal business hours to make such audits, inspections, examinations, excerpts, transcripts, and copying as they see fit.

3. **Period of Record Retention.** HABITAT shall maintain all records pertaining to the Project at its principal place of business for the most recent 5 year period after Project Completion, except as provided below:

- (a) For homeownership housing projects, records shall be retained for five (5) years after the Project Completion date; except that records imposing recapture/resale restrictions for each HOME-assisted must be retained for five (5) years after the Affordability Period terminates.
- (b) Written agreements must be retained for five (5) years after the Affordability Period terminates.
- (c) Records covering displacements and acquisitions must be retained for five (5) years after the date by which all persons displaced from the property and all persons whose property is acquired for the Project have received the final payment to which they are entitled in accordance with 24 CFR §92.353.
- (d) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must

be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

The City reserves the right to request additional record keeping requirements. Once advised of these new requirements, HABITAT agrees to comply with the City's new requirements. This section shall survive the termination of this Agreement.

4. **Reports.** Until HABITAT completes the construction of the Project and the HOME-assisted units are sold and occupied by Eligible Persons as described herein, HABITAT shall submit to the City's Housing and Community Development Department weekly reports of activities undertaken pursuant to this Agreement on the form substantially similar to **Exhibit "P"**, attached hereto. This weekly report shall be submitted every Friday by noon for that week. Such reports also shall include a narrative summary of progress, including but not limited to, selection of contractors, units under construction, units completed, demographic and income data on the beneficiaries, relocation issues, utilization of MBE/WBE's, Section 3 accomplishments, affirmative marketing and fair housing efforts, and problems encountered and proposed solutions. Failure to submit reports as and when due shall be a material breach under this Agreement.

## **SECTION 8. MONITORING**

1. **Monitoring.** HABITAT acknowledges and agrees that the City will monitor HABITAT's performance during the term of this Agreement at a minimum annually and shall allow all access, inspection, and copying of records to do so. Also, pursuant to 24 CFR §92.504(d), HABITAT shall assist the City in its obligation to conduct on-site inspections of the Project for compliance with this Agreement, construction progress, and compliance with property standard requirements listed herein and shall allow the City to access and inspect the Project at any time during the terms of this Agreement.
2. **Monitoring of Principal Residency.** The City will monitor each HOME-assisted unit for principal residency on an annual basis. Each year, the City will mail a letter to the Eligible Person requesting that they confirm the continued occupancy of the HOME-assisted unit as their principal residence for the term of the Affordability Period.
3. **Financial Monitoring.** The City will monitor, review, and evaluate the financial procedures of HABITAT through documents submitted to the City and on-site monitoring. HABITAT will provide to the City such reports, and make available to the City such records that are necessary for a proper financial evaluation.

## **SECTION 9. OTHER PROGRAM REQUIREMENTS**

1. **Non-Discrimination and Equal Opportunity.** HABITAT shall not, on the grounds of race, color, national origin, religion or sex, exclude any person from participation in, or deny any person the benefits of this Agreement, or subject any person to discrimination. HABITAT shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, and the nondiscrimination requirements at Section 282 of the HOME Investment Partnerships Act and keep records of its compliance.

HABITAT shall at all times comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d-2000d-4 (Nondiscrimination in Federally Assisted Programs) and implementing regulations contained in 24 CFR Part 1, which prohibits discrimination on the basis of race, color, and national origin in all federally assisted programs.

HABITAT shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101-6107) and implementing regulations in 24 CFR Part 146.

HABITAT shall also comply with regulations governing the accessibility of federally assisted buildings, facilities and programs. HABITAT shall comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and implementing regulations contained in 24 CFR Part 8, which prohibits discrimination on the basis of disability, and comply with any applicable provisions of the Uniform Federal Accessibility Standards.

HABITAT shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.) and implementing regulations in 24 CFR Part 8, which prohibits discrimination against persons with disabilities in all program activities and services of a public entity. Any contracts entered into by HABITAT shall include a provision requiring compliance with these regulations. HABITAT shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

HABITAT shall cooperate with the City and HUD in conducting compliance reviews and complaint investigations pursuant to all applicable civil rights statutes, executive orders, and all related rules and regulations.

2. **Fair Housing Act.** HABITAT shall comply with Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act-42 U.S.C. §§3601-3620), as amended, and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, and shall keep all records demonstrating compliance. All housing for sale or rent assisted with HOME funds must be made available without discrimination based on race, color, national origin, age, sex, religion, familial status, or disability in accordance with fair housing laws. Additionally, HABITAT shall comply with Executive Order 11063 and implementing regulations in 24 CFR Part 107, which prohibits discrimination against individuals on the basis of race, color, religion, sex and national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with federal funds.
3. **Equal Employment Opportunity (Non-Discrimination in Employment).** HABITAT shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Exhibit "Q"**, and incorporated herein by this reference. Any construction contracts exceeding \$10,000 entered into by HABITAT or its contractors and subcontractors shall include a provision requiring compliance with these regulations. HABITAT shall keep records and documentation demonstrating compliance with these regulations.
4. **Equal Access to HUD-Assisted or Insured Housing/Prohibition of Inquiries on Sexual Orientation or Gender Identity.** A determination of eligibility for housing that is assisted by



HUD shall be made in accordance with the eligibility requirements provided for such program by HUD, and such housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

No owner or administrator of HUD-assisted or HUD-insured housing, approved lender in an FHA mortgage insurance program, nor any (or any other) recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing or housing whose financing is insured by HUD, whether renter-or owner-occupied, for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity. This prohibition on inquires does not prohibit lawful inquires of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary, emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquires made for the purpose of determining the number of bedrooms to which a household may be entitled.

5. **Copeland "Anti-Kickback" Act.** HABITAT 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.
6. **Section 3 Economic Opportunity.** HABITAT shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701(u) and implementing regulations at 24 CFR Part 135 regarding economic opportunities for Low-income persons. HABITAT shall comply with the "Section 3" requirements attached hereto as **Exhibit "R"** and incorporated herein by this reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Low-income persons residing in the program service area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the program service area. HABITAT shall also include this provision in contracts or subcontracts in excess of \$100,000.00. HABITAT shall keep records documenting compliance with these requirements as required by 24 CFR §92.508(a)(7).
7. **Utilization of Minority/Women's Business Enterprises.** HABITAT shall take all affirmative steps necessary and to the maximum extent possible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. HABITAT shall also 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). HABITAT shall keep such records necessary to comply with 24 CFR §92.508(a)(7).
8. **Debarment and Suspension.** HABITAT shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 2 CFR Part 2424. HABITAT 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 HABITAT has entered into a contract or subcontract with a debarred or

suspended party, no HOME funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. HABITAT shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 2424 and 91 and documentation demonstrating compliance with the requirements of 24 CFR Part 2424 and 24 CFR §92.508(a)(7).

9. **Disclosure/Anti-lobbying provision.** HABITAT shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. HABITAT shall complete and comply with the “Certification Regarding Lobbying”, attached hereto as **Exhibit “S”** and made a part hereof by this reference. A copy of this document will be kept in each of the party’s files. HABITAT shall also comply with the requirements for funding competition established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. §3531 et seq.).
10. **Conflict of Interest.** HABITAT shall comply with the conflict of interest provisions in 24 CFR §92.356(f). No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer or sponsor or immediate family member or immediate family member of any officer, employee, agent, elected or appointed or official, or consultant of the owner, developer, or sponsor) whether private, for-profit or non-profit (including a CHDO when acting as an owner, developer, or sponsor) may purchase or occupy a HOME –assisted affordable housing unit in a project during the required Affordability Period. HABITAT shall keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356. HABITAT shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
11. **Displacement, Relocation, and acquisition.** HABITAT will take all necessary steps possible to minimize displacement. If displacement is unavoidable, HABITAT shall comply with the provisions of 24 CFR §92.353, “Displacement, relocation, and acquisition”. HABITAT shall keep records of its compliance with the requirements of 24 CFR §92.353, and as specified in 24 CFR §92.508. Types of records to be kept include but are limited to project occupancy lists identifying the names and address of all persons occupying the real property on the date described in §92.353(c)(2)(i)(A), moving into the property on or after the date described in §92.353(c)(2)(i)(A) and occupying the property on completion of the Project. Records covering displacements and acquisition must be retained for five (5) years after the date by which all persons displaced from the Property and all persons who property is acquired for the Project have received the final payment to which they are entitled in accordance with 24 CFR §92.353. If federal regulations are not applicable, HABITAT shall comply with any applicable City policy regarding relocation.
12. **Lead-Based Paint Prohibited.** HABITAT shall not use lead-based paint in any part of any of the Home-assisted units, common elements, or in the entire Property and shall comply with 24 CFR §92.355, and 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 in 24 CFR Part 35, subparts A, B, J, K and R. Subpart M is also required for Tenant Based Rental Assistance projects. HABITAT shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).

13. **Registration.** HABITAT agrees to maintain a current registration in the federal System 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 HABITAT is not currently registered, it must do so within ten (10) days of the date HABITAT executes this Agreement. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is required for registration. HABITAT shall also complete and sign the Affidavit attached hereto as **Exhibit "T"** in conjunction with its execution of this Agreement and provide proof of registration within fourteen (14) days of the Effective Date.
14. **Audits and Financial Statements.**
- (a) HABITAT shall provide the City with its annual financial statement within ninety (90) days of the end of its operating year. This financial statement shall be prepared by an actively licensed public accountant.
- (b) In addition, if expending more than \$750,000 of Federal awards during an operating year, HABITAT shall comply with the audit provisions contained in 2 CFR 200 Subpart F and the Single Audit Act Amendments of 1996 (31 U.S.C. §§7501-7507). Audits shall be conducted annually. HABITAT shall submit its annual audit to the City and within one hundred twenty (120) days of the end of HABITAT's fiscal year. In the event the audit shows that the entire funds disbursed hereunder, or any portion thereof, were not expended in accordance with the conditions of this Agreement, HABITAT shall be held liable for reimbursement to the City of all funds not expended in accordance with those regulations and Agreement provisions within thirty (30) days after City has notified HABITAT of such non-compliance. Any reimbursement by HABITAT shall not preclude the City from taking any other action or pursuing other remedies.
- (c) HABITAT also agrees to allow the City's Internal Audit and Evaluation Department to conduct any audits or financial monitoring the City feels necessary at any time during the term of this Agreement or pursuant to any HUD request.
15. **Uniform Administrative Requirements.** HABITAT acknowledges that the City must comply with the uniform administrative requirements of 2 CFR 200, as provided in 24 CFR §92.505. If requested by the City to do so, HABITAT shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. HABITAT also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
16. **Environmental Review.** HABITAT 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. However, HABITAT is required to provide information about its activities in order for the City to comply with its responsibility under 24 CFR §92.352 and 24 CFR Part 58. HABITAT shall submit to the City any changes to the original proposed scope of work or any changes in 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 30 days prior to any commencement of work. HABITAT also agrees to assist the City in

addressing environmental issues that may arise during the City's review process. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

17. **Crime Prevention Evaluation.** HABITAT agrees to contact and meet with the Crime Prevention Division from the Orlando Police Department before the disbursement of the final draw request.
18. **Compliance with Davis-Bacon Act and the Contract Work Hours and Safety Standards Act.** HABITAT agrees to follow its typical model of using community residents, staff, volunteers and partner families to build the Project and the other parts of the Butler's Preserve subdivision that are not HOME-assisted. However, if HABITAT triggers the applicability of Davis-Bacon, HABITAT understands that HABITAT will be required to adhere to the Davis-Bacon requirements. Thus, if required by the City, HABITAT shall comply with 24 CFR §92.354, and the requirements of the Secretary of Labor contained in the Davis-Bacon Act (40 U.S.C. §3141), as amended, and as supplemented and implemented by the Department of Labor regulations in 29 CFR Parts 1-7 and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§3701), and other federal laws and regulations pertaining to labor standards, as applicable. Guidance on these regulations are attached hereto as **Exhibits "U" and "V"** and incorporated herein by this reference. A copy of the current Wage Decision is attached as **Attachment "I" of Exhibit "V"**, made a part hereof by this reference, as such exhibit may be amended from time to time. As provided in 24 CFR §92.354, HOME regulations require:
  - a) Every contract for construction that includes 12 or more HOME-assisted units must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141) to all laborers, and mechanics, employed in the development of any part of the housing. This includes portions other than the HOME- assisted units. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

These contract for construction must contain these wage provisions if HOME funds are used for any project costs in 24 CFR §92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contracts so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the HOME-assisted units. Arranging multiple construction contracts within a single project for the purposes of avoiding the wage provisions is not permitted.

HABITAT shall ensure that all contractors, subcontractors and other participants must comply with all regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards, as applicable. All construction contracts and subcontracts shall include a provision for compliance with these labor provisions and supporting Department of Labor regulations. HABITAT shall ensure that bid and contract

documents contain required labor standards provisions and a copy of the current prevailing wage determination issued by the Department of Labor. HABITAT shall ensure that a copy of the wage decision and a copy of the Department of Labor poster called "Notice to all Employees" (Form WH-1521) shall be posted at the job site in a place that is easily accessible to all of the construction workers employed on the Project. Additionally, HABITAT shall conduct on-site inspections and employee interviews; collect and review certified weekly payroll reports; correct all labor standards violations promptly; maintain documentation and records of administrative and enforcement activities; and require certification as to compliance with the provisions of the Davis Bacon Act and all labor regulations before making payment under such contracts. Unless labor regulations require more frequently (such as weekly payroll reports), all documentation shall be submitted to the City for review on a monthly basis.

