

HOME DEVELOPMENT AGREEMENT

(RENTAL)

This HOME Agreement is entered into as of this XXth day of MONTH, 2015 by and between South Dakota Housing Development Authority (SDHDA) and {enter name of Developer}, a South Dakota {limited partnership or limited liability company} (Developer).

WHEREAS, SDHDA is the administrator of HOME Investment Partnership Program funds (HOME Funds) received from the U. S. Department of Housing and Urban Development (HUD) under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, as amended (the Act); and

WHEREAS, the purpose of the HOME Investment Partnership Program (the HOME Program) is to increase the supply of decent, safe, sanitary, and affordable housing for very low income, low income and moderate income households; and

WHEREAS, SDHDA, acting pursuant to the Act, heretofore adopted a HOME Allocation Plan to carry out housing activities eligible under the HOME Program; and

WHEREAS, Developer submitted an Application to SDHDA for the new construction of a {enter number of units in words} (xx) unit {enter family or elderly} housing project in {enter city}, South Dakota, to be known as {enter project name} (the Project), in furtherance of the goals of SDHDA's HOME Allocation Plan; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants set forth herein, SDHDA and the Developer do agree, for themselves and for their respective successors and assigns, as follows:

SECTION 1. The Project

1.1 Project Description

The Project is a planned xx-unit rental development located in {enter city}, South Dakota on an undeveloped site {enter street address, if known, or road boundaries of site (i.e. at the corner of Main Street and West Elm Street)} and more particularly described in Exhibit A (the Property). The Project consists of {enter description of structures (i.e. eight two-story residential structures, each containing 8 units)}. The overall unit breakdown includes {enter number of units in words} 1-bedroom units, {enter number of units in words} 2-bedroom units, and {enter number of units in words} 3-bedroom units that will be income and rent restricted at 50% AMI and {enter number of units in words} 1-bedroom units, {enter number of units in words} 2-bedroom units, and {enter number of units in words} 3-bedroom units at 60% AMI. All units are available as {enter family or senior} housing.

In addition to SDHDA HOME funds, permanent financing for the Project also comes from an award of Low Income Housing Tax Credits (LIHTC) and a resulting equity investment from {insert name of investor limited partner}, a {enter state of organization} limited liability company (the Investor), a

first mortgage from {insert name of first mortgage lender}, and {insert name of any other lender or source of financing}. Construction financing will be provided by {insert name of construction lender} and SDHDA.

A summary of the Project, including unit breakdowns, unit and on-site amenities, and key financing sources and terms, is attached as Exhibit B

1.2 Term

The term of this Agreement shall begin on the date represented by the date of the last signature of either party executing the Agreement, and shall expire upon completion of both the HOME Affordability Period and Extended Use Period, as those terms are defined below.

The HOME Affordability Period and Extended Use Period, and the Covenant Running with the Land as outlined in Section 2.1.4 below, shall continue irrespective of any pre-payment of the HOME Loan. Failure of the Project to meet all applicable HOME requirements for the entire HOME Affordability Period will result in a requirement that all HOME funds be repaid.

1.2.1 HOME Affordability Period: As a new construction rental project, the HOME Affordability Period during which Developer must maintain compliance with all applicable HOME rules shall begin with initial occupancy of the Project and shall run for twenty (20) years following the date on which the Project has met the requirements for Project Completion outlined in 24 CFR 92.2, which will require that construction be complete, all HOME funds have been disbursed by SDHDA and drawn from the US Treasury, and required completion data has been entered in HUD's IDIS system.

1.2.2 Extended Use Period: Following the expiration of the HOME Affordability Period, SDHDA will enforce a twenty (20) year Extended Use Period. During the Extended Use Period, the Project will no longer be considered a HOME-assisted project. SDHDA, however, has adopted the terms of many HOME requirements for enforcement during the Extended Use Period. Developer must continue to maintain compliance with all terms of this Agreement for the full term and shall perform in the same manner as if the Project were still subject to all applicable HOME rules

Notwithstanding, during the Extended Use Period and upon request of the Developer, SDHDA may allow the use of the LIHTC income and rent limits (at 50% and 60% AMI for Low-HOME and High-HOME units respectively as further described below) to which the Project is subject in order to promote administrative efficiency. Further, SDHDA may waive or cancel any remainder of the Extended Use Period to accommodate a future transaction whereby the Project is sold, refinanced, or otherwise recapitalized through a state or federal program intended to preserve the Project's character as affordable housing.

Exercise of either of these options will be in the sole and absolute discretion of SDHDA and shall require the execution of a formal written amendment to this Agreement following the completion of the HOME Affordability Period.

- 1.2.3 Establishment of Affordability and Extended Use Period Completion: Upon entering all required information in HUD's IDIS system, SDHDA will notify Developer of the actual date of Project Completion and the exact date of the expiration of the HOME Affordability Period and Extended Use Period respectively, which shall be calculated based on the date of Project Completion. If necessary, Developer shall execute an amendment to the Covenant Running with the Land identifying the exact dates of expiration of the HOME Affordability Period and Extended Use Period.

1.3 Tasks and Schedule

To ensure that the Project progresses adequately toward completion, Developer must achieve the following benchmarks.

- 1.3.1 Final Plans and Specifications: No later than [REDACTED], 201[REDACTED] and prior to initiating construction activity, Developer must provide evidence to SDHDA that all Code and Physical Requirements will be met (see Section 4 below).
- 1.3.2 Construction: Unless otherwise extended by SDHDA, Developer must begin construction on the Project no later than [REDACTED], 201[REDACTED] and substantially complete construction within twelve (12) months. Per the requirements of 24 CFR 92.2, in any event Developer must begin construction no later than twelve (12) months from the date of execution of this Agreement.
- 1.3.3 Cost Certification: Within one hundred-twenty (120) days of completing construction, Developer must provide a cost certification prepared by an independent certified public accountant outlining the final sources and uses of all funds.
- 1.3.4 Completion Report: Prior to final disbursement of funds, Developer must provide SDHDA with demographic data on the initial occupants of all HOME-assisted units in the Project in order to complete the Project in HUD's IDIS system. If the Project is not completed in HUD's IDIS system within twenty-four (24) months of the date of execution of this Agreement, SDHDA may cancel its commitment of funding, and the Developer shall repay any HOME funds previously advanced for the Project. In any case, if the Project is not completed in HUD's IDIS system within four years of the date of this Agreement, the Project will be considered terminated prior to completion and per the requirements of 24 CFR 92.205(e), and all HOME funds must be repaid by the Developer.
- 1.3.5 Absolute Lease-Up Deadline: All HOME units must be initially occupied within eighteen (18) months of Project Completion, as defined in Section 1.2.1 herein. Any HOME unit that is not

initially occupied within eighteen (18) months will be deemed ineligible pursuant to 24 CFR 92.252, and the Developer will repay any HOME funds attributable to those units based upon a revised cost allocation analysis completed by SDHDA.

1.4 Proforma and Budget

1.4.1 HOME Investment: Conditioned upon the availability of HOME Program Funds, and Developer's compliance with the conditions set out herein, SDHDA intends to provide up to \$ [REDACTED] in HOME funds to Developer toward eligible project costs. In no case will SDHDA's funding of the Project be less than \$1,000 per HOME-assisted unit or more than the maximum per-unit subsidy allowed under 24 CFR 92.250(a). The maximum subsidy for 1-bedroom units is \$ [REDACTED]; the maximum subsidy for 2-bedroom units is \$ [REDACTED]; and the maximum subsidy for 3-bedroom units is \$ [REDACTED].

1.4.2 Proforma: Attached as Exhibit C is a proforma laying out projections of:

- All Sources and Uses of all funds needed to complete the Project;
- Anticipated revenues including both tenant-paid rent and ancillary income from fees and interest;
- Annual operating costs associated with operating the Project and providing voluntary services to the tenants; and
- Long term estimates of operating revenues and expenses, including minimum requirements for annual replacement reserve deposits.

Developer agrees to promptly notify SDHDA of any changes to the proforma, including but not limited to increases in project costs, the receipt or availability of additional sources of funds not previously disclosed, and material changes in projections of revenue or operating expenses. SDHDA must approve changes to the proforma and reserves the right to reduce its HOME commitment, modify the number of HOME-assisted units in the Project, or require Developer to contribute additional funds needed to complete the Project if the changes to the proforma are material and result in either the over-subsidization or under-funding of the Project based on a SDHDA underwriting analysis.

SECTION 2. Form of Financing and Disbursements

2.1 Form and Terms of Assistance

2.1.1 HOME Loan: SDHDA will provide HOME funding as a construction to permanent loan to the Project. The term of the HOME loan will commence at execution of the Mortgage and Note and continue for a term of twenty (20) years from the date of Project Completion as outlined in 24 CFR 92.2, which will require that construction be complete, all HOME funds

have been disbursed by SDHDA and drawn from the US Treasury, and required completion data has been entered in HUD's IDIS system.

The HOME loan will carry {insert percentage} interest (provided there is no default) and will be repaid on {insert payment term (i.e. a cash flow contingent basis with annual payments equal to 50% of the prior year's cash flow)} due on {insert date} each year.

- 2.1.2 Security: The HOME Loan must be secured by a promissory note, a {insert priority i.e first, second, etc.} -position mortgage on the Property, and appropriate UCC financing statements.

Together, this Agreement, the Mortgage, the Mortgage Note, the Assignment of Rents and Leases, the Completion Guaranty, the Performance and Repayment Guaranty, the Replacement Reserve Guaranty, the UCC financing statements, and a Declaration of Restrictive Covenants shall constitute the Loan Documents.

