LOAN AGREEMENT
HOME PROGRAM

PART I

THIS LOAN AGREEMENT (this "**Loan Agreement**"), in two parts, Part I and Part II, is made and entered into this ____ day of _____, 2011 (the "**Effective Date**"), by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation organized pursuant to the Constitution of the State of Colorado ("**City**"), and **HABITAT FOR HUMANITY OF METRO DENVER, INC.**, a Colorado nonprofit corporation, whose address is 3245 Eliot Street, Denver, Colorado 80211 ("**Borrower**" or "**Contractor**").

WITNESSETH:

WHEREAS, the City is acting pursuant to federal grant conditions with respect to home ownership assistance under the Neighborhood Stabilization Program 2 ("**NSP 2**"); and

WHEREAS, the Borrower is eligible to receive NSP 2 funds pursuant to the Title XII of Division A of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 (enacted February 17, 2009), and implementing regulations, and is ready, willing and able to meet the conditions associated therewith;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties agree as follows:

1. **LOAN TO BORROWER**: Subject to the terms of this Loan Agreement, the City agrees to lend to Borrower the sum of One Million Three Hundred Ninety-One Thousand Three Hundred and No/100 U.S. Dollars ($1,391,300.00) (the "**Funds**"). Repayment of the Funds shall be deferred so long as Borrower is in compliance with the terms and conditions of this Loan Agreement and a promissory note in form reasonably satisfactory to both parties (the "**Promissory Note**"). Presuming such compliance, repayment of the Funds shall be forgiven on the first day of the two hundred forty-first (241st) month following the month of execution of the Promissory Note. It is hereby agreed by the parties that any and all cost overruns and/or funding shortfalls relating to the construction of the Infrastructure Improvements, as defined below, on the Property shall be the sole responsibility of the Borrower.

2. **SECURITY**: Repayment of the Promissory Note shall be secured by a Deed of Trust (the "**Deed of Trust**"), in form satisfactory to City, granted by Borrower and encumbering the real

property known and numbered as 15136 Andrews Drive, Denver, Colorado 80239 (the "**Property**"). Upon the sale of any portion of the Property, the City shall issue a partial release of the Deed of Trust for each Restricted Unit, and upon the sale of the final Restricted Unit hereunder, the City shall issue a full release of the Deed of Trust. Prior to or simultaneous with any partial release of the Deed of Trust, Borrower shall execute and record a Covenant (defined below) against each Restricted Unit prior to the sale of a Restricted Unit to an Eligible Buyer.

3. **USE AND DISBURSEMENT OF FUNDS**: The Funds will be used to repay costs associated with the development of the Property for use as affordable housing, in accordance with the following budget:

Acquisition:	693,000.00
Design:	126,900.00
Permits/tap fees:	246,400.00
Infrastructure:	325,000.00

Eligible infrastructure improvement costs ("**Eligible Costs**") shall include, without limitation, all costs associated with the installation or upgrading of water, sewer and storm sewer lines to a public connection, payment of tap fees or any other fees required to develop the Property, the installation or upgrading of gas and electric lines and any other utilities serving the Property, installation of roadways and sidewalks, and other site improvements or site preparation necessary for the development of the Property and construction of the Restricted Units (collectively, the "**Infrastructure Improvements**"); provided however, that expenses incurred by Borrower prior to February 10, 2011 shall not be included in Eligible Costs. Funds shall not be disbursed until: (i) Borrower has complied with all federal environmental and historic preservation clearances, as certified in writing by the City and County of Denver Office of Economic Development ("**OED**"); and (ii) Borrower has submitted to the City documentation of Eligible Costs incurred, on OED approved forms, and has otherwise complied with the financial administration requirements set forth in **Exhibit A** attached hereto and incorporated herein, as certified by OED in writing. Notwithstanding anything to the contrary contained in this Loan Agreement, the City shall retain ten percent (10%) of each requested disbursement of Funds for construction of infrastructure, which retainage shall be released upon final inspection and acceptance of the Infrastructure Improvements by the City and receipt by the City of proof of release of liens for the applicable improvements from all contractors, subcontractors, and suppliers. In addition, OED shall retain Five Thousand and

No/100 U.S. Dollars ($5,000.00) (the "**$5,000 Retainage**") from the Funds, which $5,000 Retainage shall be released to Borrower upon receipt by the City from Borrower of all initial information required by applicable regulations (not including, however, any continual status reports, monitoring reports or other continual reporting requirements) to be reported to the U.S. Department of Housing and Urban Development ("**HUD**") in connection with the NSP 2. The City's disbursement of Funds is subject to the availability of Funds from HUD through its Cash Management System.

4. **DEADLINE FOR DISBURSEMENT OF FUNDS**: Borrower shall submit requests for reimbursement with required documentation for no less than one-half of the funding on or before January 1, 2012. The remainder of the funding must be requested with required documentation no later than January 1, 2013. Borrower agrees that documentation for all requests for Funds, including Borrower's request for disbursement of the $5,000 Retainage, will be submitted no later than twenty-four (24) months after the date of the first disbursement of Funds under this Loan Agreement (the "**Contract Period**"). Notwithstanding the foregoing, the deadlines set forth in this Section 4 may be extended with the written approval of OED. If Borrower fails to make requests for funding as set forth above, within the timeframes set forth above, City at its sole discretion, may recapture a portion of the Borrower's total NSP funding allocation. The portion recaptured will be equal to City's estimate of the amount of NSP funds that would remain unspent by the funding deadlines described above, based on Borrower's activities to date and capacity to complete the work. In addition, the amount of Borrower's NSP funding allocation that is not obligated or expended by the expiration of the Contract Period will be recaptured immediately unless City grants an extension of the deadline in writing based on extenuating circumstances and compelling evidence that expenditures will be completed during the extended period.

5. **RESTRICTIONS ON USE OF PROPERTY**:

(a) Affordability limitations. Fifty-one (51) of the units at the Property (the "**Restricted Units**") shall be used as affordable housing as provided at 24 C.F.R. §92.254 for the period set forth in subsection (b) below. Housing that is for purchase by a family qualifies as affordable housing if the housing has a purchase price that does not exceed 95% of the median purchase price for that type of single-family housing in the jurisdiction as determined by HUD (the "**Affordable Purchase Price**"). The initial sale of a Restricted Unit by Borrower (the "**Initial Sale**") shall be to families (i) whose income does not exceed 60% of the HUD-established Denver median

income (adjusted for household size), and (ii) that will use the Restricted Unit as their principal residence (each an "**Eligible Buyer**"). After the Initial Sale, the Eligible Buyer and any subsequent owner of a Restricted Unit shall sell the Restricted Unit (x) at a purchase price that is no greater than the Affordable Purchase Price, as more particularly set forth in the Covenant, and (y) to a person whose income does not exceed 120% of the HUD-established Denver median income (adjusted for household size).

(b) Covenant Running with the Land. Pursuant to Section 2 above, prior to or as a condition of sale of the Restricted Units, Borrower shall execute a covenant in the form attached hereto as **Exhibit B** and incorporated herein, setting forth the affordability limitations described in subsection (a) above, which shall be recorded in the real estate records of the City and County of Denver and which shall constitute a covenant running with the land (the "**Covenant**"). The Covenant shall encumber the Restricted Units for a period of twenty (20) years from the date of its recording (the "**Affordability Period**").

6. **AFFIRMATIVE MARKETING**: Borrower shall comply with the affirmative marketing procedures outlined in the marketing plan, attached hereto as **Exhibit C** and incorporated herein, to provide information and otherwise attract eligible tenants from all racial, ethnic, and gender groups in the Property's housing market area.

7. **EXPENSE**: Borrower agrees to pay all actual and documented out-of-pocket costs, expenses and attorneys' fees reasonably incurred by the City as the direct result of the Borrower's breach or default of this Loan Agreement or the Promissory Note, and Borrower agrees to pay reasonable loan closing costs, including the costs of title insurance as reasonably required by the City.

