

EXHIBIT 1

J. ANDERSON GASS
Attorney
City of Knoxville

DOCUMENT NO. C-25-0130

**HOME-ARP PROGRAM AGREEMENT
RENTAL REHABILITATION PROGRAM**

This Agreement is made between **Lumen Flats Knoxville, LLC**, whose address is 1030 16th Avenue S, Suite 500, Nashville, Tennessee 37212 (“Borrower”), and the **City of Knoxville**, a municipal corporation organized and existing under the laws of the State of Tennessee, having its office at 400 Main Street, City County Building, Knoxville, Tennessee 37902 (“City”), is executed for the purpose of Borrower obtaining rehabilitation/construction financing, in full or in part, with funding provided through the American Rescue Plan Act of 2021 (“ARP”) for the HOME Investment Partnerships Program (“HOME”) (collectively, “HOME-ARP”) to acquire and rehabilitate/construct a residential property located at 1585 Coleman Avenue, Knoxville, Tennessee 37909 (“Property”) (collectively, “Project”).

IN CONSIDERATION OF BORROWER’S COMPLIANCE WITH THIS AGREEMENT, THE CITY AGREES TO PROVIDE THE FOLLOWING FINANCING FOR REHABILITATION OF THE PROPERTY:

- (1) A Deferred Payment Loan in the principal amount of \$1,000,000.00 to be further described in a Promissory Note between the City and Borrower. The City’s performance and obligation to pay under this Agreement is contingent on the City’s receipt of the corresponding HOME-ARP funds from the United States.

These loans shall be referred to collectively as the “Loan.”

Borrower has obtained additional funding from other sources and shall complete its rehabilitation/construction of the Property pursuant to the following budget and schedule, which are preliminary and subject to change.

Sources of Funds

HOME-ARP	\$ 1,000,000
Permanent Mortgage	\$ 1,552,000
Equity	\$ 1,612,136
Cash	\$ 612,136
TOTAL	\$ 3,164,136

Uses of Funds

Purchase Price	\$ 2,000,000
Loan Fees and Interest	\$ 157,636
Capital Improvements and Contingency	\$ 867,500
Attorney Fees	\$ 35,000
Soft Costs and Working Capital	\$ 97,000
Equipment	\$ 7,000
TOTAL	\$ 3,164,136

Schedule

Date	Task	Performer
July 16, 2025	Sign City loan documents and Program Agreement; issue Notice to Proceed to contractor	Borrower
July 16, 2025	Construction begins	Contractor
July 16, 2025 – December 31, 2025	Monitor construction; request disbursements	Borrower and City
December 31, 2025	Rehabilitation Completion	Contractor
March 31, 2026	Execute leases; provide initial tenant documentation to City	Borrower

BORROWER AGREES TO THE FOLLOWING TERMS AND CONDITIONS.

1. Use of Loan Funds. The loan proceeds shall be used for the purpose of making improvements to the Property as described in the Project documents made a part hereof as if set forth verbatim upon signing by the parties and attached hereto as Exhibit A (“Project Documents”). For purposes of this Agreement, the improvements shall consist of 18 units, and one auxiliary living space. Borrower agrees to rehabilitate/construct the Property to the extent and in the manner specified in the Project Documents, to comply with Borrower’s obligations, and to enforce any contractor’s or subcontractor’s obligations under the Project Documents. All rehabilitation/construction work shall comply with the City’s property standards as well as all applicable City housing and building codes.

2. Accomplishment of Work. Borrower agrees to carry out the rehabilitation/construction work specified in the Project Documents with all practical dispatch in a sound, economical, and efficient manner. At its option, the City reserves the right to cancel and terminate the Loan if, after a period of 60 days from the date of execution of the Promissory Note(s), Borrower has failed or refused to commence physical rehabilitation/construction work on the Property or if Borrower has failed or refused to complete such rehabilitation/construction work within a reasonable time. The City’s failure to exercise this right shall not be deemed a waiver thereof as long as the rehabilitation/construction work remains incomplete.

