

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: April 26, 2022 (Consent Agenda)

PUBLIC HEARING DATE: N/A

CONTACT PERSON(S) NAME AND PHONE NUMBER: Nicole Ferrini, Chief Resilience Officer, 915-212-1659

DISTRICT(S) AFFECTED: District 3

STRATEGIC GOAL: Goal 8 – Nurture and promote a healthy, sustainable community

SUBGOAL: Goal 8.2 – Stabilize neighborhoods through community, housing and ADA improvements

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

A Resolution that allows for the consolidation of the following, previously-approved, affordable rental and housing development loans taken out on properties located at 6806 Alameda and 6968 Alameda, El Paso, Texas, as recommended by the Director of Community and Human Development, as listed below.

Project Name: 6806 Alameda and 6968 Alameda loan consolidation

Project Type: Multiple Family Units

Project Address: 6806 Alameda and 6968 Alameda

District: 3

Funding Amount: \$1,093,485.75

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City of El Paso authorized HOME loans for the construction and rehabilitation of affordable housing units at 6806 Alameda (6 units) and 6968 Alameda (24 units). This item consolidates the loans into a single amortized loan and single deferred payment loan. The consideration for the City in making these loan amendments is that it will result in full loan maturity ten years earlier than the current amortization schedule.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? __X__ YES ___NO

PRIMARY DEPARTMENT: Department of Community + Human Development (DCHD)

SECONDARY DEPARTMENT: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

A handwritten signature in black ink, appearing to be 'V. R.', is written over a horizontal line.

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

A Resolution that allows for the consolidation of the following, previously-approved, affordable rental and housing development loans taken out on properties located at 6806 Alameda and 6968 Alameda, El Paso, Texas, as recommended by the Director of Community and Human Development, as listed below.

Project Name: 6806 Alameda and 6968 Alameda loan consolidation
Project Type: Multiple Family Units
Project Address: 6806 Alameda and 6968 Alameda
District: 3
Funding Amount: \$1,093,485.75

That the City Manager, on behalf of the City, be authorized to sign upon the recommendation of the Director of Community and Human Development and the approval of the City Attorney's Office: (1) Home Program Written Agreement between the City and Jesse Loftin Prentice, Jr. necessary to finalize the consolidated loan; (2) any contract amendment documents to effectuate the consolidation of the previously awarded loans into one loan and to secure and protect the City's lien interest, and (3) releases, and related documents, for all obligations under the previously filed loans that will be consolidated into the new loan; and (4) lien(s) against the properties located at 6806 Alameda and 6968 Alameda securing the City's interests pursuant to the terms of the consolidated loan.

APPROVED this ____ day of _____ 2022.

THE CITY OF EL PASO:

Oscar Leoser
Mayor

ATTEST:

Laura Prine
City Clerk

APPROVED AS TO FORM:

Wendi Vineyard

Wendi N. Vineyard
Assistant City Attorney

APPROVED AS TO CONTENT:

Nicole M. Ferrihi

Nicole M. Ferrihi, Director
Community and Human Development

STATE OF TEXAS }
 }
 }
COUNTY OF EL PASO }

**INVESTOR HOME PROGRAM
WRITTEN AGREEMENT**
[Multi-Loan Consolidation & Refinance]

THIS INVESTOR HOME PROGRAM WRITTEN AGREEMENT (the "HOME Program Written Agreement" or the "Agreement") is entered into this ____ day of _____, 20__, by and between THE CITY OF EL PASO, hereinafter referred to as "City"; and Jesse Prentice Loftin, Jr. hereinafter referred to as "Original 6968 Borrower" or "Loan Note (5142 or 8405) Borrower" or "Loftin"; and collectively as the "Parties."

WHEREAS, on or about July 2, 2002, Jose De La Rosa and Antonia De La Rosa (collectively, "Original 6806 Borrower") executed a Loan Note ("6806 Loan Note"), in the original principal amount of \$318,000.00, payable to the order of the City and which relates to the property constructed at 6806 Alameda., El Paso, El Paso County, Texas, as more fully described in a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) dated July 2, 2002 ("6806 Property"); and

WHEREAS, Loan payments were made subject to the Home Financial Terms Contract ("2002 Financial Terms Contract"), entered between the City of El Paso and Jose De La Rosa and Antonia De La Rosa on July 2, 2002, for purposes of rehabilitating 6 affordable units at the above-mentioned property (6806 Alameda); and

WHEREAS, on January 24, 2017 Project Vida Community Development Corporation the ("Assuming 6806 Borrower") , the City, and the Original 6806 Borrower entered into an Assumption Agreement and Modification of Community Development Investor-Owned Financial Terms Contract, Note, and Lien ("First Assumption 6806 Agreement") where Assuming Borrower agreed to assume the Original 6806 Borrower's obligations under the Loan Documents; agreed to modified terms included in the First Assumption Agreement as well as agreeing to a conveyance of the property from the Owner to Assuming Borrower; and

WHEREAS, following the execution of the First Assumption 6806 Agreement, Assuming 6806 Borrower and the City determined that the preservation of the Property required the release of the original loan, the demolishing of two of the six units rehabilitated under the Financial Terms Contract, and the issuance of a new loan to rehabilitate the remaining four units; and

WHEREAS, as a result of the City and Assuming 6806 Borrower's determination, Loftin agreed to undertake the obligations on behalf of the Assuming 6806 Borrower; and

WHEREAS, on April 24, 2019, the City, Assuming 6806 Borrower, and Loftin entered into an Assumption Agreement of Community Development Investor-Owned Financial Terms Contract, Note, and Lien ("Second Assumption 6806 Agreement") where Loftin assumed the obligations of Original 6806 Borrower, previously assumed by Assuming 6806 Borrower under the First Assumption 6806 Agreement as well as the City's consent to the conveyance of the Property from Assuming 6806 Borrower to Loftin.