8. **EXAMINATION OF RECORDS/ANNUAL MONITORING**: The Borrower agrees that the Comptroller General of the United States, HUD, the City, or any of their duly authorized representatives shall have access to and the right to examine, upon prior reasonable notice to Borrower, (a) the books, documents, papers, and records of the Borrower relating to the Infrastructure Improvements, which right of examination shall continue until the date that is five (5) years after the Effective Date, and (b) the following books, documents, papers and records of Borrower relating to the transactions arising from this Loan Agreement and the occupancy of the Restricted Units, which right of examination shall continue until the expiration of the Affordability

Period: (i) records evidencing the income and qualifications of each family purchasing and occupying a Restricted Unit; (ii) the purchase price of each Restricted Unit; (iii) mortgage documents; (iv) grant proposals; and (v) Fund requests. Borrower shall fully cooperate with the City in conducting an annual monitoring of Borrower's performance under this Loan Agreement, and a site inspection, to verify compliance with the requirements of this Loan Agreement.

9. **CONDITIONS**:

(a) This Loan Agreement is subject to the Title XII of Division A of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 (enacted February 17, 2009) and relevant regulations. The obligation of the City to lend the Funds is conditioned upon the Funds being appropriated for the purpose of this Loan Agreement by the United States of America and paid into the City treasury.

(b) This Loan Agreement is subject to the terms and conditions set forth in Part II.

(c) The Infrastructure Improvements shall be constructed in a good and workmanlike manner in accordance with all applicable federal, state, and City laws, ordinances, rules and regulations.

10. **NO DISCRIMINATION IN EMPLOYMENT**: In connection with the construction of the Infrastructure Improvements as contemplated by this Loan Agreement, the Borrower agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

11. **INSURANCE**:

(a) During the period of construction of the Infrastructure Improvements and continuing until the first Restricted Unit is sold to an Eligible Buyer, Borrower or it contractors shall procure and maintain insurance in the following types and amounts:

(i) Builders Risk Insurance or an installation floater in the amount of the value of the Infrastructure Improvements as improved and renovated with the Funds, with the City and County of Denver named as loss payee.

(ii) Commercial General Liability Insurance covering all operations by or on behalf of Borrower with respect to the construction of the Infrastructure Improvements, on an

occurrence basis with limits not less than $1,000,000 per occurrence, $1,000,000 for each personal and advertising injury claims, $2,000,000 products and completed operations aggregate, and $2,000,000 policy aggregate. Borrower's contractor shall include all subcontractors as insureds under its policy or shall furnish separate certificates of insurance for each subcontractor.

(iii) Worker's Compensation and Employer's Liability Insurance at statutory limits and otherwise sufficient to ensure the responsibilities of Borrower and its contractor under Colorado law.

(iv) Special cause of loss form property insurance reasonably satisfactory to the City in the amount of the value of the Infrastructure Improvements, with the City named as loss payee.

(b) Certificates of Insurance evidencing the above shall be submitted to OED prior to the disbursement of Funds hereunder. Policies shall include a waiver of subrogation and rights of recovery as against the City. Insurance companies providing the above referenced coverage must be authorized to issue insurance in Colorado and shall be otherwise reasonably acceptable to the City's Director of Risk Management.

(c) Upon the first sale of a Restricted Unit to an Owner, Borrower shall no longer be obligated to maintain any insurance with respect to the Infrastructure Improvements, and shall only be required to maintain the special cause of loss form property insurance required pursuant to subparagraph (iv) above with respect to each Restricted Unit until the sale of such Restricted Unit to an Owner.

12. **DEFENSE & INDEMNIFICATION:**

(a) Contractor hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Loan Agreement ("**Claims**"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Contractor or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

(b) Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim. Contractor's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

(c) Contractor will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

(d) Insurance coverage requirements specified in this Loan Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

(e) This defense and indemnification obligation shall survive the expiration or termination of this Loan Agreement.

13. **DEFAULT AND ACCELERATION**. Borrower expressly agrees that any breach of this Loan Agreement or the Promissory Note shall constitute a default if not cured within thirty (30) days (or such longer period of time as may be reasonably necessary to cure such breach provided that Borrower has commenced and is diligently pursuing such cure) after receipt by Borrower of written notice from the City regarding such breach. The City also may declare a default if any warranty, representation or statement made or furnished to the City by or on behalf of Borrower in connection with this Loan Agreement proves to have been false in any material respect when made or furnished. Upon the existence of a default, the City's sole remedy shall be to accelerate all amounts owed under the Promissory Note, which obligations shall be immediately due and payable. Upon default, the outstanding principal balance of the Promissory Note shall bear interest at the rate of fifteen percent (15%) per annum until paid.

14. **INTENTIONALLY OMITTED**:

15. **ASSIGNMENT AND SUBCONTRACTING**: The City is not obligated or liable under this Loan Agreement to any party other than the Borrower. The Borrower shall not assign, sublet or subcontract with respect to any of the rights, benefits, obligations or duties under this Loan Agreement except upon prior written consent of the City, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Borrower may subcontract the construction of the Infrastructure Improvements to any contractors or subcontractors without the prior consent of the City.

16. **WAIVER**: No waiver of any breach or default under this Loan Agreement shall be held to be a waiver of any other or later breach or default. All remedies afforded in this Loan Agreement shall be construed as cumulative, in addition to every other remedy provided herein or by law.

17. **CITY NOT PARTY TO CONSTRUCTION CONTRACT:** The City is not, and nothing in this Loan Agreement shall be construed to make the City a party to any construction contract pursuant to which the Funds are expended.

18. **DURATION/BINDING EFFECT**: This Loan Agreement shall remain in effect for the Affordability Period specified in Section 5(b) above, and shall be binding upon the parties and shall inure to the benefit of their respective successors, assignees, representatives, and heirs.

19. **SECTION 3 COMPLIANCE**: This Loan Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 and implementing regulations thereunder, as more fully described in Part II attached hereto.

20. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**:

(a) The Contractor represents and warrants that, as of the Effective Date, it and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

(b) The Contractor will not knowingly enter into any agreement with any contractor, subcontractor or supplier who is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in a covered transaction unless authorized by the federal agency from which the transaction originated.

(c) The Contractor shall include the certification contained in subsection (a) of this Section in any and all subcontracts hereunder and shall require any subcontractors or sub-consultants to comply with any and all applicable federal laws, rules and regulations, policies and procedures or guidance concerning the federal debarment, suspension, and exclusion program.

(d) The Contractor will immediately notify OED in writing if at any time it learns that it failed to disclose that it or any of its principals were excluded as set forth in subsection (a) above at the time the parties executed this Loan Agreement, or, if due to changed circumstances the Contractor or any of its principals have subsequently been excluded by a federal agency.

(e) The representation made in subsection (a) of this Section is a material representation of fact upon which reliance was placed when this transaction was entered into.

21. **PASS-THROUGH OF CITY OBLIGATIONS PURSUANT TO THE APPLICANT VERIFICATION STATUTE**

(a) This Loan Agreement is subject to Article 76.5 of Title 24, Colorado Revised Statutes, and any rules adopted pursuant thereto, as now existing or as hereafter amended (together the "**Applicant Verification Statute**"). Compliance by the Contractor with the Applicant Verification Statute is expressly made a contractual condition of this Loan Agreement.

(b) The Contractor shall verify the lawful presence in the United States, of each natural person eighteen years of age or older (the "**Applicant**"), who applies for federal, state or local public benefits ("**Benefits**") conferred pursuant to this Loan Agreement, as such Benefits are defined in the Applicant Verification Statute. The Contractor shall require the Applicant to produce one of the forms of identification listed in the Applicant Verification Statute, and execute an affidavit in the form attached hereto as **Exhibit D** and incorporated herein by this reference. The Contractor shall maintain copies of each Applicant's identification documentation and affidavit, and shall make such copies available to the City upon request.

22. **COUNTERPARTS:** This Loan Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed to be an original and, taken together, shall constitute one and the same instrument.

23. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**:

Contractor consents to the use of electronic signatures by the City. This Loan Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in

the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of this Loan Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of this Loan Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

EXHIBIT A Financial Administration
EXHIBIT B Form of Covenant
EXHIBIT C Affirmative Marketing
EXHIBIT D Verification Affidavit

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THE PARTIES have executed this Agreement as of the date first written above.

ATTEST:

By: _____
STEPHANIE Y. O'MALLEY, Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver

CITY AND COUNTY OF DENVER:

By: _____
M A Y O R

RECOMMENDED AND APPROVED:

By: _____
Director, Business and Housing Services
Office of Economic Development

APPROVED AS TO FORM:
DAVID W. BROADWELL,
Attorney for the City and County of Denver

By: _____
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

Contract Control No. GE1A008

By: _____
Auditor

"CITY"

ATTEST: [If required by Corporate procedures]

By: Kristina Jaredine

Title: Dir. of Finance & Admin

HABITAT FOR HUMANITY OF METRO DENVER, INC.
Taxpayer (IRS) I.D. No. 74-2050021

By: Heather Lafferty

Name: Heather Lafferty
(please print)

Title: Executive Director

"CONSULTANT"

EXHIBIT A

FINANCIAL ADMINISTRATION:

1.1 Compensation and Methods of Payment

1.1.1 Disbursements shall be processed through the BHS Financial Management Unit and the City and County of Denver's Department of Finance.

1.1.2 The method of payment to the Contractor by BHS shall be in accordance with established Financial Management Unit (FMU) procedures for line-item reimbursements. The Contractor must submit expenses and accruals to BHS on or before the last day of each month for the previous month's activity. Voucher requests for reimbursement of costs should be submitted on a regular and timely basis in accordance with BHS policies. Vouchers should be submitted within thirty (30) days of the actual service, expenditure or payment of expense, except for the final voucher for reimbursement.

1.1.3 The Contractor shall submit the final voucher for reimbursement no later than **forty-five (45) days after the end of the contract period.**

1.1.4 The Contractor shall be reimbursed for services provided under this Agreement.

1.2 Vouchering Requirements

1.2.1 In order to meet Federal Government requirements for current, auditable books at all times, it is required that all vouchers be submitted monthly to BHS in order to be paid.

a. The first exception will be that expenses cannot be reimbursed until the funds under this contract have been encumbered.

b. The second exception will be that costs cannot be reimbursed until they total a minimum of $35 unless it is a final payment voucher, or the final voucher for the fiscal year (ending December 31).

1.2.2 No more than six (6) vouchers may be submitted per contract per month, without prior approval from BHS.

1.2.3 All vouchers for all Agreements must be correctly submitted within forty-five (45) days of the Agreement end date to allow for correct and prompt closeout.

1.2.4 City and County of Denver Forms shall be used in back-up documents whenever required in the Voucher Processing Policy.

1.2.5 Only allowable costs determined in accordance with the OMB cost principles applicable to the organization incurring the cost will be reimbursed.

1.2.6 The reimbursement request, or draw request, for personnel and non-personnel expenses should be submitted to the City on a monthly basis, no later than the last day of the following month for expenses incurred in the prior month. The request for reimbursement should include:

a. Amount of the request in total and by line item;

b. Period of services for current reimbursement;

c. Budget balance in total and by line item;

d. Authorization for reimbursement by the contract signatory (i.e., executive director or assistant director).

1.2.7 If another person has been authorized by the Contractor to request reimbursement for services provided by this contract, then the authorization should be forwarded in writing to BHS prior to the draw request. The standardized BHS "Expense Certification Form" should be included with each payment request to provide the summary and authorization required for reimbursement.

1.3 Payroll

1.3.1 A summary sheet should be included to detail the gross salary of the employee, amount of the salary to be reimbursed, the name of the employee, and the position of the employee. If the employee is reimbursed only partially by this contract, the amount of salary billed under other contracts with the City or other organizations should be shown on the timesheet as described below. Two items are needed for verification of payroll–1) the amount of time worked by the employee for this pay period; and 2) the amount of salary paid to the employee, including information on payroll deductions.

1.3.2 The amount of time worked will be verified with timesheets. The timesheets must include the actual hours worked under the terms of this contract, and the actual amount of time worked under other programs. The total hours worked during the period must reflect all actual hours worked under all programs including leave time. The employee's name, position, and signature, as well as a signature by an appropriate supervisor, or executive director, must be included on the timesheets. If the timesheet submitted indicates that the employee provided services payable under this contract for a portion of the total time worked, then the amount of reimbursement requested must be calculated and documented in the monthly reimbursement request.

1.3.3 A payroll register or payroll ledger from the accounting system will verify the amount of salary. Copies of paychecks are acceptable if they include the gross pay and deductions.

1.4 Fringe Benefits

1.4.1 Fringe benefits paid by the employer can be requested by applying the FICA match of 7.65 percent to the gross salary paid under this contract. Fringe benefits may also include medical plans, retirement plans, workmen's compensation, and unemployment insurance. Fringe benefits that exceed the FICA match may be documented by 1) a breakdown of how the fringe benefit percentage was determined prior to first draw request; or, 2) by submitting actual invoices for the fringe benefits. If medical insurance premiums are part of the estimates in item #1, one-time documentation of these costs will be required with the breakdown. Payroll taxes may be questioned if they appear to be higher than usual.

1.5 General Reimbursement Requirements:

a. Invoices: All non-personnel expenses need dated and readable invoices. The invoices must be from a vendor separate from the Contractor, and must state what goods or services were provided and the delivery address. Verification that the goods or services were received should also be submitted, this may take the form of a receiving document or packing slips, signed and dated by the individual receiving the good or service. Copies of checks written by the Contractor, or documentation of payment such as an accounts payable ledger which includes the check number shall be submitted to verify that the goods or services are on a reimbursement basis.

b. Mileage: A detailed mileage log with destinations and starting and ending mileage must accompany mileage reimbursement. The total miles reimbursed and per mile rate must be stated. Documentation of mileage reimbursement to the respective employee must be included with the voucher request.

c. Pager/Cell Phone: Written statement from executive director will be required certifying that cell phone is necessary and reasonable to run the program. And, if the monthly usage charge is exceeded in any month, a detailed phone log will be required for the amount of the overage.

d. Administration and Overhead cost: Other non-personnel line items, such as administration, or overhead need invoices, and an allocation to this program documented in the draw request. An indirect cost rate can be applied if the Contractor has an approved indirect cost allocation plan. The approved indirect cost rate must be submitted to and approved by BHS.

e. Service Period and Closeout: All reimbursed expenses must be incurred during the time period within the contract. The final payment request must be received by BHS within forty-five (45) days after the end of the service period stated in the contract.

2.1 Program Income: [INTENTIONALLY DELETED]

3.1 Financial Management Systems

The Contractor must maintain financial systems that meet the following standards:

3.1.1 Financial reporting must be accurate, current, and provide a complete disclosure of the financial results of financially assisted activities and be made in accordance with federal financial reporting requirements.

3.1.2 Accounting records must be maintained which adequately identify the source and application of the funds provided for financially assisted activities. The records must contain information pertaining to contracts and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income. Accounting records shall provide accurate, separate, and complete disclosure of fund status.

3.1.3 Effective internal controls and accountability must be maintained for all contract cash, real and personal property, and other assets. Adequate safeguards must be provided on all property and it must be assured that it is used solely for authorized purposes.

3.1.4 Actual expenditures or outlays must be compared with budgeted amounts and financial information must be related to performance or productivity data, including the development of cost information whenever appropriate or specifically required.

3.1.5 Applicable Office of Management and Budget (OMB) cost principles, agency program regulations, and the terms of the agreement will be followed in determining the reasonableness, allowability and allocability of costs.

3.1.6 Source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents, etc. shall be provided for all disbursements. The Contractor will maintain auditable records-i.e., records must be current and traceable to the source documentation of transactions.

