

DEVELOPER AGREEMENT  
BETWEEN  
Virgin Islands Housing Finance Authority  
AND  
Jackson Development Company  
FOR THE  
Resilient Multifamily Housing Program

THIS DEVELOPER AGREEMENT (“Agreement”), is entered this 19<sup>th</sup> day of December, 2024 by and between the Virgin Islands Housing Finance Authority (herein called “Grantee”) Jackson Development Company (herein called “Developer”)

WHEREAS, the Grantee has applied for and has been awarded funds from the United States Department of Housing and Urban Development (HUD) for a Resilient Multifamily Housing Program, which is referred to herein as “RMHP”; and

WHEREAS, the Grantee wishes to engage the Developer to assist the Grantee in using a portion of the RMHP allocation in accordance with applicable notices, regulations and guidance from HUD;

NOW, THEREFORE, it is agreed between the parties hereto that;

**I. Program Description**

The primary objective of the Real Property Acquisition and Homeownership Conversion Program, as stipulated in this agreement, is to facilitate the acquisition, rehabilitation, development, and sale of affordable housing. The Jackson Development Company’s proposed Affordable Homeownership Program is specifically designed to transform rental units into affordable homes for low- to moderate-income (LMI) households. This initiative places particular emphasis on the rehabilitation of existing properties and the provision of financial assistance to prospective homebuyers.

The program seeks to acquire and convert multifamily rental housing into affordable homeownership options, thereby addressing the pressing need for affordable homeownership within the community. By advancing this transformation, the program aims to promote community development, enhance housing affordability, and increase homeownership rates among LMI families. Furthermore, it underscores the importance of implementing proactive measures to mitigate risks associated with natural disasters, ensuring that the housing provided is both affordable and resilient.

Adherence to the regulations set forth by the Community Development Block Grant (CDBG) is of paramount importance for the effective execution of these initiatives. Compliance with these guidelines will ensure that the proposed strategies contribute significantly to community

improvement and sustainable development. For comprehensive details and specific requirements pertaining to the program, it is advisable to consult the Action Plan.

### **Project Commitments**

The Projects, as detailed in the Applications and further delineated in the attached Exhibit A, entitled “Sources & Uses and Operating Pro Forma,” will entail the acquisition, renovation, interim operation, conversion to a condominium regime, and subsequent sale of affordable condominium homes (collectively referred to as “Homes”). The awarded funds will be allocated to acquire the Lovenlund Apartments – Phase 1 (99 units), Bellevue Village (72 units), and Calabash Boom Apartments (48 units), each of which has previously benefited from assistance under the Low-Income Housing Tax Credit (LIHTC) program. These properties will undergo renovations that include property enhancements aimed at risk mitigation, reducing damage to and loss of property and resilience against future disasters.

Upon completion of the renovations, the Developer will offer condominium units within each Project for sale to the current residents. For those residents who choose not to purchase or who are unable to buy a unit, the option to remain as a renter at the established LIHTC rent will be made available. The sales price for each unit will be determined based on its pro rata share of total development costs and will be set significantly below fair market value to ensure affordability in accordance with the corresponding federal regulations and program guidelines.

To maintain affordability for low- and moderate-income households, the Developers shall implement the following measures: (a) offer take-back financing, referred to as “Financial Assistance Loans,” to qualifying low- and moderate-income purchasers; and (b) subject each unit to resale and recapture provisions, collectively termed the “Affordability Preservation Program.” Details of this program will be articulated in an Affordable Homeownership Program Manual (the “Program Manual”), which will be operational only upon approval from the Grantee. An initial draft of the Program Manual is attached hereto as Exhibit B. Should the final Program Manual differ in any respect from the Affordability Preservation Program as defined in this Developer Agreement or in any associated Loan Document, the approved Manual shall supersede and amend the terms of this Developer Agreement and any such Loan Document, regardless of whether a formal written amendment is executed by the parties.

Additionally, the Developer commits to adhering to the special conditions outlined within this document. This commitment reinforces the Developer's obligation to meet the specific criteria and conditions stipulated herein to ensure the successful implementation and compliance of the Projects. This Developer Agreement is contingent upon the Developer's adherence to specific ongoing commitments related to the Projects, which are outlined in the Application and documented in the CDBG-MIT Regulatory Agreements. These commitments pertain to any portion of the Projects designated for rental use and will remain in effect for as long as such rental activities are maintained. Throughout the duration of the applicable CDBG-MIT Regulatory Agreement, the Owner shall comply and ensure that any rental portion of the Project adheres to the following commitments, which shall be regarded as covenants running with the land (or, if applicable, with the leasehold interest in the event that the Owner's interest is as a lessee under a long-term lease) in accordance with the laws of the Territory. The Project shall be leased exclusively to tenant households whose adjusted incomes do not exceed 60% of the area median income at the time of initial occupancy, with rents not exceeding those stipulated under the LIHTC program. It is important for the Developer to note that Area Median Incomes (AMIs) are published annually, thereby necessitating annual adjustments to the maximum allowable rents in accordance with the newly published AMIs.

Furthermore, this Agreement is premised upon the execution by the parties of an Amendment to the existing Extended Low Income Housing Commitment Agreement (as amended, the "LIHTC Agreement") for each Project. This Amendment will preserve affordability of each Project until its condominium conversion. Additionally, site control of the properties is necessary to ensure the Developer's capacity to undertake the Projects effectively. Without established site control, the Developer cannot guarantee the completion of the planned renovations or subsequent sale of the condominium units.

## **II. SCOPE OF SERVICE**

Developer will be responsible for carrying out RMHP activities in a manner satisfactory to the Grantee and consistent with all standards required as a condition of providing these funds. Program activities will include the following uses and corresponding activities eligible under RMHP:

### **A. Developer Responsibilities**

1. Developer will carry out this program in accordance with (a) the policies, procedures and other provisions of the Resilient Multifamily Housing Program Policy provided to Developer by Grantee, and incorporated herein by reference; (b) the Project-Specific Award Agreement for the Projects; and (c) the CDBG-MIT Loan Agreement, the CDBG-MIT Mortgage, the CDBG-MIT Note, and the CDBG-MIT Regulatory Agreement (items (b) and (c) collectively, the "Loan Documents") for each Project. In the event of any conflict, the Loan Documents shall govern, followed by the Project-Specific Award Agreement. Developer hereby agrees to accept and follow any written amendments to the Program Manual by Grantee that are made as a direct result of additional guidance or regulations provided by HUD and the Grantee as well as any written amendments that are mutually agreed upon by Grantee and Developer.