WHEREAS, on or about May 9, 2006, Jesse Prentice Loftin Jr. ("Original 6968 Borrower" or "Loan Note 5142 Borrower") executed a Loan Note- 2030-MF/IO-5142 & 2030-MF/IO-5142-FDP ("Loan Note 5142"), in the original principal amount of \$900,000, payable to the order of the City and which relates to the property constructed at 6968 Alameda., El Paso, El Paso County, Texas, as more fully described in a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) dated May 9, 2006 ("6968 Property"); and

WHEREAS, Loan payments for Loan Note 5142 were made subject to the Community Development Investor-Owned Financial Terms Contract Investor Home Program Written Agreement ("2006 Financial Terms Contract"), entered between the City of El Paso and Loftin on May 9 2006 for the purpose of providing borrower with funds to rehabilitate borrowers property located at 6968 Alameda., El Paso, El Paso County, Texas; and

WHEREAS, on or about February 28, 2018, Loftin executed a Loan Note-2030-MF/IO-8405 & 2030-MF/IO-8405-FDP ("Loan Note 8405"), in the original principal amount of \$650,000, payable to the order of the City and which relates to the property constructed at 6968 Alameda., El Paso, El Paso County, Texas, as more fully described in a Builder's and Mechanic's Lien Contract and Deed of Trust (With Power of Sale) dated February 28, 2018;

WHEREAS, Loan payments for Loan Note 8405 were made subject to the Investor Home Program Written Agreement ("2015 Investor HOME Agreement"), entered between the City of El Paso and Loftin on September 22, 2015 and as amended by that certain First Amendment to the 2015 Investor Home Agreement on February 28, 2018 for the purpose of constructing 14 Home assisted rental units (6968 Alameda)

WHEREAS, Loftin, and City now desire to amend and amortize the existing loans and forgivable loans for property 6806 (Loan Note 8308) into a single, forgivable loan.

WHEREAS, Loftin, and City now desire to amend and amortize the existing loans and forgivable loans for property 6968 (Loan Note 5142 & 8405) into a single amortized loan and a two, deferred forgivable loans as set forth herein.

WHEREAS, the City's Director of Community and Human Development has recommended approval of an amortized loan and forgivable deferred payment loans to Loftin, subject to the terms specified herein below; and

WHEREAS, the HOME funds had been approved for use in Borrower's rehabilitation and construction projects (the "Projects"), subject to the conditions and terms herein, and Loftin has and continues to agree to comply with all applicable HOME Program requirements.

WHEREAS, The Original 6806 Borrower completed the original construction work required in the previous original contracts as specified in the loans that are being consolidated for property located at 6806 Alameda Ave.; and

WHEREAS, due to health issues, Original 6806 Borrower was unable to continue the care and management of the property located at 6806 Alameda Ave.; and



WHEREAS, Original 6806 Borrower sold the property with the condition the 6806 Loan Note were assumed by the purchasers/buyers; and

WHEREAS, the construction requirements from the original loans held on the property located at 6968 Alameda Ave. have been completed; and

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth and for value received by Loftin from City, the parties hereto do mutually agree to be bound by all terms and conditions of this Agreement, and all documents incorporated by reference herein, as follows:

WITNESSETH:

I. DESCRIPTION OF PROPERTIES AND PROJECTS

The subject matter property are legally described as:

6968 Property- A portion of Tract 12E n/k/a Tract 12E2, Block 21, YSLETA GRANT, in the City of El Paso, El Paso County, Texas, according to a resurvey of said YSLETA GRANT made for tax purposes, and being more particularly described in the Deed of Trust (With Power of Sale) attached hereto and made a part hereof for all purposes intended; also known and numbered as 6968 Alameda Ave., El Paso, Texas (the "6968 Property")

AND

6806 Property - The East 25.5 feet of Lot 3, Block 17, Sambrano Suburb, an Addition to the City of El Paso, El Paso County, Texas, according to the plat or map thereof, recorded in Volume 2, Page 2, Real Property Records of El Paso County, Texas; also known and numbered as 6806 Alameda, El Paso, Texas (the "6806 Property")

PROJECT DESCRIPTIONS

6806 Alameda Property Project - The purpose of this loan was to provide Borrower with funds to rehabilitate 6 multi-family units; which has been completed.

AND

6968 Alameda Property Project - The purpose of this loan was to provide Borrower with funds to rehabilitate 24 multi-family units which has been completed. Phase 2: The purpose of this loan was to provide Borrower with funds



to construct and additional 14 multi-family units; which was completed for a total of 38 of UNITS.

II. AMORTIZATION OF LOAN NOTES

FOR 6968 ALAMEDA AVE., the City has lent Loftin funds in the total amount of \$1,093,485.75 subject to the terms hereinafter specified, in order to effectuate the refinance and consolidation of the remaining HOME funds owing associated with Loans 5142 and 8405.

FOR 6806 ALAMEDA AVE., the City has lent Loftin funds in the total amount \$176,191.45 subject to the terms hereinafter specified, in order to effectuate the refinance of the remaining HOME funds owing associated with the 6806 Loan Note.

A. Loftin agrees to take all necessary action to perfect and protect City's lien position as specified in Section III. of this Agreement for the life of the Deed of Trust, attached as **Exhibit "A"** or in a form acceptable to the City. City's lien being evidenced by said Deed of Trust so attached as **Exhibit "A"** and the Declaration Concerning Covenants and Restrictions Running with the Land, attached hereto as **Exhibit "B"** (the "Declaration"), are both to be recorded in the El Paso County Real Property Records.