Further, upon disbursement, the loan shall be secured by an irrevocable Letter of Credit in an amount equal to the full loan amount, from a reputable banking institution acceptable to SDHDA. The Letter of Credit will be in force from the first draw-down of funds from SDHDA and shall be released by SDHDA at the achievement of Stabilized Occupancy of the Project as defined in Section 2.3.2 below, receipt of an acceptable cost certification, and clearance of any monitoring findings related to an SDHDA review of records related to initial project development and lease-up.

- 2.1.3 Title Insurance: Prior to the making of any advance under the loan by SDHDA, Developer shall provide a title insurance policy insuring the Property in standard ALTA form issued by a title company authorized to do business in the State of South Dakota and acceptable to SDHDA. The name of the insured shall be South Dakota Housing Development Authority. The policy shall show fee simple title to the Property in Developer, subject only to such exceptions as SDHDA may approve, be in the full amount of SDHDA's loan, contain a comprehensive coverage endorsement and such other endorsements as SDHDA may require and shall insure that the mortgage constitutes a valid {insert priority i.e first, second, etc.} -position lien on the Property, and that the Property is free of all liens, encumbrances, restrictions or other matters of any kind whatsoever, with only such exceptions from coverage as are satisfactory to SDHDA.

- 2.1.4 Covenant Running with the Land: Developer must record a covenant running with the land, in form satisfactory to SDHDA, that provides a means for enforcement of the affordability restrictions of 24 CFR 92.252. The covenant is to be recorded senior to the LIHTC Restrictive Covenants. SDHDA's covenant running with the land must be senior to all other financing liens, including the first mortgage from {insert name of first lender}, and SDHDA's

mortgage referenced above, and be enforceable against all successors in interest to Developer.

2.1.5 Reserved

SDHDA will require guarantees from the underlying corporate and individual owners of the general partner(s) of the Developer, the individual owners of any “shell entities” engaged in the ownership of the Developer and general partner(s), and from any other guarantors required by the other financing sources investing in the Project, including without limitation {list guarantors}.

Guarantees shall include, at a minimum, the following terms:

- A guarantee of completion, ensuring that Developer will construct, equip, and complete the Project free and clear of liens substantially in accordance with the plans and specifications by the date called for in Section 1.3.2. Failure to complete the Project under these terms will result in Developer’s and Guarantors’ obligation to (i) pay all costs and expenses incurred in completing any unfulfilled obligations and (ii) pay to or reimburse SDHDA for all expenses incurred by SDHDA with respect to its carrying out any of Developer’s unfulfilled obligations. This guarantee will expire upon SDHDA’s final inspection and approval of the Project’s construction.
- An ongoing guarantee of performance, ensuring that the Project will be operated in compliance with all applicable federal, state, and local laws or ordinances or regulations, including but not limited to HOME regulations and fair housing laws. During the HOME Affordability Period, failure to maintain the Project in compliance with all applicable laws, or the inability to correct instances of noncompliance, will result in a requirement that the Developer and Guarantors satisfy any repayment obligation to HUD incurred by SDHDA under 24 CFR 92.503(b).
- A guarantee of annual deposits to a Replacement Reserve for the Project in an amount consistent with the Loan Documents.

2.1.6 Loan Closing: Developer shall satisfy all due diligence requirements of SDHDA in order to facilitate a closing on the loan no later than _____, 20XX. Developer shall be responsible for all closing costs in connection with the loan contemplated herein including, but not limited to, title insurance, surveys, financing fees, recording fees, and attorney fees.

2.1.7 Ownership Entity: SDHDA’s willingness to make the HOME Loan as anticipated herein is contingent upon and made with specific reliance on the evaluation of the specific individuals and entities making up the Developer, in particular the General Partner, which is {enter

name of General Partner}, which in turn is owned by {describe ownership interests (i.e. _____ who has a _____% membership interest)}.

Developer agrees that no sale or transfer of general or limited partnership interests in the Developer will be made without the prior written consent of SDHDA. This will include but is not limited to:

- The voluntary or involuntary re-assignment of the General Partner role to another entity;
- Sale or transfer of {owner of general partner}'s interest in the General Partner;
- Sale or transfer of any other General Partner interests in the Developer; and
- Sale or transfer of the Limited Partner interests in the Developer.

Notwithstanding anything to the contrary in this HOME Agreement or any other Loan Document, SDHDA consents to the transfer of the Investor Limited Partner's interest in the Developer among affiliates of the Investor. Developer must provide notice of such transfer to SDHDA at least five days prior to the transfer.

2.2 Disbursement

SDHDA's HOME Loan is intended as construction and permanent financing. Developer may request disbursements no more than monthly and not less than quarterly from SDHDA during the construction period in accordance with the terms set forth in this section.

Notwithstanding anything herein, SDHDA will draw HOME funds as needed to directly reimburse itself for certain project-related soft costs applicable to the Project. These include, but may not be limited to costs incurred by SDHDA in the underwriting, review, and oversight of the Project prior to completion and will include internal costs of SDHDA staff and external costs of SDHDA consultants. All SDHDA project-related soft costs will be included in the total HOME investment and incorporated into the HOME Loan.

Further, SDHDA shall retain the right to review and approve all draws for the Project, regardless of whether the HOME loan will be used to fund any given draw. For draws being funded by other construction or permanent funding sources, SDHDA shall be provided with the draw not less than 10 days prior to any monthly inspection and provided with the opportunity to approve or object to the draw prior to payment by any funding source.

2.2.1 Conditions of Construction Draws: Proceeds of the HOME loan will only be released to Developer for actually incurred HOME-eligible project costs. The obligation of SDHDA to approve any draw or to make any disbursement of HOME funds is subject to the satisfaction of the following conditions at the time of making such disbursement:

- a. Developer shall not be in default under the terms of this Agreement or of any of the Loan Documents, and no event shall exist, which by notice, passage of time, or otherwise would constitute an event of default under this Agreement or any of the Loan Documents.
- b. The Project shall not have been materially damaged by fire or other casualty.
- c. SDHDA shall have received evidence satisfactory to SDHDA that all work and improvements requiring inspection by any governmental authority having jurisdiction have been inspected and approved by such authorities and by any other persons or entities having the right to inspect and approve construction.
- d. Developer shall have submitted at least ten (10) days prior to the date a disbursement is desired a completed disbursement request using AIA G-702 (Contractor's Application for Payment) and G-703 (Continuation) forms and such other appropriate source documentation as may be required by SDHDA including, without limitation, the following:
 - A certificate executed by the General Contractor stating that the contractors have performed their work in a workmanlike manner, that the completed work is in accordance with the Plans, that the value of the work in place is equal to the total disbursed Direct Costs, plus retainage, and containing an itemized list of total Direct Costs expended to date with an estimate of the Direct Costs required to complete the Project, and
 - Sworn statements identifying all contractors, subcontractors and suppliers along with their addresses, and identifying all labor and materials furnished to date along with the amounts paid to date and the balances due and any change orders, as well as sworn lien waivers executed by the contractors, subcontractors, and/or suppliers covering all labor and materials identified in the prior request for disbursement approved by SDHDA, said sworn statements and sworn lien waivers to be dated no less than five (5) days precedent to the date of the requested disbursement, or such other documentation or supporting evidence as shall enable the Title Company to issue an endorsement to the title policy, including receipts or other vouchers showing payments for labor, payments to subcontractors and payments to material suppliers.
 - Evidence satisfactory to SDHDA that the Project and the contemplated use thereof are permitted by and comply with all applicable use or other restrictions and requirements in prior conveyances, zoning ordinances, or regulations that have been duly approved by the municipal or other governmental authorities having jurisdiction; that the required building permits and other permits have been

obtained as required; and that no environmental impact statement is required or that such environmental impact statement has been properly filed and approved.

- Appropriate certifications of compliance in all respects with labor standards and prevailing wage requirements applicable under federal law.
- Such other supporting evidence as may be requested by SDHDA or its agent to substantiate all payments which are to be made out of the relevant disbursement and/or to substantiate all payments then made with respect to the Project.
- e. SDHDA shall have received an endorsement to the Title Policy, indicating that since the last preceding disbursement (if any) there has been no adverse change in the state of title which has not been bonded off or insured over and no survey exceptions not theretofore approved by County, which endorsement shall have the effect of increasing the coverage of the Title Policy by an amount equal to the disbursement then being made, if the policy does not by its terms provide for such an increase.
- f. SDHDA shall have determined that all HOME requirements pertaining to the disbursement of funds have been met, including but not limited to monitoring of Davis Bacon compliance.
- g. At the time of disbursement of funds to Developer, SDHDA will advise the title company of any SDHDA soft costs drawn down and paid in accordance with the terms of this section 2.2 in order that the coverage of the Title Policy may be increased accordingly.
- h. SDHDA shall have received a current construction report from SDHDA Coordinator of Technical Services recommending payment.
- i. No determination shall have been made by SDHDA that the undisbursed amount of the loan is less than the amount received to pay all costs and expenses of any kind that reasonably may be anticipated in connection with the completion of the Project.