3. Affordability. For a period of 15 years beginning on the date rehabilitation/construction of all units in the Property is completed (“Affordability Period”), all HOME-assisted rental unit(s) in the Property shall be occupied only by households that are eligible as low-income families and shall meet the requirements to qualify as affordable housing set forth in 24 C.F.R. part 92, including 24 C.F.R. § 92.252. The HOME-assisted rental unit(s) must meet the affordability requirements set forth in 24 C.F.R. part 92 to qualify as affordable housing, including, without limitation, the following affordability requirements:

A. The rent charged for the HOME-assisted unit(s) must not exceed the maximum HOME rents. The maximum HOME rents are the lesser of:

- i. The fair market rent for existing housing for comparable units in the area as established by HUD under 24 C.F.R. § 888.111, minus a monthly allowance for tenant-paid utilities, which shall be determined by the City for each individual project by using the HUD Utility Schedule Model; or
 - ii. A rent that does not exceed 30% of the adjusted income of a family whose annual income equals 65% of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit, minus a monthly allowance for tenant-paid utilities that shall be determined by the City for each individual project by using the HUD Utility Schedule Model. The HOME rent limits provided by HUD shall include average occupancy per unit and adjusted income assumptions to be used in calculating the maximum rent under this paragraph.
- B. In rental projects with five or more HOME-assisted rental units, 20% of the HOME-assisted units must be occupied by very low-income families and meet one of the following rent requirements:
- i. Rents may not exceed 30% of the gross income of a family whose income equals 50% of the median income for the area, as determined by HUD, adjusted for family size, minus an allowance for tenant-paid utilities that shall be determined by the City for each individual project by using the HUD Utility Schedule Model; or
 - ii. Rents may not exceed 30% of a family's adjusted income, unless otherwise allowed in 24 C.F.R. § 92.252(b)(2).
- C. After review and approval by the City, the following parameters have been established for this Project:
- i. The HOME-assisted units are identified as 18 studio units.
 - ii. All 18 units shall be LOW HOME rent units. The initial maximum rent for these units shall be \$796.00, less an allowance paid for utilities, if applicable, or, if the tenant receives a federal or state project-based rental subsidy and the very low-income family pays as a contribution not more than 30% of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project based rental subsidy) is the rent allowable under the federal or state project based rental subsidy program.
 - iii. All HOME-assisted units are fixed units.
 - iv. The landlord shall provide a microwave oven and refrigerator.

- D. Borrower agrees that the address of each HOME-assisted unit shall be provided no later than the time of initial occupancy.
- E. Borrower agrees to reexamine the income of each tenant household at least annually and provide the City with annual recertifications of the incomes of all tenants residing in HOME-assisted units.
- F. Maximum LOW HOME and HIGH HOME rents for each unit's bedroom size shall be computed annually by HUD. Borrower shall annually recalculate all rent and utility allowances for HOME-assisted units for review and approval by the City. Should the maximum allowable rent amount decrease from the previous year's calculation, the rents for assisted units shall be decreased accordingly for all new or renegotiated leases. If the maximum allowable rent amount increases, Borrower may determine whether to implement a rent increase for any new or renegotiated leases. Before any annual rent increase may be implemented, tenants must be given at least 30-days' written notice of the increase. Increases in rent are also subject to all other governing provision(s) of the lease agreement.
- G. HOME-assisted units shall qualify as affordable despite a temporary noncompliance with Paragraphs A or B of this Section 3 if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are taken to ensure all vacancies are filled in accordance with this Section 3 until the noncompliance is corrected. Tenants who no longer qualify as low income families must pay a rent, adjusted for tenant-paid utilities, not less than 30% of the family's adjusted monthly income as recertified annually, or the amount payable by the tenant under state or local law.
- H. Borrower shall not refuse to lease HOME-assisted units to a certificate or voucher holder under 24 C.F.R. part 982 or the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or other HOME tenant-based assistance document.
- I. The HOME-assisted units must be occupied only by households that qualify as low-income or very low-income families except for temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with 24 C.F.R. § 92.252 until the noncompliance is corrected.
- J. The HOME-assisted unit(s) must meet the affordability requirements throughout the Affordability Period. The affordability requirements apply without regard to the term of any mortgage or transfer of ownership, except that the affordability requirements may terminate upon foreclosure or transfer in lieu of foreclosure. The affordability requirements shall be revived according to the original terms if, during the original Affordability Period, the owner of record before the foreclosure, or deed in lieu of

foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties obtains an ownership interest in the project or Property.