2. Developer is responsible for providing the deliverables that are described in Exhibit A, “Sources & Uses and Operating Pro Forma,” as well as the Loan Documents, within the time periods and for the approximate average budget amounts described therein. The total use of RMHP funds provided under this Agreement may not exceed the total amount of RMHP funds indicated in Section II(A) below.
3. Developer’s expenditures for program delivery will be limited as follows, unless changes to the limits are agreed to in writing by the Grantee and Developer for a particular property:
  - a. Minimum number of housing units to be acquired, developed and operated under the Mortgage purchase program: 219 Units
    - i. Lovelund Apartments – Phase 1 (99 units)
    - ii. Bellevue Village (72 units)
    - iii. Calabash Boom Apartments (48 units)  
(each a “Project” and collectively the “Projects”).
  - b. Eligible properties: Developer shall acquire only the Projects, which Developer certifies are (a) in designated RMHP target areas that are eligible under RMHP for rehabilitation or redevelopment as affordable residential properties and (b) as defined in the RMHP program guidelines.
  - c. Prior approval of acquisitions by Grantee: Grantee hereby approves the purchase agreement for each Project. Developer has provided Grantee with a property description; preliminary plans and specifications for rehabilitation or construction work; a preliminary development cost; an estimate of sale price; and an estimate of net sales proceeds including line-item estimates of sales and marketing costs, closing costs and financing to be provided to the buyer. The preliminary cost estimate is as shown in Exhibit A hereto. Grantee has based its approval upon an assessment of RMHP compliance, financial feasibility, conformity to expenditure limits described herein, and the potential marketability of the property, as well as its verification that the Projects are located in RMHP target areas as described herein.
  - d. Maximum RMHP expenditure per dwelling unit: Developer may spend no more than \$350,000 on any single dwelling unit, unless the Grantee gives written approval for an additional amount due to the strategic value of a property for the RMHP program.
  - e. Average RMHP expenditure per dwelling unit: The average RMHP expenditure per dwelling unit may not exceed \$300,000.
  - f. Developer fee allowed per dwelling unit: The allowed developer fee may not exceed 10% of the approved RMHP budget disregarding such fee. Of this amount, no more than 33.33% will be payable upon acquisition of an RMHP qualified property, no more than 33.33% will be payable upon final completion of

rehabilitation/construction work of a Project, and no more than 33.33% shall be payable at Project Completion, defined as the date on which each unit is sold or is under lease to a holdover tenant choosing not to purchase. The Developer may earn no other fee or profit from sale of an RMHP-assisted dwelling unit, other than the general contractor fee, and sales fee, described below.

- g. General contractor fee allowed: If Developer is acting as general contractor and thus hiring and managing subcontractors, Developer may charge an additional fee in the form of up to 14% mark-up of subcontractor costs. Developer's reimbursement requests for construction costs may include a 14% mark-up of costs approved by VIHFA, documented costs of subcontractors who have performed construction work. However, such mark-up may not be applied to non-construction costs such as taxes, insurance, security, general requirement, or working capital costs. No such fees will be paid to Developer for any RMHP property that is rehabilitated or built by a third-party general contractor. All general contractors performing work on RMHP-assisted projects must be properly licensed.
- h. Allowed sales fee or commission and marketing costs: Developer may pay no more than 6% of the sale price as a commission to a licensed third-party real estate broker or may earn an additional fee in the same amount if Developer sells the home without a broker's assistance. Additionally, Developer may expend up to \$1000 per home in RMHP funds for marketing costs such as advertisements and flyers. If marketing is funded for multiple RMHP homes, the costs of such marketing must be allocated to each home.
- i. Allowed amount of RMHP mortgage assistance per subsequent buyer: The allowed amount of RMHP mortgage assistance per Buyer will be a sliding scale amount based on buyer income, as set forth in the VIHFA approved Program Manual, but not to exceed \$275,000 minus any amount approved as cash down payment assistance.
- j. Maximum amount of RMHP cash down payment assistance per buyer and minimum cash contribution by buyer: In addition to the based amount of mortgage assistance described above, Developer may advance up to \$15,000, or half of the required down payment amount, whichever is less, to each RMHP-qualified buyer. RMHP cash down payment assistance is defined as RMHP funding provided to the homebuyer by Developer for down payment and/or closing costs. Notwithstanding the foregoing, each buyer of an RMHP home will provide, in buyer's own cash toward the combined down payment and closing costs, a minimum amount specified in the Program Manual based on buyer's income and any other relevant characteristics. Developer may honor a previous owner's down payment credit program which anticipated homeownership conversion and would have applied approximately 5% of a tenant's on-time rent paid as a down payment credit. Such a credit will be considered buyer's own cash.

- k. Other limits on expenditures: Other acquisition, rehabilitation/construction and soft costs described in Exhibit A are not subject to per-home cost limits on a line-item basis, but must be reasonable and ordinary costs of development and, in the aggregate, must conform to the per-home cost limits and average costs described elsewhere in this Section I(A)(4).
- l. Accounting for expenditures: Developer will account for total RMHP expenditures per home by means of assigning an accounting code for RMHP-funded or reimbursed expenses for each property and another accounting code, if applicable, for non-RMHP funded expenditures (if any). At the time of the sale of an RMHP-assisted home, Developer will provide Grantee with a complete accounting of RMHP expenditures for that home and non-RMHP expenditures, if any. The separate accounting of RMHP and other funds used is required for establishing the maximum allowed sale price and will provide necessary financial data on RMHP-funded expenditures in the event of a HUD audit of program activities.
- m. Mortgage Payment Terms and Maximum sale price: Mortgage payment terms will be set in accordance with the Program Manual. The sale price may not exceed the after-construction market value of the home or the total amount of RMHP and non-RMHP expenditures, whichever is less. The market value of a home and when sale price is set will be determined in accordance with clear and explicit provisions in the Program Manual.
- n. Mortgage period: the initial rental period shall be set according to the Program Manual as well as maximum renewal period(s).
- o. If the current resident fails to purchase: Each current resident will be offered the exclusive right to purchase their unit, subject to mortgage and program qualification requirements. If the resident is unable to qualify, or doesn't wish to purchase their unit, they may continue to occupy their unit as a tenant at rents that do not exceed the allowable LIHTC rent for the remaining term of the LIHTC Extended Use Agreement recorded against the property. If a current resident does not qualify for a mortgage or opts out of purchasing their unit within 12 months of the initial offering, with a certification obtained from the current resident, the unit will be retained by the Owner, subject to the existing lease and LIHTC restrictions currently in place under the Extended Use Agreement, as amended.
- p. Repayment of net proceeds of sale to nonprofit housing fund: Upon sale of an RMHP-funded home, Developer will return the net proceeds of sale to the Grantee. Net proceeds of sale are defined as follows:

- i. The sale price of the home;

ii. (Minus) the amount of any mortgage assistance and down payment assistance provided to buyer, as defined herein and described on the settlement statement;

iii. (Minus) Developer costs of sale as documented by the settlement statement, including but not limited to real estate broker fees and seller-paid closing costs;

iv. (Plus) Any reimbursements to Developer of costs previously paid or reimbursed with RMHP funds, such as pro-rated taxes and assessments.

- q. RMHP-assisted homes must be sold and subsequently re-sold only to income-qualified households in the categories described in the Program Manual in at least the minimum numbers of households described.
- r. Pursuant to the Amendment to the LIHTC Agreement to be executed no later than closing on each Project, any remaining rental units in each Project will remain subject to LIHTC restrictions through December 31, 2066. Each unit will be released from the LIHTC Agreement upon sale.
- s. The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee.
- t. The Developer, hereby unconditionally guarantees the performance of all obligations and duties under this Agreement, this includes, but is not limited to, ensuring compliance with all applicable Community Development Block Grant-Mitigation (CDBG-MIT) program requirements as outlined in FR-6109-N-02, FR-6109-N-03, FR-6109-N-04 and FR / Vol. 85, No. 17