2.2.2 Conditions of Final Disbursement: In addition to the requirements set forth in Section 2.2.1, SDHDA shall require the following prior to the final disbursement of funds, the request for which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets and correction of defects in workmanship and/or materials:

- A certificate of use and occupancy for the Project;
- Identification of the designated street address of the Project, including as applicable the street addresses assigned for the leasing office and each residential structure and the specific unit designations (e.g. unit number or lettering such as #12 or Apartment B-3) for all HOME units;

- Evidence satisfactory to SDHDA that the Project has been completed lien free and substantially in accordance with the plans and specifications;
- A final survey; and
- Review and final settlement of the cost certification described below.
- Such other supporting evidence as may be requested by SDHDA or its agent to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.

2.2.3 Limitation on Draw Requests:

- a. In all cases, Developer may not request disbursement of HOME funds until funds are needed for the payment of eligible costs, and all disbursement requests must be limited to the amount needed at the time of the request.
- b. Notwithstanding anything herein to the contrary, no disbursements for materials stored will be made by SDHDA unless Developer shall advise SDHDA of its intention to so store materials prior to their delivery. It is specifically agreed that the propriety of disbursements for materials stored shall be determined in SDHDA's sole discretion.

In addition to any other requirements SDHDA may impose, any disbursement for materials stored will require, at minimum:

- Certification from the General Contractor (and, as applicable, any subcontractors) that:
 - The materials for which payment is requested are consistent with the Project's plans and specification and have been purchased specifically for incorporation into the Project;
 - The Contractor (or subcontractor as applicable) is in actual possession of and has clear, marketable title to the materials and that such materials are not subject to any lien by the supplier or manufacturer; and
 - The materials are appropriately stored on-site and fully insured against theft, damage, or other loss OR that materials stored off-site are located in a licensed, bonded, and insured warehouse where they are fully insured against theft, damage, or other loss.
- Submission of documentation (such as invoices, receipts, shipping manifests, or insurance policies) satisfactory to SDHDA supporting the certifications;
- That any disbursement for materials stored are otherwise subject to the contract's standard retainage provisions;
- That SDHDA shall have the right to inspect the materials wherever stored, at its convenience, during normal working hours;
- That the cost and expense, if any, involved in the storage and/or delivery to the construction site will be borne by the Developer;
- That storage of materials shall be at the risk of the Developer and the loss, damage, or destruction of any materials so stored does not relieve the Developer of the duty to

complete the Project. It shall be the responsibility of the Developer to replace such items, if necessary.

In lieu of storing materials in bonded facilities or providing insurance, SDHDA may accept as additional security an irrevocable letter of credit from the General Contractor (or subcontractor responsible for the stored materials, as applicable) in an amount equal to any HOME funds disbursed for materials stored, which shall be released upon SDHDA's determination that the materials have been properly installed as part of the Project.

- c. The parties covenant and agree that in the event that SDHDA discovers a misstatement in any affidavit, statement, or certificate furnished pursuant to this Agreement, it shall make no further disbursements until such misstatement has been corrected; that SDHDA assumes no liability to the Developer for mechanic's lien claims; that if at any time during the course of construction, the total of the unpaid disclosed cost of construction, as indicated by the column totals on the general contractor's sworn statement, exceeds the amount of the undisbursed development sources, SDHDA shall not be under obligation to make further disbursement under the terms of the Agreement until the Developer has deposited with SDHDA the sum necessary to make the available funds equal to the unpaid disclosed cost of construction; and that if, after the first disbursement, a further title search reveals a subsequently arising exception over which the title insurance company is unwilling to insure, SDHDA shall discontinue disbursement until the exception has been disposed of to SDHDA's satisfaction.

2.2.4 Cost Certification: Within 120 days of completion of construction, Developer must provide a cost certification prepared by an independent certified public accountant for SDHDA review and approval. Should SDHDA determine that the cost certification indicates HOME funds were provided in an amount greater than was necessary or were used for ineligible costs, Developer shall promptly repay such funds. Additionally, SDHDA must determine based on the cost certification that the designation of HOME units in Section 3.2 below remains in compliance with the requirements of 24 CFR 92.250, or Developer must agree to adjust the designation of HOME units to bring the Project into compliance.

2.2.5 Disbursement of Developer Fee: SDHDA and Developer generally anticipate that the Developer Fee will be paid using equity contributions related to the Project's Low Income Housing Tax Credit award. Notwithstanding which specific funding source will be disbursed toward the Developer Fee, disbursement of the Developer Fee will be limited as follows:

- A maximum of 20% of the projected, non-deferred Developer Fee as shown in the Proforma attached as Exhibit C upon i) closing of the HOME Loan and execution of all Loan Documents; ii) closing of the LIHTC equity investment and all construction financing for the Project; and iii) issuance of building permits and the start of construction on the Project;

- A maximum of 20% of the projected, non-deferred Developer Fee as shown in the Proforma attached as Exhibit C (bringing the total maximum disbursement to 40% of the projected, non-deferred Developer Fee) upon completion of construction; and
- The balance of the non-deferred Developer Fee upon i) repayment of any SDHDA construction financing, including the return/repayment of any previously disbursed HOME funds determined by SDHDA repayable pursuant to Section 2.2.4 above; ii) SDHDA's review and approval of the Cost Certification; and iii) achievement of Stabilized Occupancy as defined in Section 2.3.2 below.

Nothing in this section is intended to limit the Investor Limited Partner or another funding source from imposing conditions upon the payment of the Developer Fee that are more restrictive than those imposed by SDHDA.

- 2.2.6 Contingency: If the Proforma attached as Exhibit C includes a Contingency intended to protect against un-expected cost overruns. The Contingency may not be disbursed, regardless of which funding source is providing the funds for the specific draw, unless SDHDA has previously approved an amendment to the Project Budget and Proforma and any associated project; further, any use of HOME funds toward such additional cost items must be for costs determined by SDHDA to be HOME-eligible under HUD regulations. The presence of the Contingency will not limit Developer's obligations to complete the Project or diminish its liability under the Guarantees outlined in Section 2.1.5.
- 2.2.7 Disbursement of Developer's Funds: If SDHDA shall at any time in good faith determine that the undisbursed amount of available financing is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project and shall thereupon send written notice thereof to Developer specifying the amount required to be deposited by Developer with SDHDA or its agent to provide sufficient funds to complete the Project, the Developer agrees that it will, within five (5) calendar days of receipt of any such notice, deposit with SDHDA or its agent, in a noninterest bearing account, the amount of funds specified in the Lender's notice. Developer agrees that any such funds deposited with SDHDA or its agent may be disbursed by SDHDA or its agent, before any further disbursement of loan proceeds from SDHDA, to pay any and all costs and expenses of any kind in connection with completion of the Project.
- 2.2.8 Advances Without Receipt of Draw Requisitions: Notwithstanding anything herein to the contrary, SDHDA shall have the irrevocable right at any time and from time to time to apply funds that it agrees to advance hereunder to pay any and all of the expenses referred to in Section 7.08 hereof, all without receipt of a Draw Requisition for funds from the Developer.
- 2.2.9 Advances. SDHDA agrees, on the terms and subject to the conditions hereinafter set forth, to make the following Advances to the Developer:

- a. One Advance, not to exceed a disbursed amount of \$ [REDACTED] when construction of the Project is 25% complete, as determined in writing by the Project architect, for actual expenses incurred to that date;
- b. One Advance, not to exceed a disbursed amount of \$ [REDACTED] when construction of the Project is 50% complete, as determined in writing by the Project architect, for actual expenses incurred to that date;
- c. One Advance, not to exceed a disbursed amount of \$ [REDACTED] when construction of the Project is 75% complete, as determined in writing by the Project architect, for actual expenses incurred to that date;
- d. One Advance, not to exceed a disbursed amount of \$ [REDACTED] when construction of the Project is 100% complete, as determined in writing by the Project architect, for actual expenses incurred to that date; and
- e. One Final Advance, not to exceed a disbursed amount up to \$ [REDACTED] when final Project completion information is received, which includes all costs verified by a certified public accountant.

The obligation of the Developer to repay the Advances shall be evidenced by the Note, and containing the terms relating to maturity, interest rate, and other matters set forth therein. Notwithstanding any provision of the Note, interest, if any, shall be payable at the rate provided therein only on such portions of the loan proceeds as actually have been disbursed.

2.3 Reserves and Other Accounts

Developer must establish and shall maintain an Operating Reserve and a Replacement Reserve (collectively, the Reserve Accounts) and such other accounts for the Project as described in this section. All accounts required by this section shall be held in interest-bearing segregated accounts. All accounts are to be held in banks or credit unions fully licensed to do business in the State of South Dakota and in accounts insured to the maximum limit of either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA). Any interest earned on Reserve Accounts shall remain within the Reserve Accounts.

- 2.3.1 Replacement Reserve Account: Developer shall fund a replacement reserve as required by SDHDA. Developer shall use the Replacement Reserve Account only for eligible capital costs as defined from time to time by SDHDA. Following closing on the HOME loan, Developer shall make deposits to the replacement reserve not less than annually. The initial annual deposit must be made within 6 months following construction completion but in no event later than [REDACTED], 20XX, and it shall be at least \$ [REDACTED]. The minimum annual

deposit shall be increased each year by 3%. Disbursements from this Replacement Reserve Account shall be for the purpose of effecting replacement of structural elements and mechanical equipment of the Project, for painting and decorating, or for any such purpose for the benefit of the Project.

SDHDA may periodically require Developer to obtain a capital needs assessment prepared by an independent third party architect, engineer, or other qualified firm approved by SDHDA. Initially, SDHDA expects that capital needs assessments would be required every five (5) years following Project Completion. Such capital needs assessments shall be used for the purposes of determining the adequacy of the Replacement Reserve, taking into account its existing balance, planned deposits, and anticipated future capital replacement costs for the Project. With written approval from SDHDA, the cost of obtaining a capital needs assessment can be paid from the Replacement Reserve Account if operating funds are not otherwise available.

