

**CITY OF COLLEGE STATION, TEXAS**

**CONTRACT AND GRANT FOR  
HOME PROGRAMS**

**Article I. PARTIES**

**Section 1.01** This contract for HOME Programs (the "Agreement") is between the **City of College Station** ("City"), a Home Rule municipal corporation and political subdivision of the State of Texas, and, **College Station Terrace Pines Apartment Homes, L.P.**, ("Recipient") a Texas Limited Partnership (collectively referred to as the "Parties").

**Article II. CONTRACT PERIOD**

**Section 2.01** This Agreement shall commence on the date of execution and terminate on the expiration of the period of affordability calculated in accordance with 24 CFR 92.252(E) OR 24 CFR 92.254, in which the (20) twenty-year period commences after completion of the project described in the Performance Statement unless otherwise specifically provided by the terms of this Agreement (the "Agreement Period"), or unless extended by agreement of the Parties in writing.

**Article III. RECIPIENT PERFORMANCE**

**Section 3.01** Recipient shall administer one or more projects in accordance with the HOME INVESTMENT PARTNERSHIPS ACT OF 1990, 42 U.S.C. 12701 ET SEQ. (THE ACT) and the implementing regulations, 24 CFR PART 92, TEXAS GOVERNMENT CODE SECTION 531.001 ET SEQ., the HOME INVESTMENT PARTNERSHIPS PROGRAM RULES, and the HOME PROGRAM GUIDELINES AND APPLICATION PACKAGE. Recipient shall perform all activities in accordance with the terms of the Performance Statement, ("Exhibit A" attached hereto); the Budget, ("Exhibit B" attached hereto); the Project Implementation Schedule, ("Exhibit C" attached hereto); the Applicable Laws and Regulations, ("Exhibit D" attached hereto); the Certifications, ("Exhibit E" attached hereto); the assurances, covenants, warranties, certifications, and all other statements made by Recipient in its application for the project funded under this Agreement; and with all other terms, provisions, and requirements set forth in this Agreement.

**Section 3.02** Recipient shall perform all activities in the Performance Statement within two (2) years of date of execution of this Agreement.

**Section 3.03** In the event the affordability requirements of 24 CFR 252(E) OR 254 are not satisfied by Recipient hereunder, Recipient shall bear ultimate responsibility for repayment of HOME funds.

**Section 3.04** In the event that there is program income, repayments, and/or recaptured funds, the funds must be used in accordance with the requirements of 24 CFR §92.503, as outlined in the Performance Statement, "Exhibit A".

**Section 3.05** All HOME assisted units shall comply with the HOME rents as stated in 24 CFR. 92.252. Rents may not exceed the maximum HOME rents published annually by HUD. Based upon the HOME portion of the total eligible development cost, 6 units will be designated as HOME assisted units and will be floating units. The term floating units means units that are designated as HOME assisted units but may change over time as long as the total number of HOME assisted units within the project remains not less than 6 and that these units do not differ over the affordability period in terms of size, amenities and number of bedrooms from other non HOME assisted units. Twenty percent (20%) or two (2) of the HOME assisted units must be designated Low-HOME rent units for residents at or below 50% of area median income.

#### **Article IV. CITY OBLIGATIONS**

**Section 4.01** Measure of Liability. In consideration of full and satisfactory performance of the activities referred to in Article III of this Agreement, City shall be liable for actual and reasonable costs incurred by Recipient during the Agreement period for performances rendered under this Agreement by Recipient, subject to the limitations set forth in this Article IV.

- (a) The Parties agree that City's obligations to meet City's liabilities under Article IV of this Agreement are contingent upon the actual receipt of adequate local and/or federal funds. If adequate funds are not available to make payments under this Agreement, City shall notify Recipient in writing within a reasonable time after such fact is determined. City shall then terminate this Agreement and shall not be liable for failure to make payments to Recipient under this Agreement.
- (b) City shall not be liable to Recipient for any costs incurred by Recipient, or any portion thereof, which have been paid to Recipient or which are subject to payment to Recipient, or which have been reimbursed to Recipient, or are subject to reimbursement to Recipient, by any source other than City or Recipient.
- (c) City shall not be liable to Recipient for any costs incurred by Recipient which are not eligible project costs, as set forth in 24 CFR, SECTION 92.206(A) and Article VI of this Agreement. Funds provided under this Agreement shall not be used nor shall City be liable for payment of costs associated directly or indirectly and incurred because of prohibited activities as defined in 24 CFR, SECTION 92.214.

- (d) City shall not be liable to Recipient for any costs incurred by Recipient or for any performances rendered by Recipient which are not strictly in accordance with the terms of this Agreement, including the terms of Exhibits A, B, C, D, and E of this Agreement.
- (e) City shall not be liable for costs incurred or performance rendered by Recipient before commencement or after termination of this Agreement.

**Section 4.02** LIMIT OF LIABILITY **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL OF ALL PAYMENTS AND OTHER OBLIGATIONS INCURRED BY CITY UNDER THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED FIVE HUNDRED TWENTY-ONE THOUSAND SIX HUNDRED TWELVE DOLLARS AND NO/100, (\$521,612.00); \$305,612.00 FROM THE FY 2004 BUDGET (HUD GRANT YEAR 2003), AND \$216,000.00 FROM THE FY 2005 BUDGET (HUD GRANT YEAR 2003).**

**Section 4.03** Conversion to Homeownership With the permission of the City, the owner of the HOME-assisted rental unit(s) may convert said units to homeownership pursuant to 24 CFR§92.255.