3.1.7 The Contractor shall maintain separate accountability for BHS funds as referenced in 24 C.F.R. 85.20 and OMB Circular A-110.

3.1.8 The Contractor must properly report to Federal, State, and local taxing authorities for the collection, payment, and depositing of taxes withheld. At a minimum, this includes Federal and State withholding, State Unemployment, Worker's Compensation (staff only), City Occupational Privilege Tax, and FICA.

3.1.9 A proper filing of unemployment and worker's compensation (for staff only) insurance shall be made to appropriate organizational units.

3.1.10 The Contractor shall participate, when applicable, in BHS provided staff training sessions in the following financial areas including, but not limited to (1) Budgeting and Cost Allocation Plans; (2) Vouchering Process.

4.1 Audit Requirements

4.1.1 If the Contractor expends five hundred thousand dollars ($500,000) or more of federal awards in the Contractor's fiscal year, the Contractor shall ensure that it, and its sub recipients(s), if any, comply with all provisions of the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations."

4.1.2 A copy of the final audit report must be submitted to the BHS Financial Manager within the earliest of thirty (30) calendar days after receipt of the auditor's report; or nine (9) months after the end of the period audited.

4.1.3 A management letter, if issued, shall be submitted to BHS along with the reporting package prepared in accordance with the Single Audit Act Amendments and OMB Circular A-133. If the management letter is not received by the sub recipient at the same time as the Reporting Package, the Management Letter is also due to BHS within thirty (30) days after receipt of the Management Letter, or nine (9) months after the end of the audit period, whichever is earlier. If the Management Letter has matters related to BHS funding, the Contactor shall prepare and submit a Corrective Action Plan to BHS in accordance with 24 C.F.R. Part 45 for each applicable management letter matter.

4.1.4 All audit related material and information, including reports, packages, management letters, correspondence, etc. shall be submitted to **BHS Financial Management Unit.**

4.1.5 The Contractor will be responsible for all Questioned and Disallowed Costs.

4.1.6 The Contractor may be required to engage an audit committee to determine the services to be performed, review the progress of the audit and the final audit findings, and intervene in any disputes between management and the independent auditors. The Contractor shall also institute policy and procedures for its sub recipients that comply with these audit provisions, if applicable.

5.1 Budget Modification Requests

5.1.1 Minor modifications to the services provided by the Contractor or changes to each line item budget equal to or less than a ten percent (10%) threshold, which do not increase the total funding to the Contractor, will require only notification to BHS with the next monthly draw. Minor modifications to the services provided by Contractor, or changes to each line item budget in excess of the ten percent (10%) threshold, which do not increase the total funding to Contractor, may be made

only with prior written approval by BHS. Such budget and service modifications will require submittal by Contractor of written justification and new budget documents. All other contract modifications will require an amendment to this Agreement executed in the same manner as the original Agreement.

5.1.2 The Contractor understands that any budget modification requests under this Agreement must be submitted to BHS prior to the last Quarter of the Contract Period, unless waived in writing by the BHS Director.

6.1 Procurement:

6.1.1 The Contractor shall follow the City Procurement Policy to the extent that it requires that at least three (3) documented quotations be secured for all purchases or services (including insurance) supplies, or other property that costs more than five thousand dollars ($5,000) in the aggregate.

6.1.2 The Contractor will maintain records sufficient to detail the significant history of procurement. These records will include, but are not limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

6.1.3 If there is a residual inventory of unused supplies exceeding five thousand dollars ($5,000) in total aggregate upon termination or completion of award, and if the supplies are not needed for any other federally sponsored programs or projects the Contractor will compensate the awarding agency for its share.

7.1 Bonding

7.1.1 BHS may require adequate fidelity bond coverage, in accordance with 24 C.F.R. 84.21, where the subrecipient lacks sufficient coverage to protect the Federal Government's interest.

8.1 Records Retention

8.1.1 The Contractor must retain for five (5) years financial records pertaining to the contract award. The retention period for the records of each fund will start on the day the single or last expenditure report for the period, except as otherwise noted, was submitted to the awarding agency.

8.1.2 The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access, upon reasonable notice, to any pertinent books, documents, papers, or other records which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts.

9.1 Contract Close-Out

9.1.1 All Contractors are responsible for completing required BHS contract close-out forms and submitting these forms to their appropriate BHS Contract Specialist within sixty (60) days after the Agreement end date, or sooner if required by BHS in writing.

9.1.2 Contract close out forms will be provided to the Contractor by BHS within sixty (60) days prior to end of contract.

9.1.3 BHS will close out the award when it determines that all applicable administrative actions and all required work of the contract have been completed. If Contractor fails to perform in accordance with this Agreement, BHS reserves the right to unilaterally close out a contract, "unilaterally close" means that no additional money may be expended against the contract.

10.1 Collection of amounts due:

10.1.1 Any funds paid to a Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government and the City. If not paid within a reasonable period after demand, BHS may 1) Make an administrative offset against other requests for reimbursements, 2) Withhold advance payments otherwise due to the Contractor, or 3) other action permitted by law.

EXHIBIT B

FORM OF COVENANT

After Recording, Return to:

Habitat for Humanity of Metro Denver
3245 Eliot Street
Denver, CO 80211
Attn: Lynne Brown
Director of Community Development

LIMITATIONS ON RESALE PRICE AND BUYER INCOME

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT
FOR
_____ (insert address)

SABLE RIDGE
Denver, Colorado
_____, 20___

AFFORDABLE HOUSING COVENANT
FOR
_____ (insert address)

SABLE RIDGE

THIS AFFORDABLE HOUSING COVENANT FOR _____ (insert address), THE SABLE RIDGE COMMUNITY ("**Covenant**") is made on this _____ day of _____, 20___, by HABITAT FOR HUMANITY OF METRO DENVER, INC., a Colorado non-profit corporation ("**Developer**"), whose address is 3245 Eliot Street, Denver, CO 80211.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in the City and County of Denver, Colorado (the "**City**") and further described on **Exhibit A** attached hereto and incorporated herein by this reference ("**Unit**"); and

WHEREAS, the City has provided NSP2 funds to develop the Unit; and

WHEREAS, the Developer has benefitted from these funds; and

WHEREAS, the intent of the City in providing these funds is to preserve the affordability of the Unit for persons of low or moderate income; and

WHEREAS, subsequent purchasers will benefit from the limitations on the purchase price which this Covenant requires; and

WHEREAS, the intent of the Developer is to preserve through this Covenant the affordability of the Unit for persons of low or moderate income.

NOW THEREFORE, Declarant hereby declares as follows:

ARTICLE 1
AGREEMENT BINDS THE UNIT

This Covenant shall constitute covenants running with the land and title to the Unit as a burden thereon, for the benefit of, and enforceable by, Developer. This Covenant shall bind any person at any time being the record owner of the Unit in compliance with the terms and provisions of this Covenant (an "**Owner**"). A person or persons shall be deemed an "Owner" hereunder only during the period of his, her or their recorded ownership interest in the Unit. Each Owner, upon acceptance of a deed to the Unit, shall be personally obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during the Owner's period of ownership of the Unit. Each and every conveyance of the Unit, for all purposes, shall be deemed to include and incorporate by this

reference, the terms and conditions contained in this Covenant, even without reference to this Covenant in any document of conveyance.

ARTICLE 2
QUALIFIED BUYERS

2.1 Qualified Buyers. Except as otherwise provided herein, the ownership of the Unit shall be limited exclusively to natural persons who meet the definition of Qualified Buyers. A "**Qualified Buyer**" shall mean, (a) for the initial sale of the Unit, a Household, as defined below, which has a combined annual income that does not exceed sixty percent (60%) of AMI, as defined below, at the time of purchase of the Unit, and (b) for sales subsequent to the initial sale of the Unit, a Household who has a combined annual income that does not exceed eighty percent (80%) of AMI, at the time of purchase of the Unit. A "**Household**" shall mean all persons that will be living within the Unit, including those persons that will be living in the Unit on a part-time basis. "**AMI**" shall mean the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the City and County of Denver.