B. City provided HOME funds FOR 6968 ALAMEDA AVE. in the amount of \$28,775.94 per unit AND FOR 6806 ALAMEDA AVE., in the amount of \$44,047.87 per unit of the eligible rehabilitation costs according to all terms and conditions as specified in the Agreement, including, but not limited to, the following terms and conditions:

(1) FOR 6968 ALAMEDA AVE., the City provided a portion of HOME funds allocated to this project as TWO (2) Forgivable Deferred Payment Loans of \$84,500.00 AND \$176,041.67; and for 6806 ALAMEDA AVE., ONE (1) forgivable deferred payment loan of \$176,191.45 using HOME Investment Partnerships funds, as evidenced by a Forgivable Deferred Payment Loan Note(s) of even date herewith, attached as **Exhibit "C"** and incorporated by reference herein. Provided Loftin complies with the terms and conditions of this Agreement, repayment of the Forgivable Deferred Payment Loans for 6968 ALAMEDA AVE. shall be deferred and the entire principal balance shall be forgiven following expiration of the HUD-mandated minimum affordability period to commence on the date of project completion as described in Sections IV and V. herein

(2) The City hereby provided financing FOR 6968 ALAMEDA AVE. pursuant to the amounts and requirements listed in this agreement for the rehabilitation costs as an amortized loan at zero percent (0%) interest. Such loan shall be in the amount of \$832,944.08 at (0%) for (21) years and with one initial installment in the amount of \$3,294.56 and the remaining monthly installments of \$3,292.26, as evidenced by the Amortized Loan Note(s) attached hereto as **Exhibit "D"**, beginning on the first day of the month as specified in the Amortized Loan Note(s).



(3) HOME funds were approved and advanced to Loftin, subject to the terms described herein, to include but not limited to those contained in Sections III and IV below, and any other terms and conditions specified in the Agreement.

(4)(a) The purpose of the loan(s) was to provide Loftin with funds to rehabilitate (24) existing HOME-assisted rental units and build (14) new HOME-assisted rental units on Loftin's Property located at 6968 ALAMEDA AVE., AND FOUR (4) HOME-ASSISTED RENTAL UNITS ON LOFTIN'S PROPERTY LOCATED AT 6806 ALAMEDA AVE., and as more fully described in the Deed of Trust. Loftin agrees that HOME-Assisted Units will be occupied by tenant households in accordance the following terms:

Phase 1(rehab): 19 units 60% or below, 5 units 50% or below the area median income; and

Phase 2(new construction): 14 units 60% or below the area median income

There is no other use of said funds authorized by City, and the use of the City's funds by Loftin for any other purpose shall constitute a breach of contract by Loftin for which City may pursue any and all remedies, whether at law or equity, which are available to City, subject to Loftin's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement.

(b) The Rehabilitation Act of 1973 (29 U.S.C. Section 794) and the implementing regulations at 24 CFR Part 8 apply to this Project. All common spaces in the project must be made accessible in accordance with the Uniform Federal Accessibility Standards (UFAS). For new construction of multifamily rental projects of five or more units, a minimum of five percent of the total number of dwelling units in a project (but not fewer than one unit) must be accessible to individuals with mobility impairments in accordance with the UFAS. An additional two percent of the dwelling units (but not fewer than one unit) must be accessible to individuals with hearing or vision impairments. The calculation of accessible units is based on the total number of units in the project, not just the HOME-Assisted Units. Further all covered units must be built to conform to the design and constructions requirements of the Fair Housing Act.

(c) No HOME funds will be advanced and no reimbursable costs can be incurred until the City has conducted an environmental review of the property sites as required under Title 24 of the Code of Federal Regulations ("24 CFR") Part 58. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the City of a release of funds from HUD under 24 CFR Part 58. Loftin understands that they are prohibited from taking choice-limiting actions before receiving environmental clearance in accordance with the guidance provided for in 24 CFR Part 58, 24 CFR Part 92, and CPD Notices 01-11 and 15-09. The parties further agree that the provision of any funds to the Project is conditioned on the City's determination to proceed with, modify or cancel the Project based on



the results of a subsequent environmental review. [HUD Community Planning and Development (CPD) Notice 01-11]

C. Loftin may prepay at any time all or part of the current balance of the Amortized Loan Note. Such prepayment, if any is made, will be applied first to any interest due or late payment fees and then to the reduction of principal. In the event a prepayment is made, the rate of interest on such prepayment shall be the interest rate then in effect under the terms of this Agreement. Prepayment will not release Loftin from fulfilling the HOME covenants described in Section IV of this Agreement, including but not limited to the HUD-mandated minimum affordability period.

III. REPRESENTATIONS AND WARRANTIES

A. Loftin represents that the information furnished to City upon which City relied to make this loan(s) is correct and true. Loftin hereby represents that each of said Loftin's representatives have the authority and capacity to commit to a financial obligation on behalf of Loftin. Specifically, but not by way of limitation, this authority includes signing a loan agreement, notes, and any security instrument related thereto in incurring financial obligations to construct the HOME-Assisted Units. Loftin further represents that it will own any and all buildings referenced above, subject to any and all restrictions, easements, covenants, and other matters of record.