## **Article V. DISBURSEMENT OF FUNDS**

**Section 5.01** City shall pay costs incurred which it determines are eligible and which are properly submitted under this Agreement in accordance with the requirements of 24 CFR 92.502. Recipient may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount of money needed to pay eligible costs actually incurred, and may not include amounts for prospective or future needs.

**Section 5.02** The Parties agree that City's obligations to make payments under this Agreement are contingent upon Recipient's full and satisfactory performance of its obligations under this Agreement. City reserves the right to recover, recapture or offset funds paid under this Agreement in the event City determines that Recipient will be unable to commit or expend funds within the prescribed time, as determined by City in its sole discretion.

**Section 5.03** The Parties agree that any right or remedy provided for in this Article V or in any other provision of this Agreement is cumulative, and shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

**Article VI. UNIFORM ADMINISTRATIVE REQUIREMENTS, COSTS  
PRINCIPLES AND PROGRAM INCOME  
FOR GOVERNMENT ENTITIES AND NON-PROFITS**

**Section 6.01** Except as specified in Subsection 6.02, Recipient shall comply with the requirements of OMB CIRCULARS NO. A-133 AND 24 CFR PART 84, SECTIONS, 84.2, 84.5, 85.13, 84.16, 84.21, 84.22, 84.26 - 84.28, 84.30, 84.31, 84.34 - 84.37, 84.40 - 84.48, 84.51, 84.60, 84.72, AND 84.73 and any other OMB Circulars which may apply either prospectively or retroactively. Recipient shall maintain records of the receipt, accrual, and disposition of all program income in the same manner as required for all other funds under this Agreement. Recipient shall provide reports of program income as requested by City and at the termination of this Agreement.

**Section 6.02** Non-profit organizations must comply with applicable regulations under OMB CIRCULAR NUMBERS A-110 AND A-122 pursuant to 24 CFR SECTION 92.505 and any other applicable regulations.

**Article VII. RETENTION AND ACCESSIBILITY OF RECORDS**

**Section 7.01** Recipient must establish and maintain sufficient records, including those listed under 24 CFR, SECTION 92.508. The sufficiency of the records will be determined by City.

**Section 7.02** Recipient shall give HUD, the Comptroller General of the United States, the City of College Station Auditor, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Recipient pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Recipient. Recipient agrees to maintain such records in a location accessible to the above-named persons and entities.

**Section 7.03** All records pertinent to this Agreement shall be retained by Recipient for five calendar years after the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:

- (a) If any litigation, claim or audit is started before the expiration of the five-year period and extends beyond the five-year period, the records will be maintained until all litigation, claims or audit findings involving the records have been finally resolved, including all legal and administrative appeals.
- (b) Records relating to real property acquisition shall be retained for the period of affordability required under 24 CFR 92.254 OR 92.252, as applicable.
- (c) Records covering displacement and acquisitions must be retained for at least five years after the date by which all persons displaced from the property and all persons whose property is

acquired for the project have received the final payment to which they are entitled in accordance with 24 CFR 92.353.

**Section 7.04** Recipient shall require the substance of this Article VII to be included in all subcontracts.

**Section 7.05** Recipient must provide citizens, public agencies, and other interested parties with reasonable access to records consistent with the TEXAS PUBLIC INFORMATION ACT.

### **Article VIII. REPORTING REQUIREMENTS**

**Section 8.01** Recipient shall submit to City such reports on the operation and performance of this Agreement as may be required by City including but not limited to the reports specified in this Article VIII. Recipient shall provide City with all reports necessary for City's compliance with 24 CFR 92.508, 92.509 and 24 CFR SUBPART J or any other applicable statute, law or regulation. Additionally Recipient shall provide HUD and City complete access to the property, all books, records, files, reports or other papers as requested by City and HUD.

**Section 8.02** In addition to the limitations on liability otherwise specified in this Agreement, it is expressly understood and agreed by the Parties hereto that if Recipient fails to promptly submit to City any report required by this Agreement, City may, at its sole option and in its sole discretion, withhold any or all payments otherwise due or requested by Recipient hereunder. If City withholds such payments, it shall notify Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by City until such time as Recipient fully cures or performs any and all delinquent obligations which are identified as the reason funds are withheld.

**Section 8.03** Verification of Income. Verification of income for HOME assisted unit tenants will be pursuant to 24 C.F.R 5.609.

### **Article IX. MONITORING**

**Section 9.01** The City reserves the right to carry out regular and periodic field inspections to ensure compliance with the requirements of this Agreement. Recipient shall provide access to all files and data of HOME assisted tenants and physical access to inspect each HOME assisted unit. Recipient shall attend a compliance seminar after the award of funds and prior to first draw. After each monitoring visit, City shall provide Recipient with a written report of the monitor's findings. If the monitoring reports note deficiencies in Recipient's performance under this Agreement, the monitoring report shall include requirements for the prompt correction of such deficiencies by Recipient. Failure by Recipient to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, as provided in Article XVII and XVIII of this Agreement.