2.2 Exceptions. Notwithstanding the foregoing paragraph, a transfer resulting from the death of an Owner where the transfer is to at least one (1) person taking title by will or by operation of law shall not be subject to Article 5 (Voluntary Sale By Owner), so long as the transferee shall occupy the Unit as his or her permanent residence.

ARTICLE 3
RESTRICTIONS

3.1 Unit Must Be Permanent Residence. Pursuant to the City's affordable housing rules and regulations, the Unit shall be utilized as the permanent residence of the Owner.

3.2 No Discrimination. In the sale of the Unit, there shall be no discrimination on the basis of age, race, creed, color, sex, gender, familial status, military status, sexual orientation, disability, religion, national origin or marital status.

ARTICLE 4
VOLUNTARY SALE BY OWNER

4.1 Notice. In the event that the Owner desires to sell the Unit, the Owner shall provide written notice to Developer of such Owner's intent to sell at least fifteen (15) days prior to engaging a broker to list the Unit for sale or otherwise offering the Unit for sale.

4.2 Repurchase Right. Developer and Owner entered into that certain Right of Repurchase and Shared Appreciation Agreement relating to the Unit and recorded with the Clerk and Recorder's Office of the City and County of Denver, Colorado (the "**Repurchase Agreement**"). The Repurchase Agreement is substantially in the form of the Right of Repurchase and Shared Appreciation Agreement attached hereto as **Exhibit B**. The provisions

of the Repurchase Agreement are incorporated herein by this reference. In the event that Developer elects to exercise its repurchase right under the Repurchase Agreement, then the terms and conditions of the Repurchase Agreement shall govern the closing of the repurchase of the Unit by Developer from Owner.

4.3 Sales Contract. If Developer does not elect to repurchase the Unit as set forth above, then the selling Owner may list the Unit for sale with a real estate agent licensed in the State of Colorado or the selling Owner may market the Unit as "for sale by owner," and may enter into a contract for the sale of the Unit upon such terms and conditions as the selling Owner shall, in the selling Owner's discretion, deem acceptable, *provided, however*, that:

4.3.1 the purchase price shall not exceed the Maximum Sales Price (as defined below); and

4.3.2 the selling Owner must believe in good faith that the purchaser is a Qualified Buyer.

4.4 Verification. Prior to closing of the sale of the Unit from Owner to a prospective purchaser, Owner shall request that Developer (a) qualify the prospective purchaser as a Qualified Buyer hereunder, and (b) certify that the purchase price for the Unit does not exceed the Maximum Sales Price. If Owner has not received written certification from Developer, prior to closing, that the prospective purchaser qualifies as a "Qualified Buyer" hereunder, and that the sales price for the Unit does not exceed the Maximum Sales Price, the Owner may not close the sale of the Unit to such prospective purchaser.

ARTICLE 5
MAXIMUM SALE PRICE

5.1 Maximum Sale Price. The "**Maximum Sales Price**" for a Unit shall not exceed 95% of the median purchase price for a townhome located in the City and County of Denver, as determined by Developer in its reasonable discretion, plus the value of any significant capital improvements made to the Unit by Owner, as determined by Developer in its reasonable discretion.

5.2 No Representation. THE MAXIMUM SALES PRICE IS ONLY AN UPPER LIMIT ON THE RESALE PRICE FOR THE UNIT, AND NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION, WARRANTY OR GUARANTEE BY THE DEVELOPER OR THE CITY THAT UPON TRANSFER THE OWNER SHALL OBTAIN THE MAXIMUM SALES PRICE. DEPENDING UPON CONDITIONS AFFECTING THE REAL ESTATE MARKET, THE OWNER MAY OBTAIN LESS THAN THE MAXIMUM SALES PRICE FOR THE UNIT UPON RESALE.

5.3 Buyers May Not Pay Owner's Costs. No Owner shall permit any prospective purchaser to assume any or all of the Owner's customary closing costs or accept any other

consideration which would cause an increase in the purchase price above the bid price so as to induce the Owner to sell to such prospective buyer.

ARTICLE 6
REMEDIES IN THE EVENT OF BREACH

6.1 Inspection. In the event that Developer has reasonable cause to believe that Owner is violating the provisions of this Covenant, Developer through its authorized representative, may inspect the Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after a reasonable attempt to provide such Owner with twenty-four (24) hours advance written notice.

6.2 Cure/Hearing. In the event of a violation of this Covenant, Developer shall send a notice of violation to Owner detailing the nature of the violation and allowing Owner fifteen (15) days to cure such violation. If the violation is not cured within the fifteen (15) day period, Owner shall be considered in default of this Covenant (a "**Default**").

6.3 Remedies/Voiding Transfers. If Owner is in Default of this Covenant, Developer may exercise any rights and remedies available at law or in equity relating to such Default, including specific performance. Without limiting the foregoing, in the event the Unit is conveyed in a manner that is not in full compliance with the terms and conditions of this Covenant, such transfer shall be voidable by Developer, in Developer's sole and absolute discretion, in which event the transfer shall confer no title whatsoever upon the purported transferee. Each and every transfer of the Unit, for all purposes, shall be deemed to include and incorporate by this reference the covenants herein contained, regardless of reference therein to this Covenant.

6.4 HUD. Notwithstanding anything in this Covenant to the contrary, in the event that the Unit is encumbered by a HUD-insured mortgage, the Developer's remedies shall specifically not include remedies prohibited by HUD.

ARTICLE 7
RELEASE OF COVENANT IN FORECLOSURE

7.1 Foreclosure. Developer shall release this Covenant of record and waive its ability to enforce the provisions of this Covenant with respect to the Unit in the event that title to the Unit is conveyed by way of foreclosure, or delivery of a deed in lieu of foreclosure, to a First Mortgagee (which shall be the only party entitled to take the Unit free of this Covenant pursuant to the provisions of this Article 7). "**First Mortgagee**" shall mean and refer to any person or entity named as the mortgagee or beneficiary under any mortgage encumbering the Unit which has priority of record over all other recorded liens encumbering the Unit, or its allowed assignees.

7.2 Notice of Foreclosure. In the event of (a) a foreclosure action being brought by the First Mortgagee (including assigns of the First Mortgagee), or (b) the request for the First Mortgagee to accept title to the Unit by deed in lieu of foreclosure, the Owner shall deliver a

copy of any notice of intent to foreclose or request for deed in lieu to the Developer within ten (10) days of receipt of such notice or request, at the address set forth on the first page of this Covenant.

ARTICLE 8
TERM OF RESTRICTION

This Covenant shall be effective and binding for a period of twenty (20) years from the date of recording of this Covenant.

ARTICLE 9
GENERAL PROVISIONS

9.1 Severability. Whenever possible, each provision of this Covenant and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Covenant.

9.2 Assignment. Developer may assign its rights to enforce the terms and provisions of this Covenant to the City at any time.

9.3 Choice of Law. This Covenant shall be governed and construed in accordance with the laws of the State of Colorado.

9.4 Waiver. No claim of waiver, consent or acquiescence with respect to any provision of this Covenant shall be valid against Developer except on the basis of a written instrument executed by Developer.

9.5 Further Actions. The parties to this Covenant agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Covenant or any agreement or document relating hereto or entered into in connection herewith.

9.6 Modifications. Except as otherwise provided herein, any modification to this Covenant shall be effective only when made in a writing signed by the Owner and the Developer and recorded with the Clerk and Recorder of the City and County of Denver.

9.7 No Third Party Beneficiaries. This Covenant is made and entered into for the sole protection and benefit of the City and County of Denver, the Owner and the Developer. No other person, persons, entity or entities, including without limitation prospective buyers of the Unit, shall have any right of action with respect to this Covenant or right to claim any right or benefit from the terms provided in this Covenant or be deemed a third party beneficiary of this Covenant.

IN WITNESS WHEREOF, the parties hereto have executed this Covenant on the day and year above first written.