If the capital needs assessment indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the term of this Agreement, Developer shall, at SDHDA's option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by SDHDA, Developer or the Guarantors must replenish the Replacement Reserve Account within six months.

- 2.3.2 Operating Reserve Account: Prior to the final disbursement of the HOME loan and not later than the completion of construction, Developer shall fund and maintain an Operating Reserve Account in the amount of \$ [REDACTED]. After Stabilized Occupancy, the Operating Reserve Account may be used to pay the operating costs and expenses to the extent the collected gross receipts are insufficient for such purpose. Deviations in annual Operating Expenses of greater than ten percent (10%) other than those attributable to increases in the cost of utilities, insurance, and property taxes shall be approved in advance by SDHDA. Further, the Operating Reserve Account may not be used to pay any identity of interest costs, including management fees. If drawn upon, the Operating Reserve Account must be replenished to its required minimum balance prior to distributions of Surplus Cash as defined in Section 2.6 below.

Stabilized Occupancy shall be defined as the date upon which the Project has achieved all of the following benchmarks:

- Initial occupancy of all HOME units;
- Physical occupancy of no less than 93% of all units;
- 3 consecutive months of sustained economic occupancy (net rent collected divided by gross rent potential) of at least 93%; and
- 3 consecutive months of sustained operating performance at or above a debt coverage ratio of 1.20 (inclusive of all required debt payments and calculated as if SDHDA HOME loan was payable on a monthly basis).

2.3.3 Escrow for Property Taxes and Insurance: In general SDHDA will allow any Senior Lender approved by SDHDA to manage one or more escrows for the payment of anticipated taxes and insurance premiums. However, in its sole discretion, SDHDA reserves the right, upon issuance of notice to the Developer, to require the Developer to establish and make monthly payments toward a reserve account held by SDHDA for tax and insurance payments.

If required by SDHDA, Developer shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to the HOME Loan, an amount acceptable to SDHDA. Such amount shall be used by SDHDA to pay such taxes and insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of SDHDA, and no interest shall be payable in respect thereof. Upon demand of SDHDA, Developer agrees to tender such additional moneys as are necessary to make up any deficiencies in the amounts deposited to enable SDHDA to pay such taxes and insurance premiums when due.

2.3.4 Term of Reserve Accounts: All required Reserve Accounts must be maintained for the full term of this Agreement or while SDHDA HOME loan is outstanding, whichever is longer.

2.3.5 SDHDA Approval and Access: Any withdrawal or transfer from Reserve Accounts shall require the written approval of SDHDA, by and through its designee. SDHDA's approval or request for additional information to substantiate the need for the withdrawal or transfer shall be provided within ten (10) business days of its receipt of a request for such action. Developer must establish the Reserve Accounts to require the signature of SDHDA designee and Developer for all withdrawals and transfers. Further, Developer shall authorize the financial institutions in which Reserve Accounts are held to provide SDHDA, when requested, verified statements reflecting account balances and transactions.

2.3.6 Other Reserves: Any other project reserves established pursuant to the requirements of other funders in the Project shall be subject to the same general requirements of this section, including Section 2.3.4 above. Notwithstanding, provided there has been no default and that any excess funds are returned to the Project's operating account and not disbursed to the Developer, SDHDA will exclude a reasonable and customary tax and insurance escrow managed by {senior lender} from the requirements Section 2.3.4.

2.4 Operating Receipts and Expense Account

The Developer shall establish and maintain an Operating Receipts and Expense Account to be reviewed by SDHDA during monitoring visits. All rents and other receipts of the Project shall be deposited in the name of the Developer and the Project. The Developer shall, upon collection of all Project receipts from whatever source derived from the operation of the Project, hereinafter referred to as "Operating Receipts," forthwith deposit the same in the Operating Receipts and

Expense Account. Thereafter, on a monthly basis the Developer shall pay, or cause to be paid, in a timely manner out of Operating Receipts of the Project, in the order and priority as set forth below unless otherwise directed by SDHDA, at its sole option, in writing:

- a. All of the real estate tax and insurance premium escrow payments required of the Developer, which payments shall be deemed to be part of the "Operating Expenses" of the Project for the purpose of this Agreement; and
- b. The fee of the Project's managing agent as set forth in the Management Agreement between the Developer and said managing agent; and
- c. All remaining "Operating Expenses" of the Project (which specifically exclude the Loan principal, interest, and annual fee payments), including but not limited to, taxes other than those for which an escrow payment is required under this and any permitted senior mortgage, maintenance, fuel, management, water and sewage, administration, electricity, legal, audit, and all other current expenses, unless other funds for payment are set aside or deferment of payment has been approved by SDHDA; and
- d. All of the amortized principal, interest, and premium, if any, required to be paid under the Note and Mortgage to SDHDA and to **{enter name of other Lenders}**; and
- e. All amounts required to be deposited with a designated depository in the Replacement Reserve account, as set forth in this Agreement.

2.5 Occupant Security Deposits

The Developer is further required to segregate or cause to be segregated (i) all occupant security deposits, to be held in an interest bearing depository account (hereinafter referred to as the "Security Depository Account"), and (ii) an amount equal of the aggregate of all special funds required by SDHDA to be maintained by or with respect to the Project .

2.6 Surplus Cash

Developer shall not make distributions of surplus cash (i.e. project "cash flow"), including to the General Partner or related parties or to the Investor, other than for normal operating costs in the annual budget approved by SDHDA, scheduled payments of Bank Independent's mortgage, and required escrow and reserve deposits without written approval by SDHDA based on a determination by SDHDA that:

- a. No default in the terms of this Agreement or other Loan Documents exists and is continuing;
- b. The Project is in compliance with all applicable property standards and there are no unresolved physical deficiencies;
- c. All required reserves and escrows are fully and properly funded;

- d. The most recent annual audit of the Project has been received by SDHDA and shows no material weaknesses or unresolved findings; and
- e. Following any distribution of cash flow, the Project will retain adequate liquidity to ensure uninterrupted operations. Liquidity will be measured by adding cash on hand and current receivables then subtracting current payables (i.e. liabilities) and must, following any distribution, equal or exceed one month of gross revenue potential in the most recent SDHDA approved annual Project Budget.

To obtain approval to make a surplus cash distribution, Developer shall submit to SDHDA a request at least 15 business days prior to any anticipated distribution together with a current financial statement for the Project that will enable SDHDA to assess criteria (d) above. Developer shall provide a prompt response to SDHDA requests for additional documentation, if needed.

SECTION 3. HOME Program Requirements

3.1 Affordability Period Requirements

The Project must comply with all requirements of 24 CFR 92.252, in particular requiring the HOME-assisted units be income and rent restricted for the duration of the Project’s HOME Affordability Period. The Project must also maintain compliance with the physical standards of 92.251 and be operated consistent with applicable tenant protection, affirmative marketing, and fair housing requirements of Subpart F of 24 CFR 92.

3.2 Designation of HOME Units

{enter number of units in words} (xx) units will be designated as HOME-assisted. The restrictions of this section shall apply both to initial occupancy of the HOME units upon completion of construction and throughout the term of this Agreement. As noted in Section 1.4.2 above, SDHDA reserves the right to adjust the number of HOME-assisted units if the sources and uses of funds change during development of the Project. The HOME units will be {enter “Floating Units” or “Fixed Units”} as defined in 24 CFR Part 92.252.

{enter number of units in words} (xx) units will be designated as Low-HOME units, including {enter number of units in words} (xx) 1-bedroom unit, {enter number of units in words} (xx) 2-bedroom units, and {enter number of units in words} (xx) 3-bedroom units. {enter number of units in words} (xx) units will be designated as High-HOME units, including {enter number of units in words} (xx) 1-bedroom unit, {enter number of units in words} (xx) 2-bedroom units, and {enter number of units in words} (xx) 3-bedroom units.

3.2.1 Income Restrictions: All Low-HOME units must be offered for occupancy exclusively to tenants with household incomes at or below 50% of the Area Median Income (AMI) as adjusted for household size. All High-HOME units must be offered for occupancy exclusively to tenants with household incomes at or below 60% AMI as adjusted for household size. HUD releases updated HOME income charts annually, which SDHDA will provide to

Developer. The most current income chart must be used when determining eligibility for a prospective tenant or determining the income at recertification for in-place tenants.

The Project must utilize the definition of annual income defined in 24 CFR Part 5.609 (often referred to as the "Section 8" definition). Prior to signing a lease with any tenant, Developer must obtain and examine at least two months of source documents evidencing household income.

As a reference, Developer should consult the most recent version of the HUD publication: *Technical Guide for Determining Income and Allowances for the HOME Program*.

Developer acknowledges that the HOME Income Limits and the Section 8 Income Limits (upon which the LIHTC program relies) are released by HUD on independent schedules. To the extent that HOME Income Limits are published and made effective by HUD later than the Section 8 limits, Developer acknowledges that the qualifying incomes for HOME-assisted units will not be changed until updated HOME Income Limits are published. Anytime the income limits applicable to HOME and LIHTC conflict, the more restrictive (i.e. lower) income limit will apply.

Rent Restrictions: The gross rent for each Low-HOME units may not exceed the Low-HOME rent, as adjusted for unit size published annually by HUD. The gross rent for each High-HOME unit may not exceed the High-HOME rent, as adjusted for unit size and published annually by HUD.