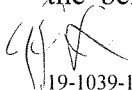
B. Loftin agrees and understands that approval of the loan(s) has been made by consideration of and in reliance upon various data furnished by Loftin, and agrees that should any of said data prove to be false or materially misleading in any way, subject to Loftin's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement, the City shall have the right to unilaterally terminate this Agreement for unremedied breach thereof and demand repayment in full the entire principal amount of the Forgivable Deferred Payment Loan Note(s), as evidenced by **Exhibit "C"**, and all principal advanced and all accrued interest under the terms of the Amortized Loan Note(s), as evidenced by **Exhibit "D"**, plus all costs of collection.

C. This Agreement is entered into in the City and County of El Paso, Texas and shall be governed and construed under the laws of the State of Texas. Venue shall be in El Paso County, Texas, for all purposes.

IV. CONDITIONS PRECEDENT

Loftin agrees to fully comply with the following terms and conditions, as a condition precedent to Loftin's receipt of any and all public financing described herein:

A. Loftin will execute all documents necessary to impose the Declaration required by the HOME program described in the Code of Federal Regulations; a copy of the Declaration to be recorded in the El Paso County Real Property Records is attached hereto as **Exhibit "B"** and incorporated herein by reference. The Declaration shall run with the Property and shall inure to the benefit of the City. If the City succeeds in enforcing or enjoining the violation of any



restriction, the City shall be reimbursed for its court costs and reasonable attorneys' fees incurred in such action.

B. Loftin agrees to grant to City the following collateral as security for the City loan(s) as agreed thereto:

(1) A **FIRST** lien on the following described real property:

A portion of Tract 12E n/k/a Tract 12E2, Block 21, YSLETA GRANT, in the City of El Paso, El Paso County, Texas, according to a resurvey of said YSLETA GRANT made for tax purposes, and being more particularly described in the Deed of Trust (With Power of Sale) attached hereto and made a part hereof for all purposes intended ; also known and numbered as **6968 ALAMEDA AVE.**, El Paso, Texas (the "6968 Property").

AND

(2) A **FIRST** lien on the following described real property:

The East 25.5 feet of Lot 3, Block 17, Sambrano Suburb, an Addition to the City of El Paso, El Paso County, Texas, according to the map and plat thereof, on file in Volume 2, Page 2, Plat Records of El Paso County, Texas; known and numbered as 6806 Alameda Ave., El Paso, Texas (the "6806 Property")

This lien shall be subservient only to the following described liens on the above-described Property:

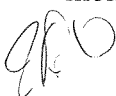
NONE

C. Loftin agrees to take any and all necessary action to perfect such lien(s) and to protect City's **FIRST** lien position in the properties described above. Any loans made under future advance clauses of any previous loans, without the City's written consent hereunder, shall constitute a breach of this Agreement.

D. Loftin agrees to provide sufficient documentation to satisfy all HOME requirements.

E. Loftin shall furnish to City acceptable evidence of liability and casualty insurance on said real estate and improvements thereon which shall be sufficient to guarantee payment of all of the Loftin's indebtedness on the aforementioned Property. This insurance coverage shall name the City as an additional insured.

F. Flood Mitigation Plan. Flood Insurance: Loftin shall maintain flood insurance for the life of the loans. Compliance component is strictly enforced through monitoring of loan monthly and yearly. Flood insurance policies shall include the City as an additional insured.



G. If Loftin breaches any term or condition of this Section III., entitled "Conditions Precedent," and following Loftin's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, the entire principal amount of the Forgivable Deferred Payment Loan Note(s), as evidenced by **Exhibit "C"**, and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan Note(s), as evidenced by **Exhibit "D"**, shall immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement entitled "Events of Default."

V. COVENANTS

The following covenants in Subsections A-Z of this Section IV shall apply as long as any amounts are outstanding under the Forgivable Deferred Payment Loan and Amortized Loan Notes, unless a longer period is specified:

A. [*intentionally deleted*].

B. [*intentionally deleted*]

C. [*intentionally deleted*]

D. Loftin agrees that it will not discriminate against current or prospective tenants on the basis of the receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance programs, or on the basis that such tenants have a minor child or minor children who reside with them. Loftin agrees to comply with 24 CFR §92.252, specifically to include, but not limited to, subsection (d) "Non discrimination against rental assistance subsidy holders".

E. The Parties hereby further agree upon the following HUD-mandated minimum affordability period

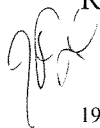
6968 Property:

- FDP \$84,500, Apartments 1-24, 15 yr. afford began 6/1/09 (initial occupancy)
- FDP \$176,041.67, Apartments 25-38, 20 yr. afford began 4/9/19 (initial occupancy)
- Loan \$832,944.08, Apartments 1-38 mature and release lien on 05/01/2043

6806 Property:

- FDP \$176,191.45, forgiven and release of lien and all Home Program and Written Agreements and Requirements within 10 days of execution of this Agreement.

will comply with Subpart F - Project Requirements of Part 92 of Title 24 of the Code of Federal Regulations, HOME Investment Partnerships Program. Loftin further agrees to continuously



comply with 24 CFR §92.250 regarding Maximum Per Unit Subsidy; 24 CFR §92.251 regarding Property Standards; 24 CFR §92.252 regarding Qualification as Affordable Housing; Rental Housing, 24 CFR §92.203 regarding Tenant Income, 24 CFR §92.355 regarding lead-based paint requirements, and applicable subsections and amendments thereto regarding:

- a) rent limitations;
- b) rent schedules;
- c) increases in tenant income;
- d) adjustments of qualifying rent

1. Loftin shall fulfill the HOME occupancy requirements by reserving (28) of the HOME units for the property located at 6868 Alameda Ave. that are identified as "High" HOME rent units for tenants whose income is no more than 60% of the City's median income for their household size and (10) of the HOME units that are identified as "Low" HOME rent units for tenants whose income is no more than 50% of the City's median income for their household size.