DEVELOPER:

HABITAT FOR HUMANITY OF METRO DENVER, INC.

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20___, by _____, as _____ of Habitat for Humanity of Metro Denver, Inc.

WITNESS my hand and official seal.

_____
Notary Public

My commission expires: _____

EXHIBIT A
to form of Covenant

LEGAL DESCRIPTION OF UNIT

EXHIBIT B
to form of Covenant

EXECUTED REPURCHASE AGREEMENT

EXHIBIT C
(Affirmative Marketing)

City and County of Denver
Affirmative Marketing Program

The City and County of Denver is committed to the goal of adequate housing for all its citizens and to affirmatively furthering fair housing opportunities. The City has developed written material explaining the NSP2 Programs for dissemination and will inform the public, owners, and potential tenants about Federal fair housing laws. These materials will display the "equal housing opportunity" slogan and logo. The City will also publicize its HOME programs through press releases, solicitations to property owners and written communications to fair housing groups and local lenders. The City will display the "equal housing opportunity" slogan on all such communications.

All contracts, grant agreements and/or loan agreements between the City or its agents and property owners executed in connection with the NSP2 Program will:

(1) prohibit discrimination in the rental of housing rehabilitated through the City's NSP2 program on the basis of race, color, religion, sex, national origin, age, handicap, or household composition;
(2) require compliance with all applicable fair housing and equal opportunity laws, and
(3) include a copy of our Affirmative Marketing Program and require compliance with all procedures contained herein for the period of affordability of the term of the loan, whichever is greater.

In the City's Housing Loan Program, the objective of the Affirmative Marketing Program and a project's Affirmative Marketing Plan will be to increase the racial/ethnic diversity of the project's tenant population so that the tenant population is not made up exclusively of persons of one race/ethnicity. In order to accomplish this, owners will be required to adopt a plan that will inform and solicit applications from persons in the housing market who are least likely to apply for the housing without special outreach. In general, persons who are not of the race/ethnicity of the majority of the residents of the neighborhood in which the property is located will be considered as persons least likely to apply.

The City will work with the project owner to identify which racial/ethnic groups in the population are least likely to apply for housing in each project without special outreach. The City will assist the owner in developing a project specific Affirmative Marketing Plan which includes special outreach efforts and the City will approve the Plan. The property manager or rental agent will be required to maintain records enabling the City to assess the results of the owner's actions to affirmatively market units. These records will include rental applications, all vacancy notices, and rental receipts. The City or its agent will review the owner's records and these records must be made available to the City. Additionally, the City will require the owner to submit annual tenant reports that will include tenant characteristics including race/ethnicity.

The project's Plan will identify specific actions the owner must take when becoming aware of an impending vacancy. These actions will include notifying the City or its designee in writing of the vacancy. The owner will provide the date the unit will be available, the number of bedrooms; the rent, the location of the unit, and the name, address, and telephone number of the property manager or rental agent. The City will circulate this notice to specific community and other organizations serving those racial/ethnic groups identified in the project's plan as least likely to apply for housing in that particular project without special outreach. In some cases the owner will also be required to advertise the vacancy in a general circulation newspaper. Owners who rent exclusively to one segment of the population to the exclusion of applicants from other segments will be notified of potential noncompliance. The City will provide technical assistance to the owners in expanding outreach efforts. If necessary, specific corrective actions will be required.

Owners who discriminate or who fail to comply with the requirements of this Affirmative Marketing Program may be found in breach of contract or in default on their grant or loan agreement, and the City may take action to recover all funds made available to the owner by the City plus applicable penalties.

The City has adopted a policy to aggressively encourage landlords to rehabilitate units that are accessible to persons with physical disabilities.

EXHIBIT D

VERIFICATION AFFIDAVIT

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

_____ I am a United States citizen, or

_____ I am a Permanent Resident of the United States, or

_____ I am an alien lawfully present in the United States pursuant to Federal Law.

I understand that this sworn statement is required by law because I have applied for a public benefit. I understand that State law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute §18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

_____ _____

Signature **DATE**

_____

[Print] Name of Applicant

PART II
SUPPLEMENTARY GENERAL CONDITIONS (CDBG)

ARTICLE I
FEDERAL REQUIREMENTS

The following conditions take precedence over any conflicting conditions in the Agreement.

Sec. 100. Definitions. As used in this Agreement:

A. "City" means City and County of Denver or a person authorized to act on its behalf.

B. "Contractor" means a person or entity that has entered into an Agreement with the City under which the person or entity will receive federal funds under the Community Development Block Grant Program. "Subcontractor" means any person or entity that enters into an agreement or contract with a Contractor.

C. "OED" means the City's Office of Economic Development or a person authorized to act on its behalf.

D. "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

E. "Construction contract or agreement" means a contract for construction, rehabilitation, alteration and/or repair, including painting and decorating.

Sec. 101. Housing and Community Development Act of 1974. This Agreement is subject to Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.), pertaining to Community Development Block Grants, and HUD regulations at 24 C.F.R. 570 et seq., and 24 C.F.R. 85 et seq.

Sec. 102. Uniform Administrative Requirements. This Agreement is subject to the requirements of U.S. Office of Management and Budget (OMB) Circular Nos. A-87, A-110, A-122, A-128, and A-133, and applicable sections of 24 C.F.R. Parts 84 and 85 as they relate to the acceptance and use of Federal funds.

Sec. 103. Nondiscrimination Under Title VI of the Civil Rights Act of 1964.

A. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and implementing regulations at 24 C.F.R. Part 1, prohibiting discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance.

B. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Contractor shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of such land or any improvements erected or to be erected thereon, and providing that the Contractor and the United States are beneficiaries of and entitled to enforce such covenant. The Contractor agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.

Sec. 104. Nondiscrimination in Housing Under Title VIII of the Civil Rights Act of 1968. This Agreement is subject to the requirements of Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), and implementing regulations, prohibiting housing discrimination on the basis of race, color, religion, sex, or national origin. The Contractor agrees to carry out the services under this Agreement in a manner so as to affirmatively further fair housing.

Sec. 105. Nondiscrimination Under Age Discrimination Act of 1975. This Agreement is subject to the requirements of the Age Discrimination Act of 1975 (P.L. 94-135) and implementing regulations of the U.S. Department of Health and Human Services. Except as provided in the Act, no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving funds under this Agreement. The Contractor will include the provisions of the above clause in every subcontract which is paid for in whole or in part with assistance provided under this Agreement.

Sec. 106. Compliance with Section 109 of the Housing and Community Development Act of 1974. This Agreement is subject to Section 109 of the Housing and Community Development Act of 1974, as amended, and implementing regulations (24 C.F.R. Section 570.607), providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I of the Act.

Sec. 107. Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063. This Agreement is subject to Executive Order 11063, issued November 20, 1962, as amended by Executive Order 12259, issued December 31, 1980, and implementing regulations at 24 C.F.R. Part 107, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.

Sec. 108. Nondiscrimination on the Basis of Handicap Under Rehabilitation Act of 1973. This Agreement is subject to Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended, and regulations at 24 C.F.R. Part 8, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.

Sec. 109. "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities.

A. The work to be performed under this contract is subject to the requirements of section 3 of Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this section 3 clause, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 135.

E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 C.F.R. Part 135.

F. Noncompliance with HUD's regulations in 24 C.F.R. Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

Sec. 110. Relocation Assistance and Property Acquisition Requirements. This Agreement is subject to the relocation and acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended, and implementing regulations at 49 C.F.R. Part 24; Section 104(d) of the Housing & Community Development Act, as amended, and implementing regulations at 24 C.F.R. Part 42; and 24 C.F.R. 570.606. The Contractor must comply with the City's Anti Displacement and Relocation Assistance Plan on file.

Sec. 111. Conflict of Interest.