- b) **Volunteers.** The prevailing wage provisions required under Davis Bacon do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.
  - c) **Sweat Equity.** The prevailing wage provisions of Davis Bacon do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.
19. **Drug Free Work Place.** HABITAT shall comply with the Drug Free Workplace Act of 1988 (41 U.S.C. 701, et.seq.) and HUD's implementing regulations at 2 CFR 2429 regarding maintenance of a drug-free workplace. HABITAT shall complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Exhibit "W"** and made a part hereof by this reference. HABITAT will complete this certification and a copy shall be kept in the files of each of the parties of this Agreement.
20. **Close-out.** HABITAT acknowledges HOME funds will be closed out in accordance with 2 CFR 200, subpart D.

## **SECTION 10. ENFORCEMENT OF AGREEMENT – DEFAULTS AND REMEDIES**

1. **Events of Default.** The following shall constitute an Event of Default under this Agreement:
- (a) if HABITAT fails to comply with any HOME program regulations, including, but not limited to, 42 U.S.C. §§12701-12839 or 24 CFR Part 92;
  - (b) if HABITAT fails to comply with any of the terms contained in this Agreement or uses the funds other than as authorized by this Agreement or any of the other documents executed in connection with this Project;
  - (c) if HABITAT fails to timely comply with audit requirements;
  - (d) if HABITAT fails to expend HOME funds in a timely manner or fails to meet any of the time requirements as set forth in this Agreement;

- (e) if HABITAT fails to construct the Project as required by this Agreement;
- (f) if HABITAT fails to sell any of the HOME-assisted units to Eligible Persons as Affordable housing as required by this Agreement;
- (g) if HABITAT fails to sell the HOME-assisted units to Eligible Persons within the time frames and terms required by this Agreement;
- (h) if HABITAT fails to maintain CHDO status, if applicable;
- (i) if HABITAT is deemed in default under any other HOME or SHIP agreements it has with the City relating to this Project or any other unrelated project or is in default under the terms of other financing or mortgages used for the Property or any other projects and said default extends beyond the applicable cure period provided in said documents;
- (j) if at any time any material representation or omission made by HABITAT in any written certification or communication submitted by HABITAT to the City in an effort to induce the making of this loan or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
- (k) if HABITAT does not disclose to the City, upon demand, the names of all persons with whom HABITAT has contracted or intends to contract with for the construction or management of any portion of the Property, including contracts for services and/or labor;
- (l) if HABITAT fails to pay any sum when due under this Agreement, the Note, or other documents executed in connection with this Project and such failure continues for ten (10) days after written notice by the City to HABITAT;
- (m) Sale or disposal of any part of the Project or any of the HOME-assisted units except the sale of the HOME-assisted units to Eligible Persons as described herein; or
- (n) if any other default or breach of any term shall occur under the Note, Mortgage, Declaration of Restrictive Covenant or any other Loan Documents executed in connection with this loan by the City.

Notwithstanding any of the foregoing provisions to the contrary, if HABITAT has failed to cure any default prior to the expiration of any stated applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

2. **No Waiver.** Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.
3. **Remedies.** Upon the occurrence of any Event of Default or any other breach of this Agreement, the City shall be free to take many actions including, but not limited to terminating this Agreement, retaining all undisbursed funds, accelerating the loan to maturity, demanding payment for all amounts disbursed to HABITAT, and/or exercising all rights and remedies

available to it under the terms of this Agreement, or other Loan Documents, statutory law, equity or under common law. Additional examples of actions the City may take include, but are not limited to:

- (a) direct HABITAT to prepare and follow a schedule of actions for carrying out the affected activities, consisting of schedules, time tables and milestones necessary to implement the affected activities;
- (b) establish and follow a management plan that assigns responsibility for carrying out the remedial actions;
- (c) cancel or revise activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;
- (d) reprogram HOME funds that have not yet been expended from activities to offer eligible activities or withhold HOME funds;
- (e) direct HABITAT to reimburse the City for any amounts not used in accordance with the requirements of 24 CFR Part 92 or this Agreement;
- (f) suspend disbursement of HOME funds;
- (g) debarment or suspension; limited further funding opportunities; or
- (h) other appropriate action including, but not limited to any action legally available such as litigation, declaratory judgment, specific performance, damages, injunctions, enforcement of the Declaration of Restrictive Covenant, termination of the Agreement, or any other available remedies.

All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to it.

## **SECTION 11. EQUAL PROTECTION OF FAITH-BASED ORGANIZATIONS**

The HUD program requirements in 24 CFR §5.109 apply to the HOME program, including the requirements regarding disposition and change in use of real property by a faith-based organization. A copy of 24 CFR §5.109 is attached hereto as **Exhibit “X”** and is incorporated herein by reference.

## **SECTION 12. DURATION OF THE AGREEMENT**

1. **Term.** Unless earlier terminated, the term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the “Effective Date”) and shall remain in effect through completion of the Project and ownership of all of the HOME-assisted units by Eligible Persons, which is November 30, 2017. Notwithstanding any of the foregoing, all record keeping requirements, audit and use and maintenance requirements mandated by HOME regulations shall survive termination of this Agreement. All Loan

Documents executed in connection with this Agreement shall also survive termination of this Agreement and will remain in effect under the terms and conditions specified therein.

### SECTION 13. INDEMNIFICATION

1. **Indemnification.** HABITAT shall defend, indemnify and hold harmless the City from and against any and all liability, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions, including attorney's fees, whether or not suit is filed and if suit is filed, attorney fees and costs at all trial and appellate levels, including bankruptcy, of any kind and nature arising or growing out of or in any way connected with the performance of this Agreement by HABITAT or any of its contractors, agents, or the like because of or due to the existence of the Agreement itself, unless caused by the City's gross negligence or willful misconduct. This indemnity shall survive termination of this Agreement.
2. **Environmental Indemnification.** HABITAT shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as an indication of ownership, management or control of the Property by the City, and HABITAT hereby recognizes and acknowledges that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Note, Mortgage, or other Loan Documents to the contrary, this indemnification provision shall survive closing.

### SECTION 14. INSURANCE

1. **Insurance.** Without limiting HABITAT's indemnification, HABITAT shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates with valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City and its officers and employees shall be named as an additional named insured on all policies of liability insurance.
  - (a.) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of Florida. In addition, such policy shall provide that the coverage shall be primary for losses arising out of HABITAT's performance of the Agreement. The required certificate shall be furnished by HABITAT prior to execution of this Agreement.



- (b.) At least thirty (30) calendar days prior to the expiration of any of the above-referenced insurance policies, HABITAT shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.
- (c.) The policies of insurance which must be secured are:
  - 1. Commercial General Liability Insurance: HABITAT must secure commercial general liability insurance to include, but not be limited to, bodily injury and property damage coverage. The policy's limit liability amount shall not be less than Five Hundred Thousand Dollars (\$500,000) per person/per occurrence for bodily injury to, or death to one or more than one person and not less than One Hundred Thousand Dollars (\$100,000) per occurrence for property damage.
  - 2. Workers' Compensation Coverage: All employees of HABITAT must be included under such policy in an amount and with coverage to meet all requirements of Florida law.
  - 3. Flood Insurance: HABITAT shall provide flood insurance as required under applicable HUD regulations.
  - 4. Builder's Risk. During the construction of the Project, HABITAT shall have insurance in effect to cover all risks or damages to the HOME-assisted units.
  - 5. Property Insurance. HABITAT must obtain property insurance for the fair market value of the Property.

## SECTION 15. SUBCONTRACTS

- 1. Contracts. HABITAT is required to provide all work pursuant to this Agreement and in no event shall any portion be subcontracted to any other party without the City's prior written consent. If any part of the work is subcontracted, it shall not in any way affect the provisions of this Agreement and HABITAT's obligation to comply. HABITAT is allowed to subcontract the development or construction of the HOME-assisted units to properly licensed contractors. All contracts with properly licensed contractors shall be in writing and subject to approval by the City.

## SECTION 16. MISCELLANEOUS PROVISIONS

- 1. Assignment. This Agreement may not be assigned to any other entity without the prior written consent of the City.
- 2. No Grant of Vested Rights. This Agreement shall not be construed as granting or assuring or vesting any land use, zoning, development approvals, permission or rights with respect to property owned or to be acquired by HABITAT.
- 3. No Partnership or Agency. City shall not in any way or for any purpose be considered to be or to have become a partner of HABITAT with respect to the Project. HABITAT is not, and

shall not be, the agent of the City for any purpose, nor shall the City be the agent of HABITAT for any purpose.

4. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effected, this Agreement is declared severable.
5. **Entire Agreement/Modification.** This Agreement, together with **Exhibits "A" through "X"** attached hereto, constitute the entire agreement between the parties and supersedes all previous discussions, understandings, representations and agreements as to the items herein contained. This Agreement may only be modified by a writing signed by both of the parties hereto.
6. **Notices.** Whenever by the terms of this Agreement notice shall or may be given to either party, such notice shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid to:
  - A. Oren Henry, Director  
Housing and Community Development Department  
City of Orlando  
400 S. Orange Avenue, 7<sup>th</sup> Floor  
Orlando, Florida 32802
  - B. Catherine S. McManus, President  
Habitat for Humanity of Greater Orlando, Inc.  
4116 Silver Star Road  
Orlando, FL 32808
7. **Compliance with All Laws.** Notwithstanding anything to the contrary, the Project shall be operated consistent with all applicable federal, state and local laws and regulations.
8. **Survival.** All provisions of this Agreement intended to survive or to be performed subsequent to the end of the period of this Agreement shall survive termination of the Agreement.
9. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Florida.

**IN WITNESS WHEREOF** the parties have executed this Agreement, each upon the date set forth next to his/her name.

**HABITAT FOR HUMANITY OF GREATER  
ORLANDO, INC., a Florida non-profit  
corporation (Seal)**

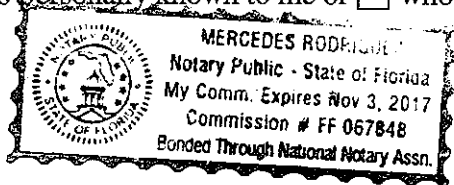
By: Catherine S. McManus  
Catherine S. McManus, President

Date: June 10, 2016

CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA  
COUNTY OF ORANGE

THE FOREGOING was acknowledged before me this 10th day of JUNE, 2016, by **Catherine S. McManus**, as President of HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. He/She ☒ is personally known to me or ☐ who has produced DL-M255-137-70-994-8 as identification.



Mercedes Rodriguez  
NOTARY PUBLIC

Print Name: Mercedes Rodriguez  
My Commission Expires:

ATTEST:

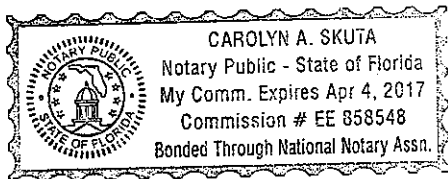
**CITY OF ORLANDO, FLORIDA,**  
**a municipal corporation**

By: Amy T. Tennaco  
Amy T. Tennaco, Interim City Clerk

By: Jim Gray  
Mayor / Mayor Pro Tem  
Date: 6/22/16

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this 20 day of June, 2016 by Jim Gray, Mayor Pro Tem and Amy Tennaco, City Clerk, who are personally known to me who did (did not) take an oath.



Carolyn Skuta  
Name  
Notary Public  
Serial Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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

June 21st, 2016  
By: Wick Walsh  
Chief Assistant City Attorney

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Lots 1-7, 44, 48, 49, 54-59, Butler's Preserve, according to the Plat thereof as recorded in Plat Book 82, Page 104, 105, 106 and 107 of the Public Records of Orange County, Florida.

**EXHIBIT "B"**

**STANDARDS OF ELIGIBILITY**

**PERSONS ELIGIBLE AND QUALIFIED AS ESTABLISHED BY THE U.S. DEPARTMENT  
OF HOUSING AND  
URBAN DEVELOPMENT (HUD) 2016**

	<b><u>1 Person</u></b>	<b><u>2 Person</u></b>	<b><u>3 Person</u></b>	<b><u>4 Person</u></b>	<b><u>5 Person</u></b>	<b><u>6 Person</u></b>	<b><u>7 Person</u></b>	<b><u>8 Person</u></b>
<b>LOW INCOME (up TO 80%)</b>	32,800	37,450	42,150	46,800	50,550	54,300	58,050	61,800

## EXHIBIT "C"

### Overview

Habitat shall develop the site to suitable specifications and build 16 new, detached, single-family homes located in the 59 unit Butler's Preserve Subdivision, Orlando, Florida. HOME funds in the amount of \$687,395 will be used to pay for construction materials for these 16 HOME-assisted units.