## **Article X. INDEPENDENT CONTRACTOR**

**Section 10.01** It is expressly understood and agreed by the Parties hereto that City is contracting with Recipient as an Independent Contractor and not any employee, or agent of City. This Agreement does not establish or constitute a joint venture between City and Recipient.

**Section 10.02** By entering into this Agreement CITY and RECIPIENT do not intend to create a joint enterprise.

## **ARTICLE XI. INDEMNIFICATION**

**Section 11.01.** RECIPIENT AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS CITY, ITS PUBLIC OFFICIALS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DEMANDS, JUDGMENTS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING REASONABLE ATTORNEY FEES, COSTS AND EXPERT FEES, WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING OR IN ANY WAY INCIDENT TO, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES AND WORK TO BE PERFORMED BY RECIPIENT UNDER THIS AGREEMENT.

**SECTION 10.02** BY ENTERING INTO THIS AGREEMENT THE CITY DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY, THE LIMITATIONS AS TO DAMAGES CONTAINED IN THE TEXAS TORT CLAIMS ACT OR CONSENT TO SUIT.

## **ARTICLE XII. SUBCONTRACTS**

**Section 12.01** Except for subcontracts to which the federal labor standards requirements apply, Recipient may not subcontract for performances of any obligation required or described in this Agreement without obtaining City's prior written approval. Recipient shall only subcontract for performance obligations required or described in this Agreement to which the federal labor standards requirements apply after Recipient has submitted a Subcontractor Eligibility form, as specified by City, for each such proposed subcontract and Recipient has obtained City's prior written approval, based on the information submitted, of Recipient's intent to enter into such proposed subcontract. Recipient, in subcontracting for the performance of any obligation required as described in this Agreement, expressly understands that in entering into such subcontracts, City is in no way liable to Recipient's subcontractor(s).

**Section 12.02** In no event shall any provision of this Article XI, specifically the requirement that Recipient obtain City's prior written approval of a subcontractor's eligibility, be construed as relieving Recipient of the responsibility for ensuring that the performances rendered under all

subcontracts are rendered so as to comply with all of the terms of this Agreement, as if such performances rendered were rendered by Recipient. City's approval under Article XI does not constitute adoption, ratification, or acceptance of Recipient's or subcontractor's performance hereunder. City maintains the right to insist upon Recipient's full compliance with the terms of this Agreement, and by the act of approval under Article XI, City does not waive any rights or remedies which, may exist or which may subsequently accrue to City under this Agreement.

**Section 12.03** Recipient shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

Section 12.04 Recipient shall submit a subcontractor utilization report prior to beginning work and prior to hiring any additional subcontractors.

### **Article XIII. CONFLICT OF INTEREST**

**Section 13.01** No person who (a) is an employee, agent, consultant, officer or elected or appointed official of City or of any applicant that receives funds and who exercises or has exercised any functions or responsibilities with respect to activities assisted with funds provided under this Agreement or (b) who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a personal or financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement (or the proceeds thereof) with respect to a HOME assisted activity either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. Recipient shall ensure compliance with applicable provisions under 24 CFR 84.40 - 84.48 AND OMB CIRCULAR A-110 in the procurement of property and services.

### **Article IV. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

**Section 14.01** Equal Opportunity. Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, familial status, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Agreement. In addition, funds provided under this Agreement must be made available in accordance with the requirements of SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 (12 U.S.C. 1701U) that:

- (a) 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 provided under this Agreement be given to low-income persons residing within the general local government area in which the project is located; and
- (b) 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 or non-metropolitan City as the project.

**Section 14.02 Religious Organizations.** Funds provided under this Agreement may not be provided to primarily religious organizations, such as churches, for any activity, including secular activities. In addition, funds provided under this Agreement may not be used to rehabilitate or construct housing owned by primarily religious organizations, such as churches, for any activity, including secular activities. In addition, funds provided under this Agreement may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. The completed housing project must be used exclusively by the owner entity for secular purposes and must be available to all persons regardless of religion. There must be no religious or membership criteria for tenants of the property as specified under 24 CFR 92.257.

## **Article XV. LEGAL AUTHORITY**

**Article 15.01** Recipient assures and guarantees that Recipient possesses the legal authority to enter into this Agreement, to receive funds authorized by this Agreement, and to perform the services Recipient has obligated itself to perform hereunder.

**Article 15.02** The person or persons signing and executing this Agreement on behalf of Recipient, or representing themselves as signing and executing this Agreement on behalf of Recipient, do hereby warrant and guarantee that he, she or they have been duly authorized by Recipient to execute this Agreement on behalf of Recipient and to validly and legally bind Recipient to all terms, performances, and provisions herein set forth.

**Section 15.03** Recipient shall not employ, award contract to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by U.S. Department of Housing and Urban Development. In addition, City shall have the right to suspend or terminate this Agreement if Recipient is debarred, suspended, proposed for debarment, or ineligible to participate in the HOME Program.

## **ARTICLE XVI. LITIGATION AND CLAIMS**

**Section 16.01** Recipient shall give City immediate notice in writing of a) any action, including any proceeding before an administrative agency, brought or filed against Recipient in connection with this Agreement; and b) any claim against Recipient, the cost and expense of which Recipient may be entitled to be reimbursed by City. Except as otherwise directed by City, Recipient shall furnish immediately to City copies of all documents received by Recipient with respect to such action, proceeding, or claim.