2. *[intentionally deleted]*.

3. The current HOME rent limitations are outlined in **Exhibit "H"**, attached hereto and incorporated by reference are subject to periodic adjustments by HUD and will be provided to Loftin by the City as such is updated. Further, the City will provide updated utility allowances to the Loftin on at least an annual basis.

4. The terms and conditions regarding subsequent rent increases and HUD median income adjustments are specified in **Exhibit "I"**, "HOME Program Rents and Tenant Eligibility," attached hereto and incorporated by reference herein. The City reserves the right to amend said attachment and to notify the Loftin of the changes, without a written amendment to this Agreement.

5. All HOME-Assisted Units must be maintained in compliance with the applicable state and local housing quality standards and code requirements throughout the affordability period, as required by 24 CFR §92.251(c). If none exist, the housing must meet Housing Quality Standards (HQS) found at 24 CFR §982.401.

6. For rehabilitation projects involving housing units that were built prior to 1978, housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K and R.

7. For purposes of this Agreement, "project completion" means that all necessary title transfer requirements to the Loftin have been performed; construction has been completed; the project complies with the requirements of 24 CFR Part 92 (including the property standards under 24 CFR §92.251); the final drawdown has been disbursed for the project; the Loftin has submitted all necessary demographic and financial information to the City for initial occupancy of all HOME-Assisted Units; and the project completion information (which includes the demographic and financial information) has been entered into the Integrated Disbursement and



Information System (IDIS) established by HUD. Once the requisite information is provided, the City agrees to use its best efforts to enter that information into IDIS within 30 days of receipt.

F. Loftin agrees to comply with 24 CFR §92.216 regarding Income Targeting

1. Annual re-examination.

2. It is the further intention of this Agreement that all applicable HOME requirements and conditions be fulfilled in order to assist Low and Very Low- Income persons in obtaining suitable housing. Loftin agrees to comply with 24 CFR §92.253 regarding Tenant and Participant Protections regarding the leases, federally-prohibited lease terms specifically identified in 24 CFR §92.253 (b), and adoption of written tenant selection policies and criteria that conform to HUD requirements outlined in 24 CFR §92.253(d). Further, Loftin agrees to comply with all applicable state and local tenant-landlord laws.

3. In a project containing HOME-assisted and other units, the City may designate fixed or floating HOME units at the time of project commitment. The City hereby designates the HOME-Assisted Units in this project as FLOATING HOME units. As floating units, the units are changed to maintain conformity with the requirements of 24 CFR §92.252 during the HUD mandated minimum affordability period so that the total number of housing units meeting the requirements of 24 CFR §92.252 remains the same, and each substituted unit is comparable in terms of size, features and number of bedrooms to the originally designated HOME-assisted Unit.

G. In order to assure compliance with the Project Requirements of the HOME Program (as defined Title 24 of the Code of Federal Regulations, Part 92, Subparts E and F), Loftin agrees to submit annually the following documentation to City for review and approval:

1. A copy of the tenant application and a description of the tenant qualification process to include Tenant Selection Procedures that Loftin will utilize to verify tenant incomes.

2. A copy of the lease agreement form that will be utilized for the properties located at 6808 Alameda AND 6968 Alameda El Paso, Texas. Loftin agrees to attach to its standard lease agreement form, the Mandatory Lease Addendum to control over any conflicting prohibited lease terms, a copy of which is attached hereto as **Exhibit "J"**, which must be completed by Loftin and every tenant household in connection with the execution of the lease and upon the City's request.

3. Loftin hereby agrees to verify all income, assets, household characteristics, and any other circumstances that affect tenant eligibility in accordance with 24 CFR Part 5 and as more specifically described in **Exhibit "I"**, "HOME Program Rents and Tenant Eligibility". Further, Loftin shall assist the City in acquiring tenants' consent and release authorization for purposes of determining or auditing tenant income eligibility or for verifying related information from depository or private source of income, or any Federal, State, or local agency ("source documentation").



4. If applicable, a copy of Loftin's procedures for marketing the availability of accessible units to eligible persons such that reasonable, nondiscriminatory steps are taken in making the accessible units that become available are offered to persons who require the accessibility features.

H. Loftin agrees that it will not discriminate against any class of individuals protected against discrimination under federal law in soliciting and accepting tenants for the newly constructed or rehabilitated structure. Loftin further agrees to participate with City in making all good faith efforts necessary to attract as tenants any and all classes of individuals protected against discrimination under federal law as required by the City, pursuant to 24 CFR §92.351 (Affirmative Marketing Policy and Procedures). For the duration of this Agreement, Loftin agrees to comply with all requirements of the City's Affirmative Marketing Policy and Procedures, attached hereto as **Exhibit "K"**. The City reserves the right to amend said attachment and to notify the Loftin of the changes, without written amendment to this Agreement. Further, the City reserves the right to review on an annual basis the records that document the Loftin's affirmative marketing actions. Loftin agrees to take corrective actions when the affirmative marketing requirements are not met, in accordance with 24 CFR §92.351(a)(2)(v).

I. Furthermore, Loftin understands and agrees that for the entire HUD-mandated minimum affordability period the Property shall remain affordable to Low- and Very Low-income individuals and/or households without regard to term of any loan or mortgage or transfer of ownership pursuant to 24 CFR §92.252, as evidenced by and enforced through the Declaration. Definitions of Low and Very low Income individuals and/or households are attached as **Exhibit "H"** and are adjusted by HUD on a periodic basis. Subject to Loftin's rights to cure any default following thirty day written notice, as provided in Section V in this Agreement, failure to meet the affordability requirements for the HUD-mandated minimum affordability period, shall constitute an event of default requiring immediate repayment to the City of the entire principal amount of the Forgivable Deferred Payment Loan Note(s) and the entire outstanding principal advanced and all accrued interest thereon of the Amortized Loan Note(s) (collectively, "HOME funds"), and additionally, the City shall be entitled to exercise all rights and remedies reserved to it under Section V of this Agreement entitled "Events of Default."