The HOME rent limit is a gross rent limit. An allowance for any tenant paid utilities must be made to ensure that the combination of rent paid to Developer and the allowance for tenant-paid utilities does not exceed the applicable Low-HOME or High-HOME rent.

Developer acknowledges that the LIHTC Program imposes similar but different limits on rent and further acknowledges that in the event other financing sources allow a higher rent, the HOME rent limits imposed by SDHDA and the HOME limitations shall continue to apply.

Re-verifying Incomes: Developer shall re-verify the income of in-place tenants using at least two months of source documentation not less than every 6th year of the HOME Affordability Period. In years when source documentation is required, all in-place tenants must be re-verified regardless of how long they have been in place.

- 3.2.2 Treatment of Over-Income Tenants: In the event an in-place tenant, upon re-verification of the tenant's income, has a household income above the applicable 50% AMI HOME Income Limit for Low-HOME tenants or the applicable 80% AMI HOME Income Limit for Low-HOME or High-HOME tenants, the Developer shall take the following actions:

- If the Low-HOME tenant's income increases at re-verification to greater than 50% AMI but less than or equal to 80% AMI, then the Developer will first substitute another unit that is comparable or larger by either i) designating another unit in the Project occupied by an eligible Low-HOME tenant or ii) renting the next available unit as a Low-HOME unit. After substituting another Low-HOME unit, the Developer may raise the rent for the over-income tenant to the lesser of i) 30% of the over-income tenant's adjusted income or ii) the applicable High-HOME rent for such unit. Such an increase in rent shall be subject to the terms of the lease and the provisions of Section 3.3.1 below.
- If the Low-HOME tenant's income increases at re-verification to greater than 80% AMI, then the Developer will first increase the rent for the over-income tenant to the lesser of i) 30% of the tenant's adjusted income or ii) the "market rent" for the unit (i.e. what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, LIHTC, or other such programs). The Developer must also substitute another unit that is comparable or larger by either i) designating another unit in the Project occupied by an eligible Low-HOME tenant or ii) renting the next available unit as a Low-HOME unit.
- If the High-HOME tenant's income at re-verification increases to greater than 80% AMI, then the Developer will first increase the rent for the over-income tenant to the lesser of i) 30% of the tenant's adjusted income or ii) the "market rent" for the unit (i.e. what the unit would be projected to rent for in the local market absent any income or rent restrictions imposed by HOME, LIHTC, or other such programs). The Developer must also substitute another unit that is comparable or larger by either i) designating another unit in the Project occupied by an eligible High-HOME tenant or ii) renting the next available unit as a High-HOME unit.
- This section notwithstanding, if the unit occupied by an over-income tenant is subject to LIHTC rent restrictions, the Developer will not be required to raise the rent beyond the applicable LIHTC rent for the unit.

3.2.3 SDHDA Approval of Rent, Utility Allowances, and Fees: Pursuant to the requirements of 92.252(d) and (f), SDHDA must approve the rents and utility allowances applied to the Project on an annual basis. The Developer may not increase the rents of HOME-units without prior approval of SDHDA.

Additionally, the Developer shall provide a fee schedule, consistent with requirements of Section 3.3.2 below for review and approval by SDHDA on an annual basis. Any mandatory tenant fees not otherwise approved by SDHDA shall be considered rent and are subject to the gross rent limits outlined herein.

3.3 Project Requirements

Developer must operate the Project in compliance with the requirements of Subpart F of 24 CFR 92.

- 3.3.1 Lease: Developer must have a written lease with each tenant of a HOME-assisted unit, in a form acceptable to SDHDA. If directed by SDHDA, Developer shall include SDHDA's HOME Lease Addendum, as may be updated from time to time, on all HOME leases. The lease must, at a minimum, provide all HOME tenants with at least 30 days written notice prior to i) increasing the rent or ii) terminating or refusing to renew the lease.

All tenants must be offered leases with a minimum period of one (1) year. Developer cannot terminate or refuse to renew the lease of any tenant for other than good cause. In particular, good cause does not include an increase in a tenant's income or a tenant's failure to accept or participate in supportive services being offered now or in the future to residents of the Project.

Good cause for terminating or refusing to renew the lease shall include material violations of the lease or violations of applicable federal, state, or local laws.

The lease may not include any provisions prohibited by 24 CFR 92.253(b).

- 3.3.2 Prohibition on Certain Fees to Tenants: Developer shall not charge tenants fees to cover operating costs of the Project or administrative costs related to complying with the HOME program. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, Developer may charge fees approved by SDHDA for the following:

- Reasonable application fees to prospective tenants;
- Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by SDHDA to be customary for rental housing projects in the area and not excessive;
- Parking fees to tenants only if such fees are determined by SDHDA to be customary for rental housing projects in the neighborhood and not excessive; and
- Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged only for services provided.

- 3.3.3 Voluntary Services: Developer must ensure that any supportive services being offered to tenants of the Project are voluntary. Tenants may not, as a condition of their initial lease or continued occupancy, be required to accept, participate in, or comply with the requirements of any supportive services program.

- 3.3.4 Tenant Selection Plan: Developer must develop a tenant selection plan meeting the requirements of 24 CFR 92.253(d). Developer cannot refuse to lease to a holder of a Section

8 Housing Choice Voucher, recipient of HOME Tenant Based Rental Assistance, or a prospective tenant receiving similar assistance under another federal, state, or local program solely because of the tenant or prospective tenant's participation in such program. The tenant selection plan will be subject to review and approval by SDHDA both prior to initial occupancy of the HOME-assisted units and during the term of this Agreement.

3.3.5 Conditions for Faith-Based Organizations: Faith-based organizations are eligible to participate in the HOME program on the same basis as any other organization but must comply with the requirements of 24 CFR 92.257. Among other requirements, Developer may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Project. If Developer does engage in such religious activities, those activities must be offered separately from the HOME-assisted housing, and participation by tenants of the Project must be voluntary. Additionally, Developer shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

SECTION 4. Property Standards and Management

4.1 Property Standards

The Project must be constructed and maintained in compliance with the requirements of 24 CFR 92.251.

4.2 Construction Codes

The Project must be constructed in compliance with all applicable State and local zoning, land use, and building code requirements. The Project's plans and specifications must clearly list all building codes applicable to the project, including without limitations electrical, mechanical, plumbing, and fire codes.

Additionally, the Project must be constructed to meet or exceed the standards of the 2009 International Energy Conservation Code for single-family homes or the 2007 edition of the American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) standard 90.1 for multi-family building, as applicable.

4.3 Required Project Amenities and Features

The Developer acknowledges that SDHDA's decision to award funding for the Project was influenced, in part, by Developer's proposal to include various features and amenities in the construction of the project. Consequently, the Project must be constructed to include all features and amenities promised within the Developer's application for HOME funding and further delineated in Exhibit **B**.

4.4 Additional Construction Requirements

- a) The Project must also be constructed in compliance with the accessibility requirements of 24 CFR 8 which implements Section 504 of the Rehabilitation Act of 1973. Additionally, if the Project is a “covered multifamily dwelling,” as defined in 24 CFR 100.201, the Project must also meet the design and construction requirements of 24 CFR 100.205 regarding, among other things, accessibility to the building and common areas.

In particular, Developer must ensure that the construction of the units in the Project will satisfy requirements for both physically accessible units and those accessible for tenants with sensory (i.e. hearing or visual) impairments. Based on the {enter number of units in words} (XX) unit Project, a minimum of {enter number of units in words} (X) units must be physically accessible and a minimum of {enter number of units in words} (X) units must be accessible for tenants with sensory impairments.

- b) Developer must prohibit the use of lead based paint construction of the project.
- c) Developer will require its contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project. Developer will require its contractors to stop construction if ground disturbance related to this Project results in the discovery of any bones, artifacts, foundations, or other indications of past human occupation and notify both the State Historic Preservation Office and SDHDA immediately.

4.5 Ongoing Maintenance of the Project

Developer must maintain the Project in compliance with all applicable state and local codes and ordinances throughout the term of this Agreement. SDHDA has determined that the following local codes apply to the ongoing occupancy and maintenance of the Project:

- {List applicable codes }

Additionally, Developer must maintain the Project in compliance with the Housing Quality Standards (HQS) in 24 CFR 982.401. In the event of a conflict between state and local codes and HQS, the stricter standard will apply.

As a matter of clarification, SDHDA acknowledges that the requirements of the LIHTC, as applied by SDHDA, include compliance with the HUD’s Uniform Physical Conditions Standards (UPCS). UPCS is generally a more stringent standard than HQS, but in the event a conflict on any given inspectable item or building component, the stricter standard shall apply.

4.6 Property Management

SDHDA must approve any professional property management company employed by Developer for the project.

Initially, SDHDA has approved {enter name of property management company} as the property manager for the Project.

SECTION 5. Insurance, Casualty, and Condemnation

5.1 General

During construction, Developer will maintain the insurance coverages outlined in Exhibit D. Throughout the term of this agreement, at its own expense, the Developer will maintain, for the benefit of SDHDA, extended coverage property and comprehensive liability insurance insuring the interest of SDHDA in the Project and will keep the improvements now existing or hereafter erected on the Project insured against loss by fire and such other hazards, casualties, and contingencies as may be required from time to time by SDHDA, and all such insurance shall be evidenced by extended coverage property and comprehensive liability insurance, and standard fire insurance policy or policies, in such amounts as may be required by SDHDA, and in default thereof SDHDA shall have the right to effect such insurance at the expense of the Developer. The improvements must be insured by a company which is rated not less than "B+," by A. M. Best Company, and the coverage must be for no less than the full replacement cost; and must cover personal injury and property damage under general public liability in an amount at least equal to \$500,000. Such policies shall be endorsed with loss payable to SDHDA, shall have a replacement cost endorsement, and shall be deposited with SDHDA. The Developer shall pay all premiums on such insurance at least ten (10) days prior to the date the premium on each said policy shall become due and payable. At the written request of SDHDA, Developer shall promptly furnish to SDHDA all written notices and all paid-premium receipts received by Developer.