- K. Borrower must repay the full amount of HOME funds invested in the project if the project fails to meet the affordability requirements for the full Affordability Period.

4. Federal, State, and Local Requirements. Borrower is responsible for full compliance with all applicable federal, state, and local laws, rules, and regulations. Without limiting the foregoing, Borrower agrees to comply with and ensure the enforcement of the applicable federal, state, and municipal requirements referenced below and made a part hereof as if set forth verbatim:

- A. The Charter and Code of Ordinances of the City.
- B. 2 C.F.R. part 200.
- C. HUD regulations covering lead-based paint in federally assisted housing, including, without limitation, requirements for disclosure and notifications, paint testing, risk assessments, hazard reduction, safe work practices, prohibited methods of paint removal, occupant protection, and ongoing maintenance, all as set forth in 24 C.F.R. part 35. Borrower shall conduct regular maintenance and evaluation of the lead hazard reduction work in accordance with 24 C.F.R. § 35.1355(a). Unless all lead is abated and no soil-lead and no dust-lead hazards are present, the Borrower is responsible for the following: (i) a trained visual inspection for deteriorated paint, bare soil, and the failure of any hazard reduction measures annually and at unit turnover; (ii) repair of all unstable lead paint in accordance with 24 C.F.R. § 35.1330(a)(b) using safe work practices; (iii) treatment of bare soil unless current evaluation shows not a soil-lead hazard; (iv) repair of encapsulated or enclosed areas that are damaged; (v) clearance testing in accordance with 24 C.F.R. § 35.1340; (vi) requesting, in writing, that the occupants of rental units monitor lead-based paint surfaces and inform the owner of potential lead hazards; and (vii) informing current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units (said pamphlet must be provided to new occupants before they move in).
- D. 24 C.F.R. part 92, as revised by the Appendix to Notice CPD-21-10, entitled “Requirement for the Use of Funds in the HOME-American Rescue Plan Program,” issued September 13, 2021, by HUD’s Office of Community Planning and Development (“HOME-ARP Notice”) as the same may be amended or superseded from time to time; however, Borrower shall not assume the City’s responsibility for initiating the review process under Executive Order 12372. As between the parties, the City shall have the sole authority to determine whether a revision to 24 C.F.R. part 92 authorized pursuant to the Appendix to the HOME-ARP Notice is applicable to this Project and how, if at all, this Agreement, the Deed of Trust, the Note, the Project Documents, the Restrictive Covenant, or any other agreements heretofore, herewith,

or hereafter made by Borrower should be construed, interpreted, or amended to conform to such revision.

- E. Any other law, rule, or regulation applicable to ARP, HOME, or HOME-ARP.
- F. The Project Documents.
- G. The City's Neighborhood Housing Standards, Ongoing Housing Standards, as well as all applicable City housing and building codes.

Borrower further agrees that no funds provided or personnel employed under this Agreement shall in any way or to any extent be engaged in any political conduct or activities in violation of the Hatch Act, 5 U.S.C. §§ 7321-7326.

In addition, Borrower agrees to include such fair housing and equal opportunity provisions, lead-based paint requirements, labor standards requirements (if applicable), and the applicable provisions of the Project Documents in any successor contracts for work financed in whole or in part by the loan in the event that such contracts should prove necessary.

Borrower further agrees that the rehabilitation/construction work financed in whole or in part with funds provided by the City shall not be performed by any contractor if it or its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the rehabilitation/construction activity by any federal department or agency.

In accordance with the Flood Disaster Protection Act of 1973, Borrower agrees that no funds provided by the City shall be used to rehabilitate/construct the Property if it is located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless Borrower obtains and maintains flood insurance under the National Flood Insurance Program.

