

DEVELOPMENT AGREEMENT

Construction

THIS DEVELOPMENT AGREEMENT MADE this 30th day of January, 2017 (the "Agreement") by and between the **CITY OF BIRMINGHAM, ALABAMA**, a municipal corporation (hereafter referred to as the "City") and **NAVIGATE AFFORDABLE HOUSING PARTNERS, INC.**, a non-profit corporation under the laws of the State of Alabama, (hereinafter referred to as the "Developer"). The effective date of this Agreement shall be upon execution by both parties.

WITNESSETH:

WHEREAS, the City through its Community Development Department has been designated as a participating jurisdiction for the Community Development Block Grant Disaster Recovery (CDBG-DR) Program; and

WHEREAS, the City has issued a request for proposals (RFP) pursuant to 24 CFR Part 58 from interested housing developers for the purpose of the construction and sale of new homes in the Pratt Community of the City of Birmingham; and

WHEREAS, Developer submitted a proposal in response to the RFP; and

WHEREAS, Developer is a non-profit corporation which has experience as a developer of housing for low and moderate income persons, and has demonstrated its experience and qualifications to the City; and

WHEREAS, based on Developer's demonstrated experience and qualifications, the City has decided to retain the services of Developer; and

WHEREAS, subject to the satisfaction of certain conditions set forth in this Agreement, Developer will be awarded funds under CDBG-DR with approval to construct single-family new construction units in the Pratt City Community; and

WHEREAS, CDBG-DR allows for the provision of affordable single-family new construction pursuant to 78 FR 14329, 14345 (March 5, 2013) and 78 FR 32262 (May 29, 2013) regulations; and

WHEREAS, the City and Developer desire to enter into an Agreement that provides for new housing construction as permitted under CDBG-DR for sale to qualified applicants; and closing and related costs, including audit, for projects located within the Pratt City Community, with specific parcels to be approved by the Community Development Department (hereinafter collectively and/or singularly referred to as the "Project").

NOW, THEREFORE, for and in consideration of the mutual benefit herein provided for and expressed, the City and Developer do hereby agree as follows:

1. DEFINITIONS:

Unless specifically provided otherwise or context otherwise requires, when used in this Agreement:

- a) "Appraisal" means an appraisal which meets the criteria specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act ("URA"), as further defined in 49 CFR 24.103.
- b) "CDBG Act" means the Housing and Community Development Act of 1974, Pub. L No. 93-383, as amended. Unless otherwise noted in HERA (as amended) and the alternative requirements of the CDBG-DR Notices, CDBG-DR is governed by the CDBG regulations.
- c) "CDBG-DR refers to the alternative requirements for CDBG-DR issued by HUD in the Federal Register on March 5, 2013 and May 29, 2013 and as modified.
- d) CDBG-DR Funds means those funds to be provided by City pursuant to the terms of the Agreement.
- e) "CDBG-DR Notice" means the Federal Register sections detailing the rules for the CDBG-DR program for "Hurricane Sandy and Other Disasters Occurring in 2011-2013", including 78 FR 14329 (March 5, 2013) and 78 FR 32262 (May 29, 2013).
- f) "City" means the City of Birmingham Community Development Department, the CDBG-DR Program administering agency of the City. For the purpose of this Agreement and all administration of CDBG-DR funds, the Community Development Department shall act on behalf of the City in the execution and fiscal and programmatic control of this Agreement. The term "Approval by the City" or like term used in this Agreement shall in no way relieve the Developer from any duties or responsibilities under the terms of this Agreement, or from any obligation under any State or local law or regulation.
- g) "Current market appraised value" means the value of a property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to a final offer made for the property by the Developer; provided however, if the anticipated value of the proposed acquisition is estimated at \$25,000 or less, the current market value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the Developer determines is qualified to make the valuation.
- h) "Development Agreement-Acquisition" means that certain agreement between the parties related to the acquisition of properties for the Project.
- i) "Developer" refers to the eligible entity pursuant to 24 CFR Part 92, and in this instance is Navigate Affordable Housing Partners, Inc., who is acting as an owner/developer.
- j) "Director" means the Director of the Community Development Department of the City of Birmingham.
- k) "Environmental Requirements" means the requirements described in 24 CFR Part 58.
- l) "Fee" is hereby defined as the amount of money the City agrees to pay and the Developer agrees to accept as payment in full for the professional, technical and construction services rendered pursuant to this Agreement to complete the work.
- m) "HOME" means HOME Investment Partnerships Program as described in 24 CFR Part 92, under the authority of 42 U.S.C. 3535 (d) and 12701-12839.
- n) "HUD" means the United States Department of Housing and Urban Development.
- o) "Income Limits" means 120% of Area Median Income as defined by HUD's Neighborhood Stabilization Program's eligibility requirements.
- p) "LMMI" is the HUD-defined term incorporating households with eligible incomes (at or below 120% of area median income, based on household size and county), including low-, moderate, and middle-income, on referring to the objectives of the CDBG-DR program.
- q) "NSP" means HUD's Neighborhood Stabilization Program.