These HOME-assisted units will be modestly-sized ( $\leq 1,500$  sq. ft., including areas for utilities and storage), single-story homes with three bedrooms/ 1 bath for 15 units and one five-bedroom/2 bath unit.

Habitat strives to build sustainable (green), energy-efficient housing that is environmentally-friendly and more cost-effective for homeowners to maintain. Toward this end, this project's homes will encompass a wide range of sustainable areas, such as energy conservation, water efficiency, CO2 emission reduction and indoor air quality. Specific sustainable features include but are not limited to:

- Building an extended roof overhang for improved cooling and heating
- Installing A/C ducts inside air conditioned space
- Installing a programmable thermostat
- Using Energy Star<sup>®</sup> rated appliances, including dishwasher and disposal
- Using low-flow toilets and shower heads
- Capturing rainwater in well-designed swales
- Planting shrubs and trees that are native to Florida

The development of the land, including the necessary zoning is already in place and approved. The vertical building process will commence by July 1, 2016. The construction of each of the HOME-assisted units shall take approximately six months to complete using a mix of subcontracted and volunteer labor. Community residents, staff, volunteers and the future homeowners (a/k/a partner families) will provide the volunteer labor. Habitat estimates the construction of all of the HOME-assisted units will be completed in November 2017.

Habitat will sell the homes at appraised value as determined by independent property appraisal, less the City's HOME subsidy. Habitat will market the homes using a family selection process that complies with federal fair housing laws. Buyers whose income does not exceed 80% AMI will be selected to purchase the HOME-assisted units through Habitat's unique, interest-free mortgage program. Total monthly payments (i.e. principal, insurance & taxes) will not exceed 30% of buyer's gross income.

This is an overview and more details are as described in this HOME Agreement.

**EXHIBIT "D"**

**Budget**

**UNIT MIX BREAKDOWN**

<b><u>Low-income (80%)</u></b>	<b><u>Low-income (80%)</u></b>
<b>15 Units</b> <b>Low-income</b> <b>3 Bedroom/ 1 Bath</b> <b>FMV (Appraisal) Sales Price – \$140,375.00</b> <b>Reduction in price (direct HOME subsidy) -</b> <b>\$42,481</b> <b>Sales Price to Eligible Person - \$97,894.00</b>	<b>1 Unit</b> <b>Low-income</b> <b>5 Bedroom/2 Bath</b> <b>FMV (Appraisal) Sales Price - \$153,500</b> <b>Reduction in Price (direct HOME subsidy) –</b> <b>\$50,174.00</b> <b>Sales Price to Eligible Person - \$103,326.00</b>

The requested funds will be used to buy materials for the new construction of the sixteen (16) HOME-assisted units for Eligible Persons. 15 of the HOME-assisted units are three (3) bedroom and one (1) bath and 1 HOME-assisted unit is five (5) bedroom /2 bath. As detailed in the budget, the materials for the new construction will include, but not necessarily be limited to material for: landscaping, appliances, cabinets, carpet, drywall, dumpster, electrical fixtures, insulation, plumbing, windows, trusses, and roofing-

**BUDGET ON NEXT 3 PAGES**

# BUTLER'S PRESERVE | Construction Cost Detail for 16 Homes

		2016 City of Orlando HOME Funds	Other Habitat Funding Sources	Notes
<b>LAND ACQUISITION</b>	<b>Amount (\$)</b>			
Land	34,448		34,448	Purchase cost
<b>CLOSING &amp; LEGAL</b>	<b>Amount (\$)</b>			
Subtotal - Closing & Legal	20,384		20,384	
<b>ARCHITECTURAL &amp; DESIGN</b>	<b>Amount (\$)</b>			
Subtotal - Architectural & Design	31,952		31,952	
<b>MARKETING</b>	<b>Amount (\$)</b>			
Subtotal - Marketing	5,424		5,424	
<b>INSURANCE</b>	<b>Amount (\$)</b>			
Builder's Risk & Gen'l Liability	24,400		24,400	
<b>CONSTRUCTION - SITE IMPROVEMENT</b>	<b>Amount (\$)</b>			
Land Clearing	31,225		31,225	
Grading	86,325		86,325	
Concrete Work	22,911		22,911	
Base & Paving	32,549		32,549	
Drainage	58,374		58,374	
Common Area Landscaping/irrigation	5,153		5,153	
Miscellaneous	33,019		33,019	
Sanitary Sewer	46,718		46,718	
Other Approval Costs	9,762		9,762	
Water Distribution	40,079		40,079	
Subtotal - Site Improvement	366,115			
<b>CONSTRUCTION -HOUSELINE COSTS</b>	<b>Amount (\$)</b>			
Appliances	20,560	20,560		
Blinds	5,200	4,940	260	
Cabinets	41,868	39,775	2,093	
Cabinet Installation	6,819		6,819	
Carpet, Vinyl Materials	26,607	25,277	1,330	
Carpet, Vinyl Installation	14,328		14,328	
Driveway and Walks Materials	21,024	19,973	1,051	
Driveway and Walks Labor	27,200		27,200	
Drywall Materials	49,900	49,900		
Drywall Labor	16,500		16,500	
Marble Window Sills	7,040	6,688	352	
Dumpster	12,000	11,400	1,200	
Electric Fixtures	4,100	3,895	205	
Electric Materials	54,904	52,159	2,745	
Electric Labor	10,619		10,619	
Electric Underground Conduit	5,600		5,600	
Fill	8,400	8,400		
Footing Concrete	20,405	19,384	1,021	
Foundation Block	31,450	29,878	1,573	
Slab Concrete	41,250	39,188	2,063	
Mason Labor	67,660		67,660	
Concrete Pumping	8,000		8,000	
Frame Materials	96,600	91,770	4,830	



Slab Concrete	41,250	39,188	2,063	
Mason Labor	67,660		67,660	
Concrete Pumping	8,000		8,000	
Frame Materials	96,600	91,770	4,830	
Frame Labor	28,834		28,834	
HVAC Materials	51,978	49,379	2,599	
HVAC Labor	16,382		16,382	
Compressor Cage	4,000		4,000	
Insulation Materials	14,749	14,012	737	
Insulation Labor	3,253		3,253	
Boracare	720	684	36	
Landscape Package	13,600	12,920	680	
Mirrors and Shelves	4,800		4,800	
Mobile Mini	1,600	1,520	80	
Paint Ext. Material	14,000		14,000	In-kind donations
Paint Int. Material	12,000		12,000	In-kind donations
Plumbing Materials	40,972	38,923	2,049	
Plumbing Labor	44,983		44,983	
Porch Railings and Posts	8,200	7,790	410	
Roofing Materials	35,500	33,725	1,775	
Roofing Labor	31,470		31,470	
Security Alarm	8,000		8,000	In-kind donations
Shutters	3,840	3,648	192	
Siding	49,000		49,000	In-kind donations
Sitework/Grading/Backfill	31,600		31,600	
Soffit & Fascia	10,250		10,250	
Stucco	10,500		10,500	
Surveys, plot plan, tie-in, final	7,200		7,200	
Temporary Electric	2,400	2,280	120	
Portable Toilet	3,120	2,964	156	
Trim Materials	38,000	36,100	1,900	
Trim Labor	8,175		8,175	
Trusses	34,716	32,980	1,736	
Windows	28,720	27,284	1,436	
Window Installation	6,800		6,800	
Misc./contingency	24,000		24,000	
Appraisal	4,800		4,800	
FGBC Cert. insp. and application	4,800		4,800	
<b>Subtotal - Houseline Costs</b>	<b>1,200,996</b>			
<b>CONSTRUCTION - SOFT COSTS</b>				
Utilities	6,779		6,779	Estimate (Street
Fire/Police Permit/Fee	8,656		8,656	
Building Permit/Fee	9,600		9,600	
Sewer Permit/Fee	40,800		40,800	Reimbursed at 100%
Water Permit/Fee	41,431		41,431	
School Permit/Fee	103,760		103,760	Reimbursed at 25%
Transportation Permit/Fee	61,088		61,088	Reimbursed at 100%
Construction Labor	178,983		178,983	Allocation of HFHGO
Worker's Comp	14,644		14,644	construction staff
Contingency	23,300		23,300	
<b>Subtotal - Soft Costs</b>	<b>489,041</b>			

Construction Labor	178,983		<b>178,983</b>	Allocation of HFHGO construction staff
Worker's Comp	14,644		<b>14,644</b>	
Contingency	23,300		<b>23,300</b>	
<b>Subtotal - Soft Costs</b>	<b>489,041</b>			
<b>TOTAL COSTS</b>	<b>2,172,760</b>	<b>687,395</b>	<b>1,485,965</b>	

**\*City of Orlando Total Funds per Home: 3-Bedroom Home \$42,481**  
**5-Bedroom Home \$50,174**

**EXHIBIT "E"**

**CITY OF ORLANDO  
HOME Investment Partnerships Program (HOME)  
HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.**

**PROMISSORY NOTE**

**\$687,395.00**

\_\_\_\_\_, 2016

**Orlando, Florida**

For value received, the undersigned promises to pay the City of Orlando, a Florida municipal corporation, the principal sum of *Six Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (\$687,395.00)* Said principal shall be payable at 400 South Orange Avenue, Orlando, Florida 32801, or at such other place as the holder hereof may designate in writing, in one (1) principal installment of *Six Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (\$687,395.00)* due on November 30, 2017; provided, however, that if the undersigned is in full compliance with that certain HOME Program Agreement and all agreements between the undersigned and the City, then the debt evidencing this Note shall be marked cancelled by the lender.

Notwithstanding the above, at the option of the City, this Note shall become immediately due and payable, upon the occurrence of anyone of the following events: (i) failure to pay any sum when due under this Note, the HOME Program Agreement or such other documents executed in connection with this Project and such failure continues for ten (10) days after written notice by City to the undersigned; (ii) failure to comply with any HOME Program regulations including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92; (iii) failure to comply with any of the terms contained in the HOME Program Agreement, or uses the funds other than as authorized by the HOME Program Agreement or any of the other documents executed in connection with this Project; (iv) failure to timely comply with audit requirements; (v) failure to expend HOME funds in a timely manner or fails to meet any of the time requirements as set forth in the HOME Program Agreement; (vi) failure to construct the Project as required by the HOME Program Agreement; (vii) failure to sell the HOME-assisted units to Eligible Persons as Affordable housing as required by the HOME Program Agreement (viii) failure to sell the HOME-assisted units within the time frames and terms as required in the HOME Program Agreement; (ix) if a CHDO, failure to maintain CHDO status for the duration of the HOME Program Agreement; (x) the undersigned is deemed in default under the HOME Program Agreement with the City or any other HOME or SHIP agreements it has with the City even if unrelated to this Project or Property or is in default under the terms of other financing or mortgages used for the Property and said default extends beyond the applicable cure period provided in said documents; (xi) if at any time any material omission or material representation made by the undersigned in any written certification or communication submitted by the undersigned to the City in an effort to induce the making of this loan or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner; (xii) failure to disclose to the City, upon demand, the names of all persons with whom the undersigned has contracted or intends to contract with for the construction or management of any portion of the Property, including contracts for services and/or labor; or (xiii) sale of any of the Project or HOME-assisted units except the sale of the HOME-assisted units to Eligible Person as set forth in the HOME Program Agreement; or (xiv) if any other default or breach of any term shall occur under the Note, Mortgage or any Loan Documents.

The holder hereof may exercise this option to accelerate during any default by the undersigned regardless of any prior forbearance. In the event of any default under this Note, and if the same is referred to an attorney at law for collection or any action at law or in equity is brought with respect hereto, the undersigned shall pay the holder hereof all expenses and costs, including, but not limited to, attorney's fees;

The maker of this Note hereby waives demand, presentment, notice of dishonor, and protest. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

The debt evidenced by this Note is secured by a Mortgage and Security Agreement of even date herewith (the "Mortgage"), covering the property described in **Exhibit "A"** (the "Property"), as more fully described in the Mortgage and HOME Program Agreement.

The term "Loan Documents" when used herein shall mean, collectively, the following documents: (i) this Note; (ii) the Mortgage; (iii) the HOME Program Agreement between the City of Orlando and HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. ("HOME Program Agreement"); (iv) Declaration of Covenants and Restrictions; and (v) all other documents or agreements arising under, related to, or made in connection with, the loan evidenced by this Note, as such Loan Documents may be amended. All persons to whom this Note may come are referred to the Mortgage, the HOME Program Agreement, and other Loan Documents for their effect on this Note. All terms not defined herein shall have the meaning ascribed to such terms in the HOME Program Agreement.

The validity of this Note and the other Loan Documents, each of their terms and provisions and the rights and obligations of the undersigned under this Note, and the other Loan Documents shall be governed by, interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of Florida. The undersigned agrees that any controversy arising under or in relation to this Note, HOME Program Agreement, the Mortgage or any other Loan Documents shall be litigated exclusively in the State of Florida. The state and federal courts and authorities with jurisdiction in the State of Florida shall have exclusive jurisdiction over all controversies which may arise under or in relation to this Note, including without limitation those controversies relating to the execution, interpretation, breach, enforcement or compliance with this Note, the Mortgage, or any other issue arising under, related to, or in connection with any of the Loan Documents. The undersigned irrevocably consents to service, jurisdiction, and venue of such courts for any litigation arising from this Note, Mortgage, or any of the other Loan Documents, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

The provisions of this Note, the Mortgage, HOME Program Agreement, and all other Loan Documents shall be binding on the successors and assigns, including, but not limited to, any receiver, trustee, representative or other person appointed under foreign or domestic bankruptcy, receivership, or similar proceedings of the undersigned and any person having an interest in the undersigned.