Borrower further agrees to fully comply with all applicable provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*

5. Property Standards. Upon completion of the rehabilitation/construction work, and for the duration of the Affordability Period, all rehabilitation/construction must meet the City's Neighborhood Housing Standards, which include the most current property maintenance codes adopted by the City, existing housing codes related to health and safety, major system repair, lead-based paint, accessibility requirements, and cost-effective energy conservation measures, and all other requirements within 24 C.F.R. § 92.251. Borrower agrees that the City, its agents, or its representatives shall have the right to inspect the Property from time to time at any reasonable hour of the day to determine Borrower's compliance with this requirement. After rehabilitation/construction, Borrower must maintain the rehabilitated/constructed units as decent, safe, and sanitary housing in good repair. Borrower must also meet the City's Ongoing Property Standards, which include compliance with the most current property maintenance codes adopted by the City.

6. Nondiscrimination. Borrower agrees not to discriminate against prospective tenants on the grounds of race, color, national origin, religion, sex, disability, or familial status. In addition, Borrower agrees not to discriminate against prospective tenants on the basis of, their receipt of, or eligibility for housing assistance under any federal, state, or local housing assistance program. Borrower further agrees that it:

- A. Shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status, or national origin;
- B. Shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, age, disability, familial status, or national origin;
- C. Shall in all solicitations or advertisements for employees placed by or on behalf of itself, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status, or national origin;
- D. Shall include these provisions in every subcontract or sublease let by or for it;
- E. Shall use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement (as used in this Agreement, the term “minority and women-owned business” means a business at least fifty-one percent (51%) owned and controlled by minority group members or women, and for the purpose of this definition, “minority” refers to persons who are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, or American Indians);
- F. Shall adhere to Section 504 of the Rehabilitation Act of 1973, which states that no otherwise qualified individual with disabilities shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance; and
- G. Shall have facilities accessible to persons with disabilities. Also, places where programs or services are held outside the offices of Borrower must be accessible to persons with disabilities. These concessions include, but are not limited to, ramps, parking facilities, water fountains, entryways, rest room facilities, and elevators when necessary. If it is not possible for these physical changes to be made, Borrower shall have an alternative plan to serve persons with disabilities.

7. Affirmative Marketing. Borrower agrees to exercise affirmative marketing of all vacant assisted units and assisted units that become vacated during the Affordability Period as described in Section 3 of this Agreement. If the Project consists of five or more housing units, Borrower agrees to the following:

- A. Borrower shall inform and solicit applications from persons not likely to apply for the housing without special outreach by notifying the Knoxville Area Urban League immediately when it is known that a vacancy shall occur and/or provide the unit as a referral for tenants on Knoxville's Community Development Corporation's ("KCDC") existing housing waiting list.
- B. Borrower shall keep data on:
 - i. The racial, ethnic, and gender characteristics of tenants occupying assisted units before rehabilitation/construction, tenants moving from and into assisted units after rehabilitation/construction, or applicants for tenancy of assisted units; and
 - ii. How the applicants heard about the housing opportunity. Information regarding applicants for initial occupancy of assisted units must be provided to the City within 120 days following completion of rehabilitation/construction.
 - iii. During the Affordability Period, Borrower shall also keep information on all vacancies of assisted units and copies of all newspaper advertisements to fill vacancies of assisted units. Copies of these advertisements may be submitted directly to the City.
 - iv. Borrower shall use the Equal Housing Opportunity logo or slogan in advertising vacant assisted units.
 - v. Borrower shall advertise assisted unit vacancies in the *Knoxville News Sentinel* if more than four such vacancies exist in the Project and there is not a sufficient waiting list to fill these vacancies, or list the Property with KCDC's list of properties available for rental assistance certificate holders.

8. Unoccupied Units. If a rental unit remains unoccupied six months from the date of Project completion, Borrower must provide information to the City about current marketing efforts and a possible enhanced plan for marketing the unit. If a unit remains unoccupied 18 months after Project completion, Borrower must repay the entire amount of the HOME investment.