In the event of loss, the Developer shall give prompt notice by mail to the insurance carrier and SDHDA, and SDHDA may make proof of loss, if not made promptly by the Developer. Subject to prior Permitted Exceptions recorded against the Property, SDHDA is hereby authorized in the event of loss to compromise and settle all loss claims on said policy on such terms as it deems appropriate. Developer shall promptly furnish to SDHDA a copy of any proof of loss given to the insurance carrier.

If the Project, or any part thereof, shall be damaged by fire or other insured hazard, the amounts paid by any insurance company shall be paid to SDHDA, to the extent of the Indebtedness then remaining unpaid, and, at the option of SDHDA, all or any part of such amount may be applied in reduction of the Indebtedness or released for the repairing or rebuilding of the Project. If in SDHDA's determination restoration is financially feasible and desirable, any insurance proceeds shall first be applied to such restoration. All policies of insurance and any and all refunds of unearned premiums are hereby assigned to SDHDA as additional security for the payment of the Indebtedness. In event of foreclosure of this Project, all right, title and interest of Developer in and to any insurance policies then in force shall pass to the purchaser on foreclosure.

5.2 Condemnation

Subject to prior permitted exceptions recorded against the Property, the Developer hereby irrevocably assigns to SDHDA any award or payment which becomes payable by reason of any taking of the Property, Project, or any part thereof, either temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings.

The Developer will file and prosecute in good faith and with due diligence that which would otherwise be its claim in any such award or payment and subject to prior permitted exceptions recorded against the Property will cause the same to be collected and paid over to SDHDA, and the Developer irrevocable authorizes and empowers SDHDA, in the name of the Developer or otherwise, to file, prosecute, settle or compromise any such claim and to collect, receipt for and retain the same.

The proceeds of the award of payment may, after deducting all reasonable costs and expenses that may have been incurred by SDHDA in the collection thereof, at the sole discretion of SDHDA, be released to the Developer, applied to restoration of the Project or applied in reduction of the Indebtedness secured hereby. If in SDHDA's determination restoration is financially feasible and desirable, any condemnation proceeds shall first be applied to such restoration.

5.3 Application of Proceeds in an Event of Default

In the event of an event of default hereunder under the HOME Agreement or any other Loan Document, SDHDA may apply insurance and condemnation proceeds to the reduction of the indebtedness secured hereby in any manner selected by SDHDA but, unless otherwise agreed by SDHDA in writing, no application of such proceeds to the HOME Loan, or to other obligations secured by the Loan Documents, or any of them, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the HOME Loan, or any such other obligations.

SECTION 6. Other Federal Requirements

6.1 Other Federal Requirements

Developer agrees to develop and operate the Project in full compliance with other related federal requirements.

6.2 Equal Opportunity and Fair Housing Requirements

In accordance with Sections 24 CFR 92.350 and 92.351 of the HOME regulations, except for specific exceptions allowing elderly designated projects to apply age restrictions, no person shall on the ground of race, color, religion, sex, disability, familial status, national origin, or age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program activity funded in whole or in part from HOME funds. In addition, Developer shall develop, operate, and maintain the Project in accordance with the following:

- 6.2.1 The requirements of the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100; Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958 B1963 Comp., P. 652 and 3 CFR1980 Comp., P. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR Part 107; and of the Civil Rights Act of 1964 (42 U.S. C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- 6.2.2 The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8;
- 6.2.3 The requirements of 24 CFR 5.105(a)(2) requiring that HUD-assisted housing be made available without regard to actual or perceived sexual orientation, gender identity, or marital status and prohibiting owners (or their agents) from inquiring about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity;
- 6.2.4 The requirements of Executive Order 11246 (3 CFR 1964-65, Comp., p. 339) (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR Chapter 60; The nondiscrimination requirements of section 282 of the HOME Investment Partnerships Act at title II of the Cranston-Gonzales National Affordable Housing Act, as amended;
- 6.2.5 The requirements of Section 3 of the Housing and Urban Development Act of 1968 (U.S.C. 1701u) as evidenced by submission of Form HUD-60002 which the Developer shall complete and return to SDHDA within ninety days of the date of this agreement, that:
- To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds be given to low-income persons residing within the unit of general local government or the metropolitan area as determined by HUD, in which the project is located; and
 - To the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area as the project.

6.2.6 The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Developer must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. Developer will cooperate with SDHDA in its minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the procurement of property and services including; without limitation, real estate firms, construction firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services.

6.2.7 The nondiscrimination requirements of section 282 of the HOME Investment Partnerships Act at title II of the Cranston-Gonzales National Affordable Housing Act, as amended.

Non-discrimination: Developer agrees to post notices containing this policy against discrimination in conspicuous places available to applicants for employment and employees. All solicitations or advertisements for employees, placed by or on the behalf of the Developer, shall state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, religion, or sex.

6.3 Affirmative Marketing

Developer must adopt and implement affirmative marketing procedures for the Project consistent with the requirements of 24 CFR 92.351. Developer must submit an Affirmative Fair Housing Marketing Plan (AFHMP), using form HUD-935.2A, or on another such form as SDHDA may reasonably require, for SDHDA review prior to marketing and leasing the HOME-assisted units.

SDHDA reserves the right to require Developer to update the Project's AFHMP from time to time to ensure it remains appropriate given potentially changing demographic characteristics of the market area and is updated based on the operational experience with the Project.

6.4 Displacement, Relocation, and Acquisition

Developer will take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of the Project. Additionally, Developer will assure compliance with appropriate relocation and real property acquisition requirements as provided in 24 CFR 92.353.

6.5 Labor Standards

The Project is subject to the requirements 24 CFR 92.354. Because there are **more/fewer** than eleven (11) HOME-assisted housing units, the prevailing wage standards of the Davis-Bacon Act **do/do not** apply.

As applicable, Developer will ensure that its contracts for construction contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 USC 276a-5), will be paid to all laborers and mechanics employed in the development of affordable housing involved. Developer further will ensure that such agreements must also be subject to the overtime provisions, as applicable, of the Work Hours and Safety Standards Act (40 USC 327-332).

Developer shall comply with regulations issued under these Acts and with other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. SDHDA shall require certification as to compliance with the provisions of this section and will monitor the Project and its records for such compliance before making any payment under this Agreement.

6.6 Use of Contractors and Subcontractors

Developer will ensure and maintain records demonstrating that none of the contractors or subcontractors involved in the development of the Project are suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts. Developer will further ensure that its contractors include parallel provisions in their subcontracts, provide and maintain records showing that subcontractors are not suspended, debarred, or otherwise prohibited from participating in federally-assisted contracts.

Developer shall, at a minimum, search at www.sam.gov to verify that each contractor and subcontractor is not listed as an excluded party.

6.7 Conflict of Interest

No officer, employee, agent, or consultant of Developer (known as covered persons) may occupy a HOME-assisted affordable housing unit in the Project. However, this provision does not apply to an employee or agent of Developer who occupies a housing unit in the Project as a project manager or maintenance worker.

Notwithstanding, SDHDA may approve a waiver to allow a covered person to occupy a unit in the Project based on a written request from Developer if, in SDHDA's sole discretion, a waiver would be appropriate under the provisions of 24 CFR 92.356(f)(2).

While the conflict of interest provisions in 24 CFR 92.356 do not technically apply to Developer's procurement of goods and services associated with the development or operation of the Project, Developer agrees to notify SDHDA in writing and seek SDHDA approval prior to entering into any contract with an entity owned in whole or in part by a covered person or an entity owned or controlled in whole or in part by Developer, the General Partner, any of the underlying individual owners of the General Partner, or any of the Guarantors. SDHDA will review the proposed contract to ensure that the contractor is qualified and that the costs are reasonable. Approval of an identity of interest contract will be in SDHDA's sole discretion.

Notwithstanding, SDHDA initially acknowledges and approves the Developer's use of {identify any identity of interest entities} as the {identify role, e.g. property manager, general contractor, etc.} for the Project.

6.8 Certification Regarding Lobbying

Developer certifies that it will not and, to the best of its knowledge, has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Developer further agrees that it shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

SECTION 7. Reporting

7.1 General Requirements

Developer agrees to provide reports to SDHDA and to maintain records documenting compliance with this Agreement, the loan documents and regulatory agreements, the HOME rule, and all other applicable federal, state, and local laws and regulations. Developer also agrees to provide SDHDA, HUD, HUD's Office of Inspector General, the Comptroller General of the United States (aka the U.S. Government Accountability Office or "GAO"), or their representatives access to the Project and its records for the purpose of monitoring Developer's compliance with applicable requirements.

7.2 Reports

Developer shall submit periodic reports to SDHDA on the progress and performance of the Project. SDHDA reserves the right to unilaterally alter, supplement, or otherwise modify the frequency or content of required reports as needed to maintain adequate oversight of the Project, address changes to HOME regulations, or to address findings related to noncompliance by the Project.