**4. The deliverables and compliance period for the project are as indicated below:**

Lovenlund Phase 1 Apartments					
Key Activity	Performance Goal	Key Performance Indicators	Source Verification	Estimated Start	Estimated Completion
Complete Exterior Rehabilitation of Units 99/ 10 Buildings	10 Buildings (including the community center) in Active Construction by December 2025	4 buildings in construction by 4/1/2025; 4 buildings in construction by 7/1/2025; 2 buildings in construction by 11/1/2025	Monthly Status Reports, Site Inspection Reports	3/1/2025	12/31/2025
	Completion of 10 buildings	4 buildings completed by 3rd	Monthly Status Reports,	1/1/2025	7/31/2025

	by August 31, 2026	quarter (August 2025)	Inspection Reports		
		4 buildings completed by end of 1st quarter (February 2026)		8/1/2025	2/28/2026
		2 buildings completed by end of 3rd quarter (June 2026)		2/1/2026	6/30/2026
	Completion of Roof Retrofitting by 4 <sup>th</sup> Qtr. 2025	Roof Retrofitting 50% complete by 6/1/2025; final 50% complete by 11/30/2025	Monthly Status Reports, Inspection Reports	1/1/2025; 6/1/2025	6/1/2025; 11/30/2025
	Renovation of Wastewater Treatments and reverse Osmosis upgrade by Jan 2026	25% quarterly completion	Monthly Status Reports	1/1/2025	1/1/2026
Generators	Installation of Generators	100% Generators installed	Monthly Status Reports	1/1/2025	12/31/2025
Homeownership Conversion	Offer Homeownership opportunity to current tenant and the LMI community	Start by June 2025	Monthly Status Reports; Sale Reports	6/2025	
<b>Calabash and Bellevue Apartments</b>					
Key Activity	Performance Goal	Key Performance Indicators	Source Verification	Estimated Start	Estimated Completion
Complete Exterior Rehabilitation of Units 8 Buildings- Calabash Boom and 36 Duplex Buildings- Bellevue	Calabash Boom- 8 Buildings (including the community center) in Active Construction by December 30, 2025	3 buildings in construction by 4/1/2025; 3 buildings in construction by 7/1/2025; 2 buildings in construction by 11/1/2025	Monthly Status Reports, Site Inspection Reports	1/1/2025	12/31/2025
	Bellevue- 36 Duplex Buildings in Active Construction by March 1, 2025	12 duplex buildings in construction by 4/1/2025; 12 duplex buildings in construction by 7/1/2025; 12 duplex buildings in	Monthly Status Reports, Site Inspection Reports	1/1/2025	12/31/2025

		construction by 11/1/2025			
	Calabash Completion of 8 buildings by August 31, 2026	3 buildings completed by 3rd quarter (August 2025)	Monthly Status Reports, Inspection Reports	1/1/2025	7/31/2025
		3 buildings completed by end of 1st quarter (February 2026)		8/1/2025	2/28/2026
		2 buildings completed by end of 3rd quarter (June 2026)		2/1/2026	8/30/2026
	Bellevue Completion of 36 buildings by November 30, 2026	12 buildings completed by end of 2 <sup>nd</sup> qtr 2026; 12 buildings completed by end of 1 <sup>st</sup> qtr 2026; 12 buildings completed by end of 3 <sup>rd</sup> qtr 2026	Monthly Status Reports, Inspection Reports	1/2025; 7/1/2025; 2/1/2026	6/30/2025; 3/1/2026; 8/30/2026
	Completion of Roof Retrofitting by end 4 <sup>th</sup> Qtr. 2025	Roof Retrofitting 50% complete by 6/1/2025; final 50% complete by 11/30/2025	Monthly Status Reports, Inspection Reports	1/1/2025; 6/1/2025	6/1/2025; 11/30/2025
	Renovation of Wastewater Treatments and reverse Osmosis upgrade by Jan 2026	25% quarterly completion	Monthly Status Reports	1/1/2025	1/1/2026
	Installation of Generators by 12/2025	100% installed by 2025	Monthly Report	1/2025	12/2025
Homeownership Conversion	Offer Homeownership opportunity to current tenant and the LMI community	Start by June 2025	Monthly Status Reports; Sale Reports	6/2025	

## B. Grantee Responsibilities

Grantee is responsible for the following tasks and deliverables.

1. Completing Tier 1 environmental assessments and providing Tier 1 clearances for all RMHP target areas, as well as completing and approving site-specific environmental reviews.
1. Monitoring pre-purchase counseling and homebuyer education to prospective homebuyers in Developer's home sales program as described in the program manual.
2. Managing all draws of RMHP funds from HUD and paying valid and properly documented draw requests from Developer.
3. Reporting to HUD via the Disaster Reporting Government Reporting (DRGR) system, using, in part, data provided by Developer.
4. Monitoring all program activities of Developer to assure compliance with the terms of this Agreement, including all RMHP requirements.
5. Processing requests for disbursements of RMHP funds, including necessary construction in a timely manner; Grantee will clearly and promptly describe any deficiencies identified by Grantee that prevent a disbursement or portion of a disbursement from being approved. Upon the request of Developer, Grantee must promptly itemize and describe such deficiencies in writing.
6. Ensuring that information required by the Recovery Act is reported in the Disaster Recovery Grant Reporting (DRGR) system or on [www.FederalReporting.gov](http://www.FederalReporting.gov) in a timely manner. Grantee must comply with the RMHP performance reporting requirements and with any additional reporting requirements announced by HUD at any time during the duration of this agreement.

### **C. Acquisition/Renovation Loans:**

**Principal Amount:** The principal amount of the Bellevue / Calabash Boom Loan for the acquisition/renovation period of the Bellevue / Calabash Boom Project is Twenty-Seven Million Seven Hundred Ninety-Eight Thousand Nine Hundred Eighty-Seven and No/100 Dollars (\$27,798,987.00), bearing interest at the rate of zero percent (0%) unless in the event of default. The principal amount of the Lovenlund – Phase 1 Loan for the acquisition/renovation period of the Lovenlund – Phase 1 Project is Twenty Million Five Hundred Seventy-One Thousand Fifty-Four and 00/100 Dollars (\$20,571,054.00), bearing interest at the rate of zero percent (0%) unless in the event of default.

See the application and the Excel spreadsheet with Sources / Uses for added detail.

**Maturity:** Each Loan shall mature on the earliest to occur of: (i) acceleration following an Event of Default under the respective Loan Documents that is not cured within any applicable grace or cure period; or (ii) the “**Maturity Date**”, which shall

be 35 years from the Closing Date; provided, however, that the Maturity Date (x) shall be extended for any additional period for which an Developer agrees in its sole discretion to extend the term of its CDBG-MIT Regulatory Agreement described below.

**Security:**

Each Loan shall be evidenced by a Promissory Note and secured by a Mortgage, Assignment of Leases and Rents, and Security Agreement (“**Mortgage**”), which Mortgage shall (i) constitute a lien upon the applicable Project and a security interest in all fixtures and personal property relating to or located in such Project, and (ii) secure all obligations to Grantee under the Loan Documents; and UCC-Financing Statements covering the fixtures and personal property located at the Project; each of which is to be executed and delivered by Developer at Closing. The Mortgage shall constitute a first-priority lien on the Project.

Each Home will be released from the Mortgage at the time of sale (a “**Unit Sale**”), at which time Developer will provide to Grantee, as substitute security:

A security interest in sales proceeds and other funds that are retained by Developer in the Restricted Asset Account as detailed below; and a collateral assignment of any Financial Assistance Loan and the proceeds thereof.

**Debt Service:** Principal and interest shall be paid in annual installments due January 1 of each year following the Initial Sale Period (as defined below) in an amount equal to (x) all funds in the Restricted Asset Account (as defined below) in excess of (y) \$500,000 or such other amount as shall be specified in the approved Program Manual or otherwise approved in writing by Grantee, which amount the parties intend shall be sufficient for the liquidity and operation of the Restricted Asset Account.