9. Tenant and Participant Protections.

- A. *Lease clause prohibitions*. Borrower agrees to execute written lease documents for all assisted units during the Affordability Period. Such leases may not be for a period of less than one year, unless a lesser period is mutually agreed to by Borrower and the tenant. Such leases shall not contain any of the following provisions:

- i. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- ii. *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with state law.
- iii. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent.
- iv. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant.
- v. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
- vi. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury.
- vii. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- viii. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorneys' fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant may, however, be obligated to pay costs if the tenant loses.
- ix. *Mandatory supportive services.* Agreement of the tenant requiring the tenant to accept supportive services. This prohibition, however, does not apply to residents of transitional housing.

Borrower further agrees not to terminate the tenancy, or refuse to renew the lease, of a tenant residing in an assisted unit except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable federal, state, or local law; or for other good cause. Written notice must be provided at least 30 days in advance of any termination or refusal to renew that specifies the grounds for the action. A

tenant's failure to participate in any required supportive services of transitional housing is a permissible basis for terminating tenancy or refusing to renew a lease.

- B. *Tenant selection policy.* Borrower also agrees to adopt and adhere to written tenant selection policies and criteria that:
- i. Are consistent with the purpose of providing housing for very-low-income and low-income families;
 - ii. Are reasonably related to HOME eligibility and the applicant's ability to perform the obligations of the lease;
 - iii. Provide for:
 - a. The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and
 - b. The prompt written notification to any rejected applicant for tenancy of the grounds for rejection.
- C. *Fee prohibitions.* Borrower agrees to only charge fees that are customarily charged in rental housing. Borrower may not charge uncustomary fees like laundry room access fees or servicing, origination, processing, inspection, or other such fees for the costs of providing homeownership assistance. However, Borrower may charge:
- i. Reasonable application fees to prospective tenants;
 - ii. Parking fees to tenants, only if such fees are customary for rental housing projects in the neighborhood; and
 - iii. Fees for services such as bus transportation or meals, as long as such services are voluntary.

10. Anti-Displacement. Borrower agrees to adhere to all provisions of the City's Policies for Protection of Tenant Occupants and to cooperate fully with the City in administering the Policies. Borrower agrees to provide all existing tenants residing in the Property prior to rehabilitation/construction an opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling in the Property upon completion of the Project.

11. Conflict of Interest. Borrower agrees that no person who is an employee, agent, consultant, officer, or elected or appointed official of the City who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision-making process or gain inside information with regard to the Project may obtain a financial interest or benefit from a HOME-assisted activity or have an interest in any contract, subcontract, or agreement with respect thereto or the proceeds thereunder, either for

themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

12. Requests for Disbursement of Funds. Borrower may not request disbursement of the Loan funds until the funds are needed for payment of an eligible rehabilitation/construction cost. The amount of each request may not exceed the amount needed for actual, eligible, and reasonable expenses incurred.

13. Records. For a period of five years following completion of the improvements specified by the Project Documents, Borrower agrees to keep the following records: all loan documents, contracts, invoices, materials, personnel and payroll records, conditions of employment, books of account, and any other documentation pertinent to the rehabilitation/construction of the Property and the disposition of the Loan proceeds. For a period of five years following the completion of the Affordability Period, or the repayment of all Loan funds, whichever is later, Borrower agrees to keep records of all written agreements, tenant leases, tenant income certifications, rent and utility allowance determinations, records of the income and expenses related to the rental of the Property, and any other documentary data pertaining to the rental of, and occupancy of, the Property. Borrower shall permit the City, HUD, the Comptroller of the United States, and their designees to have full and free access to these records for the purpose of making audits, examinations, excerpts, and transcriptions.

Additionally, Borrower shall annually provide the City with information on rents and occupancy of HOME-assisted units to demonstrate compliance with the affordability requirements in 24 C.F.R. § 92.252. If the Project has floating units, Borrower shall provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements. If the Project has 10 or more units, Borrower shall provide proof of financial viability each year during the Affordability Period. A current cash flow statement or tax return can be used to document financial viability.