Signatures Next Page

By signing below, the undersigned accepts and agrees to the covenants and agreements contained in this Note.

**HABITAT FOR HUMANITY OF GREATER  
ORLANDO, INC.,** a Florida  
Non-profit corporation (Seal)

By: \_\_\_\_\_  
**Catherine S. McManus, President**

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

### **CORPORATE ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ORANGE

*THE FOREGOING* was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **Catherine S. McManus**, as President of HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. He/She ☐ is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## EXHIBIT "F"

**PREPARED BY AND RETURN TO:**

Lisa R. Pearson, Esq.  
Chief Assistant City Attorney  
City of Orlando  
400 South Orange Ave.  
Orlando, FL 32801  
Phone: (407) 246-2295

### MORTGAGE AND SECURITY AGREEMENT

**THIS MORTGAGE AND SECURITY AGREEMENT** (hereinafter "Mortgage") is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by the Mortgagor, **HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.**, a Florida non-profit corporation, whose mailing address is 4116 Silver Star Road, Orlando, FL, 32808 (hereinafter "Borrower"), in favor of the Mortgagee, **City of Orlando**, a Florida municipal corporation with a principal address of 400 South Orange Avenue, Orlando, FL 32801 (hereinafter "Lender").

**WHEREAS**, Borrower and Lender have entered into an HOME Program Agreement (the "HOME Agreement"), a copy of which is on file in the City Clerk's Office for the City of Orlando and the definitions and terms of which are incorporated herein by this reference as if fully set forth herein, and which provides, among other things, that the Lender will loan to Borrower HOME funds to be used towards the construction of sixteen (16) HOME-assisted units located in the Butler's Preserve subdivision at Willie Mays Parkway, Orlando, FL, 32811, all of which units shall be designated as HOME-assisted units for sale to Low-income families as Affordable housing and upon such other terms as set forth in the HOME Agreement; and

**WHEREAS**, to ensure, among other things, that the HOME-assisted units are sold to Low-income families as Affordable housing and on the terms set forth in the HOME Agreement, Borrower has executed a note in favor of Lender in the principal sum of *Six Hundred Eighty Seven Thousand Three Hundred Ninety Five Dollars (\$687,395.00)*, which indebtedness is evidenced by Borrower's promissory note dated of even date herewith (hereinafter "Note"), a copy of which is attached hereto as **Exhibit "A"**, due and payable as provided in the Note.

To secure to Lender (a) the indebtedness evidenced by the Note, and all renewals, extensions and modifications thereof; (b) the performance of the covenants and agreements of Borrower contained in the Note between Lender and Borrower; (c) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; (d) the performance of the covenants and agreements contained in the HOME Agreement between the Lender and Borrower; and (e) the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant, convey and assign to Lender the benefit of a lien on, and a security interest in any fee simple interest Borrower may acquire now or in the future in and to the following described real property located in Orange County, Florida:

**[SEE ATTACHED EXHIBIT "B"]**

Together with all buildings, structures, improvements and tenements now or hereafter erected

on the Property; all heretofore or hereafter vacated alleys and streets abutting the Property, and all easements, streets, ways, alleys, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and therefor; all rents, royalties, mineral, oil and gas rights and profits, water rights and water stock appurtenant to the Property; all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in or on, or used or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; all elevators and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants; all leasehold estates and all leases or subleases of the Property, or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Borrower thereunder, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all rents, profits, issues and revenue of the Property and the buildings on the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created; all machinery, apparatus, equipment, fittings, fixtures and tangible personal property of every kind and nature whatsoever now or hereafter located on the Property or in any buildings or improvements upon the Property, or any part thereof, and used or usable in connection with the construction of or any occupancy of any buildings on the Property or the operation of the Property and all additions thereto; and all proceeds, products, substitutions, additions, renewals, accessions and replacements of any of the foregoing items. All of the foregoing real and personal property herein referred to as the "Property").

TO HAVE AND TO HOLD the said Property unto the Lender, in fee simple.

To protect the security of this Mortgage, Borrower further covenants, warrants and agrees with Lender as follows:

1. **Payment of Principal and Interest.** Borrower shall promptly pay all payments provided for in the Note, any prepayment and late charges provided in the Note and all other sums secured by this Mortgage and shall otherwise comply with all the terms in the Note and this Mortgage.
2. **HOME Agreement.** The indebtedness that is secured by this Mortgage and is the subject of the Note shall be advanced pursuant to the covenants and conditions of the HOME Agreement between Borrower and Lender, all of which terms are incorporated herein by reference and made a part of this Mortgage with the same force and effect as if fully set forth in this Mortgage.
3. **Funds for Taxes, Assessments, Charges; Liens.** Borrower shall pay all water and sewer rates, rents, taxes, ad valorem taxes, assessments, premiums, insurance and other impositions attributable to the Property by Borrower making payment when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. Upon request, Borrower shall promptly furnish to Lender all receipts evidencing such payments. Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property, or shall transfer to

bond any claims of lien filed by any such persons.

4. **Leases, Subleases and Easements.** Borrower, at Borrower's sole cost and expense, shall maintain and cause to be performed, all of the covenants, agreements, terms, conditions and provisions on its part to be kept, observed and performed under any lease, sublease or easements, which may constitute a portion of or an interest in the Property; shall require its tenants or subtenants to keep, observe and perform all of the covenants, agreements, terms, conditions and provisions on their part to be kept, observed or performed under any and all leases, subleases, or easements; and shall not suffer or permit any breach or default to occur with respect to the foregoing; and in default thereof, Lender shall have the right to perform or to require performance of any such covenants, agreements, terms, conditions and provisions of any lease, sublease or easements. Except in the ordinary course of business, Borrower shall not, without the consent of Lender, consent to any modification or amendment of any lease, sublease or easement or to the, cancellation, termination or surrender of any lease, sublease or easement. Borrower shall not enter into any lease, sublease, or easement or make any modification or amendment that would violate any terms of the HOME Agreement or violate any of the HOME regulations governing this Property.
5. **Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and such other hazards, casualties, liabilities and contingencies as Lender shall require and in such amounts and for such periods as Lender shall require. Borrower shall also maintain commercial general liability insurance with Lender named as an additional insured in such amounts and for such periods as Lender may require. Borrower shall also maintain worker's compensation insurance, subject to the statutory limits of the State of Florida, and employer's liability insurance with a limit of no less than \$500,000.00 per accident, per employee.

All premiums on the foregoing insurance policies shall be paid by Borrower making payment, when due, directly to the carrier, or in such other manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgagee clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies or certificate of insurance with regard thereto, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender.

In the event of loss, Borrower shall give immediate written notice to the insurance carrier and Lender. Borrower hereby authorizes and empowers Lender as attorney in fact for such Borrower to make proof of loss, to adjust and compromise any claim under insurance policies (provided, however, that so long as no Event of Default shall not then exist, no such compromise shall be made by Lender without the approved consent, which consent shall not be unreasonably withheld), to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds,



and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property, or (b) to apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due.

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall not extend or postpone the due dates of any future installments. If the Property is sold or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. **Preservation and Maintenance of the Property.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the standards required by HUD and its property standards requirement, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, and cure any violations within the time permitted by the applicable governing body, (f) shall use and operate, and shall require its lessees or licensees to use or operate, the Property in compliance with all applicable laws, ordinances, regulations, covenants, conditions and restrictions and with all applicable requirements of any lease or sublease now or hereafter affecting the Property, (g) shall operate and maintain the Property in a manner to ensure compliance with applicable U.S. Department of Housing and Urban Development (HUD) and HOME regulations, and (h) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Mortgage or the rights or powers of Lender. Neither Borrower nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

7. **Use of Property.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.
8. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in paragraph 5 hereof.

Any amounts disbursed by Lender pursuant to this paragraph shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable upon demand by Lender and shall bear interest from the date of disbursement at the Event of Default rate stated in the Note unless collection from Borrower of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law. Nothing contained in this paragraph shall require Lender to incur any expense or take any action hereunder.

9. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property at any time. If the Property requires repair, care or attention, after notice to Borrower, Lender may enter or cause entry to be made on the Property to repair, protect and maintain the Property as Lender may deem necessary. Any and all money that the Lender must pay to accomplish the proper maintenance on the Property shall become due and payable under the provisions of the above paragraph.
10. **Books and Records.** Borrower shall keep and maintain at all times at Borrower's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property, compliance with all applicable HOME and federal regulations, compliance with the HOME Agreement and copies of all written contracts, leases and other mortgages or other interests which affect the Property. Such books, records, contracts leases, other documentation and mortgages shall be subject to examination and inspection at any reasonable time by Lender. Upon Lender's request, Borrower shall furnish to Lender, within one hundred and twenty (120) days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant.

11. **Condemnation.** Borrower shall promptly give written notification to Lender of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action or proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney in fact for Borrower, to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking (provided, however, that so long as no Event of Default then exists, no compromise or settlement shall be made without the Borrower's consent, which consent shall not be unreasonably withheld). The proceeds of any award or payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Mortgage, whether or not then due, with the balance, if any, to Borrower.

12. **Assignment of Rents.** Borrower hereby collaterally assigns and transfers to Lender all the leases, subleases, franchises, rents, issues and profits of the Property, and hereby gives to and confers upon Lender the right, power and authority to collect such rents, issues and profits as herein set forth. Borrower irrevocably appoints Lender its true and lawful attorney-in-fact for such purposes. Upon the occurrence of an Event of Default, not cured within any applicable grace period, under this Mortgage, Lender shall have the right, at its option, immediately and without further legal action being necessary, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Borrower or Lender, for all such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Borrower shall have the right to collect, use and retain such rents, issues and profits (but not more than one month in advance) prior to or so long as there is not an Event of Default under this Mortgage.

13. **Collection of Rents Upon Event of Default.** Upon any Event of Default under this Mortgage, Lender may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property (but only by way of a court-appointed receiver or court order), or any part thereof, in its own name, sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Lender may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Property, or the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default.

14. **Restriction on Further Assignments or Modifications.** Borrower shall not, without the prior written consent of Lender, assign the rents, issues or profits, or any part thereof, from the Property or any part thereof, and shall not consent to the modification, cancellation or surrender of any lease or sublease covering the Property. However, Borrower shall not enter into any lease, sublease, or easement, or make any modification or amendment that would violate any terms of the HOME Agreement or violate any of the HOME regulations governing this property. An action of Borrower in violation of the terms of this section shall be void as against Lender in addition to being an Event of Default under this Mortgage.

Borrower shall not, without the consent of Lender after the occurrence of an Event of Default, consent to the cancellation or surrender of, accept prepayment of rents, issues or profits more than thirty (30) days in advance under, any lease or sublease now or hereafter covering the Property or any part thereof, nor modify any such lease or sublease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported assignment, cancellation, surrender, prepayment or modification made without the written consent of Lender shall be void as against Lender. Borrower shall, upon demand of Lender, enter into an agreement with Lender with respect to the provisions contained in the preceding provision regarding any lease or sublease covering said Property or any part thereof, and Borrower hereby appoints Lender attorney-in-fact of Borrower to execute and deliver any such agreement on behalf of Borrower and deliver written notice thereof to the tenant to whose lease such agreement relates. Borrower agrees to furnish to Lender a copy of all leases, any modification of any lease presently in effect and copies of all future leases affecting the Property covered by this Mortgage, and failure to furnish to Lender a copy of any modification of a lease or a copy of any future lease affecting said Property shall be deemed a Event of Default under this Mortgage.

All leases or subleases hereafter entered into by Borrower with respect to the Property or any part thereof shall be subordinate to the lien of this Mortgage.

15. **Uniform Commercial Code Security Agreement.** This Mortgage is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals, and amendments thereof, and reproductions of this Mortgage in such form as Lender may require to perfect a security interest with respect to said items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other

security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Mortgage, Lender shall have the remedies of a secured party under the Uniform Commercial Code and, at Lender's option, may also invoke the remedies provided in this Mortgage as to such items.

In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in this Mortgage.