**Restricted Asset Account**

- a) Owner shall establish a deposit account, to be called the “**Restricted Asset Account**”, to be operated in strict accordance with this Developer Agreement or as further or otherwise provided in the Program Manual approved by Grantee.
- b) Owner shall deposit into the Restricted Asset Account:
- c) All Net Cash Flow of the Project. “Net Cash Flow” means net income from rental operations after payment of all operating expenses.
- d) All Unit Sale Proceeds, as defined below;
- e) All Financial Assistance Loan repayments, as defined below;
- f) Any Excess Proceeds as defined in the Declaration of Affordability Covenants and recovered pursuant thereto; and
- g) Any other income that it receives in the course of operating the program.

- h) Funds in the Restricted Asset Account will be used to perform CDBG-MIT eligible activities, and no further draws on the Loan may be made while funds are available in the Restricted Asset Account.
- i) Annually, some or all of the balance of the Restricted Asset Account will be paid over to Grantee as Debt Service, as provided above.

**Unit Sales:**

No later than the completion of renovations for a Project, Developer will offer to each tenant in good standing the right of first refusal (“**ROFR**”) to buy their unit at a price substantially equal to its *pro rata* share of total acquisition, renovations and development costs (the “**Discounted Unit Price**”).

“**Initial Sale Period**” shall mean the period of time beginning with the date an Developer first offers the ROFR to Project tenants and expiring on the date the last Project tenant either (1) closes on the purchase of their unit (a “**Unit Sale**”), if they have elected to exercise their right of first refusal, or (2) waives or is deemed to have waived their right to exercise their right of first refusal.

When a Home is sold (a “**Unit Sale**”), each homebuyer will pay a downpayment and the proceeds of a first-mortgage commercial loan for which they qualify (the “**Unit Sales Proceeds**”). The Developer will provide to each eligible homebuyer (buyers under 120% of AMI), in the form of a seller take-back loan, Homebuyer Financial Assistance as more particularly described in the Affordable Homeownership Program Manual (the “**Financial Assistance Loan**”). Developer will deposit all Unit Sale Proceeds to the Restricted Asset Account.

At the time of each Unit Sale, the Mortgage, Regulatory Agreement, and Existing ELIHC (as defined below) will be partially released with respect to each Home, and a substitute restrictive covenant secured by a mortgage instrument (the “**Declaration of Affordability Covenants**”) will be recorded with resale and recapture provisions as approved in the Program Manual. The Declaration of Affordability Covenants shall generally limit resale price increases to the rate of inflation over time, thus preserving the initial discount in sales price from fair market value.

**D. General Loan Conditions**

**APPLICABLE:**

**NOT APPLICABLE**

(check one)

**(ii) Funding during acquisition/construction:**

On the Closing Date, Grantee will fund \$15,221,195, with respect to the Lovenlund 1 Project, and \$19,933,438, with respect to the Bellevue / Calabash Boom Project, or such greater amount as may be approved by Grantee, to cover acquisition costs or other costs of each Project approved by Grantee in its reasonable discretion (the “**Acquisition Portion**”).

Grantee will fund up to 90% of the balance of the Loan remaining after disbursement of the Acquisition Portion (such balance, the “**Renovation Portion**”) during the progress of construction of the Project, on terms and conditions acceptable to Grantee in its sole and uncontrolled discretion, which conditions shall include without limitation, review and approval of draw requests and payment and reimbursement of additional costs, fees and expenses of Grantee. The terms and conditions regarding Grantee’s funding during construction of the Project shall be negotiated between Developer , Grantee, and Developer ’s other construction period finance providers (if any) prior to closing the Loan.

The remaining 10% of the Renovation Portion of the Loan (the “**Retainage**”) shall be released *pro rata* upon the completion of each Building in the Project, and upon compliance with the other conditions to funding set forth in the Loan Agreement. Completion of any Building will be established by Developer ’s receipt of a certificate of occupancy for such Building; provided, however, that in the event no certificate of occupancy is available under local practice for a renovation project such as the Project, then completion will be established by a certification from the project architect that the Building has been substantially completed in accordance with approved plans and specifications, but for punch list items not affecting the suitability of the Building for occupancy and for which at least 150% of the expected cost has been reserved.

Disbursement of the Renovation Portion of the Loan shall be equal to Grantee’s *pari passu* share (100% unless there are other funding sources) of (a) costs actually incurred by Developer minus (b) contingency amounts or Retainage (“**Net Draw Amount**”).

Grantee's *pari passu* share of each Net Draw Amount will be based on Grantee's share of funds being advanced over the construction period to pay the sum of all Net Draw Amounts, which percentage shall be calculated by Grantee prior to the Closing Date using Developer 's monthly sources and uses statement. Grantee will fund its *pari passu* share of the Net Draw Amount at each draw during construction with the balance, if any, paid as provided below. Notwithstanding the foregoing, if the Closing Date is later than the first draw for the Project, the initial disbursement of the Loan shall be equal to Grantee's *pari passu* share of all Net Draw Amounts prior to and including the Closing Date.

Each lender providing construction financing shall execute an intercreditor agreement to document the understandings between the lenders as to *pari passu* funding of the Project.

(b) **Use of Proceeds:** Proceeds from the Loans are to be used solely to support the acquisition, development, restoration, replacement, rehabilitation, conversion to condominium, and/or rehabilitation of the Projects in accordance with the Applications and the terms and conditions of the Loan Documents. The Loans shall be used solely to pay when due, or to reimburse if already expended, actual costs of Eligible Expenses.

(c) **Non-Recourse Loan:** The Loans are non-recourse to the Developer ; provided however, the nonrecourse carveouts set forth in the Loan Documents are personal obligations of the Developer and shall be guaranteed by one or more Guarantor(s) acceptable to Grantee under the terms and conditions set forth in the Loan Documents. The obligations of each Guarantor(s) shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Mortgage. Grantee may pursue its remedies against any Guarantor(s) without first exhausting its remedies against the Developer or the Project.

(d) [Reserved]

(e) **Additional Project Debt:** Without the prior written consent of Grantee, no other indebtedness of the Developer or the Projects may have a lien priority senior to that of the Loan.

(f) **Cost Certification.** Developer acknowledges and agrees that the principal amount of the Loans set forth in this Developer Agreement was calculated based upon estimated costs for the development, restoration, rehabilitation, and construction of the Projects provided by the Developer . Developer agrees to provide Grantee with a cost certification audit acceptable to Grantee (the “**Cost Certification Audit**”) prepared by an independent third-party consulting or accounting firm (“**Audit Firm**”) acceptable to Grantee, certifying the costs incurred and paid by Developer in the development, restoration, replacement, rehabilitation, and construction of the Projects, and including such other information as Grantee may require. Developer agrees to cooperate with Grantee and to provide any documentation deemed necessary to Grantee for a complete audit.

(g) **Reduction of Loans.** Notwithstanding anything to the contrary contained herein, Grantee may reduce the principal amounts of the Loans in the event the Cost Certification Audit or the final subsidy layering analysis of the Projects completed by Grantee discloses that the actual costs incurred by Developer in the development, restoration, replacement, rehabilitation, and/or construction of the Projects were materially less than the estimated costs for the development, restoration, replacements, rehabilitation, and/or construction of the Projects upon which the calculation of the principal amount of the Loans as set forth in the Developer Agreement were based. The principal amounts of the Loans may be reduced based on the actual Project costs incurred by Developer, the amount of any equity received in consideration of tax credits awarded to the Project, amount of any bond proceeds and the final amount, and the terms and conditions of any of the Developer ’s other financing. If the amount of Loan proceeds advanced to Developer , prior to completion of the Cost Certification Audit and final subsidy layering analysis, materially exceeds the principal amount of the Loan supported by the Cost Certification Audit and final subsidy layering analysis (“**Excess Proceeds**”), Grantee may reduce the amount of the final disbursement, and Developer shall pay Grantee the amount of any remaining Excess Proceeds in one lump sum payment within thirty (30) days of receiving written notice from Grantee that the Excess Proceeds are due and payable.