Initially, SDHDA may require reports as follows:

- 7.2.1 Prior to the commencement of construction, Developer shall report not less than quarterly on progress toward commencement of construction. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g. by April 15th reports on the first quarter are due);
- 7.2.2 During the construction period, Developer shall report monthly on progress, submit invoices being paid, and provide evidence of appropriate lien waivers to SDHDA regardless of whether Developer is requesting a disbursement from SDHDA during that month;

- 7.2.3 Upon completion of construction and prior to Stabilized Occupancy, Developer shall report monthly on progress toward leasing units and provide monthly income and expense reports;
- 7.2.4 Upon reaching Stabilized Occupancy, Developer shall report on the occupancy and financial status of the Project not less than annually.

Annual reports shall include a HOME Rental Project Compliance Report, utility allowance documentation, an Affirmative Fair Housing Marketing Plan, Tenant Selection Policy, and a copy of the Lease Agreement. Additionally, Developer shall submit copies of its annual project audit, prepared by an independent certified public accountant, within one hundred-twenty (120) days of the end of its fiscal year.

All reports pertaining to leasing and occupancy shall include, but will not be limited to, a statistical report reflecting the actual number of persons served, the types of services provided and the actual number of persons receiving those services, and a narrative description of assistance provided, in addition to the aforementioned statistics, that includes a statement regarding the progress made toward meeting performance goals.

7.3 Recordkeeping and Inspections

Developer shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of SDHDA, HUD, or their designees may examine any records or information accumulated pursuant to this Agreement. During the Period of Affordability, SDHDA will conduct on-site inspections to verify compliance with 24 CFR 92.252 as required by 24 CFR 504. All confidential information shall be treated as such by all aforementioned SDHDA or HUD representatives or designees.

Developer shall maintain administrative and financial records as required by 24 CFR 92.508, applicable to the activities to be carried out under this agreement, including but not necessarily limited to:

- 7.3.1 Property description and location;
- 7.3.2 Records regarding project requirements that applies for the duration of the period of affordability (all of Subpart F of 24 CFR);
- 7.3.3 Documentation that the amount of investment in each housing unit is in compliance with the requirements in 24 CFR 92.205(c) and maximum subsidy limits in 24 CFR 92.250;
- 7.3.4 Information about contractors, vendors and other lenders to include but not necessarily be limited to verification of non-debarment and suspension, verification of qualifications and

experience, legally binding contracts and agreements, invoices and payment records and related correspondence. (See: 24 CFR Part 24);

- 7.3.5 Financial information including, but not necessarily limited to, audits and related correspondence, accounting and financial records, indirect cost analyses, and operating budgets;
- 7.3.6 Project records in accordance with 24 CFR 92.508(a)(3) that demonstrate that each HOME assisted renter and each housing unit leased meets the requirements of the HOME program.
- 7.3.7 Other Records that include documentation of compliance with other federal requirements in accordance with 24 CFR 92.508 that includes the following requirements to the extent applicable to the funded activity:
- Documentation of efforts to affirmatively further fair housing;
 - If applicable, records documenting compliance with federal law regarding displacement, relocation and property acquisition in accordance with the URA;
 - Records demonstrating compliance with labor requirements set out in 24 CFR 92.354, including contract provisions and payroll records (as applicable);
 - Records concerning lead-based paint set out in 24 CFR Part 35;
 - Records supporting requests for waivers of the conflict of interest prohibition set out in 24 CFR 92.356 (if applicable);
 - Records demonstrating compliance with flood insurance requirements under 24 CFR 92.352.
- 7.3.8 Records related to any decision to terminate the lease of a tenant or refuse to renew the lease of a tenant, including documentation of the specific lease violations leading to termination or non-renewal.

7.4 Records Retention

Developer shall retain all applicable administrative and project records and records pertinent to other federal requirements, as specified in Section 92.508 of the HOME Final Rule, for a period of five (5) years after the termination of all activities funded under this agreement. In this context funded activities extend throughout the period of affordability as stipulated in 24 CFR 92.252 and 92.508.

Records for non-expendable property acquired with HOME Program Funds shall be retained for five (5) years after the period of affordability.

Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have commenced before the expiration of the five (5) year

period, such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five (5) year period, whichever occurs later.

7.5 Inspections

Developer will provide SDHDA, applicable federal authorities, and their representatives with access to the Project for the purposes of conducting physical inspections, including individual apartments, common spaces, and the grounds. SDHDA will conduct periodic physical inspections during construction to ensure the Project is progressing and construction activity meets applicable property standards. After construction completion, SDHDA will inspect the Project annually or on another schedule it determines to ensure that the Project is being maintained in compliance with all appropriate property standards.

7.6 Compliance Monitoring Fee

After the first full year in service, which is measured from the month the last building in the Project is placed in service, and annually for the duration of the term of this Agreement, the Developer will pay SDHDA a compliance monitoring fee. For the first full year of operations, the fee shall be \$_____ per project and \$_____ per HOME-Assisted Unit. Upon notice to the Developer, SDHDA may adjust the fee annually, based on its estimated costs of monitoring the Project for compliance with the HOME Program. In no case may SDHDA increase the fee beyond an annualized rate of 3% calculated with from the year in which this agreement is first executed. The Compliance Monitoring Fee shall be payable as of the first of January each year; failure to submit the fee shall be a violation of this Agreement.

SECTION 8. Enforcement and Termination.

8.1 Default

The actions noted below shall constitute an event of default by Developer hereunder. SDHDA may give written notice of default to the Developer, by registered or certified mail, addressed to the address stated in this Agreement, or such other address as may subsequently, upon appropriate written notice thereof to SDHDA, be designated by the Developer as its legal business address.:

- 8.1.1 Failure to comply with the terms and conditions hereof;
- 8.1.2 Failure to comply with HOME Program regulations, fair housing laws, and other federal requirements related to the Project;
- 8.1.3 A default by Developer under any other of the Loan Documents; and
- 8.1.4 Any event of fraud, misrepresentation, gross negligence, or willful misconduct by Developer in the execution or performance of this Agreement or in its application for participation in the HOME Program.

8.2 Remedies

In the event of default by Developer hereunder, which is not cured within thirty (30) days of the mailing of written notice by SDHDA as described in Section 8.1, SDHDA may seek any combination of the following remedies:

- 8.2.1 Withhold any further payments to be made under this Agreement until such time as Developer's breach has been cured in accordance with the terms and conditions of any cure period provided by SDHDA (but SDHDA may, in its sole discretion, make disbursement after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder);
- 8.2.2 Apply to any appropriate court, State or Federal, for specific performance, in whole or in part, of the covenants and agreements contained herein, or for an injunction against any violation of such covenants and agreements;
- 8.2.3 Enter upon the Property and take possession thereof, together with the Project then in the course of construction, and proceed either in its own name or in the name of the Developer, as the attorney-in-fact of the Developer (which authority is coupled with an interest and is irrevocable by the Developer), to complete or cause to be completed the Project, at the cost and expense of the Developer;
- 8.2.4 Require the use of or change in professional property management;
- 8.2.5 Require the replacement of the General Partner of Developer;
- 8.2.6 Pursue the appointment of a receiver to collect rents and profits or to take possession of the Project;
- 8.2.7 Declare immediately due and payable all unpaid principal, accrued interest and annual fees on the Note, together with all other sums payable thereunder and the same shall thereupon be immediately due and payable without presentment or other demand, protest, notice of dishonor or any other notice of any kind, all of which are hereby expressly waived;
- 8.2.8 Apply sanctions set forth in 24 CFR 92, if determined by SDHDA to be applicable;
- 8.2.9 Apply to any appropriate court, State or Federal, for such other relief as may be appropriate and allowed by law, since the injury to SDHDA arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain; and

8.2.10 Terminate this Agreement by giving written notice to Developer of such termination and specifying the effective date of such termination. If the Agreement is terminated by SDHDA as provided herein, Developer shall have no claim of payment or claim of benefit for any incomplete project activities undertaken under this Agreement.

Any delay by SDHDA in exercising any right or remedy provided herein or otherwise afforded by law or equity shall not be a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singly, serially (in any order) or concurrently, and as often as the occasion therefore arises.

8.3 Termination for Convenience

In addition to the termination provision in Section 8.2.10, this Agreement may be terminated by SDHDA upon thirty (30) days written notice. In the event of termination under this section, Developer shall have no claim of payment or claim of benefit for any incomplete project activities undertaken under this Agreement and shall not be entitled to, and hereby waives, all claims for lost profits and all other damages and expenses.

SECTION 9. Indemnification

Developer hereby agrees to reimburse, indemnify and save and hold SDHDA and its successors and assigns harmless from and against any damage, liability, loss, penalty, charge, cost or deficiency, including but not limited to any repayment obligation to HUD incurred by SDHDA under 24 CFR 92.503(b), reasonable attorney's fees, and other costs and expenses incident to monitoring, remedial actions, proceedings or investigations and the defense of any claim, arising out of, resulting from or related to, and to pay to SDHDA or its successor in interest, on demand, the full amount of any sum which SDHDA or its successor has paid or becomes obligated to pay on account of:

- a) Any misrepresentation, omission, or the breach of any representation or warranty of the Developer under the Loan Documents;
- b) Any failure of the Developer to fully perform or observe or cause to be performed or observed any term, provision, covenant, or agreement to be performed or observed by the Developer, or after an assumption, by a subsequent Developer, pursuant to the Loan Documents;
- c) Any claims, assessments, or liabilities for charges, penalties, liens, taxes, or deficiencies arising from or relating to the use and operation by the Developer, or after an assumption, Developer's successors to the Property or Project; or
- d) The manufacture, generation, storage, use, treatment, transportation, or disposal of solid waste, or any toxic or hazardous materials, substances, or pollutants either directly or indirectly by the Developer or any of their past or present affiliates on the Property described on Exhibit A,

which occurs prior to possession passing from the Developer pursuant to a Sheriff's Deed upon completion of a foreclosure or upon acceptance of a Deed in Lieu of Foreclosure.