14. Security and Loan Termination. The Loan shall be evidenced by a Promissory Note of Borrower and secured by a Deed of Trust on the Property of the same date, duly recorded in the Register's Office for Knox County, Tennessee. In addition, Borrower and the City shall enter into a Restrictive Covenant encumbering the Property that shall restrict the occupancy and the rents of the property for the duration of the Affordability Period, as more specifically described in Section 3 of this Agreement. Borrower agrees that the City shall have the right to cancel or terminate the Loan, and that any monies included in the Loan that have been advanced to Borrower by the City shall be due and payable by Borrower to the City on demand if:

- A. The rehabilitation/construction described in Section 1 of this Agreement and in the Project Documents is not carried out with reasonable diligence or is discontinued at any time for any reason other than strikes, lockouts, acts of God, fires, floods, or other similar catastrophes, riots, war, or insurrection;

- B. Borrower makes changes in or terminates the Project Documents, or enters into another contract or subcontract for work on the Property without the prior written approval of the City;
- C. Borrower shall not submit a dispute between Borrower and a contractor to an applicable dispute resolution procedure provided or to litigation, and the City's inspection indicates that the work in dispute was done in accordance with the Project Documents;
- D. All Borrowers die, become legally incapacitated, or otherwise become legally unable to act prior to the completion of the rehabilitation/construction;
- E. Borrower abandons the Property;
- F. The sale, lease, or other transfer of any kind or nature of the Property prior to the completion of the rehabilitation/construction without the prior written consent of the City, excluding (i) the creation of a lien or encumbrance subordinate to the City's Deed of Trust, (ii) the creation of a purchase money security interest for household appliances, or (iii) a transfer by devise, descent, or operation of law upon the death of a joint tenant;
- G. The rehabilitation/construction described in Section 1 of this Agreement and in the Project Documents fails to meet the affordability requirements of Section 3 of this Agreement for the full Affordability Period; or
- H. Borrower defaults in any covenant, agreement, term or condition of this Agreement, the Deed of Trust, the Note, the Project Documents, the Restrictive Covenant, or any other agreements heretofore, herewith, or hereafter made by Borrower.

Termination shall be accomplished by mailing by certified mail or by personally delivering written notice of termination to Borrower at Borrower's personal address, or to any other address that Borrower has given the City notice personally or by mail. Termination shall be effective on the date the notice is mailed or personally delivered to Borrower's address, regardless of whether the notice is actually received by Borrower.

15. Term. This Agreement shall be effective until the later of (i) the completion of the Affordability Period or (ii) until Borrower has well and truly performed all the terms and conditions of this Agreement, the Restrictive Covenant, the Deed of Trust, and the Note secured thereby.

16. Program Income and Reversion of Assets. All program income as defined in 24 C.F.R. § 576.2 shall be returned to the City. Any unused or unearned government funds held by the Borrower, and any accounts receivables attributable to such funds shall revert to and become property of the City at the termination of this Agreement or at the expiration of the term of this Agreement.

17. Ethical Standards. Borrower hereby takes notice of and warrants that it is not in

violation of, or has not participated in, and shall not participate in the violation of any of the following ethical standards prescribed by the Knoxville City Code. For violation of the ethical standards prescribed by the Knoxville City Code, the City has the following remedies: (i) oral or written warnings or reprimands; (ii) cancellation of transactions; and (iii) suspension or debarment from being a contractor or subcontractor under City or City-funded contracts. The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, including a right to notice and hearing prior to imposition of any cancellation, suspension, or debarment from being a contractor or subcontractor under a City contract.

- A. Knoxville City Code Section 2-1048(a) - Conflict of Interest. It shall be unlawful for any employee of the City to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy, or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by: (i) the employee or the employee's immediate family, (ii) a business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner, or employee or (iii) any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.
- B. Knoxville City Code Section 2-1049(a) - Receipt of Benefits from City Contracts by Councilmembers, Employees, and Officers of the City. It shall be unlawful for any member of the City Council, officer, or employee of the City to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work, or service for the City in which any member of the City Council, officer, or employee of the City has or holds any such interest is void.
- C. Knoxville City Code Section 2-1050(a)-(b) - Gratuities and Kickbacks Prohibited. It is unlawful for any person to offer, give, or agree to give to any person, while an employee of the City, or for any person, while an employee of the City, to solicit, demand, accept, or agree to accept from another person anything of a pecuniary value for or because of: (i) an official action taken, or to be taken, or which could be taken, (ii) a legal duty performed, or to be performed, or which could be performed, or (iii) a legal duty violated, or to be violated, or which could be violated by such person while an employee of the City. Anything of nominal value shall be presumed not to constitute a gratuity under this section. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
- D. Knoxville City Code Section 2-1051(a)-(b) - Covenant Relating to Contingent Fees.