(h) **Due on Sale or Transfer Restrictions.**

(1) Subject to the terms of this subsection (h), and absent Grantee's written waiver, 100% of the amounts due under the Loan are due upon the sale or refinancing of the Project, including without limitation, payment of all principal and accrued and unpaid interest. Grantee may, in its sole discretion, accept less than 100% of the amounts then due, but said waiver will not constitute forgiveness of the amounts due under the Loan.

(2) During the term of the Loan, the Developer hereby covenants and agrees not to sell, transfer or otherwise dispose of the Project or any portion thereof without obtaining the prior written consent of Grantee, which consent shall be granted to any responsible transferee that agrees to be bound by the Regulatory Agreement. Notwithstanding the foregoing the following shall not require Grantee's Consent: (A) the pledge to a limited partner/member by a general partner/managing member of the general partner's/managing member's interest in a limited partnership/operating agreement as security for the performance of all of the general partner's/managing member's obligations under the limited partnership/operating agreement; (B) a sale, transfer, pledge, encumbrance or other disposition of investor limited partner/investor member interests in Developer ; or (C) the change in the general partner/managing member of Developer by the investor limited partners/investor members as general partner/managing member of Developer in accordance with the terms of the Partnership Agreement; provided, however that (i) Developer shall provide Grantee with notice of any such change; and (ii) the entity replacing the general partner/managing member of the Developer is under direct or indirect common control or management with the investor limited partner/investor member.

(3) Notwithstanding the foregoing, the Loan will not be due upon the conversion of the Project to a condominium regime, nor upon the sale of any Home and the application of Unit Sales Proceeds as described herein and in accordance with the Homeownership Program Manual.

(i) **Restrictions on Identity of Interest.** Developer shall be required to notify Grantee in writing prior to contracting with any Identity of Interest entity and shall include in its audited financial statements a disclosure of all amounts paid to any Identity of Interest entity. Grantee will have the right, in its sole discretion, to require the cancellation of any contract between Developer and any Identity of Interest entity at any time during the term of the contract, and all such contracts shall permit such cancellation. An “**Identity of Interest**” relationship exists if any officer, director, board member, or authorized agent of any project team member (including any consultant, general contractor, supplier, vendor, vendee, attorney, management agent, seller of the land, etc.):

(1) is also an officer, director, board member or authorized agent of Developer or anyone with an Identity of Interest with Developer (each, an “**Developer Party**”);

(2) has any financial interest in an Developer Party;

(3) is a business partner of an officer, director, board member, or authorized agent of any Developer Party; or

(4) has a family relationship through blood, marriage or adoption with an officer, director, board member, or authorized agent of any Developer Party; or

(5) advances any funds or items of value to the Developer.

Notwithstanding the foregoing, Developer shall have the right to contract with Jackson Development Company, LLC for development services and with JDC Management, LLC or other Identity of Interest entity for the property management of the Project.

**Regulatory Agreements:**

(a) **CDBG-MIT Regulatory Agreement.** (i) As a condition to disbursement of proceeds under the Loan, each Project will be encumbered by a regulatory agreement in favor of Grantee (each a “CDBG-MIT Regulatory Agreement”). The CDBG-MIT Regulatory Agreements shall (i) run with the land; (ii) have a term of thirty-five (35) years; (iii) survive the repayment of the Loan; and (iv) contain the applicable terms, conditions, restrictions and regulations agreed to in the Application, and as required by the Action Plan. Each CDBG-MIT Regulatory Agreement shall be recorded in the real estate records in the county in which each Project is located and shall be subordinate only to the Existing ELIHC (as defined below) that encumbers the applicable Project, and those liens and encumbrances agreed to by Grantee, in its sole discretion. (ii) All regulatory agreements will be partially released in connection with each Unit Sale, upon recordation of a Declaration of Affordability Covenants or such substitute covenants and restrictions as Grantee may require and as provided in the Affordable Homeownership Program Manual.

(b) **Other Regulatory Agreements.** No other regulatory agreements or property restrictions shall be permitted on the Project except with the prior written consent of Grantee. Grantee hereby consents to the existence of the Extended Low-Income Housing Commitment Agreement, between Reliance-Calabash Boom Associates, LLLP and the Grantee, Extended Low-Income Housing Commitment Agreement, between Reliance-Bellevue Associates, LLLP and the Grantee, and the Extended Low-Income Housing Commitment Agreement, between Reliance-Lovenlund Associates, LLLP and the Grantee (collectively, the “Existing ELIHCs”).

**Income Eligibility Requirements**

In accordance with section 2301(f)(3)(A) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-329, the Developer will use all RMHP funds to assist individuals and families whose incomes do not exceed 120 percent of area median income, unless otherwise required by the Grantee. The Grantee is also responsible for ensuring that 25 percent of the total grant is used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties to house individuals and families whose incomes do not exceed 50 percent of area median income, as required by HERA; in some cases, the Developer will use RMHP funding for individuals and families at or below 50 percent of area median income if required by provisions elsewhere in this agreement.

**E. Developer Staffing**

The names and roles of Developer's key personnel (staff or contractors) executing the project are as follows:

Chief Executive: Robert Jackson

RMHP Project Manager: Clifford Graham

Construction Manager: Clifford Graham

Person in charge of marketing: to be determined

Property manager: Jenique Smith

Housing Counselor: to be determined

Financial staff person responsible for approving submission of RMHP payment requests: Kyra Hansen

Any changes in the key personnel assigned or their general responsibilities under this project are subject to the prior approval of the Grantee.

#### **F. Performance Monitoring**

The Grantee will monitor the performance of the Developer based on goals and performance standards as stated above along with all other applicable federal, state and local laws, regulations, and policies governing the funds provided under this contract. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If corrective action is not taken by the Developer within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated. Developer agrees to provide HUD, the General Accounting Office, the Grantee, or the Grantee's internal auditor(s) access to all records related to the performance of activities in this agreement.

#### **G. Progress Reports and Other Reports**

Developer hereby agrees to provide in a timely manner all necessary progress reports and other reports required by Grantee on forms to be provided by Grantee.

### **III. TIME OF PERFORMANCE**

#### **A. Start and Completion Dates**

Services of the Developer shall start on the closing date for the acquisition of each Project (intended to be no later than **December 31, 2024**, and end on **December 31,**

2029, with all RMHP funds allocated having been expended and houses sold, unless Grantee at its sole discretion approves a later completion date.

Notwithstanding the foregoing, with respect to additional activities and funding, the term of this agreement will automatically be extended, if Grantee allocates additional funds to Developer for the activities described herein or causes another entity (such as a nonprofit housing fund) to allocate additional funds. As a condition of Developer receiving such additional allocation of funds, Developer and staff of Grantee must jointly create and agree to a new Exhibit A, Homes Sales Activities and Detailed Budget, describing the additional activities, schedule and costs.

The term of this Agreement and the provisions herein shall be extended to cover any additional time period during which the Developer is responsible for RMHP reporting or compliance measures or remains in control of RMHP funds or other RMHP assets, including program income.