16. **Events of Default.** The following shall constitute an Event of Default under this Mortgage:

- (a) failure to pay any sum when due under the Note, this Mortgage or other documents executed in connection with this Project;
- (b) failure to comply with any HOME Program regulations including, but not limited to, 42 U.S.C. §§12701-12839 or 24 CFR Part 92;
- (c) failure to comply with any of the terms contained in the HOME Agreement or uses the HOME funds other than as authorized by the HOME Agreement;
- (d) failure to timely comply with audit requirements;
- (e) failure to expend HOME funds in a timely manner or fails to meet any of the time requirements as set forth in the HOME Agreement;
- (f) failure to construct the Project as required by the HOME Agreement;
- (g) failure to sell the HOME-assisted units to Eligible Persons as Affordable housing as required in the HOME Agreement;
- (h) failure to sell the HOME-assisted units to Eligible Persons within the timeframes required by the HOME Agreement;
- (i) if a CHDO, failure to maintain CHDO status for the duration of the HOME Agreement;
- (j) sale or disposal of any part of the Property or any of the HOME-assisted units except the sale of the HOME-assisted units to Eligible Persons as set forth in the HOME Program Agreement;
- (k) Borrower is deemed in default under any other HOME or SHIP agreements it has with the Lender even if unrelated to this Project or Property or is in default under the terms of other financing or mortgages used for the Property or other projects and said default extends beyond the applicable cure period provided in said documents;

- (l) if at any time any material omission or material representation made by Borrower in any written certification or communication submitted by Borrower to the Lender in an effort to induce the making of this loan or the administration thereof is determined by the Lender to be false, misleading, or incorrect in any material manner;
- (m) failure to disclose to the Lender, upon demand, the names of all persons with whom Borrower has contracted or intends to contract with for the construction or management of any portion of the Property, including contracts for services and/or labor; or
- (n) if any other default or breach of any term shall occur under the Note, Mortgage or any Loan Documents.

Notwithstanding any of the foregoing provisions to the contrary, if Borrower has failed to cure any Event of Default by any applicable cure period, the Lender may, at its sole option, cure such Event of Default, provided, however, that the Lender shall be under no duty or obligation to do so.

17. **Remedies.** Upon the occurrence of any Event of Default, or any other breach of this Mortgage, Lender may declare Borrower in default and the remedies available to Lender shall include, but not necessarily be limited to, any one or more of the following: (i) Lender may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding; (ii) Lender may take immediate possession of the Property or any part thereof by way of a court-appointed receiver as discussed in this Mortgage and manage, control or lease the same to such person and at such rental as it may deem proper and collect all rents, issues and profits therefrom; and (iii) Lender shall be free to terminate the HOME Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of the HOME Agreement, the Loan Documents, under statutory law, federal or under common law. The City may also exercise any one or more of the actions contained in 2 CFR §200.
18. **Remedies Cumulative.** Each remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.
19. **Borrower and Lien Not Released.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower or any junior lien holder, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, with the consent of Borrower, release from the lien of this Mortgage any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, or join in any extension or subordination agreement. Any actions taken pursuant to this paragraph

shall not affect the obligation of Borrower to pay the sums secured by this Mortgage and to observe the covenants of Borrower contained herein and shall not affect the lien or priority of lien hereof on the Property. Borrower shall pay Lender title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

20. **No Waiver.** Failure of the Lender to declare an Event of Default shall not constitute a waiver of any rights by the Lender. Furthermore, the waiver of any Event of Default by the Lender shall in no event be construed as a waiver of rights with respect to any other Event of Default, past or present.
21. **Appointment of Receiver; Lender in Possession.** Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage which is not cured within any applicable cure period, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for managing the Property.
22. **Transfers of the Property or Beneficial Interests in Borrower.** Sale of the Property to another party may occur only with the written approval of the City. On sale or transfer of all or any part of the Property, or any interest therein, Lender may, at Lender's option, declare all of the sums secured by this Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by this Mortgage or by state or federal law.
23. **Notice.** Except for any notice required under applicable law to be given in another manner, each notice, demand, consent or other approval (collectively, "notices" and singly, "notice") given under the Note, this Mortgage and any other Loan Document, shall be in writing to the other party, and if to Borrower, at its address set forth at the beginning of the Mortgage, and if to Lender, at its address set forth at the beginning of the Mortgage, or at such other address as such party may designate by notice to the other party and shall be deemed given (a) three (3) Business Days after mailing, by certified U.S. mail, return receipt requested, postage prepaid; (b) one (1) Business Day after delivery, fee prepaid, to a national overnight delivery service; or (c) when delivered, if personally delivered with proof of delivery thereof.

Borrower and Lender each agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, the receipt of the same upon request by the other party and that any notice rejected or refused by it shall be deemed for all purposes of this Mortgage to have been received by the rejecting party on the

date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. As used in the Mortgage, the term "Business Day" means any day other than a Saturday, a Sunday or any other day on which Lender is not open for business.

24. **Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.
25. **Governing Law and Severability.** This Mortgage shall be governed by the law of the State of Florida. In the event that any provision of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provisions, and to this end, the provisions of this Mortgage and the Note are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Mortgage or in the Note, whether considered separately or together with other charges levied in connection with this Mortgage and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation.
26. **Waiver of Statute of Limitations.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.
27. **Attorney's Fees.** If this Mortgage is placed in the hands of an attorney for the collection of any sum payable hereunder or the enforcement of any provisions contained herein, Borrower agrees to pay all costs of collection, including attorneys' fees, including those in all appellate and bankruptcy proceedings incurred by Lender, either with or without the institution of any action or proceeding, and in addition to all costs, disbursements and allowances provided by law. All such costs so incurred shall be deemed to be secured by this Mortgage.
28. **Environmental Hazards.** Borrower covenants and agrees that Borrower shall not: (a) cause or permit the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including aboveground and underground storage tanks for petroleum or petroleum products), treatment, handling or disposal of any Hazardous Materials (as defined below) (excluding the safe and lawful use and storage of quantities of Hazardous Materials customarily used in the operation and maintenance of comparable multi-family or commercial properties or for normal household or business purposes) on or under the Property, or in any way affecting the Property or its value, or which may form the basis for any present or future demand, claim or liability relating to contamination, exposure, cleanup or other remediation of



the Property; or (b) cause or permit the transportation to, from or across the Property of any Hazardous Material (excluding the safe and lawful use and storage of quantities of Hazardous Materials customarily used in the operation and maintenance of comparable multi-family or commercial properties or for normal household or business purposes); or (c) cause or exacerbate any occurrence or condition on the Property that is or may be in violation of Hazardous Materials Law (as defined below). The matters described in (a), (b) and (c) above are referred to collectively below as "Prohibited Activities or Conditions".

Borrower represents and warrants that it has not at any time caused or permitted any Prohibited Activities or Conditions and to the best of its knowledge, except as set forth in any environmental assessment furnished by Borrower to Lender, no Prohibited Activities or Conditions exist or have existed on or under the Property. Borrower shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions.

If Borrower has disclosed that Prohibited Activities or Conditions exist on the Property, Borrower shall comply in a timely manner with, and cause all employees, agents and contractors of Borrower and any other persons present on the Property to so comply with (1) any program of operation and maintenance ("O&M Program") relating to the Property that is acceptable to Lender with respect to one or more Hazardous Materials (which O&M Program may be set forth in an agreement of Borrower (an "O&M Agreement")) and all other obligations set forth in any O&M Agreement, and (2) all Hazardous Materials Laws. Any O&M Program shall be performed by qualified personnel. All costs and expenses of the O&M Program shall be paid by Borrower, including without limitation Lender's fees and costs incurred in connection with the monitoring and review of the O&M Program and Borrower's performance thereunder. If Borrower fails to timely commence or diligently continue and complete the O&M Program and comply with any O&M Agreement, then Lender may, at Lender's option, declare all of the sums secured by the Mortgage to be immediately due and payable, and Lender may invoke any remedies permitted by this Mortgage.

Borrower represents that Borrower has not received, and has no knowledge of the issuance of, any claim, citation or notice of any pending or threatened suits, proceedings, orders or governmental inquiries or opinions involving the Property that allege the violation of any Hazardous Materials Law ("Government Actions").

Borrower shall promptly notify Lender in writing of: (i) the occurrence of any Prohibited Activity or Condition on the Property; (ii) Borrower's actual knowledge of the presence on or under any adjoining property of any Hazardous Materials which can reasonably be expected to have a material adverse impact on the Property or the value of the Property, discovery of any occurrence or condition on the Property or any adjoining real property that could cause any restriction on the ownership, occupancy, transferability or use of the Property under Hazardous Materials Law; Borrower shall cooperate with any governmental inquiry and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions; (iii)

any Governmental Action; and (iv) any claim made or threatened by any third party against Borrower, Lender or the Property relating to loss or injury resulting from any Hazardous Materials. Any such notice by Borrower shall not relieve Borrower of or result in a waiver of any obligation of Borrower.

Borrower shall pay promptly the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any Hazardous Materials from the Property required by Lender as a condition of its consent to any sale or transfer of all or any part of the Property or any transfer occurring upon a foreclosure or a deed in lieu of foreclosure or any interest therein, or required by Lender following a reasonable determination by Lender that there may be Prohibited Activities or Conditions on or under the Property. Borrower authorizes Lender and its employees, agents and contractors to enter onto the Property for the purpose of conducting such environmental studies, audits and investigations. Any such costs and expenses incurred by Lender (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Borrower fails to pay promptly shall become immediately due and payable and shall become additional indebtedness secured by the Mortgage.

Borrower shall hold harmless, defend and indemnify Lender and its officers, directors, trustees, employees and agents from and against all proceedings (including but not limited to Government Action), claims, damages, penalties, costs and expenses (including without limitation fees and expenses of attorneys and expert witnesses, investigatory fees and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from (i) any breach of any representation, warranty or obligation of Borrower contained in this paragraph, or (ii) the presence or alleged presence of Hazardous Materials on or under the Property.

The term "Hazardous Materials" for purposes of this paragraph includes petroleum and petroleum products, flammable explosives, radioactive materials (excluding radioactive material in smoke detectors), polychlorinated biphenyls, lead, asbestos in any form that is or could become friable, hazardous waste, toxic or hazardous substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise including, but not limited to, those materials defined as "hazardous substances," "extremely hazardous substances," "air pollutants," "toxic pollutants," "hazardous wastes," "extremely hazardous waste," or "restricted hazardous waste" by Hazardous Materials Law or regulated by Hazardous Materials Law in any manner whatsoever.

The term "Hazardous Materials Law" for the purposes of this paragraph means all federal, state and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements and any court judgments applicable to Borrower or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel

supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property.

The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this paragraph shall be in addition to any and all other obligations and liabilities that Borrower may have to Lender under applicable law.

The representations, warranties, covenants, agreements, indemnities and undertakings of Borrower contained in this paragraph shall continue and survive notwithstanding the satisfaction, discharge, release, assignment, termination, subordination or cancellation of the Mortgage or the payment in full of the principal of and interest on the Note and all other sums payable under the Loan Documents or the foreclosure of the Mortgage or the tender or delivery of a deed in lieu of foreclosure or the release of any portion of the Property from the lien of the Mortgage, except with respect to any Prohibited Activities or Conditions or violation of any of the Hazardous Materials Laws which first commences and occurs after the satisfaction, discharge, release, assignment, termination or cancellation of the Mortgage following the payment in full of the principal of and interest on the Note and all other sums payable under the Loan documents or which first commences or occurs after the actual dispossession from the entire Property of the Borrower and all entities which control, are controlled by, or are under common control with the Borrower (each of the foregoing persons or entities is hereinafter referred to as a "Responsible Party") following foreclosure of the Mortgage or acquisition of the Property by a deed in lieu of foreclosure. Nothing in the foregoing sentence shall relieve the Borrower from any liability with respect to any Prohibited Activities or Conditions or violation of Hazardous Materials Laws where such Prohibited Activities or Conditions or violation of Hazardous Material Laws commences or occurs, or is present as a result of, any act or omission by any Responsible Party or by any person or entity acting on behalf of a Responsible Party.

29. **Waiver of Jury Trial.** Borrower (i) covenants and agrees not to elect a trial by jury with respect to any issue arising under any of the Loan Documents triable by a jury and (ii) waives any right to trial by jury to the extent that any such right shall now or hereafter exist. This waiver of right to trial by jury is separately given, knowingly and voluntarily with the benefit of competent legal counsel by the Borrower and this waiver is intended to encompass individually each instance and each issue as to which the right to a jury trial would otherwise accrue. Further, Borrower hereby certifies that no representative or agent of the Lender (including but not limited to Lender's counsel) has represented, expressly or otherwise, to Borrower that Lender will not seek to enforce the provisions of this paragraph.

**SIGNATURES NEXT PAGE**

IN WITNESS WHEREOF, Borrower has executed this Mortgage or has caused the same to be executed by its representatives thereunto duly authorized.

Signed in the presence of Two Witnesses:

**HABITAT FOR HUMANITY OF  
GREATER ORLANDO, INC., a**  
Florida Non-Profit Corporation

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
**Catherine S. McManus, President**

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

#### CORPORATE ACKNOWLEDGMENT

STATE OF FLORIDA  
COUNTY OF ORANGE

*THE FOREGOING* was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Catherine S. McManus, as President of **HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.** He/She ☐ is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**\*THIS DOCUMENT IS EXEMPT FROM THE PAYMENT OF INTANGIBLE PERSONAL  
PROPERTY TAX PURSUANT TO SECTION 199.183(1), FLORIDA STATUTES.**

**EXHIBIT “A”**

**EXHIBIT "B"**

**LEGAL DESCRIPTION**

Lots 1-7, 44, 48, 49, 54-59, Butler's Preserve, according to the Plat thereof as recorded in Plat Book 82, Page 104, 105, 106 and 107 of the Public Records of Orange County, Florida.