- r) "Pratt Focus Area" is the area within the Pratt City Community of the City depicted on the map attached hereto as Exhibit A.
- s) "Project" means the activities described in this Agreement which are to be carried out to meet the objectives of the CDBG-DR program.
- t) "Program Income" means the CDBG-DR portion of any proceeds received by the Developer and repaid to the City.
- u) "Section 3 residents" means public housing residents or residents of the City of Birmingham who have a household income falling below HUD's income limits per the Housing and Urban Development Act of 1968.
- v) "Vacant properties" includes both vacant land and properties with vacant structures on the land.
- w) "Work" means all the professional, technical and construction services to be rendered or provided by the Developer as described here.

2. TERMS AND CONDITIONS OF FUNDING:

- a) Upon execution of this Agreement, initial CDBG-DR Funds in the amount of Four Million Five Hundred Thousand Dollars and No/100 (\$4,500,000) shall be obligated for the use in compliance with this Agreement.
- b) Funds shall be limited to the uses provided herein.

3. CITY RESPONSIBILITIES:

- a) The City shall furnish the Developer with information regarding the requirements for this Project, including any changes in the CDBG-DR regulations or program limits that affect the Project, including but not limited to program incomes. Notwithstanding the foregoing, the failure of the City to notify Developer of such changes shall not excuse Developer from complying with the changed regulations or program limits and shall not be deemed a breach of this Agreement by the City, and the City shall have no liability to Developer for such failure.
- b) The City will prepare an Environmental Review in compliance with HUD governing rules and regulations for CDBG-DR activities for each parcel identified by Developer for acquisition prior to approval. Developer understands that the City must give environmental clearance for any property to be acquired prior to acquisition.
- c) The City will conduct progress inspections of work completed and will review project files and information to protect its interest as funder, lender and regulatory authority for this Project, and will provide information to the Developer regarding any progress inspection or monitoring to assist it in ensuring compliance. The City's review and approval of the work will relate only to overall compliance with the general requirements of the Agreement and HUD and CDBG-DR requirements, and all City regulations and ordinances.
- d) The City will manage all draws of CDBG-DR from HUD and payment of valid and properly documented draw request from Developer. The City will disburse as provided in Section 13 of this Agreement. City will process request for disbursements of CDBG-DR, including necessary construction inspections, in a timely manner. The City will clearly and promptly

describe any deficiencies identified by the City that prevent a disbursement or portion of a disbursement from being approved.

- e) The City will monitor all activities of Developer to assure compliance with the terms of this Agreement including CDBG-DR requirements. Notwithstanding the foregoing, the City's failure to monitor shall not excuse Developer from complying with the terms of this Agreement and shall not be deemed a breach of this Agreement by the City, and the City shall have no liability to Developer for such failure to monitor.
- f) Nothing contained herein shall relieve the Developer of any responsibility as provided under this Agreement.

4. DEVELOPER RESPONSIBILITIES:

Developer will serve as the developer and shall be responsible for the construction of housing units for sale to qualified applicants; closing and related costs including audit for this Project. As the developer, Developer will be responsible for ensuring that the Project is in compliance with the requirements of the CDBG-DR Program. Developer may partner with other entities in proposed developments subject to approval from the City. Developer, in its position as developer, will develop single family in the Pratt Focus Area outlined in Exhibit 'A'. These units will be sold to applicants who meet HUD Income Limits. The units to be developed must be used for housing as defined in the CDBG-DR Program Regulations.

Participation of Historically Underutilized Business Enterprises:

Developer acknowledges and agrees that the City, as a matter of public policy, encourages participation of minority- and women-owned business enterprises to the maximum extent possible subject to 24 CFR pt. 85.36. To that end the developer shall seek to partner with the Birmingham Construction Industry Authority in order to increase minority participation and provide information to qualified contractors. Developer will also assist in the training and employment of Section 3 residents as qualified in the HUD act of 1968.