## ARTICLE XVII. CHANGES AND AMENDMENTS

**Section 17.01** Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both the Parties to this Agreement.

**Section 17.02** It is understood and agreed by the Parties hereto that any performance under this Agreement must be rendered in accordance with the Act, the regulations promulgated under the Act, the assurances and certifications made to City by Recipient, and the assurances and certifications made to the United States Department of Housing and Urban Development by the City with regard to the operation of the HOME Program.

**Section 17.03** Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal or state law or regulations are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulations. All other amendments to the Agreement must be in writing and signed by both Parties, except as provided in paragraphs 16.02 and 16.03.

## ARTICLE XVIII. SUSPENSION

**Section 18.01** In the event Recipient fails to comply with any term of this Agreement, City may, upon written notification to Recipient, suspend this Agreement in whole or in part and withhold further payments to Recipient, and prohibit Recipient from incurring additional obligations of funds under this Agreement.

## ARTICLE XIX. TERMINATION

**Section 19.01** The City may terminate this Agreement in whole or in part, in accordance with 24 CFR 85.43 and this Article or as provided in this Agreement. In the event Recipient materially fails as determined by City, to comply with any term of this Agreement, whether stated in a Federal statute or regulation, an assurance, in a City plan or application, a notice of award, or elsewhere, City may take one or more of the following actions:

- (a) Temporarily withhold cash payments pending correction of the deficiency or default by the Recipient.
- (b) Disallow all or part of the cost of the activity or action not in compliance; and require immediate repayment of such disallowed costs.
- (c) Withhold further HOME awards from Recipient.
- (d) Exercise other rights and remedies that may be legally available as determined by the City to

comply with the terms of this Agreement.

- (e) City may terminate this Agreement for convenience in accordance with 24 CFR 85.44.

## ARTICLE XX. AUDIT

**Section 20.01** Unless otherwise directed by City, Recipient shall arrange for the performance of an annual financial and compliance audit of funds received and performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Recipient shall have an audit made in accordance with 24 CFR 92.506, THE SINGLE AUDIT ACT OF 1984, 31 U.S.C. 7501 ET. SEQ., AND OMB CIRCULAR NO.133, "AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS", for any of its fiscal years included within the Agreement Period, in which Recipient receives more than \$300,000.00 in federal financial assistance provided by a federal agency in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance or direct appropriations, but does not include direct federal cash assistance to individuals. The term includes awards of federal financial assistance received directly from federal agencies, or indirectly through other units of State and local government;
- (b) At the option of Recipient, each audit required by this Article may cover either Recipient's entire operations or each department, agency, or establishment of Recipient that received, expended, or otherwise administered federal funds;
- (c) The cost of such audit services is the responsibility of Recipient. City shall not make payment for the cost of such audit services;
- (d) Unless otherwise specifically authorized by City in writing, Recipient shall submit the complete and final report of such audit to City within thirty (30) days after completion of the audit, but no later than one (1) year after the end of each fiscal period included within the period of this Agreement. Audits performed under Subsection A of this Article XX are subject to review and resolution by City or its authorized representative.
- (e) As part of its audit, Recipient shall verify expenditures according to the Budget attached as Exhibit B.

**Section 20.02** Notwithstanding Paragraph 20.01, City reserves the right to conduct an annual financial and compliance audit of funds received and performances rendered under this Agreement. Recipient agrees to permit City or its authorized representative to audit Recipient's records and to obtain any documents, materials, or information necessary to facilitate such audit.

**Section 20.03** Recipient understands and agrees that it shall be liable to City for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement. Recipient further understands and agrees that reimbursement to City of such disallowed costs shall be paid by Recipient from funds which were not provided or otherwise made available to Recipient under this Agreement.

**Section 20.04** Recipient shall take all necessary actions to facilitate the performance of such audit or audits conducted pursuant to this Article XX as City may require of Recipient.

**Section 20.05** All approved HOME audit reports shall be made available for public inspection within 30 days after completion of the audit.

## **ARTICLE XXI. ENVIRONMENTAL CLEARANCE REQUIREMENTS**

**Section 21.01** Recipient understands and agrees that by the execution of this Agreement, City shall assume the responsibilities for environmental review, decision making, and other action which would otherwise apply to City in accordance with and to the extent specified in 24 CFR, PART 58. In accordance with 24 CFR 58.77(B), City further understands and agrees that City shall handle inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

**Section 21.02** Funds provided under this Agreement may not be obligated and expended before the actions specified in this Article occur.

**Section 21.03** City shall prepare a written Environmental Assessment of its activities in accordance with 24 CFR PART 58, SUBPART F, City must then follow the steps specified in this subsection to ensure compliance with the NATIONAL ENVIRONMENTAL POLICY ACT (NEPA). When the Environmental Assessment is completed, City must follow one of the following two (2) procedures. The first is a Finding of Significant Impact, in which the Request for Release of Funds for the project is an action which may significantly affect the quality of the human environment. If this is the case, City must then prepare an Environmental Impact Statement in accordance with SUBPART H OR SUBPART I OF 24 CFR PART 58. The second and more common procedure must be followed for all projects not requiring an Environmental Impact Statement. City in this instance must publish, in the manner prescribed in 24 CFR 58.43 AND 58.44, a combined legal notice in a single publication: A Finding of No Significant Impact, and a Notice of Intent to Request Release of Funds. In the first part of this notice, City certifies that, as a result of the Environmental Assessment, the project is not an action which may or will significantly affect the quality of the human environment. City shall then provide the public with at least fifteen (15) calendar days to comment on this combined notice following its publication date, unless exceptional circumstances exist as specified in 24 CFR 58.46. If no unresolved problems occur, City must then concurrently submit to HUD the following documents:

- a. a Publisher's Affidavit and certification form, for the combined legal notice; and
- b. a Request for Release of Funds form.
- c. Upon receipt of such documents, City must allow a fifteen (15) calendar day comment period to expire before it can formally release any project funds which are subject to the environmental review regulations. City must comply with all other applicable environmental requirements as specified in Exhibit D of this Agreement. City shall document its compliance with such other requirements in its environmental review file.

**Section 21.04** City shall complete a written Finding of Categorical Exclusion, as applicable under 24 CFR 58.35 (A), by which the activities or projects funded this Agreement are categorically excluded from the NATIONAL ENVIRONMENTAL POLICY ACT requirements of 24 CFR PART 58. City shall publish a Notice of Intent to Request Release of Funds in the manner prescribed in 24 CFR 58.43. City shall provide the public with at least seven (7) calendar days to comment on the Notice following its publication date. Finally, City shall concurrently submit to HUD the following documents:

- (a) a Request for Release of Funds form;
- (b) the written Finding of Categorical Exclusion described above; and
- (c) a Publisher's Affidavit for the Notice of Intent to Request Release of Funds.
- (d) Upon receipt of such documents, City must allow a fifteen (15) calendar day comment period to expire before it can formally release any project funds which are subject to the environmental review regulations. City must comply with all other applicable environmental requirements as specified in Exhibit D of this Agreement. City shall document its compliance with such other requirements in its environmental review file.

## **Article XXII. SPECIAL CONDITIONS**

**Section 22.01** City shall not release any funds for any costs incurred by Recipient under this Agreement until City has received certification from Recipient that its fiscal control and fund accounting procedures are adequate to assure the proper disbursement of and accounting for funds provided under this Agreement. City shall specify the content and form of such certification.

**Section 22.02** Affordability. Funds provided under this Agreement must meet the affordability requirement of 24 CFR 92.252 OR 92.254, and the HOME rules as applicable. The City shall reduce the HOME investment amount to be recaptured on a pro-rata basis for the time the unit is in compliance with 24 CFR 92.252 OR 92.254 and the HOME rules as applicable.

**Section 22.03** Repayment. Recipient agrees that all repayments, including all interest and any other

return on the investment of HOME funds will be made to City pro-rata. The formula for repayment is the funds received which are subject to repayment divided by the number of months in the period of affordability multiplied by the number of months that a home is not operated in accordance with the affordability requirement.

**Section 22.04** Housing Quality Standards. Recipient shall ensure that all housing, rental or owner-occupied, assisted with funds provided under this Agreement shall meet the requirements of 24 CFR 92.251 for the duration of this Agreement.

**Section 22.05** Affirmative Marketing. Recipient shall adopt and submit for City's approval Affirmative Marketing procedures and requirements, not later than 30 days after the date this Agreement is executed. The Affirmative Marketing procedures and requirements shall include, but need not be limited to, those specified in 24 CFR 92.351. City will assess the efforts of the Recipient during the rental and marketing of the units by use of compliance certification or personal monitoring visit to the project at least annually. Where a Recipient fails to follow the Affirmative Marketing requirements, corrective actions shall include extensive outreach efforts to appropriate contacts to achieve the occupancy goals or other sanctions the City may deem necessary. Recipient must provide City with an annual assessment of the Affirmative Marketing program of the development. The assessment must include:

- (a) Method used to inform the public and potential tenants about Federal Fair Housing laws and Affirmative Marketing policy. Recipient's advertising of vacant units must include the Equal Housing Opportunity logo or statement. Advertising media may include newspaper, radio, television, brochures, leaflets, or may involve simply a sign in a window. Recipient may wish to use community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, social service centers or medical service centers as resources for this outreach.
- (b) Records describing actions taken by the Recipient to affirmatively market units and records to assess the results of these actions. Recipient must maintain a file containing all marketing efforts (i.e. copies of newspapers ad, memos of phone calls, copies of letters) to be available for inspection at least annually by City.
- (c) Recipient shall solicit applications for vacant units from persons in the housing market who are least likely to apply for housing without benefit of special outreach efforts. In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the housing is located shall be considered those least likely to apply.
- (d) Recipient shall maintain a listing of all tenants residing in each unit through the end of the compliance period.

**Section 22.06** Reversion of Assets. Upon termination of this Agreement, all funds remaining on hand on the date of termination and all accounts receivable attributable to the use of funds received under this Agreement shall revert to City. Recipient shall return these assets to City within seven (7)

business days after the date of termination.

**Section 22.07** City shall not release any funds for any costs incurred by Recipient under this Agreement until City has received from Recipient a legally enforceable agreement containing requirements and remedies adequate to enforce the affordability requirements of 24 CFR 92.252 or 92.254, as applicable, with Recipient. Recipient shall record said contract in the real property records of the City where the project is located and return the original document, duly certified as to recordation by the appropriate City official, to the City. Receipt of such certified recorded original by the City is required prior to issuance of funds under this Agreement.