#### **B. RMHP Funds Obligation Deadline**

Developer must obligate the “total RMHP funding” amount in Section III (A) herein by December 31, 2027. Developer must obligate at least half of that amount by December 31, 2025. To obligate funds, developer must follow these procedures:

1. Funds for property acquisition are obligated by entering into a valid and RMHP-compliant purchase agreement.
2. Funds for construction or rehabilitation are obligated by completing a detailed set of plans and specifications (or work write-up) and completing a detailed construction/rehabilitation cost estimate based upon those specifications. Such cost estimate may include a contingency for construction change orders of up to 15% for rehabilitation and up to 5% for new construction
3. For a property that has met the requirements above, the total obligation amount will include the per-unit or prorated estimates of soft costs, developer fee and selling costs based on the cost assumptions in Exhibit A.
4. Developer must report fund obligations on a monthly basis or when requests for reimbursements are made, whichever occurs sooner.

### **IV. BUDGET**

#### **A. Program Budget**

The total amount of RMHP funding allocated to Developer is \$ 48,370,041. This amount represents an allocation of the Grantee’s total RMHP funding contingent upon Developer’s performance.

#### **B. Additional Budget Details**

A detailed project budget and cash flow projections are included in Exhibit A. In addition, the Grantee may require more detailed or different budget breakdowns than the one contained herein including the "Sample Mortgage Purchase Pro Forma," and the Developer shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee.

### **C. Recapture and Reallocation of Developer's Allocation of RMHP Funds**

If Developer fails to expend RMHP funds as indicated with regard to the goals and delivery schedule in Exhibit A, Grantee at its sole discretion may recapture a portion or all of the Developer's total RMHP funding allocation. The portion recaptured will be equal to Grantee's estimate of the amount of RMHP funds that would remain by the spending deadlines described herein, based on Developer's activities to date and capacity to complete the work.

In addition, the amount of Developer's RMHP funding allocation that is not obligated or expended by the obligation deadline in Section II.B. herein will be recaptured immediately unless Grantee grants a brief extension of the deadline in writing based on extenuating circumstances and compelling evidence that obligations will be completed during the extended period.

## **VI. PAYMENT**

It is expressly agreed and understood that the total amount of RMHP funds to be paid by the Grantee to the Developer under this Agreement shall not exceed the amount described in Section III.A. herein plus additional amounts allocated, if any. Requests for the payment of eligible expenses shall be associated with the budget line items in Exhibit A and in accordance with performance.

## **VII. NOTICES**

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery, or sent by facsimile or other electronic means. Any notice sent as aforesaid shall be effective on the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

**Grantee:** Virgin Islands Housing Finance Authority  
3202 Demarara Plaza, Suite 200  
St. Thomas, USVI 00802-6447  
Attn: Eugene Jones, Executive Director  
with a copy to:

**Developer:** Jackson Development Company, LLC  
PO Box 303217, St. Thomas, VI 00803  
Attn: Robert O. Jackson  
Cell: 305-458-1965  
Office: 340-714-1100  
or Clifford Graham

**VII. ENTIRE AGREEMENT**

This agreement between the Grantee and the Developer for the use of funds eligible for receipt supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Developer with respect to this Agreement. By way of signing this agreement, the Developer is bound to perform the agreements within this agreement or any HUD approved amendment thereof.

Additional requirements associated with this agreement are described in the Loan Documents.

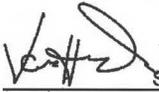
IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

**GRANTEE**

VIRGIN ISLANDS HOUSING FINANCE  
AUTHORITY, an autonomous instrumentality of  
the Government of the United States Virgin Islands,

By: \_\_\_\_\_  
Name: Eugene Jones, Jr.  
Title: Executive Director

REVIEWED AND APPROVED FOR LEGAL SUFFICIENCY

  
Special Counsel 12/20/2024  
NAME AND TITLE DATE:

**DEVELOPER**

Jackson Development Company  
a U.S. Virgin Islands corporation  
By:   
Robert O. Jackson  
\_\_\_\_\_  
\_\_\_\_\_  
Robert O. Jackson, ~~President~~ *Manager*

**Exhibit A**  
**Sources & Uses and Operating Pro Forma**

**Exhibit B**

**Jackson Development Company Homeownership Program Manual**

**JCAHP CDBG-MIT Affordable Homeownership Program Program Manual(1135610.10).docx**

**Exhibit C**

**Jackson Development Company Mitigation Measures Memo**

**Loveland 1- Memo re Mitigation Activities 9-13-24.pdf**

**Bellevue - Calabash Memo re Mitigation Activities 9-13-24.pdf**

**Exhibit D**  
**Additional Requirements**

**I. GENERAL CONDITIONS**

**A. General Compliance**

The Developer agrees to comply with all RMHP requirements, including those found in the RMHP Developer Agreement, the Recovery Act of 2009, and the requirements applicable to entitlement communities under CDBG regulations. The Developer also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Developer further acknowledges its responsibility for adherence to all applicable terms and regulations including, but are not limited to, the following:

- I. the Architectural Barriers Act of 1968 (42 U.S.C. §§4151-4157);
- II. the Uniform Federal Accessibility Standards, as set forth in 24 CFR Part 570.614;
- III. the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973;
- IV. the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. §276(a) to (a-7) and 24 CFR Part 570.603. If the Award is funded *pari passu*, any construction contracts entered into by Developer shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations;
- V. compliance with the environmental requirements of the Program, which include submitting a report in form and substance acceptable to Grantee, which must provide an environmental assessment of such construction in accordance with 24 CFR Part 58, and be approved by Grantee before taking any choice limiting actions such as, without limitation, purchasing the Project site, or starting construction. Also see paragraph 15 of this Developer Agreement;
- VI. the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (49 CFR Part 24) and Section 104(d) of the Housing and Community Project Act of 1974 as amended, and 24 CFR Part 570.606;
- VII. for buildings and other improvements built prior to 1978, the Lead-Based Paint Poisoning Protection Act (42 U.S.C. §4831(b)) and the Residential

Lead Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856) and implementing regulations at 24 CFR Part 35; and

- VIII. Compliance with the provisions of Section 3 of the Housing and Urban Project Act of 1968 (12 U.S.C. §1701u) and implementing regulations contained in 24 CFR Part 75 regarding economic opportunities for low- and very low-income persons.
- IX. Within (60) sixty days after this agreement is executed, Developer shall develop or a staffing plan that identifies specific personnel who will be responsible for implementation and compliance of key requirements of the award including, financial management, internal controls, procurement, monitoring, and CDBG-MIT specific requirements. The plan must include established timelines.
- X. The Developer must develop and outline a Management Staffing Plan of the human resource needs of each project and how those needs will be met for the duration of the project.
- XI. Grant funds must be used for their intended purposes. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the approved projects and may not exceed the maximum limits set in the approved budget. Grant recipients must account for costs and expenditures. Grant funds cannot be used to pay late fees penalties, and any loan obligations, including debt service payments.
- XII. If the VIHFA or HUD determines that any funds were extended by the Developer for unauthorized or ineligible purposes or the expenditures constitute disallowed costs in any other way, Then VIHFA/ HUD may, after giving the Developer (30) days to respond, order repayment of the same. The Developer shall remit the disallowed amount to VIHFA within thirty (30) Thirty days of written notice of the disallowance.
- XIII. Within (30) Thirty days provide a plan on how CDBG-DR and CDBG-MIT funds will be segregated from other funds received or managed. Identify where this is emphasized in the Accounting Policy and Procedures.
- XIV. Within (30) Thirty days final copy of the Developer's Fraud, Waste, and Abuse Policy and Procedures must be provided to VIHFA before the Developer receives any funding/reimbursement failure to provide a sufficient policy, in alignment with Federal Register Vol. 83, No. 28, within the timeframe provided will result in automatic adherence to VIHFA Fraud, Waste And Abuse Policies And Procedure.