J. **[intentionally deleted]**

K. Loftin further agrees to comply with subpart H - "Other Federal Requirements" of 24 CFR Part 92, as applicable, the federal requirements set forth in 24 CFR Part 5, subpart A, and the federal regulations at 24 CFR Part 87, related to lobbying. Loftin hereby agrees to sign the Certification, attached hereto and made a part of this Agreement as **Addendum A**, and if necessary, the Disclosure Lobbying Activities, referenced therein and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to the City. Loftin shall require the language of the Certification and disclosure be included in all construction contracts and subcontracts and that all contractor(s) and subcontractor(s) shall certify and disclose accordingly.



L. Loftin agrees to comply with the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended and implementing regulations at Title 24 CFR Part 100), including applicable design and construction standards and other Federal Rules, regulations and policies applicable to the performance of this Agreement. Further, Loftin agrees to assist in the City's compliance with the requirements of 24 CFR §92.202 Site and Neighborhood Standards.

M. No person in the United States shall, on the grounds of race, creed, color, national origin, (including immigration status where an alien holds proper work authorization), religion, sex, gender identity, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the Loftin pursuant to this Agreement, as set forth in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d) and implementing regulations at Title 24 CFR Part 1; Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07) and implementing regulations at Title 24 CFR Part 146; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) and implementing regulations at Title 24 CFR Part 8; and Title 1 of the Americans with Disabilities Act of 1990 (ADA) and implementing regulations at Title 28 CFR Part 35.

N. Loftin hereby agrees that in all solicitations for employment applications, Loftin shall hold itself out as an equal opportunity employer. Furthermore, Loftin shall comply with all the equal opportunity requirements in Title 24 CFR Section 5.105, the requirements of Executive Order 11246 (Equal Opportunity) and the implementing regulations at Title 41 CFR Part 60, and the requirements of Executive Orders 11063 and 12259 (Equal Opportunity in Housing) and the implementing regulations at Title 24 CFR Part 107. Loftin shall fully comply with all federal and state laws, regulations, and executive orders regarding equal employment and shall further comply with Davis-Bacon Act (40 U.S.C. §276a-276a-5) compensation requirements, if applicable, to Loftin, pursuant to 24 CFR §92.354. Loftin's Project, regardless of the number of HOME-Assisted Units or HOME funding amount, is subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S. §327-332), the requirements of the Copeland (Anti-Kickback) Act (40 U.S.C. 276c), and Fair Labor Standards Act of 1938, as amended (29 U.S. 20 et. seq.). Further, Loftin agrees to comply with the following project requirements, as applicable:

1. ***[intentionally deleted]***.

O. With respect to HOME-Assisted Units, Loftin shall maintain such records and accounts, including program records; financial records; program administrative records; equal opportunity and fair housing records; affirmative marketing records; records demonstrating compliance with the income determination and requirements of 24 CFR §92.203; record keeping requirements of 24 CFR §92.508; records demonstrating compliance with the applicable uniform administrative requirements of 24 CFR §92.505; records demonstrating compliance with the labor requirements of 24 CFR §92.354; records demonstrating compliance with the lead-based paint requirements of 24 CFR §92.355; records supporting exceptions to the conflict of interest prohibition pursuant to 24 CFR §92.356; debarment and suspension certifications required by 24 CFR Parts 94 and 91; and any other records as are deemed necessary by the City to assure a proper accounting and monitoring of all HOME funds.



Pursuant to 24 CFR §92.508, Loftin shall keep and maintain adequate records to demonstrate compliance with HOME requirements:

1. Loftin shall maintain project records to verify at a minimum: the source and application of HOME funds, including supporting documentation; the minimum per-unit subsidy amount and maximum per-unit subsidy amount for the project; rent and utility allowance calculations; compliance with on-going property maintenance standards and lead based paint requirements; occupancy requirements are being met; and compliance with rent increase procedures.

2. Loftin shall maintain tenant records to verify at a minimum that: the project is satisfying the affordability and income targeting requirements for the required period; tenants are income eligible; the project is in compliance with tenant and participant protections of 24 CFR §92.253. Such documentation must be kept for each household, and will include: the tenant's application, initial income verification documents, subsequent income recertification documents and the tenant's lease and lease addendum.

3. For general rental housing projects, records must be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five-year period or until five years after the HUD-mandated minimum affordability period terminates, whichever date is later.

4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required record, whichever is later.

5. Loftin further agrees to allow City to conduct periodic project monitoring and evaluation activities as determined necessary by City and HUD and/or their designees. Loftin agrees that it will make its premises and records available for such on-site, physical inspection and monitoring.

P. Loftin agrees to execute any and all notes, security agreements, financing statements, affordability covenants, deeds of trust and any other documents or amendments that are consistent with this Agreement and are reasonably necessary for perfection of City's lien or lien interests in the form submitted by Counsel for the City. Loftin further agrees to cooperate with the City in re-signing any documents to correct errors or omissions, if any, in any form or legal document required by the City or HUD.

Q. *[intentionally deleted]*

R. Upon reasonable request, City shall have the right at all times to inspect Loftin's business premises, and its books and records relating to employment. Loftin agrees that it will make its premises and records available for such inspection by City. Loftin further agrees that City, HUD, the Comptroller General of the United States, or any of their duly authorized



representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Loftin for the purpose of making an audit, examination, excerpts, and transcriptions.