**Section 22.08** Flood Insurance. Funds provided under this Agreement may not be used in connection with acquisition or rehabilitation of a development located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards.

**Section 22.09** Fair Housing. Recipient participating in the HOME Program shall use affirmative fair housing marketing practices in determining eligibility and concluding all transactions. These requirements apply to all projects of five (5) or more units. Each participating entity must affirmatively further fair housing according to 24 CFR 92.350.

**Section 22.10** Displacement, Relocation, and Acquisition. Recipient must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, business and nonprofit organizations) as a result of a project assisted with funds provided under this Agreement. Recipient must comply with the applicable provisions of 24 CFR 92.353.

**Section 22.11** Property Standards. Recipient shall ensure that all housing, rental or owner-occupied, assisted with funds provided under this Agreement (1) shall meet the lead-based paint requirements in 24 CFR 92.355 upon project completion and (2) shall meet the requirements of 24 CFR 92.251 for the duration of this Agreement.

**Section 22.12** Tenant and Participation Protections. Recipient shall ensure that all tenant and participation protection policies are in accordance with 24 CFR 92.253.

**Section 22.13** All documents necessary for the conveyance of real property, pursuant to the Agreement, must be approved, prior to execution, by the City. (i.e. deeds, notes, Deed of Trust, and any covenants and restricts, etc.).

**Section 22.14** Funding under this Agreement is contingent upon Recipient meeting all terms, conditions of this Agreement.

**Section 22.15** This Agreement and the performance hereunder may not be assigned without the express written consent of City.

**Section 22.16** This Agreement is binding on Recipient's assigns and successors-in-interest.

**Article XXIII. ORAL AND WRITTEN CONTRACTS**

**Section 23.01** All oral and written contracts between the Parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

**Section 23.02** The attachments enumerated and denominated below are hereby made a part of this Agreement, and constitute promised performances by Recipient in accordance with Article III of this Agreement.

- (a) Exhibit A. Performance Statement
- (b) Exhibit B. Budget
- (c) Exhibit C. Project Implementation Schedule
- (d) Exhibit D. Applicable Laws and Regulations
- (e) Exhibit E. Certifications

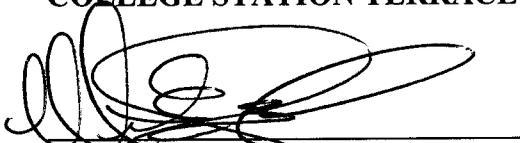
**Article XXIV. VENUE**

**Section 24.01** For purposes of litigation pursuant to this Agreement, venue shall lie in Brazos County, Texas.

**Article XXV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

**Section 25.01** Recipient shall comply with all federal, state and local laws, statutes, ordinances, rules, regulations, orders and decrees of any court or administrative body or tribunal related to the activities and performances of contractor under this Agreement. Upon request by City, Recipient shall furnish satisfactory proof of its compliance herein.

**COLLEGE STATION TERRACE PINES APARTMENT HOMES, L.P.**

  
\_\_\_\_\_  
Michael Lankford  
Managing General Partner

05.17.04  
Date

**CITY OF COLLEGE STATION**

By: \_\_\_\_\_  
Ron Silvia, Mayor

\_\_\_\_\_  
Date

ATTEST:

By: \_\_\_\_\_  
Connie Hooks, City Secretary

\_\_\_\_\_  
Date

APPROVED:

\_\_\_\_\_  
Thomas E. Brymer, City Manager

\_\_\_\_\_  
Date

Reyanne Inemick  
\_\_\_\_\_  
City Attorney

5/13/04  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services

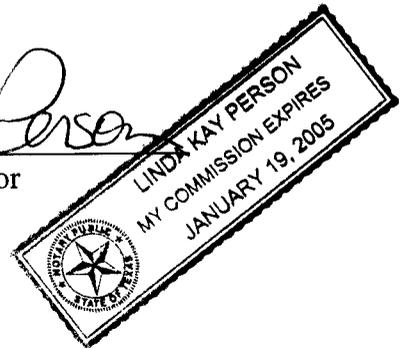
\_\_\_\_\_  
Date

STATE OF TEXAS §  
                                  §  
COUNTY OF Bell §

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on the 12<sup>th</sup> day of May, 2004, by Michael Lankford, in his capacity as Managing General Partner of College Station Terrace Pines Apartment Homes, L.P., a Texas Limited Partnership.

Linda Person  
Notary Public in and for  
the State of Texas



STATE OF TEXAS §  
                                  §  
COUNTY OF BRAZOS §

**ACKNOWLEDGMENT**

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, by Ron Silvia, as Mayor of the City of College Station, a Texas Home Rule municipal corporation, on its behalf.

\_\_\_\_\_  
Notary Public in and for  
the State of Texas

**EXHIBIT A**  
**PERFORMANCE STATEMENT**

**COLLEGE STATION TERRACE PINES APARTMENT HOMES, L.P.**

Recipient is awarded \$305,612 from the City of College Station FY 2004 and \$216,000 from the City of College Station FY 2005 HOME Investment Partnerships Program. These funds must be used for eligible hard construction costs only. Recipient is authorized to contract with Lankford Interests as a developer for the creation of College Station Terrace Pines Apartment Homes, to include six (6) HOME units. Of the six HOME units, there shall be one (1) one-bedroom and one (1) two-bedroom unit designated as Low Home Rents Units. Two (2) one-bedroom and two (2) two-bedroom units shall be designated as High Home Rents Units. Recipient shall construct a minimum of a 100 unit apartment complex.