- XV. Within (30) Thirty days after this agreement is executed, the Developer shall provide a Grant Management Policy including the process for overseeing the grant and the role and responsibilities of staff
- XVI. In addition to the bank statements provided, the Developer shall provide the most recent (2022 & 2023) year annual financial audits.
- XVII. The Developer shall provide within thirty (30) days a summary of previous audit findings and a Corrective Action Plan for each finding and concern and provide evidence of the completion of each of these actions.
- XVIII. The Developer shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement.
- XIX. The Developer shall provide a homeownership plan or lease agreement detailing the arrangement between the landlord and tenant to purchase the property.
- XX. Within (30) Thirty days after this agreement is executed, the Developer shall provide a comprehensive Marketing and Budget Plan
- XXI. Within (30) Thirty days after this agreement is executed, the Developer shall provide a comprehensive plan detailing the Interior Unit Upgrade Credit Program
- XXII. Before any procurement action or within (30) Thirty days after this agreement is executed, whichever comes first, the Developer shall provide an Independent Cost Estimate (ICE) for all construction-related projects

**B. “Independent Contractor”**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Developer shall at all times remain an “independent contractor” with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, as the Developer is an independent contractor.

**C. Workers’ Compensation**

The Developer shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

**D. Insurance & Bonding**

1. In General. The Developer, at his sole expense, shall purchase and maintain in full force and effect during the term of this Agreement and any renewals thereafter, policies of insurance as provided in this section naming Grantee as co-insured on all such policies. Developer shall furnish to Grantee binders or policies showing the insurance in force as the time of commencement of the present term.

2. Liability Insurance. Developer shall purchase and maintain in full force general liability insurance in an amount of not less than \$1,000,000.00 per occurrence for injuries or death to persons and \$100,000.00 per occurrence for damage to property. This insurance shall be written with an acceptable company authorized and licensed to do business in the United States Virgin Islands and shall be written in a form acceptable to Grantee. Said insurance shall be taken out prior to beginning any operation and shall be kept in effect until all operations have been successfully terminated. Copies, or the originals as the case may be, shall be furnished to the Grantee and shall be approved by Grantee before Developer begins performance under this agreement. Developer shall designate Grantee as an additional insured on all such policies and such policies shall provide for thirty (30) days written notice of cancellation to the Grantee. Further, Developer shall provide Grantee with additional insured endorsement page from each policy in a form acceptable to Grantee. Grantee reserves the right to approve or reject any deductible amounts in the required coverage, Developer shall provide at least ten (10) days prior notice to the Grantee before any termination or reduction in coverage. Liability insurance may be obtained through a separate policy or through the required policies described in subsection (c) below.

3. Property/Casualty and Builder's Risk Insurance. Prior to taking title to any RMHP-assisted property, Developer will obtain a property and casualty or builder's risk insurance policy that insures the property for losses up to the amount of estimated replacement costs, which may not be less than the estimated amount of investment in the property as described in the Project Budget. If the Project Budget is increased, the amount of coverage must be increased accordingly. If Developer cannot obtain insurance coverage in the total amount of investment in the property after making best efforts, Grantee at its sole discretion may give written approval of a lesser amount of coverage. Developer shall designate Grantee an additional insured on all such policies and such policies shall provide thirty (30) days written notice of cancellation to Grantee. Further, Developer shall provide Grantee with additional insured endorsement page from each policy in a form acceptable to Grantee. Grantee reserves the right to approve or reject any deductible amounts in the required coverage, Developer shall provide at least ten (10) days prior notice to the Grantee before any termination or reduction in coverage.

d. Developer alone shall be responsible for investigation and payment of claims not covered by insurance. Grantee shall not in any way be responsible for payment of any claims determined to be Developer's responsibility under this Agreement.

#### **E. Suspension or Termination**

In accordance with 24 CFR 85.43 or 84.62, the Grantee may suspend or terminate this Agreement if the Developer materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the statutes, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Developer to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Developer to the Grantee reports that are incorrect or incomplete in any material respect.

This Agreement may also be terminated for convenience by mutual agreement between the Grantee and the Developer, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety. Such a termination shall only be carried out with the explicit written approval from HUD.

#### **F. Indemnification**

Developer agrees to indemnify and to defend and hold Grantee harmless against (a) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the transactions contemplated hereby; (b) any claims related to losses, costs, damages or expenses that Grantee may incur, directly or indirectly, including reasonable attorneys' fees, as a result of or in connection with the presence or removal of any environmental contamination or hazardous materials at, on or under the Project, and the violation of any applicable federal and state environmental laws at or in connection with the Project, other than conditions first arising after the earlier of Developer no longer having possession of the Project or the Loan being repaid in full. Such indemnities may be contained in the Loan Agreement or in separate indemnity agreements to be executed and delivered by Developer at Closing. This indemnity shall survive cancellation, termination or avoidance of this Developer Agreement.

## II. ADMINISTRATIVE REQUIREMENTS

### A. Financial Management

#### 1. Accounting Standards

The Developer agrees to comply with 24 CFR 85.20-26 for other governmental entities (if and as applicable to a developer/borrower) and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### 2. Cost Principles

The Developer shall administer its program in conformance with OMB Circulars A-87, "Cost Principles for State, Local and Indian Tribal Governments," A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," (if and as applicable to a developer/borrower). These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

### B. Documentation and Record Keeping

#### 1. Client Data

The Developer shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service or benefit provided. Such information shall be made available upon request to Grantee monitors or their designees for review.

#### 2. Records to be Maintained

The Developer shall maintain all records required by Federal regulations specified in 24 CFR 570.506. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken benefits low-, moderate-, or middle-income persons.
- c. Records required to determine the eligibility of activities and the eligibility of all properties assisted;

d. Records required to document the purchase and sale amounts of each property, discounts, and the sources and uses of funds for each activity;

e. Records documenting compliance with the fair housing and equal opportunity requirements of the RMHP program, including but not limited to the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program;

f. Records documenting efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the tenant protection requirements.

g. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21728; and

h. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

### 3. Retention

The Developer shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date that the Grantee submits its first quarterly performance report to HUD via DRGR. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

### 4. Disclosure

The Developer understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Developer's responsibilities with respect to services provided under this contract, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

### 5. Close-outs

The Developer's obligation to the Grantee shall not end until the U.S. Department of Housing and Urban Development completes all close-out requirements for the RMHP grant. Activities during this close-out period shall

include, but are not limited to: making final payments; disposing of program assets (including the return of all unused materials, equipment, cash advances, program income balances, and accounts receivable to the Grantee; and determining the custodianship of records. However, the terms of this Agreement shall remain in effect during any period that the Developer has control over RMHP funds, including program income.

**6. Audits**

All Developer records with respect to any matters covered by this Agreement shall be made available to the Grantee, Grantee agency, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments or termination of this agreement. The Developer hereby agrees to have an annual agency audit conducted in accordance with the current Grantee policy concerning Developer audits and OMB Circular A-133.

**C. Reporting and Payment Procedures**

**1. Indirect Costs**

Direct and indirect costs of staff cannot be charged by Developer. Developer will be reimbursed for internal costs through a developer fee as specified in this Agreement.

**2. Payment Procedures**

The Grantee will pay to the Developer funds available under this Agreement based upon information submitted by the Developer and consistent with any approved budget and Grantee policy concerning payments. Payments will be made for eligible RMHP related expenses actually incurred by the Developer and will not exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Developer accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Developer.

HUD, through the Disaster Recovery Grant Reporting (DRGR) system, generally provides access to grant funds within 3 working days of an electronically submitted request by the Grantee. To ensure expeditious implementation of activities, Grantee agrees to draw funds from the line of credit

and make payment to the Developer within 10 working days of receipt of the Developer's complete and properly submitted requests for payment for activities under this agreement, if feasible. Developer agrees to submit requests for payment in a timely manner in the form and at the times directed by the Grantee.