Every person, before being awarded a contract in excess of \$10,000.00 with the City, shall represent that no other person has been retained to solicit or secure the contract with the City upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business. The intentional violation of the representation specified in this section is unlawful.

- E. Knoxville City Code Section 2-1052(a) - Contemporaneous Employment Prohibited. It shall be unlawful for any employee of the City to become or be, while such employee, an employee of any party contracting with the particular department or agency of the City in which the person is employed by the City.

18. Independent Contractor. Borrower shall perform all obligations under this Agreement as an independent contractor; neither it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers' compensation as an employee of the City.

19. Assignment. Borrower shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.

20. Written Amendments. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

21. Required Approvals. Neither Borrower nor the City is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.

22. Article Captions. The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.

23. Severability. If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

24. Religious Organizations. Religious organizations receiving funding under this Agreement may not utilize Project funds to engage in any of the following activities:

- A. Perform inherently religious activities such as worship, religious instruction, or proselytization;

- B. Acquire, construct, or rehabilitate structures or properties that shall be used for inherently religious activities, including sanctuaries and chapels; and
- C. Discriminate against any beneficiary or prospective beneficiary on the basis of religion or belief.

25. Grantor Recognition. Borrower ensures the recognition of the City's and HUD's roles in providing services under this Agreement. Borrower shall prominently label the funding source for all activities, facilities, and items utilized pursuant to this Agreement. In addition, Borrower shall include a reference to the support provided pursuant to this Agreement in all publications that have been made possible through the use of the funding provided for in this Agreement.

26. No Benefit for Third Parties. The services to be performed by Borrower pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on Borrower's performance of its services hereunder, and no right to assert a claim against the City or Borrower, its officers, employees, agents or contractors shall accrue to Borrower or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of Borrower's services hereunder.

27. Non-Reliance of Parties. The parties expressly agree that they have not relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

28. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

29. EEO/AA. The City is an EEO/AA/Title VI/Section 504/ADA/ADEA Employer.

30. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to

enforce or nullify any provision of this agreement shall be instituted only in a court of appropriate jurisdiction in Knox County, Tennessee.

31. Entire Agreement. This Agreement, together with all other documents enumerated herein and made a part hereof as if set forth herein verbatim, embodies the entire Agreement between the parties. There are no prior representations, terms, conditions, promises, agreements, oral or otherwise, between the parties other than those contained herein.

32. Rule of Construction. If any inconsistencies exist, the following rule of construction shall apply: the terms, conditions, provisions, responsibilities, obligations, and promises set out in this Agreement shall control, except that, subject to Section 4, Paragraph D of this Agreement, 24 C.F.R. part 92, as revised by the Appendix to the HOME-ARP Notice, shall control this Agreement in instances where the terms, conditions, provisions, responsibilities, obligations, and promises of this Agreement are in conflict with 24 C.F.R. part 92, as revised by the Appendix to the HOME-ARP Notice.

33. Borrower's Limited Partners/Investor Member.

- A. Borrower's limited partner, special limited partner, or investor member, as applicable, shall have the right, but not the obligation, to cure any default by Borrower under this Agreement, and the City shall accept such cure as if made by Borrower directly.
- B. Notwithstanding anything to the contrary contained herein, a transfer by Borrower's limited partner, special limited partner, or investor member of its interest in the Borrower in accordance with the terms of the Borrower's Partnership Agreement or Operating Agreement, or a removal and replacement of Borrower's general partner or managing member in accordance with the terms of the Borrower's Partnership Agreement or Operating Agreement shall not constitute transfer of the Property or otherwise be deemed an event of default under this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered and is effective on the latest of the dates set forth below.

APPROVED AS TO FORM:

CITY OF KNOXVILLE

CHARLES W. SWANSON
LAW DIRECTOR

INDYA KINCANNON
MAYOR