S. Loftin is prohibited from assigning this Agreement in whole or in part in any manner without the written consent of the City. Loftin hereby understands and agrees that if the Property, as described herein, is voluntarily or involuntarily sold or transferred in whole or in part within the HUD-mandated minimum affordability period, as further described hereinabove the City shall declare the entire balance of outstanding principal advanced and all accrued interest on the Amortized Loan Note(s), Exhibit "D", and the entire principal amount of the Forgivable Deferred Payment Loan Note(s), Exhibit "C", immediately due and payable following Loftin's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period.

T. Loftin hereby agrees that it shall not impair, whether by means of affirmative action or inaction, the lien status of the City in the collateral as described herein, used as security for the City loan(s).

U. This Agreement may be executed in any number of counterparts; all such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

V. LOFTIN HEREBY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY SUITS, ACTIONS, DEMANDS, LIABILITIES, TYPE OR DESCRIPTION, BROUGHT OR MADE, AND CLAIMS OF ANY CHARACTER, FOR OR ON ACCOUNT OF ANY INJURIES OR DEATH, OR ACTIONABLE TORTS, SUSTAINED BY ANY PERSON(S), AND DAMAGE OR DESTRUCTION OF ANY PROPERTY ARISING OUT OF, OCCASIONED BY, OR RELATING TO THE PERFORMANCE OF THE AGREEMENT, OR THE ACTIVITIES CARRIED OUT HEREUNDER, WHETHER OR NOT BASED IN WHOLE OR IN PART ON THE CITY'S NEGLIGENCE. THIS INDEMNITY SHALL COVER CITY'S ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER RELATED COSTS INCLUDING JUDGMENTS, AWARDS AND SETTLEMENTS.

W. No member, officer, or employee of City, or its designees or agents, no member of the governing body of City and no other public official of City who exercises any functions or responsibilities, or who has been in a position to participate in a decision-making process or gains inside information with regard to the activities governed by this Agreement during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the HOME Program under this Agreement. Loftin further agrees to comply with all provisions contained in 24 CFR §92.356 "Conflict of Interest". Unless expressly permitted by the City in writing, no developer, officer, employee, agent or consultant of the Loftin, may occupy a HOME-Assisted Unit in the Property.



X. Loftin certifies that it is not debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, Loftin shall establish procedures to ensure that it does not make any award to any contractors at any tier in violation of the non-procurement debarment and suspension standard. Loftin will verify and document that none of its contractors are debarred, suspended or otherwise excluded from participation through the effective use of the List of Parties Excluded from Federal Procurement or Non-procurement programs ("List"). Loftin may request assistance from the City to access the List and document results.

Y. Loftin and City agree that the anticipated construction will involve the following HOME-Assisted Units:

6806 Alameda:	4 units
6968 Alameda:	Phase 1 = 24 units Phase 2 = 14 units

No HOME-Assisted Units constructed under this Agreement will be exempt from the requirements and conditions noted herein. City agrees that notwithstanding anything in this Agreement to the contrary, including without limitation, the covenants of this Section IV.

Z. If applicable, Loftin must meet conditions and limitations for use of HOME funds involving faith-based activities, as specified in 24 CFR §92.257.

1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the HOME Program. Neither the Federal government nor a State or local government receiving funds under the HOME programs shall discriminate against an organization on the basis of the organization's religious character or affiliation.

2. Organizations that are directly funded under the HOME Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under this Program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this Program, and participation must be voluntary for the beneficiaries of the assistance provided.

3. A religious organization that participates in the HOME Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct HOME funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.



4. An organization that participates in the HOME Program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

5. HOME Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. To the extent allowed by applicable federal regulations for the HOME Program, and to the extent allowed by this Agreement, HOME Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the applicable federal regulations for this HOME Program. Where a structure is used for both eligible and inherently religious activities, HOME Program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to HOME funds under the Title 24, Code of Federal Regulations. Sanctuaries, chapels, or other rooms that a HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for HOME-funded improvements. Disposition of real property, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85).

6. If a state or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, these requirements apply to all of the commingled funds.

If Loftin breaches any term or condition of this Section entitled "Covenants", the entire principal amount of the Forgivable Deferred Payment Loan Note(s) as evidenced by **Exhibit "C"**, and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan Note(s), as evidenced by **Exhibit "D"**, may immediately be declared due and payable, and City shall be entitled to exercise all rights and remedies reserved to it under Section V. of this Agreement, entitled "Events of Default."

VI. EVENTS OF DEFAULT

A. Upon breach of this Agreement by Loftin and following Loftin's failure to cure the breach after written notice and a thirty (30) day opportunity to cure period, the City has the right to accelerate the payment of the loans, as evidenced by **Exhibits "C" and "D"**, respectively, and City further has the right to declare that the entire principal amount of the Forgivable Deferred Payment Loan Note(s), and the entire outstanding principal advanced and all accrued interest under the terms of the Amortized Loan Note(s) are immediately due and payable by Loftin to City at the time of the contract breach. City's right to accelerate the loan(s) shall apply to all events as specifically designated in Sections III and IV of this Agreement, and to the following events, but shall not be limited to these events:

(1) Material errors in the representations and warranties given to City by

Loftin;



(2) Loftin's failure to perform any of the covenants or conditions precedent as stated in this Agreement;

(3) A new or un-stayed judgment or unsatisfied lien against Loftin in an amount which, in the City's judgment, may impair its security or perfection of its security status regarding the collateral subject to this Agreement;

(4) Failure to pay principal on time;

(5) Loftin's timely payment of principal, interest or any other amount due by check or automatic check withdrawal for which insufficient funds exist;

(6) [*intentionally deleted*]

(7) Loftin's failure to comply with the Declaration and the HUD-mandated minimum affordability period, so long as such affordability period is in effect.