All work must be in compliance with current City of College Station Building Codes. Recipient shall dedicate all easements required by City including blanket easements which shall be substituted with as-built easements for all City utilities.

The project must be substantially completed within eighteen (18) months of purchasing the property or upon sale of the property by developer, whichever occurs first.

City Community Development Department shall have final approval of design of the project. Recipient shall submit final plans and specifications to City Community Development Department in addition to any other City Department review required by the City of College Station Code of Ordinances prior to commencement of construction or City may terminate this Agreement.

All required permits must be obtained prior to any work commencing. All required inspections must be performed by the City of College Station Building Inspectors.

Recipient, his assigns or successors-in-interest in the property shall place deed restrictions on the property proper to completion of the project. The deed restrictions shall be for a minimum period of twenty (20) years (the HOME affordability period) and shall restrict the use of the property so as to meet the HUD affordability requirements.

Parties must provide written notification of all subcontractors to City.

Upon completion of such construction Parties must submit a copy of all receipts paid. At that point, the City will have thirty (30) days to make payment on said receipts, not to exceed maximums established in Exhibit B, Budgets.

Maximum rents and income will be established annually by the U.S. Department of Housing and Urban Development, and the recipient will be notified in writing of said rates by the Community Development Division, as soon as the Division is made aware of said rates.

Within six (6) months from issuance of the Certificate of Occupancy, said HOME unit must be occupied by an eligible tenant. Recipient agrees not to prohibit a Section 8 tenant from occupying said HOME unit. Recipient is not prohibited from conducting background check on credit history, or criminal history.

Annually, or as tenant occupancy changes, Recipient will submit to the City a copy of the lease and proof of income of the tenants occupying HOME units. This information will be submitted for the duration of the affordability period as noted in Deed of Trust, the Promissory Note and the Covenants and Restrictions placed on the property.

Rental income does not constitute program income, recaptured funds or repayment of funds. However, any program income, recaptured funds, or repayment of any funds must be immediately returned to the City of College Station Community Development Division-Home Investment Partnerships Program. The City grants the Recipient the authority for the right to maintain all project proceeds. Any/All program income, recaptured funds, repaid funds, project proceeds, etc. are subject to this Agreement.

**EXHIBIT B  
BUDGET**

**COLLEGE STATION TERRACE PINES APARTMENT HOMES, L.P.**

**SOURCES OF FUNDS:**

Maximum Proceeds of Grant under the Agreement	\$521,612.00
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**USES OF FUNDS:**

Construction Costs	\$521,612.00
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## EXHIBIT C

### PROJECT IMPLEMENTATION SCHEDULE

CONTRACT START DATE: May 31, 2004

CONTRACT END DATE: 20 Years from Construction Completion Date, or No  
Later Than November 30, 2025

Texas Department of Housing and Community Affairs (TDHCA) Board Allocation of Housing Tax Credits – Funding under this agreement is contingent upon TDHCA Board recommendation of award of Housing Tax Credits to Recipient on or before July 31, 2004.

Project Financing and Land Acquisition – All project financing and acquisition of land is scheduled to be in place and complete on or before December 31, 2004.

Construction Phase – Construction for this project is scheduled to begin January 15, 2005 with placement of project “in service” date no later than February 28, 2006.

# EXHIBIT D

## THE APPLICABLE LAWS AND REGULATIONS

Recipient shall comply with all federal, state, and local laws and regulations applicable to the activities and performances rendered by Recipient under this contract including but not limited to the laws, and the regulations specified in Section I through VI of this Exhibit D.

### I. CIVIL RIGHTS

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, 1958-1963 COMP., P. 652 AND 3 CFR, 1980 COMP., P. 307) (EQUAL OPPORTUNITY IN HOUSING) AND IMPLEMENTING REGULATIONS AT 24 CFR, PART 107; AND TITLE VI 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;

EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259, AND 24 CFR PART 107, "NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063". THE FAILURE OR REFUSAL OF RECIPIENT TO COMPLY WITH THE REQUIREMENTS OF EXECUTIVE ORDER 11063 OR 24 CFR, PART 107 SHALL BE A PROPER BASIS FOR THE IMPOSITION OF SANCTIONS SPECIFIED IN 24 CFR 107.60;

THE PROHIBITION 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;

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 REQUIREMENTS OF 24 CFR 92.351 (MINORITY OUTREACH), EXECUTIVE ORDERS 11625 AND 12432 (CONCERNING MINORITY BUSINESS ENTERPRISE), AND 12138 (CONCERNING WOMEN'S BUSINESS ENTERPRISE). CONSISTENT WITH HUD'S RESPONSIBILITIES UNDER THESE ORDERS, RECIPIENT MUST MAKE EFFORTS TO ENCOURAGE THE USE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN CONNECTION WITH HOME FUNDED ACTIVITIES. RECIPIENT MUST PRESCRIBE PROCEDURES ACCEPTABLE TO THE CITY TO ESTABLISH ACTIVITIES TO ENSURE THE INCLUSION, TO THE MAXIMUM EXTENT POSSIBLE, OF MINORITIES AND WOMEN, AND ENTITIES OWNED BY MINORITIES AND WOMEN. THE CONTRACTOR / SUBCONTRACTOR WILL BE REQUIRED TO IDENTIFY CONTRACTS WHICH HAVE BEEN BID BY MINORITY OWNED, WOMEN OWNED, AND/OR SMALL DISADVANTAGED BUSINESSES.