**Exhibit "G"**

**PREPARED BY AND RETURN TO:**

Lisa R. Pearson  
Chief Assistant City Attorney  
City of Orlando  
400 South Orange Avenue  
Orlando, FL 32801  
Phone: (407) 246-2295

**DECLARATION OF RESTRICTIVE COVENANT CONTAINING  
INCOME AND PRINCIPAL RESIDENCY RESTRICTIONS**

**THIS DECLARATION OF RESTRICTIVE COVENANT CONTAINING INCOME AND PRINCIPAL RESIDENCY RESTRICTIONS** is made this \_\_\_\_ day of \_\_\_\_\_, 2016, by **HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.**, a Florida non-profit corporation, (hereinafter referred to as "Owner"), in favor of the **City of Orlando**, a Florida municipal corporation (hereinafter referred to as "City").

**WHEREAS**, the City has been designated by the United States Department of Housing and Urban Development ("HUD") as a participating jurisdiction for the receipt and use of funds as provided by the HOME Investment Partnerships Program (hereinafter referred to as "HOME Program"), as provided in 24 CFR Part 92;

**WHEREAS**, Owner is the fee simple owner of Butler's Preserve Subdivision, a subdivision to consist of 59 homes, generally located at Willie Mays Parkway, Orlando, Florida;

**WHEREAS**, the City and Owner entered into a HOME Program Agreement wherein federal HOME funds have been provided to construct a project consisting of 16 of the 59 units, and pursuant to federal regulations, 24 CFR §92.254 requires that certain affordability requirements be met for a certain period of time on the HOME-assisted units, which are more particularly described as follows:

**LEGAL DESCRIPTION**

**Lots 1-7, 44, 48, 49, 54-59, Butler's Preserve, according to the Plat thereof as recorded in Plat Book 82, Page 104, 105, 106 and 107 of the Public Records of Orange County, Florida.**

(hereinafter referred to as the "Property");

**WHEREAS**, the Owner has designated sixteen (16) of these units on the Property as “Home-assisted” units; and

**WHEREAS**, Owner and City wish to ensure that the HOME-assisted units continue to be maintained as Affordable housing for Low-income families for a period of not less than fifteen (15) years, regardless of any subsequent changes in ownership of the Property.

**NOW, THEREFORE**, Owner declares that said Property shall be held, transferred, encumbered, used, sold, conveyed, and occupied, subject to the covenants hereinafter set forth expressly and exclusively for the use and benefit of said Property and of each and every person or entity who now or in the future owns any portion or portions of the Property.

1. **RESTRICTION OF USE TO AFFORDABLE HOUSING**. The 16 HOME-assisted units must be sold and occupied and are restricted as follows: fifteen (15) units [3-bedroom/1 bath units] and one (1) unit ( 5 bedroom/2bath unit) shall be sold and occupied by Low-income families (80% of median income or less within the Orlando Metropolitan Statistical Area) who are First Time Homebuyers at prices and terms that qualify it as Affordable housing, all in the manner as described herein and in the HOME Program Agreement and all according to the income limits published annually by HUD based upon the Annual Income of the household. The Project must meet the property standards set forth in 24 CFR §92.251 and meet the accessibility requirements contained in 24 CFR Part 8, and all applicable local codes, or such successive regulations which may be adopted by HUD. The HOME Program Agreement executed by and between HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. and the City of Orlando dated \_\_\_\_\_, 2016 on file with the City Clerk’s Office and the City’s Housing and Community Development Department, (400 South Orange Avenue, Orlando, Florida, 32802) and a copy of which is also attached hereto, contains additional requirements and restrictions and is hereby incorporated herein by reference as if fully set forth herein and made a part hereof, including the terms and definitions contained therein. All terms not defined in this Restrictive Covenant shall have the meaning as described in the Home Program Agreement.

2. **BINDING NATURE OF COVENANTS**. These covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of fifteen (15) years from the date of Project Completion (the “Affordability Period”) as that term is defined in 24 CFR Part 92 and the HOME Program Agreement between Owner and the City.



3. **ENFORCEMENT OF DECLARATION OF RESTRICTIVE COVENANT.**

Enforcement and specific performance of the foregoing restrictive covenant shall be by proceedings at law or in equity against any person or persons violating or attempting to violate such covenant to restrain violation. Such action may be brought by the City of Orlando, the United States Department of Housing and Urban Development, and intended beneficiaries.

4. **ATTORNEYS' FEES.** Any person who successfully brings an action for enforcement of this Restrictive Covenant shall be entitled to recover attorneys' fees and costs for such action, including any successful appellate proceedings, from the then owner of the affected portion or portions of the Property.

**IN WITNESS WHEREOF**, Owner has executed this Declaration of Covenants and Restrictions, the day and year first above written.

**Signed in the presence of Two Witnesses:**

**HABITAT FOR HUMANITY OF  
CENTRAL FLORIDA, INC., a  
Florida Non-Profit Corporation**

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

\_\_\_\_\_  
**Catherine S. McManus, President**

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

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

**CORPORATE ACKNOWLEDGMENT**

STATE OF FLORIDA  
COUNTY OF ORANGE

*THE FOREGOING* was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, as President of HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. He/She ☐ is personally known to me or ☐ who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

**CITY OF ORLANDO**

**HOME AGREEMENT**

**EXHIBIT "H"**

**REQUEST FOR PARTIAL PAYMENT**

**TO: Housing and Community Development Department**

**FROM: HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.**

**PROJECT ADDRESS: Willie Mays Parkway**

**HOME LOAN: \$687,395.00**

**REQUESTED AMOUNT:**

I certify that \_\_\_\_\_% of the rehabilitation/construction work on the above referenced Project has been completed according to the HOME Agreement between the above and the City of Orlando has been completed to date.

Said work consists of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1.	Original Contract:	_____
2.	Net Changes by Change Orders	_____
3.	Contract Sum to Date (line 1 + 2)	_____
4.	Total completed & Stored to Date (Column G)	_____
5.	Retainage of completed work & stored materials (10%) (Column D + E + F)	_____
6.	Total Less Retainage (Line 4 less line 5 total)	_____
7.	Less Previous Payments (line 6 from previous pay application)	_____
8.	Current Payment Due	_____
9.	Balance to Finish, including retainage (line 3 less line 6)	_____

Therefore, I request that the Housing and Community Development Department pay a partial payment in the amount of \$\_\_\_\_\_ (this payment).

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**Exhibit "I"**

**PARTIAL RELEASE AND WAIVER OF LIEN / BOND CLAIM  
OF CONTRACTOR\SUBCONTRACTOR\SUPPLIER**

Pursuant to the agreement between \_\_\_\_\_ (herein after referred to as Contractor \ Subcontractor \ Supplier) and Owner (hereinafter referred to as Owner), the undersigned Contractor \ Subcontractor \ Supplier acknowledges that for and in consideration of the sum of \$ \_\_\_\_\_ the undersigned in hand this day paid, the receipt of which is hereby acknowledged, the undersigned does hereby waive, release, remise and relinquish any and all right to claim any lien or liens, or assert any kind or class of lien whatsoever, or make any claims on bond or to otherwise make any claims upon the Owner, Contractor, and/or Contractor's surety, if any, for work done, materials and/or equipment furnished, which the undersigned now has or may hereinafter have on the following-described property through the date of \_\_\_\_\_:

PROPERTY:

\_\_\_\_\_  
Orlando, FL

OWNER:

\_\_\_\_\_  
Orlando, FL

This affidavit is executed by the Contractor in accordance with section 713.06 of the Florida Statutes for the purposes of obtaining (partial) payment from the Owner in the amount of \$ \_\_\_\_\_

The undersigned certifies that all labor, services, materials and/or equipment furnished to or for the property described herein have been provided prior to the execution and delivery of this document. The undersigned further certifies that all bills, charges, payroll, taxes and any other obligations of the undersigned Subcontractor\Vendor for this project have been paid in full through \_\_\_\_/\_\_\_\_/\_\_\_\_; and that there are no pending actions, claims, liens or suits against said Subcontractor\Vendor for work performed, materials and/or equipment furnished for the above-described project. The undersigned Subcontractor \ Supplier further agrees to indemnify and hold harmless the Owner, Contractor and/or Contractor's surety (if any) and the City of Orlando from any and all claims that may arise in violation and/or contradiction of this document and/or pursuant to said work done, materials and/or equipment furnished through the above referenced date.

DATED on \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NAME OF COMPANY

\_\_\_\_\_  
NAME OF AUTHORIZED AGENT

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED AGENT

\_\_\_\_\_  
TITLE

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned officer, personally appeared \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_ who is personally known to me or presented \_\_\_\_\_ as identification, and who did \_\_\_\_ take an oath, and who is known to me to be the person described in and who executed the forgoing instrument, and acknowledged to and before me that he/she is authorized to execute the forgoing instrument in the capacity and for the purposes therein expressed.

Signature of Notary \_\_\_\_\_

My Commission # and Expiration:

**EXHIBIT "J"**

**MONTHLY PROGRESS REPORT/FINAL REPORT**

**A. Project Information**

Agency: HABITAT FOR HUMANITY OF GREATER ORLANDO, INC.

Project Title: Butler's Preserve

Project Start Up Date:

Estimated Project Completion Date:

**B. Project Financial Summary**

	Amount	Funds Invoiced to Date	Percentage (%)
Other Funding			
HOME Funding			
Total Funding			

Percentage of Project Completed to Date: \_\_\_\_\_ % (Monthly \_\_\_\_ Final \_\_\_\_)

**C. Comments (Please answer all questions)**

1. Describe specific tasks completed this month.

---

---

---

---

---

---

**EXHIBIT "K"**

**Home-Assisted Units**

**UNIT MIX BREAKDOWN**

<b><u>Low-income (80%)</u></b>
<b>16 HOME-assisted units</b>
(15 Units) 3-bedroom/1 bath
(1 Unit) 5-bedroom/2 bath

1. 4697 College Drive - Lot 1
2. 4691 College Drive - Lot 2
3. 4685 College Drive - Lot 3
4. 4679 College drive - Lot 4
5. 4673 College Drive - Lot 5
6. 4667 College Drive - Lot 6
7. 4661 College Drive - Lot 7
8. 659 Inspiration Way - Lot 44
9. 676 Humanity Way - Lot 48
10. 670 Humanity Way - Lot 49
11. 645 Humanity\_Way - Lot 54
12. 651 Humanity way - Lot 55
13. 657 Humanity Way - Lot 56
14. 663 Humanity Way - Lot 57
15. 669 Humanity Way - Lot 58
16. 675 Humanity Way - Lot 59

**EXHIBIT “L”**

**CITY OF ORLANDO**

**The Homebuyer Qualification package must include the following:**

1. City Assistance Application
2. Client Tax Returns
3. Income verification
  - Third party verification, if available
  - 2 month of recent paystubs
  - Alternatives sources of income
    - Social Security
    - Social Security Income
    - Unemployment
    - Child Support
    - Alimony
4. Asset verification
  - Bank Statements (for checking accounts – provide most recent 6 months and for savings accounts – provide most current statement)
  - 401k/retirement/investment

---

**ANNUAL INCOME AS DEFINED IN 24 CFR PART 5**

The Part 5 definition of annual income is the gross amount of income of all household members that is anticipated to be received during the coming 12- month period.

**EXHIBIT "M"**

**CITY OF ORLANDO HOUSING ASSISTANCE APPLICATION**

Effective Date: \_\_\_\_\_ Allocation Year: \_\_\_\_\_

**A. Recipient Information** (select one)

- a. ☐ Current homeowner
- b. ☐ Home buyer: ☐ Existing Dwelling ☐ Newly Constructed Dwelling

**B. Subsidy Use** (check all that apply)

<input type="checkbox"/>	Down Payment Assistance	<input type="checkbox"/>	Principal Buy Down
<input type="checkbox"/>	Closing Costs	<input type="checkbox"/>	Rehabilitation
<input type="checkbox"/>	Interest Subsidy	<input type="checkbox"/>	Emergency Repair
<input type="checkbox"/>	Loan Guarantee	<input type="checkbox"/>	Other

**C. Household Information**

Member	Names - All Household Members	Relationship	Age
1			
2			
3			
4			
5			
6			

**D. Assets:** All household members including minors

Member	Asset Description	Cash Value	Income from Assets
1			
2			
3			
4			
5			
6			
Total Cash Value of Assets		D(a) \$	
Total Income from Assets		D(b)	\$
If line D(a) is greater than \$5,000, multiply that amount by the rate specified by HUD (applicable rate <u>2.0 %</u> ) and enter results in D(c), otherwise leave blank.		D(c)	\$

E. **Anticipated Annual Income:** Includes unearned income and support paid on behalf of minors.

Member	Wages / Salaries (include tips, commission, bonuses and overtime)	Benefits / Pensions	Public Assistance	Other Income	Asset Income
1					(Enter the Greater of box D(b) or box D(c), above, in box E(e) below)
2					
3					
4					
5					
6					
	(a)	(b)	(c)	(d)	(e)
Totals	\$	\$	\$	\$	\$

Enter total of items E(a) through E(e). This amount is the <b>Annual Anticipated Household Income</b>	\$
--	----

- F. **Recipient Statement:** The information on this form is to be used to determine maximum income for eligibility. I/we have provided, for each person set forth in Item C, acceptable verification of current and anticipated annual income. I/we certify that the statements are true and complete to the best of my/our knowledge and belief and are given under penalty of perjury. **WARNING:** Florida Statute 817 provides that willful false statements or misrepresentation concerning income and assets or liabilities relating to financial condition is a misdemeanor of the first degree and is punishable by fines and imprisonment provided under S 775.082 or 775.83.