B. City hereby expressly reserves any and all other rights and remedies available to it in the event of Loftin's breach of this Agreement. It is hereby understood and agreed that in the event City agrees to a settlement of any breach of contract by Loftin, this shall not preclude the City from exercising its rights for any further or additional breaches of this Agreement. This shall also apply to any instances in which the City allows a period of time to pass in excess of thirty (30) days so that Loftin has an opportunity to remedy any breach of this Agreement.

VII LOFTIN'S LIABILITY

Loftin understands and agrees that if Loftin fails to comply with any term or condition, as specified in Section III entitled "Conditions Precedent" or Section IV. entitled "Covenants", any other term or condition of this Agreement, or any other term or condition of any document incorporated by reference herein, such that City is entitled to withhold payment of publicly-financed funds under the terms and conditions of this Agreement. Loftin will bear sole liability for all obligations in any way related to the Property described herein, and City shall be entitled to all rights and remedies reserved herein.

VIII NOTICES

Any communications or notices regarding this Agreement shall be effective only if sent postage prepaid by (i) certified mail, return receipt (effective upon receipt or denial of receipt); (ii) regular U.S. Mail (deemed effective 3 business days after deposit with the United States Postal Service); (iii) nationally-recognized overnight courier (effective upon receipt or denial of receipt); or (iv) hand delivery (effective upon receipt or denial of receipt), to the following addresses, unless either party notifies the other in writing of a change of address:



CITY: City of El Paso
Attn: Director, Dept. of Community and Human Development
P.O. BOX 1890
El Paso, TX 79950-1890

LOFTIN: JESSE PRENCTICE LOFTIN JR.
Attn: D/B/A THE MARLOFT
6968 ALAMEDA AVE.
El Paso, Texas 79905

IX. DURATION OF AGREEMENT


This agreement shall be effective on the date first above written and shall remain in effect for the HUD-mandated minimum affordability period required by Title 24 of the Code of Federal Regulations, Part 92 following project completion until terminated, and for five years thereafter or until full repayment of the Loan Notes under the terms of the particular notes, whichever date is later.

X. COLLATERAL DOCUMENTS

The following Exhibits "A" -"N", Addendum A, and Equal Opportunity Clause are attached and incorporated by reference for all purposes.

Exhibit "A": Deed of Trust
Exhibit "B": Declaration Concerning Covenants and Restrictions Running with the Land
Exhibit "C": Forgivable Deferred Payment Loan Note
Exhibit "D": Amortized Loan Note
Exhibit "E": *[Intentionally Deleted]*
Exhibit "F": *[Intentionally Deleted]*
Exhibit "G": *[Intentionally Deleted]*
Exhibit "H": HOME rent limitations
Exhibit "I": HOME Program Rents and Tenant Eligibility
Exhibit "J": Mandatory Lease Addendum
Exhibit "K": Affirmative Marketing Policy and Procedures
Exhibit "L": Section 3- Area Business and Workforce Agreement
Exhibit "M": Affirmative Action Plan
Addendum A: Certification
Equal Opportunity Clause

XI. ENTIRE AGREEMENT



This Agreement embodies all of the representations, rights, duties and obligations of the parties, and any prior oral or written agreement not embodied herein shall not be binding upon or inure to the benefit of any of the parties. This Agreement may only be amended by written

instrument signed by duly authorized representatives of the parties. If any term, covenant or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms, covenants and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term, covenant, or provision held to be invalid.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

THE CITY OF EL PASO:

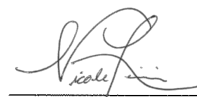
Tommy Gonzalez
City Manager

APPROVED AS TO FORM:



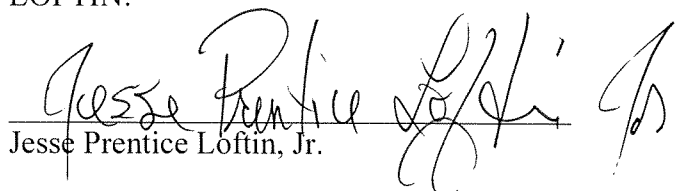
Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini, Director
Community and Human Development

LOFTIN:



Jesse Prentice Loftin, Jr.

[ACKNOWLEDGEMENTS FOLLOW ON THE FOLLOWING PAGE]

(The foregoing representative(s) of Loftin expressly represents that the Loftin has lawfully authorized execution of this Agreement).

ACKNOWLEDGMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by TOMMY GONZALEZ as City Manager of **THE CITY OF EL PASO**, on behalf of said Municipal Corporation.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on this ____ day of _____, 20____, by _____ as _____ of _____, on behalf of said entity.

Notary's Commission Expires:

Notary Public, State of Texas
Notary's name (printed):



ADDENDUM A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, 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 the 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.

GRANTEE:

By: 

Name: Jesse Prentice

Title: Owner

(Taken from) §130.15 Equal Opportunity clause.

(a) Government contracts. Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, 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 by the contracting officer setting forth the provisions of the non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees place by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment 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/she has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, 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 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 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 non-compliance with the nondiscrimination clauses of the contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 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 provisions of 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 contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the 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 interests of the United States.

(sic)

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than \$50,000 and such other contracts as the Director may designate.

(e) Incorporation by operation of the order and departmental regulations. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such



contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