A. Conflicts Prohibited.

1) Except for the use of CDBG funds to pay salaries or other related administrative or personnel costs, no employees, agents, consultants, officers, or elected or appointed officials of the City or of a sub-recipient, if applicable, who exercise or have exercised any functions or responsibilities in connection with activities funded under this Agreement or who are in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain any personal or financial interest or benefit from the proceeds of this Agreement for themselves, their families or business associates during their tenure and for one year thereafter. Such prohibited interests include the acquisition and disposition of real property; all subcontracts or agreements for goods or services; and any grants, loans or other forms of assistance provided to individuals, businesses and other private entities out of proceeds of this Agreement.

2) The Contractor's officers, employees or agents shall not solicit or accept gratuities, favors or anything of monetary value from subcontractors, or potential subcontractors.

3) No employee, officer or agent of the Contractor shall perform or provide part-time services for compensation, monetary or otherwise, to a consultant or other subcontractor that has been retained by the Contractor under this Agreement.

4) In the event of a real or apparent conflict of interest, the person involved shall submit to the Contractor and the City a full disclosure statement setting forth the details of the conflict of interest in accordance with 24 C.F.R. 570.611(d), relating to exceptions by HUD. In cases of extreme and unacceptable conflicts of interest, as determined by the City and/or HUD, the City reserves the right to terminate the Agreement for cause, as provided in Article V below. Failure to file a disclosure statement shall constitute grounds for termination of this Agreement for cause by the City.

B. Interest of Certain Federal Officials. No member of the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Sec. 112. Political Activity Prohibited. None of the funds provided under this Agreement shall be used directly or indirectly for any partisan political activity, or to further the election or defeat of any candidate for public office.

Sec. 113. **Lobbying Prohibited**. None of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat legislation pending before the U.S. Congress.

Sec. 113(a). **Prohibition on Use of Federal Funds for Lobbying; Requirements for Disclosure Statements, and CERTIFICATION. Section 319, P.L. 101-121.** Any contractor, subcontractor and/or grantee receiving federal appropriated funds certifies by signing this Agreement, in two parts Part I, and Part II and signing and/or entering into any other agreement in connection with this Agreement, to the best of his or her knowledge and belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a 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.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed 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 and not more than $100,000 for each such failure.

Sec. 114. **Copyrights**. If this Agreement results in a book or other copyright material, the author is free to copyright the work but HUD and the City reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.

Sec. 115. **Patents**. Any discovery or invention arising out of or developed in the

course of work under this Agreement shall be promptly and fully reported to HUD for determination as to whether patent protection on such invention or discovery should be sought, and how the rights under any patent shall be allocated and administered in order to protect the public interest.

Sec. 116. Theft or embezzlement from OED funds; Improper Inducement, Obstruction of Investigations and other Criminal provisions. Under 24 C.F.R. 24, the Contractor and/or any member of its staff may be debarred, suspended, and/or criminally liable if s/he:

A. Embezzles, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets or property which are the subject of the contract;

B. By threat of procuring dismissal of any person from employment, induces any persons to give up money or things of value;

C. Willfully obstructs or impedes an investigation or inquiry under HUD;

D. Directly or indirectly provides any employment, position, compensation, contract, appointment or other benefit, provided for or made possible in whole or in part by OED funds to any person as consideration, or reward for any political action by or for the support or opposition to any candidate of any political party;

E. Directly or indirectly knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or threat of denial of any employment or benefit funded under the Act.

ARTICLE II
DISBURSEMENTS AND ACCOUNTING

Sec. 201. Eligible and Ineligible Costs. Costs under this Agreement are governed by OMB Circular A-87 or A-122 as applicable. All costs incurred by the Contractor using monies under this Agreement must be reasonable and relate clearly to the specific purposes and end product of the Agreement. To be eligible for reimbursement, expenditures must: (1) Be necessary and reasonable for proper and efficient performance of the contractual requirements and in accordance with the approved budget; (2) Be no more liberal than policies, procedures and practices applied uniformly to activities of the City, both Federally assisted and non-Federally assisted; (3) Not be allocable to or included as a cost of any other Federally financed program; (4) Be net of all applicable credits, such as purchase discounts, rebates or allowances, sales of publications or materials, or other income or refunds; and (5) Be fully documented.

The following costs or expenditures by the Contractor are specifically ineligible for reimbursement: bad debts, contingency reserves, contributions and donations, entertainment and fines and penalties.

Sec. 202. **Documentation of Costs**. All costs must be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

Sec. 203. **Charges Against Project Account**.

A. Payments under the Agreement shall be made on an actual basis for services that are performed and fully documented as having been performed. The City shall not reimburse or pay any expenditures, costs or payments that are inconsistent with the last approved budget. The budget for this Agreement may be revised upon written request of the Contractor, and written approval from OED.

B. At any time prior to final payment, the City may have the invoices and statements of costs audited. Each payment shall be subject to reduction for amounts which are found by the City not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

C. In the absence of error or manifest mistake, all payments when approved shall be evidence of the services performed, except that all payments made by the City to the Contractor are subject to correction in accordance with the audit findings of the City or HUD. The Contractor shall promptly repay the City the amounts determined to be due on the basis of such audit.

D. Prior to final payment, the Contractor shall first furnish the City evidence in affidavit form that all claims, liens, or other obligations incurred by it and all of its subcontractors or agents in connection with the performance of their services have been properly paid and settled.

E. Contract funds remaining unspent by the Contractor at the termination of the Agreement for any cause shall be returned to the City within the time specified by the City. Interest shall accrue in the favor of the City at the rate of eight percent (8%) per annum on such funds thereafter.

Sec. 204. **Method of Payment and Disbursements**. The Contractor must submit properly executed invoices and requests for payment to OED. The City agrees to establish a payment procedure that will provide funds in a timely and regular manner, and which will include, among other things, the requirement for a ten percent (10%) retainage by the City where funds are disbursed for construction. The Contractor agrees to disburse funds within seventy-two (72) hours of receiving payment from the City.

Sec. 205. **Travel Expenses**. Reimbursement for travel and related subsistence, local mileage and parking, is limited to those costs and amounts for which the City reimburses City

employees for official travel. First class air-fare is not allowable. Any travel outside of the Denver metropolitan area must be specifically authorized in advance by the City.

Sec. 206. **Designation of Depository**. The Contractor shall designate a commercial bank which is a member of the Federal Deposit Insurance Corporation for deposit of funds under this Agreement. Any balance deposited in excess of FDIC insurance coverage must be collaterally secured. The Contractor is encouraged to use minority or female-owned banks.

Sec. 207. **Refunds**. The Contractor agrees to refund to the City any payment or portions of payments which HUD and/or the City determine were not properly due to the Contractor.

ARTICLE III
CONSTRUCTION CONTRACTS AND LABOR STANDARDS

Sec. 301. **Lead-Based Paint Hazards**. The construction or rehabilitation of residential structures with assistance provided under this Agreement is subject to the HUD Lead-Based Paint Regulations, 24 C.F.R. Part 570.608. The Contractor is responsible for the inspections and certifications required.

Sec. 302. **Davis-Bacon Act**. Except for the rehabilitation of residential property that contains not less than eight (8) units, the Contractor and all subcontractors hired under contracts for more than $2,000.00 for the construction or repair of any building or work financed in whole or in part with assistance provided under this Agreement, shall comply with the Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and applicable regulations of the Department of Labor under 29 C.F.R. Part 5, requiring the payment of wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. The current Davis-Bacon wage rate schedule must be included in all bid and contract documents, as well as the "Federal Labor Standards Provisions", Form HUD-4010, by one of the following methods contained in the Labor Relations Letter No. LR 2006-03 at http://www.hud.gov/offices/olr/library.cfm.

Sec. 303. **Contract Work Hours and Safety Standards Act**. All federally assisted construction contracts of more than $2,000.00 must comply with Department of Labor regulations (29 C.F.R. Part 5), and all federally assisted construction contracts of more than $100,000.00 must comply with the Contract Work Hours and Safety Standards Act of 1962 (40 U.S.C. 327 et seq.).