\_\_\_\_\_  
Signature of Head of Household

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Spouse or Co-Head of Household

Date \_\_\_\_\_

G. **Household Data** (to be completed by Administrator or designee)

Number of Persons									
By Race / Ethnicity						By Age			
White	Black	Hispanic	Asian	American Indian	Other	0 - 25	26 - 40	41 - 61	62 +

Unit Information			Special Target / Special Needs (Check all that apply)				
Number of Residents	Tenant Rent	Number of Bedrooms	Farmworker	Developmentally Disabled	Homeless	Elderly	Other

NOTE: Information concerning the race or ethnicity of the occupants is being gathered for statistical use only. No occupant is required to give such information unless he or she desires to do so, and refusal to give such information will not affect any right he or she has as an occupant.



## CERTIFICATION BY APPLICANT (S)

I/We, the applicant(s), certify that all information in this application and all information furnish in support of this application is true and complete to the best of my/our knowledge and belief. Should it be found that I/we willfully falsified any information upon which eligibility was determined, I/we will be considered in breach and I/we shall be required to return any sums expended by the City of my/our behalf, including any legal fees incurred during the verification process and administrative costs.

### If Seeking Homebuyers Assistance:

I/We certify that I am/we are a first time home buyer or that I have not owned a home in the last three years, or I am a displaced homemaker or a single parent qualifying under the program's definition of first time homebuyer.

I/We understand and agree that by receipt of assistance from the City of Orlando for downtown and closing costs for the purchase of a property, a lien will be placed against the property. At the end of the lien period, if I am/we are not in default, a Satisfaction of Lien for the cost of Downpayment assistance will be issued by the City.

### PENALTY FOR FALSE OF FRAUDULENT STATEMENT:

I/We certify that the information provided in this application is true and correct as of the date set forth opposite my/our signature(s) on this application and acknowledge my/our understanding that any intentional or negligent misrepresentation(s) of the information contained in this application may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, Section 101, et seq. and liability for monetary damages to the Lender, it agents, successors and assign, insurers and any other person who may suffer any loss due to reliance upon any misrepresentation which I/we have made on this application.

Applicant(s) expressly authorize you to make inquiries of others concerning the foregoing information. Including, but not limited to procuring consumer reports from consumer reporting agencies and to provide information arising out of applicant(s) transaction with you to others. Any person named herein is expressly authorized to furnish you with information in connection with his application.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant Signature

### APPROVAL OF APPLICATION

The undersigned have reviewed this application for assistance, including supporting data, and find it meets the requirements established by the City of Orlando for the housing assistance program.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Housing Financial Specialist

\_\_\_\_\_  
Date

\_\_\_\_\_  
HOME Administrator

## ASSET ADDENDUM TO APPLICATION

In order to properly qualify an applicant for residency, the following asset information for all occupants including minors must be obtained. This information will be used for qualification purposes only.

**Assets Include:**

Cash held in savings and/or checking accounts, trust funds, equity in real estate and other capital investments, stocks, bonds, Treasury bills, certificates of deposit, money market funds, IRA accounts, retirement and pension funds, lump sum receipts (i.e. lottery winnings, insurance settlements, etc.), and personal property held as an investment (i.e. gem or coin collections, painting antique cars, etc.)

(Do not include necessary personal property such as furniture, automobiles, and clothing.)

- A. I (we) hereby state that the combined value of my (our) assets \_\_\_\_\_does/ \_\_\_\_\_does not exceed \$7,500.

TOTAL VALUE OF ASSETS: \$

TOTAL ANNUAL INCOME EXPECTED  
TO BE DERIVED FROM ASSETS: \$ \_\_\_\_\_

- B. \_\_\_\_\_ I (we) do not have any assets at this time.

**WARNING:** Florida Statute 817 provides that willful false statements or misrepresentation concerning income and assets or liabilities relating to financial condition is a misdemeanor of the first degree and is punishable by fines and imprisonment provided under § 775.083 or 775.83.

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

---

*Name*
*Signature*
*Date*

## AUTHORIZATION TO RELEASE INFORMATION

### TO WHOM IT MAY CONCERN:

1. I/We have applied for Housing Assistance from the City of Orlando. The City as part of the application process may verify information contained in my/our application and in other documents required in connection with the assistance.
2. I/We authorize you to provide the City any and all information and documentation that they may request. Such information includes, but is not limited to, employment history and income; checking and savings, money market or similar account balances; and copies of income tax returns.
3. A copy of this authorization may be accepted as an original.

X _____ <i>Applicant's Signature</i>	_____ <b>Date of Birth</b>	<u>XXX-XX</u> <b>Last four digits of your Social Security #</b>
---	-------------------------------	--

X _____ <i>Co-Applicant's Signature</i>	_____ <b>Date of Birth</b>	<u>XXX-XX</u> <b>last four digits of your Social Security #</b>
--	-------------------------------	--

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Date**

## Consent to Advertise or Display Publicly

Your answer to the following question will not affect the decision as whether your application will be approved. If your application is accepted and Purchase assistance is provided, may the City of Orlando use photographs of your home in its advertising or other public displays regarding the Purchase Assistance program? Please place your initials next to either yes or no.

\_\_\_\_\_ Yes, the City may use photographs of my property for advertising and other displays related to the Purchase Assistance program.

\_\_\_\_\_ No, the City may not use photographs of my property for advertising and other displays related to the Purchase Assistance program.

\_\_\_\_\_  
*Applicant Signature*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*Co-Applicant Signature*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
**Date**

## HOUSEHOLD EXPENSE SUMMARY

**The information you provide will remain confidential, however, we reserve the right to use this information to determine program eligibility.**

Mortgage: \$ \_\_\_\_\_

Utilities: \$ \_\_\_\_\_

Food: \$ \_\_\_\_\_

Child Care: \$ \_\_\_\_\_

Car Payment(s): \$ \_\_\_\_\_

Public Transportation: \$ \_\_\_\_\_

Insurance: \$ \_\_\_\_\_

Telephone: \$ \_\_\_\_\_

Cellular Phone/Pager: \$ \_\_\_\_\_

Credit Card(s) \$ \_\_\_\_\_

Loans: \$ \_\_\_\_\_

Medical: \$ \_\_\_\_\_

Cable/Satellite TV: \$ \_\_\_\_\_

Entertainment: \$ \_\_\_\_\_

Other: \_\_\_\_\_ \$ \_\_\_\_\_

**Total Monthly Expenses: \$ \_\_\_\_\_**

**Total Household Income: \$ \_\_\_\_\_**

**WARNING:** Florida Statute 817 provides that willful false statements or misrepresentation concerning income and assets or liabilities relating to financial condition is a misdemeanor of the first degree and is punishable by fines and imprisonment provided under S 775.083 or 775.83.

\_\_\_\_\_  
*Applicant Signature*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*Co-Applicant Signature*

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
*Address*

**EXHIBIT "N"**

**CERTIFICATION OF OTHER FINANCIAL ASSISTANCE\***

**PROJECT NAME: Butler's Preserve**

I, \_\_\_\_\_, Owner \_\_\_\_\_ or Owner's Representative \_\_\_\_\_  
hereby certify the following:

1. \_\_\_\_\_ The following assistance has been or is to be provided to the Project:

_____ (Amount)	_____ (Source)
-------------------	-------------------

_____ (Amount)	_____ (Source)
-------------------	-------------------

_____ (Amount)	_____ (Source)
-------------------	-------------------

**OR**

2. \_\_\_\_\_ No other assistance (governmental or non-governmental) has been provided at the time of application for HOME funding nor is any other financial assistance anticipated in the future.

I also certify that should other assistance be sought in the future, the City of Orlando will be notified within 15 days of application for other assistance.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\*Assistance includes any money, loan, grant, (including Community Development Block Grant), guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from any source, including governmental or non-governmental, including the federal, state or local government for use in, or in connection with, a specific housing project.

## **EXHIBIT “O”**

### **AFFIRMATIVE MARKETING PROCEDURES AND REQUIREMENTS**

In 1973 the City of Orlando and its City Council created a Human Relations Board under Chapter 57 of the Code of the City of Orlando, as amended, to undertake the following functions:

1. To foster mutual understanding and respect among all racial, religious and ethnic groups in the City of Orlando;
2. To encourage equality of treatment for, and prevent discrimination against, any racial, religious or ethnic group of its members;
3. To cooperate with governmental and nongovernmental agencies and organizations having like or kindred functions;
4. To make such investigations and studies in the field of human relations as in the judgment of the Board will aid in effectuating its general purposes;
5. To assist various groups and agencies of the community to cooperate in education campaigns devoted to the elimination of groups prejudices, racial tension, intolerance or discrimination;
6. To aid in permitting the City of Orlando to benefit from the fullest realization of its human resources; and
7. To accept grants and donations on behalf of the City from foundations and others for the purpose of carrying out the above listed functions, subject to the approval of the Mayor and City Council.

The Office of Human Relations (OHR) is responsible for the administration of Chapter 57, as amended, and has applied for designation as a “substantial equivalency” agency of the Department of Housing and Urban Development.

Affirmative marketing steps consist of good faith efforts and actions to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing. The Office of Human Relations will assist the Housing Department to undertake the following steps to ensure the affirmative marketing of HOME-assisted housing containing five or more units:

#### Provision of Fair Housing Information

The City of Orlando will disseminate fair housing information through its Office of Human Relations (OHR). In addition to being responsible for the enforcement of fair housing laws, the OHR will assist in the implementation of affirmative marketing techniques. Some of the activities the OHR will undertake related to the provision of fair housing information are: to conduct periodic workshops and seminars, to distribute information on available housing, housing programs for low and moderate income persons, sources for housing counseling and credit, etc. to neighborhood centers and to residents through homeowner and neighborhood associations. In addition, the OHR is in the process of instituting a fair housing reference library as a central source of information on fair housing in the community.

#### Compliance

Any program, office, organization or owner implementing or participating in HOME-assisted activities will undertake the following procedures in marketing units under the HOME program:

- Display Fair Housing posters in the respective offices
- Use the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners and tenants
- Include in any published information that the project provides fair housing opportunities.

In addition, program participants will be required to take one or more of the following minimum steps to ensure that applications are solicited from persons in the housing market areas who are not likely to apply for the housing without special outreach:

- Notice of the availability of the units will be provided to community groups such as neighborhood associations and other non-profit service organizations.
- Notice of the availability of units will be published in community newspapers.
- Notify the Metropolitan Orlando Urban League, the Coalition for the Homeless of Orlando, Inc., and/or the Central Florida Housing and Development Services, Inc. (HANDS) of any units available for rent.

#### Maintenance of Records

Each applicant must submit to the City of Orlando copies of advertisements, letters, or other documentation which evidences the outreach and fair housing efforts undertaken to market units.

The City of Orlando will monitor compliance with this requirement,



will maintain the records submitted and will assess the results of these efforts on a quarterly basis. When affirmative marketing requirements are not met, the City staff will provide technical assistance and counseling to remedy the problem. If a subsequent evaluation shows that affirmative marketing requirements are still not being met, the City will have the option of working closer with the recipient or of withholding funding until compliance is achieved, or as a last resort calling due any loans or assistance that may have been disbursed.

Exhibit "P"  
Daily Progress Report

[illegible]

**Contractor Signature & Title**

## **EXHIBIT “Q”**

### **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE FOR CONTRACTS SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, HABITAT and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. HABITAT shall take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such employment practices shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. HABITAT shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. HABITAT shall state in all job postings, solicitations, or advertisements for employees that it is an Equal Opportunity Employer. HABITAT shall also post that it is an Equal Opportunity Employer in a visible place in the office.

## **EXHIBIT "R"**

### **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. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower 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 prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability which would prevent them from complying with these requirements.
- C. HABITAT 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. HABITAT 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 HABITAT is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. HABITAT 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. 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 HOME Program Agreement or contract through 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 "S"**

**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 HABITAT 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 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.

**HABITAT FOR HUMANITY OF GREATER  
ORLANDO, INC., a Florida Non-Profit  
Corporation**

\_\_\_\_\_  
Signature & Title

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

## EXHIBIT "T"

### 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](http://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](http://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.

*(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 HABITAT FOR HUMANITY OF GREATER ORLANDO, INC. and is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT "U"

### Contract Work Hours and Safety Standards Act

The provisions of this paragraph are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (b)(1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under such contract of any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (b)(1) through (4) of this paragraph.