The provisions of this Section 9 shall survive the termination of this HOME Agreement, the other Loan Documents, the payment of SDHDA loan, and the liabilities and the exercise of any right or remedy under the Loan Documents.

SECTION 10. CHDO Provisions

10.1 CHDO Designation

{enter "Developer" OR "The General Partner of Developer, {enter name of CHDO}" OR "The Managing Member of Developer, {enter name of CHDO},"} has been designated by SDHDA as a Community Housing Development Organization (CHDO) as defined under 24 CFR 92.2 and shall serve as the {enter developer, owner, sponsor—only one role per project, LIHTC is always sponsor} of the Project as such role is defined under 24 CFR 92.300(a).

10.2 Certification of Current and Continuing CHDO Status

{enter Developer or name of CHDO} hereby acknowledges that this Project is being funded with HOME funds reserved specifically for CHDOs and certifies that as of the date of this Agreement it meets the definition of a CHDO under 24 CFR 92.2. {enter Developer or name of CHDO} further certifies and agrees that it will continue to operate its affairs such that it continuously meets the CHDO definition for the life of this Agreement and will notify SDHDA immediately if any change in circumstance results in it no longer meeting these criteria at any time during the term of this Agreement. It further will provide documentation to SDHDA as may be requested from time to time to document that it continues to comply with the CHDO definition.

10.3 Replacement of {enter name of CHDO} as {General Partner or Managing Member}

In addition to all requirements of Section 2.1.7 above, in the event the {limited partnership agreement or operating agreement} of the Developer allows for removal of {enter name of CHDO} as {enter general partner or managing member}, Developer certifies that the agreement provides that such removal may only be for cause and that {enter name of CHDO} must be replaced with an organization that satisfies the criteria for CHDOs in Section 10.2 and has been formally designated as a CHDO by SDHDA.

10.4 Tenant Grievance Procedures and Tenant Participation

Developer will operate the Project in compliance with 24 CFR 92.303 and will adhere to a fair lease and grievance procedure approved by SDHDA and follow a program of tenant participation in management decisions. Developer will update these procedures from time to time as may be appropriate or required by SDHDA and will report to SDHDA on their implementation.

SECTION 11. Notices

Except in the case of notice of default under this Agreement, notices due to Developer hereunder shall be placed in the United States mail, postage prepaid, addressed to the Developer as follows:

{INSERT DEVELOPER NOTICE ADDRESS}

Notices due SDHDA shall be placed in the United States mail, postage prepaid, addressed to SDHDA as follows:

South Dakota Housing Development Authority
3060 E. Elizabeth Street
Post Office Box 1237
Pierre, South Dakota 57501-1237
Attn: Director of Rental Housing Management

11.1 Investor Notice and Opportunity to Cure

SDHDA will accept from the Investor a cure of any default under this Agreement or the Loan Documents on the same terms as such sure would be permitted and accepted by the Developer. In the event of default, SDHDA will endeavor to provide a courtesy notice of such default to the Investor, as applicable. However, in no case will the failure of SDHDA to provide or of the Investor to receive such a notice be grounds to challenge, delay, or otherwise infringe any enforcement action taken by SDHDA, including but not limited to foreclosure.

Any notice provided to the Investor hereunder will be placed in the United States mail, postage prepaid, addressed to the Investor as follows:

{INSERT INVESTOR NOTICE ADDRESS & CONTACT}

The Investor may update its address or contact by providing notice to SDHDA, but any such updated address or contact information shall only be effective upon written acknowledgement of the change by SDHDA.

SECTION 12. Miscellaneous Provisions

12.1 Assignment

This Agreement is binding on SDHDA and Developer, and their respective successors and assigns. Developer shall not assign or transfer its interest in this Agreement without the written consent of SDHDA.

12.2 Interpretation

This Agreement shall not be merged with any subsequent agreement between SDHDA and Developer, including, but not limited to SDHDA's loan documents or regulatory agreements related to Project. Any question or dispute regarding the interpretation of the terms of this Agreement shall be decided by SDHDA. SDHDA's decision shall be final and binding. In the event of a conflict between this Agreement, the Loan Documents, and/or the regulatory agreements, SDHDA reserves the right to resolve the conflict and determine which provision will take precedence. In general, the more restrictive provision will apply.

12.3 Applicable Law

This Agreement shall be construed and interpreted in accordance with South Dakota law. In the event of legal action resulting from a dispute hereunder, the Parties agree that the state and federal courts of the State of South Dakota shall have jurisdiction and that the proper forum for such action shall be Pierre, South Dakota.

12.4 Entire Agreement

This Agreement, together with the exhibits hereto and proposal and application for participation in the program submitted by Developer, which are specifically incorporated herein, represent the entire agreement between the parties and supersede all prior representations, negotiations or agreements whether written or oral.

12.5 Amendments

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

12.5.1 Notwithstanding any terms within this Agreement, in the event that (i) HUD imposes new or modified requirements on existing HOME-assisted projects through regulation, administrative notice, publication, or other notice or (ii) HUD specifically identifies violations of HOME program requirements pertaining to this Agreement or the Project, Developer agrees to comply with any new or modified requirements to ensure the Project remains in or is brought into compliance with such requirements. Developer further agrees to execute an amendment to modify the terms of this Agreement in such manner as necessary to reflect and implement new HOME requirements or correct identified deficiencies. SDHDA shall provide not less than 30 days' notice to the Developer of any such modifications.

12.6 Headings

The headings of the paragraphs in this Agreement are for convenience only and do not affect the meanings or interpretation of the contents.

12.7 Severability

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

12.8 Counterparts

This Agreement shall be executed in two or more counterparts, each of which shall be considered an original, and shall be binding when fully executed by both parties.

12.9 Loan Documents

As used herein, the term "Loan Documents" includes the HOME Development Agreement, the Mortgage, the Promissory Note, the Assignment of Rents and Leases, the Declaration of Restrictive Covenants by Developer as Declarant, and UCC financing statements.

12.10 Authority

Except as otherwise provided herein, whenever any approval or notice by SDHDA is required under this Agreement, or whenever any action by SDHDA is required or permitted, the Director of Rental Housing Management of SDHDA, its successor or its authorized delegate, shall have the power and right to approve, give notice or act on behalf of SDHDA, as the case may be.

SECTION 13. Certification

Developer representative initial here: _____

Developer certifies that its duly authorized representative has read and reviewed this HOME Agreement in its entirety; acknowledges its responsibility for implementation of the Agreement; assumes full responsibility for compliance therewith; indemnifies and holds SDHDA harmless with respect to noncompliance; and agrees that the representations contained in this section shall survive the expiration or termination of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the date or dates set opposite the signatures of their duly authorized representatives, respectively.

**SOUTH DAKOTA HOUSING DEVELOPMENT
AUTHORITY**

Date

NAME
TITLE

ATTEST:

NAME
TITLE

DRAFT

DEVELOPER

By: **GENERAL PARTNER OR MANAGING MEMBER**

Its: **{General Partner or Managing Member}**

Date

By: **NAME**

Its: **TITLE**

STATE OF SOUTH DAKOTA)

:SS

COUNTY OF _____)

On this ____ day of _____, 201_, before me, the undersigned Notary Public, personally appeared _____, who acknowledged himself to be the _____ of _____, {General Partner or Managing Member} of _____ Limited Partnership, and that he, as such, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing himself as the _____ of _____, General Partner of _____ Limited Partnership.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL) Notary Public, State of South Dakota
My Commission Expires: _____

EXHIBIT A
LEGAL DESCRIPTION

DRAFT

EXHIBIT B
PROJECT SUMMARY

DRAFT

EXHIBIT C
PROJECT PROFORMA

DRAFT

EXHIBIT D
INSURANCE REQUIREMENTS

The Developer will cause the General Contractor to provide and maintain, at all times during the process of building the Project (and, from time to time at the request of the Lender, furnish the Lender with proof of payment of premiums on):

- (1) Builder's risk insurance, written on the so-called "Builder's Risk Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available on the so-called "all risk" form of policy (the Developer and the Lender's interest shall be protected in accordance with a loss payable clause in form and content satisfactory to the Lender);
- (2) Comprehensive general liability insurance, with the Lender as a named insured, including coverages for operations, contingent liability (operations of subcontractors) completed operations and contractual liability insurance, with limits (i) against bodily injury of not less than \$1,000,000 and (ii) against property damage of not less than replacement cost (to accomplish the above required limits, an umbrella excess liability policy may be used); and
- (3) Workmen's compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (1) and (2) above shall be in form and content satisfactory to the Lender and shall be placed with financially sound and reputable insurers licensed to transact business in the State of South Dakota. The policy of insurance delivered pursuant to clause (1) above shall contain an agreement of the insurer to give not less than ten (10) days advance written notice to the Lender in the event of cancellation of such policy or change affecting the coverage thereunder. Acceptance of insurance policies delivered pursuant to clauses (1) and (2) above shall not bar the Lender from requiring additional insurance which it reasonably deems necessary.