Sec. 304. **Anti-Kickback Act**. If this Agreement involves construction or repair, then it is subject to the Copeland "Anti-Kickback" Act of 1934 (40 U.S.C. 276c) and Department of Labor regulations (29 C.F.R. Part 3), prohibiting and prescribing penalties for "kickbacks" of wages. Wages must be paid in accordance with the requirements of 29 C.F.R. Part 3 and 29 C.F.R. 5.5.

Sec. 305. Equal Employment Opportunity Under Executive Order No. 11246, as Amended. If this Agreement involves a federally assisted construction project in excess of $10,000.00 then it is subject to Executive Order No. 11246, as amended by Executive Orders 11375 and 12086, HUD regulations at 24 C.F.R. Part 130, and the Department of Labor Regulations at 41 C.F.R. Chapter 60.

The Contractor agrees that it will be bound by the equal opportunity clause set forth below and other provisions of 41 C.F.R. Chapter 60, with respect to its own employment practices when it participates in federally assisted construction work, provided that if the Contractor so participating is a State or local government, the equal opportunity clause set forth below is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement.

The Contractor agrees that it will incorporate into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained pursuant to this Agreement, the following equal opportunity clause:

"During the performance of this Agreement, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all employment is without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September

24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Department and the Secretary
of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contract procedures authorized in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions or paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The subcontract or purchase orders shall include such terms and conditions as the Department may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work; provided, that if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government, which does not participate in work on or under the Agreement.

The Contractor agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in and the discharge of its primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11246 of September 24, 1965, with a contractor debarred from or who has not demonstrated eligibility for Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and

penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontracts by the Department or the Secretary of Labor pursuant to Part II, Subpart D, of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with the requirements hereof, the City may take any or all of the following actions: Cancel, terminate or suspend, in whole or in part this grant, contract, agreement or loan; refrain from extending any further assistance to the Contractor under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Contractor; and refer the case to the Department of Justice for appropriate legal proceedings."

ARTICLE IV
ENVIRONMENTAL AND HISTORIC CONDITIONS

Sec. 401. **Environmental Clearance**. No funds under this Agreement may be obligated or spent for acquisition or construction until Contractor has received written environmental clearance from OED. Any special environmental and historic conditions imposed by the City must be incorporated into the design and construction of the project.

Sec. 402. **Compliance with Clean Air and Water Acts.** If this Agreement provides assistance in excess of $100,000, then the Contractor and all subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act, (33 USC 1368), the Federal Water Pollution Control Act, (33 USC 1251 et seq.), Executive Order 11738, and Environmental Protection Agency ("EPA") regulations (40 C.F.R. Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities.

Sec. 403. **Additional Environmental and Historic Conditions**. This Agreement is also subject to the following statutes, executive orders and regulations, when the Contractor is so instructed by the City or the United States of America.

A. National Environmental Policy Act of 1969 (42 USC 4321 et seq.), HUD regulations (24 C.F.R. Part 58) and the Council on Environmental Quality regulations (40 C.F.R. Parts 1500-1508) providing for establishment of national policy and procedures for environmental quality;

B. National Historic Preservation Act of 1966 (16 USC 470 et seq.), requiring consideration of the effect of a project on any site or structure that is included in or eligible for inclusion in the National Register of Historic Places;

C. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance;

D. Reservoir Salvage Act of 1960 (16 USC 469 et seq.) as amended by the

Archaeological and Historical Data Preservation Act of 1974, (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities;

E. Flood Disaster Protection Act of 1973, (42 USC 4001 et seq.), relating to mandatory purchase of flood insurance in areas having special flood hazards;

F. Executive Order 11988, Flood Plain Management, May 24, 1977 (42 FR 26951 et seq.) prohibiting certain activities in flood plains unless there is no practical alternative, in which case the action must be designed to minimize potential damage;

G. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.), requiring review of all actions affecting a wetland;

H. Safe Drinking Water Act of 1974, (42 USC 201, 300f et seq.), prohibiting federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area;

I. Endangered Species Act of 1973, (16 USC 1531 et seq.), requiring that actions funded by the federal government do not jeopardize endangered and threatened species;

J. Wild and Scenic Rivers Act of 1968, (16 USC 1271 et seq.), prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse affect on the National Wild and Scenic Rivers System;

K. Clean Air Act, (42 USC 7401 et seq.), prohibiting federal assistance for any activity which does not conform to the State implementation plan for national primary and secondary ambient air quality standards;

L. Farmland Protection Policy Act of 1981 (7 USC 4201 et seq.) relating to the effects of federally assisted programs on the conversion of farmland to non-agricultural uses;

M. HUD Environmental Criteria and Standards, (24 C.F.R. Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

ARTICLE V
TERMINATION

Sec. 501. Termination Due to Loss of Funding. This Agreement is funded with monies provided by the U.S. Department of Housing and Urban Development. If such funds or any part thereof are not appropriated by City Council or paid into the City Treasury, the City may

immediately terminate this Agreement.

Sec. 502. Termination for Cause.

A. The City may terminate this Agreement whenever the Contractor materially fails to perform any of its obligations under this Agreement in a timely and proper manner, or is otherwise in default, and shall fail to cure such default within a period of ten (10) days (or such longer period as the City may allow) after receipt from the City of a notice specifying the default.

B. If the City has sustained damages due to the Contractor's breach of this Agreement, the City may withhold payment as a set off until the amount of damages due to the City is determined.

Sec. 503. Termination for Convenience. The City may terminate this Agreement at any time the City desires. The City shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.

Sec. 504. Payment After Termination. The Contractor shall be reimbursed only for that portion of work satisfactorily completed at the effective date of the termination.

Sec. 505. Reversion of Assets. Upon termination of this Agreement for any reason, or upon expiration of this Agreement, any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds must be immediately returned to the City. Any real property under the Contractor's control that was acquired or improved with more than $25,000 in CDBG funds must either: (1) be used to meet one of the national objectives of the Housing and Community Development Act of 1974, listed in 24 C.F.R. 570.901 for five years after termination or expiration of this Agreement; or (2) disposed of so that the City is reimbursed for the fair market value of the property, minus any portion of the value attributable to expenditures of non-CDBG funds.

ARTICLE VI
MISCELLANEOUS

Sec. 601. Personnel. The Contractor represents that it has or will secure all personnel required in performing its services under this Agreement. All services required of the Contractor will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and authorized or permitted under State and local laws to perform such services.

Sec. 602. Subject to Local Laws. This Agreement shall be construed and enforced in accordance with Colorado law, and the Charter and Revised Municipal Code of the City and County of Denver. Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver, Colorado.

Sec. 603. **Contractual Relationship**. The Contractor shall not be considered for any purpose whatsoever to be an agent or an employee of the City. It is understood and agreed that the status of the Contractor shall be that of an independent contractor.

Sec. 604. **When Rights and Remedies Not Waived**. Payment by the City shall not be construed to be a waiver of any breach which may then exist on the part of the Contractor, and no assent, expressed or implied, to any breach shall be deemed a waiver of any other breach.

Sec. 605. **Sales and Use Taxes**. The Contractor or any subcontractor is not exempt from payment of the City Sales Tax or Use Tax. In accordance with applicable State and local law, the Contractor will pay, and/or require subcontractors to pay, all sales and use taxes on tangible personal property, including that built into a project or structure, acquired under this Agreement.

Sec. 606. **Patented Devices, Materials, and Processes**. If the Contractor employs any design, device, material or process covered by letter of patent or copyright, it shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor shall defend, indemnify and save harmless the City from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which the City may be obliged to pay by reason of any infringement.

Sec. 607. **Titles and Subheadings**. The titles and subheadings used in this Agreement are for the convenience of reference only and shall not be taken as having any bearing on the interpretation of this Agreement.

Sec. 608. **Notices**. All notices shall be given by certified mail. Notices to the City shall be addressed to the Director of the Office of Economic Development Either of the parties may designate in writing substitute addresses or persons to receive notices.