#### ***Health and Safety:***

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health



and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29, Part 1926 (formerly Part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act. **40 USC 3701 et seq.**
- (3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## EXHIBIT "V"

### Federal Labor Standards Provisions U.S. Department of Housing and Urban Development

Office of Labor Relations Previous editions are obsolete

Page 1 of 5 form HUD-4010 (06/2009) ref. Handbook 1344.1

#### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the

work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics

includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part [Previous editions are obsolete [Page 2 of 5 form HUD-4010 (06/2009) ref. Handbook 1344.1] of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid

(including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section I(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section I(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site

at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its

designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete; [Previous editions are obsolete Page 3 of 5 form **HUD-4010** (06/2009) ref. Handbook 1344.1]

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be

paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by Previous editions are obsolete [Page 4 of 5 form HUD-4010 (06/2009) ref. Handbook 1344.1] the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

## **5. Compliance with Copeland Act requirements.**

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the

purpose of influencing in any way the action of such Administration makes, utters or publishes any statement knowing the same to be false, shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards**

**Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages

required by the clause set forth in sub paragraph (1) of this paragraph. Previous editions are obsolete [Page 5 of 5 form HUD-4010 (06/2009) ref. Handbook 1344.1] **(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**ATTACHEMENT #1**

General Decision Number: FL160120 01/08/2016 FL120

Superseded General Decision Number: FL20150120

State: Florida

Construction Type: Residential

County: Orange County in Florida.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the solicitation was issued on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.15 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2016. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/08/2016

ENGI0673-009 05/01/2013

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Crawler Crane, Hydro		
Crane, Locomotive Crane,		
Tower Crane, Truck Crane....	\$ 23.50	9.05
Gantry Crane, Bridge Crane..	\$ 22.70	9.05
Oiler.....	\$ 19.52	9.05

-----  
\* IRON0808-003 02/01/2015

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 23.50	11.95

-----  
SUFL2009-116 06/08/2009

	Rates	Fringes
BRICKLAYER.....	\$ 20.00	0.00
CARPENTER, Excludes Form Work....	\$ 11.85	3.29
CEMENT MASON/CONCRETE FINISHER...	\$ 12.19	0.00

ELECTRICIAN.....	\$ 11.98	0.00
FENCE ERECTOR.....	\$ 13.50	1.06
FORM WORKER.....	\$ 14.00	0.54
INSULATOR: Batt and Blown.....	\$ 12.01	0.00
IRONWORKER, ORNAMENTAL.....	\$ 12.60	0.00
IRONWORKER, REINFORCING.....	\$ 16.88	0.00
LABORER: Common or General.....	\$ 9.50	0.00
LABORER: Mason Tender - Brick...	\$ 11.51	0.00
LABORER: Mason Tender - Cement/Concrete.....	\$ 10.46	0.00
LABORER: Pipelayer.....	\$ 11.79	0.00
LABORER: Roof Tearoff.....	\$ 9.00	0.00
LABORER: Landscape and Irrigation.....	\$ 9.15	0.00
OPERATOR: Asphalt Paver.....	\$ 12.07	0.00
OPERATOR: Backhoe Loader Combo.....	\$ 17.04	0.00
OPERATOR: Backhoe/Excavator.....	\$ 12.56	0.00
OPERATOR: Bulldozer.....	\$ 12.14	0.00
OPERATOR: Distributor.....	\$ 11.57	0.00
OPERATOR: Forklift.....	\$ 17.38	0.00
OPERATOR: Grader/Blade.....	\$ 15.50	0.00
OPERATOR: Loader.....	\$ 11.10	0.00
OPERATOR: Roller.....	\$ 11.02	0.00
OPERATOR: Screed.....	\$ 11.08	0.00
OPERATOR: Trackhoe.....	\$ 15.68	0.00
OPERATOR: Tractor.....	\$ 10.20	0.00
PAINTER: Brush, Roller and Spray.....	\$ 13.61	0.00
PLASTERER.....	\$ 13.59	0.00
PLUMBER.....	\$ 15.04	0.00
ROOFER, Includes Built Up, Modified Bitumen, and Shake & Shingle Roofs (Excludes Metal		



Roofs).....	\$ 13.33	0.00
ROOFER: Metal Roof.....	\$ 16.99	0.00
SHEET METAL WORKER, Includes HVAC Duct Installation (Excludes Metal Roof Installation).....	\$ 9.95	0.00
TRUCK DRIVER, Includes Dump Truck.....	\$ 10.22	0.00
TRUCK DRIVER: 4 Axle Truck.....	\$ 11.78	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 12.10	0.00

---

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

---

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

## Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

## Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

## WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal

---

process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

---

**Exhibit "W"**

**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 ("HUD") in awarding the Loan. If it is later determined that HABITAT knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the Housing Department and/or the HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. HABITAT will comply with the other provisions of the Act and with other applicable laws.

**CERTIFICATION**

1. HABITAT 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 HABITATS'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. HABITATS' 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 be engaged in the performance of the 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 under the Loan, 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 (5) calendar days after such conviction
  - E. Notify the City's Housing and Community Development Department and/or the HUD 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. HABITAT 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 Loan funds (including street address, city, county, state, zip code and total estimated number of employees). HABITAT further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Loan, it shall notify the City's Housing and Community Development Department and/or HUD 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 of Subgrantee:** Butler's Preserve

**Loan Program Name:** HOME Program/Entitlement Loan

**Grant:** \_\_\_\_\_

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

The borrower shall insert in the space provided below the site(s) expected to be used for the performance of work under the Loan covered by the certification:

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

Orlando, FL

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

**ATTEST:**

**HABITAT FOR HUMANITY OF  
GREATER ORLANDO, INC.**

\_\_\_\_\_  
Date

## EXHIBIT "X"

### ELECTRONIC CODE OF FEDERAL REGULATIONS

Title 24 → Subtitle A → Part 5 → Subpart A → §5.109

Title 24: Housing and Urban Development  
PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS  
Subpart A—Generally Applicable Definitions and Requirements; Waivers

---

#### **§5.109 Equal participation of faith-based organizations in HUD programs and activities.**

(a) *Purpose.* Consistent with Executive Order 13279 (issued on December 12, 2002; 67 FR 77141), entitled "Equal Protection of the Laws for Faith-Based and Community Organizations," as amended by Executive Order 13559 (issued on November 17, 2010; 75 FR 71319), entitled "Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations," this section describes requirements for ensuring the equal participation of faith-based organizations in HUD programs and activities. These requirements apply to all HUD programs and activities, including all of HUD's Native American Programs, except as may be otherwise noted in the respective program regulations in title 24 of the Code of Federal Regulations (CFR), or unless inconsistent with certain HUD program authorizing statutes.

(b) *Definitions.* The following definitions apply to this section:

*Direct Federal financial assistance* means Federal financial assistance provided when a Federal Government agency or an intermediary, as defined in this section, selects the provider and either purchases services from that provider (*i.e.*, via a contract) or awards funds to that provider to carry out an activity (*e.g.*, via grant, sub-grant, sub-award, or cooperative agreement). The recipients of sub-grants or sub-awards that receive Federal financial assistance through State-administered programs (*e.g.*, flow-through programs) are considered recipients of direct Federal financial assistance. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of indirect Federal financial assistance.

*Federal financial assistance* means assistance that non-Federal entities receive or administer in the forms of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

*Indirect Federal financial assistance* means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion; the organization receives the assistance as a result of a decision of the beneficiary, not a decision of the Government; and the beneficiary has at least one adequate secular option for the use of the voucher, certificate, or other similar means of Government-funded payment.

*Intermediary* means an entity, including a nongovernmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that accepts Federal financial assistance and distributes that assistance to other entities that, in turn, carry out activities under HUD programs.

(c) *Equal participation of faith-based organizations in HUD programs and activities.* Faith-based organizations are eligible, on the same basis as any other organization, to participate in HUD programs and activities. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character or affiliation, or lack thereof. In addition, decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not based on the religious character or affiliation, or lack thereof, of an organization.

(d) *Separation of explicitly religious activities from direct Federal financial assistance.*

(1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal

1/3

financial assistance retains its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance that it receives (e.g., via contract, grant, sub-grant, sub-award or cooperative agreement) to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law.

(2) A faith-based organization that receives direct Federal financial assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and 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.

(e) *Explicitly religious activities.* If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance.

(f) *Intermediary responsibilities to ensure equal participation of faith-based organizations in HUD programs.* If an intermediary—acting under a contract, grant, or other agreement with the Federal Government or with a State, tribal or local government that is administering a program supported by Federal financial assistance—is given the authority to select a nongovernmental organization to receive Federal financial assistance under a contract, grant, sub-grant, sub-award, or cooperative agreement, the intermediary must ensure that such organization complies with the requirements of this section. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

(g) *Beneficiary protections.* Faith-based organizations that carry out programs or activities with direct Federal financial assistance from HUD must give written notice to beneficiaries and prospective beneficiaries of the programs or activities describing certain protections available to them, as provided in this subsection. In addition, if a beneficiary or prospective beneficiary objects to the religious character of the organization carrying out the programs or activities, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no such objection.

(1) *Written notice.* The written notice must state that:

(i) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(iv) If a beneficiary objects to the religious character of the organization, the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no such objection; and

(v) Beneficiaries or prospective beneficiaries may report an organization's violation of these protections, including any denial of services or benefits by an organization, by contacting or filing a written complaint to HUD or the intermediary, if applicable.

(2) *Timing of notice.* The written notice must be given to prospective beneficiaries before they enroll in any HUD program or activity. When the nature of the program or activity or exigent circumstances make it impracticable to provide the written notice in advance, the organization must provide written notice to beneficiaries of their protections at the earliest available opportunity.

(3) *Referral requirements.* (i) If a beneficiary or prospective beneficiary of a program or activity that receives direct Federal financial assistance from HUD objects to the religious character of an organization that carries out the program or activity, that organization must promptly undertake reasonable efforts to identify and refer the beneficiary or prospective beneficiary to an alternative provider to which the beneficiary or prospective beneficiary has no such objection.

(ii) A referral may be made to another faith-based organization, if the beneficiary or prospective beneficiary has no objection to that provider based on the provider's religious character. But if the beneficiary or prospective beneficiary



requests a secular provider, and a secular provider is available, then a referral must be made to that provider.

(iii) Except for activities carried out by telephone, internet, or similar means, the referral must be to an alternative provider that is in reasonable geographic proximity to the organization making the referral and that carries out activities that are similar in substance and quality to those offered by the organization. The alternative provider also must have the capacity to accept additional beneficiaries.

(iv) If the organization determines that it is unable to identify an alternative provider, the organization shall promptly notify the intermediary or, if there is no intermediary, HUD. If HUD or an intermediary is notified that an organization is unable to identify an alternative provider, HUD or the intermediary, as appropriate, shall promptly determine whether there is any other suitable alternative provider to which the beneficiary or prospective beneficiary may be referred. An intermediary that receives a request for assistance in identifying an alternative provider may request assistance from HUD.

(4) *Recordkeeping.* A faith-based organization providing a referral under paragraph (g)(3) of this section must document a beneficiary or prospective beneficiary's request for a referral, whether the beneficiary or prospective beneficiary was referred to another provider, to which provider the beneficiary or prospective beneficiary was referred, and if the beneficiary or prospective beneficiary contacted the alternative provider, unless the beneficiary or prospective beneficiary requests no follow up.

(h) *Nondiscrimination requirements.* Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services or carrying out activities with such assistance, discriminate against a beneficiary or prospective beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, this section does not require any organization that only receives indirect Federal financial assistance to modify its program or activities to accommodate a beneficiary that selects the organization to receive indirect aid.

(i) *Exemption from Title VII employment discrimination requirements.* A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(j) *Acquisition, construction, and rehabilitation of structures.* Direct Federal financial assistance 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 a HUD program or activity. Where a structure is used for both eligible and explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), direct Federal financial assistance may not exceed the cost of the share of acquisition, construction, or rehabilitation attributable to eligible activities in accordance with the cost accounting requirements applicable to the HUD program or activity. However, acquisition, construction, or rehabilitation of sanctuaries, chapels, or other rooms that a HUD-funded faith-based organization uses as its principal place of worship, may not be paid with direct Federal financial assistance. Disposition of real property by a faith-based organization after its use for an authorized purpose, or any change in use of the property from an authorized purpose, is subject to Government-wide regulations governing real property disposition (2 CFR part 200, subpart D) and the HUD program regulations, as directed by HUD.

(k) *Commingling of Federal and State, tribal, and local funds.* If a State, tribal, or local government voluntarily contributes its own funds to supplement direct Federal financial assistance for an activity, the State, tribal or local government has the option to segregate those funds or commingle them with the direct Federal financial assistance. However, if the funds are commingled, the requirements of this section apply to all of the commingled funds. Further, if a State, tribal, or local government is required to contribute matching funds to supplement direct Federal financial assistance for an activity, the matching funds are considered commingled with the direct Federal financial assistance and, therefore, subject to the requirements of this section. Some HUD programs' requirements govern any activity assisted under those programs. Accordingly, recipients should consult with the appropriate HUD program office to determine the scope of applicable requirements.

[69 FR 41717, July 9, 2004, as amended at 80 FR 75934, Dec. 7, 2015; 81 FR 19416, Apr. 4, 2016]