3. Progress Reports

The Developer shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

**D. Procurement**

1. Program Income

The Developer shall report no less frequently than monthly all program income generated by activities carried out with RMHP funds made available under this contract. The Developer may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period or as otherwise specified by the Grantee. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Compliance

The Developer shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) not otherwise disposed of in the closeout agreement shall revert to the Grantee upon termination of this Agreement.

3. OMB Standards

Unless otherwise specified within this agreement, the Developer shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40.

4. Travel

The Developer shall obtain written approval from the Grantee for any costs for travel outside the area served with funds provided under this Agreement.

#### **E. Use of and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 [or Part 85] and 24 CFR 570.503, 570.504, and 570.505, as applicable, which include but are not limited to the following:

1. The Developer shall transfer to the Grantee any RMHP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination, unless otherwise specified in the HUD closeout agreement with the Grantee.

2. Real property under the Developer's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used in accordance with the RMHP application for the period consistent with the land-banking and continued affordability requirements. If the Developer fails to use RMHP-assisted real property in a manner that meets RMHP land-banking, affordability and benefit requirements within and for the prescribed period of time, the Developer shall comply with the applicable sections under 24 CFR 570.503, 570.504, and 570.505.

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to which funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Developer for activities under this Agreement shall be (a) transferred to the Grantee for the RMHP program or (b) retained after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of non-RMHP funds used to acquire the equipment.

### **III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT**

The Developer agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24; 24 CFR Part 42 – Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD Assisted Programs; and 24 CFR 570.606 – Displacement, relocation acquisition, and replacement of housing. The Developer shall provide appropriate relocation assistance (URA or section 104(d)) to eligible displaced persons as defined by applicable HUD, VIHFA and/or URA regulations that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for an RMHP-assisted project. The Developer also agrees to comply with applicable Grantee or local ordinances, resolutions, and policies concerning the displacement of persons.

The Developer will use RMHP funds to demolish major structures or convert units from non-residential uses only with the prior written permission of the Grantee. Permission for demolition of minor structures such as porches, sheds, and garages shall be deemed to have been granted when Grantee approves the plans and specifications (which may also be called work write-ups) for a particular property that Developer is assisting with RMHP funds.

## **V. PERSONNEL & PARTICIPANT CONDITIONS**

### **A. Civil Rights**

#### **1. Compliance**

The Developer agrees to comply with applicable state and local civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974 as amended (the HCDA), section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

#### **2. Nondiscrimination**

The Developer agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in section 109 of the HCDA are still applicable.

#### **3. Section 504**

The Developer agrees to comply with all Federal regulations issued pursuant to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

### **B. Affirmative Action**

#### **1. Approved Plan**

The Developer agrees that it shall be committed to carry out, pursuant to the Grantee's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Developer to assist in the formulation of such program. The Developer shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Developer will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group Developers or women. The Developer may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation.

3. Access to Records

The Developer shall furnish and cause each of its own Developers or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Developer will include the provisions of the prior Section V A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Developers or subcontractors.

**C. Employment Restrictions**

1. Prohibited Activity

The Developer is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Developer agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Developer agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Developer shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Developer agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Developer of its obligation, if any, to require payment of the higher wage. The Developer shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. "Section 3" Clause

*a. Compliance*

Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Developer and any of the Developer's grantees and subcontractors. Failure to fulfill these requirements shall

subject the Grantee, the Developer and any of the Developer's grantees and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Developer certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Developer further agrees to comply with the Section 3 requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from 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 low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Developer further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the RMHP-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the RMHP-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Developer certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

*b. Notifications*

The Developer agrees to 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 said labor organization or worker's representative of its 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.

*c. Subcontracts*

The Developer will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Grantee's agency. The Developer will not subcontract with any entity 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 entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

**D. Conduct**

1. Assignability

The Developer shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee ; provided, however, that claims for money due or to become due to the Developer from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

*a. Approvals*

The Developer shall not enter into any subcontracts over \$100,000 with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

*b. Monitoring*

The Developer will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be

summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

*c. Content*

The Developer shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

*d. Selection Process*

The Developer shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Developer agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.

4. Conflict of Interest

The Developer agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

a. The Developer shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

b. No employee, officer or agent of the Developer shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

c. No covered persons who exercise or have exercised any functions or responsibilities with respect to RMHP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the RMHP-assisted activity, or

with respect to the proceeds from the RMHP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Developer, or any designated public agency.

HUD WARNING

***Warning: Any person who knowingly makes a false claim or statement to HUD may be subject to civil and criminal penalties under 18 U.S.C. 287, 1001 and 31 U.S.C. 3729.***

5. Lobbying

The Developer hereby certifies that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Developer of Congress, an officer or employee of Congress, or an employee of a Developer 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;

b. 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 Developer of Congress, an officer or employee of Congress, or an employee of a Developer of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions; and

c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly:

d. Lobbying Certification

This certification is a material representation of the fact upon which reliance was placed when this transaction was made or entered into.

Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, HUD reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Developer agrees that it will comply with 24 CFR 570.200(j) so that funds are not used to support inherently religious activities.

**VI. ENVIRONMENTAL CONDITIONS**

**A. Air and Water**

The Developer agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

1. Clean Air Act, 42 U.S.C., 7401, et seq.;
2. Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
3. Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

**B. Flood Disaster Protection**

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Developer shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

**C. Lead-Based Paint**

The Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.487 or 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all RMHP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted. Documentation shall be retained in the files for compliance to the above statement.

## **VII. ENVIRONMENTAL REVIEW**

All RMHP assistance is subject to the National Environmental Policy Act of 1969 and related federal environmental authorities and regulations at 24 CFR part 50 or 58. Prior to the execution of any agreement provided for in this Developer Agreement, and prior to any demolition or grading of the Project, or other choice-limiting actions, or commencement of construction, Developer must submit an environmental report in form and substance acceptable to Grantee, which must provide for written approval and environmental assessment of the Project in accordance with (but only to the extent required by) 24 CFR Part 58. No choice limiting action with respect to the Project may commence until Developer has received written approval of the environmental assessment, to the extent applicable, from Grantee. Violation of this requirement shall result in delay, postponement or cancellation of any payment of Loan proceeds.

## **VIII. REHABILITATION STANDARDS**

The Developer will carry out all RMHP-assisted rehabilitation in compliance with the rehabilitation standards in the Consortium's RMHP application, the RMHP Policy and Guidelines and in accordance with applicable laws, codes, and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties.

## **IX. TIMELINESS OF USE AND EXPENDITURE OF RMHP FUNDS**

The Developer will ensure that RMHP allocated funds are expended within a timely manner in accordance with the schedule in this Agreement. Should the Consortium as a whole fail to meet the requirement to expend its award prior to the deadline in its grant agreement with HUD, HUD, on the first business day after that deadline, will notify the Grantee, restrict the amount of unused funds in the grantee's line of credit, and begin the process of de-obligating the unused amounts.

#### **X. ELIGIBILITY AND ALLOWABLE COSTS**

The Developer will ensure and document that its RMHP activities meet eligible use, allowable cost, and eligible activity requirements of RMHP.

#### **XIII. SEVERABILITY**

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement shall nevertheless be in full force and effect.

#### **XIV. SECTION HEADINGS AND SUBHEADINGS**

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

#### **I. WAIVER**

The Grantee's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