THE AGE DISCRIMINATION ACT OF 1975 (42 U.S.C., SECTION 6101 ET SEQ.);

SECTION 504 OF THE REHABILITATION ACT OF 1973 (29 U.S.C., SECTION 794) AND "NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY-ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT", 24 CFR, PART 8. BY SIGNING THIS CONTRACT, RECIPIENT UNDERSTANDS AND AGREES THAT THE ACTIVITIES FUNDED HEREIN SHALL BE OPERATED IN ACCORDANCE WITH 24 CFR, PART 8; AND THE ARCHITECTURAL BARRIERS ACT OF 1968 (42 U.S.C., SECTION 4151 ET. SEQ.) INCLUDING THE USE OF A TELECOMMUNICATIONS DEVICE FOR DEAF PERSONS (TDDs) OR EQUALLY EFFECTIVE COMMUNICATION SYSTEM.

## **II. LEAD-BASED PAINT**

TITLE IV OF THE LEAD-BASED PAINT POISONING PREVENTION ACT (42 U.S.C. SEC. 4831).

## **III. ENVIRONMENTAL STANDARDS**

NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (42 U.S.C. SEC. 4321 ET. SEQ.) AND 40 CFR PARTS 1500-1508;

THE NATIONAL HISTORIC PRESERVATION ACT OF 1966 (16 U.S.C. SEC. 470 ET. SEQ.) AS AMENDED; PARTICULARLY SECTION 106 (16 U.S.C. SEC. 470F);

EXECUTIVE ORDER 11593, PROTECTION AND ENHANCEMENT OF THE CULTURAL ENVIRONMENT, MAY 13, 1971 (36 FED. REG. 8921), PARTICULARLY SECTION 2(C);

THE RESERVOIR SALVAGE ACT OF 1960 (16 U.S.C. SEC. 469 ET SEQ.). PARTICULARLY SECTION 3 (16 U.S.C. SEC. 469A-1), AS AMENDED BY THE ARCHEOLOGICAL AND HISTORIC PRESERVATION ACT OF 1974; FLOOD DISASTER PROTECTION ACT OF 1973, (42 U.S.C. SEC. 4001 ET. SEQ.) AS AMENDED, PARTICULARLY SECTIONS 102(A) AND 202(A) (42 U.S.C. SEC. 4012A (A) AND SEC. 4106(A);

EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, MAY 24, 1977 (42 FED. REG. 26951), PARTICULARLY SECTION 2(A).

EXECUTIVE ORDER 11990 PROTECTION OF WETLANDS, MAY 24, 1977 (42 FED. REG. 26961), PARTICULARLY SECTIONS 2 AND 5.

THE SAFE DRINKING WATER ACT OF 1974, (42 U.S.C. SEC. 201, 300(F) ET SEQ.) AND (21 U.S.C. SEC. 349) AS AMENDED, PARTICULARLY SECTION 1424(E) (42 U.S.C. SEC. 300H-303(E);

THE ENDANGERED SPECIES ACT OF 1973, (16 U.S.C. SEC. 1531 ET. SQ.) AS AMENDED, PARTICULARLY SECTION 7 (16 U.S.C. SEC. 1536);

THE WILD AND SCENIC RIVERS ACT OF 1968, (16 U.S.C. SEC. 1271 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 7(B) AND (C)(16 U.S.C. SEC. 1278(B) AND (C));

THE CLEAN AIR ACT (41 U.S.C. SEC. 7401 ET SEQ.) AS AMENDED, PARTICULARLY SECTION 176(C) AND (D) (42 U.S.C. SEC. 7506(C) AND (D));

FARMLANDS PROTECTION AND POLICY ACT OF 1981, (7 U.S.C. SEC. 4201 ET SEQ.)

24 CFR PART 51, ENVIRONMENTAL CRITERIA AND STANDARDS.

**IV. ACQUISITION/RELOCATION**

THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (42 U.S.C., SEC. 4601 ET. SEQ.), 49 CFR PART 24, AND 24 CFR SECTION 570.496A (55 FED. REG. 29309 (JULY 18, 1990))

**V. LABOR REQUIREMENTS**

Davis-Bacon and Related Acts (40 USC 276(A)-7)

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, AS AMENDED (40 USC 327-333)

COPELAND (ANTI-KICKBACK) ACT (40 USC 276C)

FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED (29 USC 201, ET. SEQ.)

## EXHIBIT E

### CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

The undersigned certified, to the best of its knowledge and belief, that:

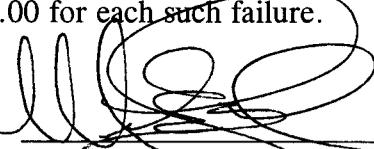
1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

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

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Signed:

BY:

  
Michael Lankford

Managing General Partner

COLLEGE STATION TERRACE PINES APARTMENT HOMES,

L.P.

DATE: 05.12.04