5. NOTICE TO PROCEED:

After the execution of this Agreement, the City shall issue, in writing, a notice to proceed to the Developer. This notice shall serve to inform the Developer that all contingencies that must occur prior to the Developer's obligations have been met and that the Developer is authorized to incur costs associated with this Project. The issuance of the Notice to Proceed shall not alter the Agreement term.

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6. PROJECT PLAN AND BUDGET:

- a) Prior to any construction, Developer shall submit to the City for approval a master plan (the "Master Plan") and Project budget (the "Project Budget") for the construction of homes in the Pratt Community. This Master Plan shall incorporate properties currently owned by the City and identify any additional properties for acquisition.

- b) The Master Plan shall clearly show Project boundaries, all proposed housing units and area improvements, prototypical elevations and floorplans, prototypical materials, as well as clearly communicate the methods and materials for the construction of sustainable, resilient homes. The Master Plan shall also be used to subdivide or rezone property if needed. The Developer shall prepare applications for subdivision and rezoning.
- c) The budget shall clearly illustrate the estimated cost of the Project including both soft and hard costs. The fee for development shall be considered a soft cost and be included in the Project Budget.
- d) A Project time line shall be submitted that clearly shows the processes needed to complete the Project.
- e) The City shall issue in writing approval of the Master Plan and Project Budget.

7. TRANSFER OF CITY OWNED PROPERTY:

Upon approval of the Master Plan and estimated Project Budget, and following and contingent upon approval of the Birmingham, City Council, the City shall transfer title of City-owned Properties in the Project boundary to the Developer or Developer's designee at no cost to the Developer. Transferred property will be owned by Developer or Developer's designee and Developer shall be fully responsible for such property. Such property shall be transferred subject to the mortgage and the covenants described in this Agreement.

8. HOME CONSTRUCTION:

- a) Following approval of the Master Plan and Project Budget, Property acquisition shall be conducted by Developer in accordance with the terms of this Agreement and the Development Agreement-Acquisitions.
- b) Prior to construction, a fully detailed construction cost estimate and construction documents shall be prepared for each unit for approval by the City. Construction cost estimate shall include all costs both hard and soft. Construction documents shall include floor plans, elevations, materials, location and construction method of safe room(s) and any other information required for permitting and bidding. In the case of attached single family homes, Developer may submit all units within the same building footprint as one submission to the City.
- c) Developer will execute a mortgage in favor of the City on each parcel of property purchased by Developer and made a part of the Project in such amount as shall be determined by Developer and the Community Development Department. It is anticipated that the amount of each mortgage will be the purchase price of the real estate/housing unit acquired plus the budget amount for the related construction costs for the said unit. Therefore, all mortgages will collectively total the approximate amount of all outstanding construction loans to Developer made under the terms of this Agreement and based upon the allocation of the CDBG-DR funds to the real estate purchased and the related construction costs for each unit.

- d) Developer's failure to comply with CDBG-DR regulations shall constitute a breach of this Agreement and other Loan Documents. In the event of such breach, Developer shall repay to City all CDBG-DR funds it has received under this Agreement.
- e) Once the construction cost estimate and construction documents have been approved by the City, the City will issue a notice to construct to Developer. No contract may be entered into nor may work commence without approval from the City.
- f) Developer shall be responsible for the construction of all units. Developer shall engage the services of a qualified homebuilder(s) licensed by the State of Alabama to undertake all construction work to be performed on all units contingent upon approval of such homebuilder(s) by the City.
- g) Any work performed with CDBG-DR funds will comply with the current International Building Code and the International Residential Building Codes as published by the International Code Council as adopted by the City of Birmingham, except those specifically altered by "The Special Provisions" promulgated by the Inspection Services Department of the City of Birmingham, Alabama. Where a conflict in codes exists, the most stringent interpretation shall prevail.
- h) Once construction has begun, the City and Developer will undertake periodic inspections of the work to be performed. Inspections will be performed by the City prior to payment of Developer invoices. Payments shall reflect the percentage of work completed. The City and Developer will conduct a final inspection and all work must be accepted prior to the final payment of invoices for the work performed. Acceptance of the work by the City shall not create any liability to any third party for any defective work, nor shall it constitute a waiver by the City with respect to any latent defects or other defects which are not apparent at the time of the inspection.

9. DISPOSITION OF HOMES TO QUALIFIED HOME BUYERS:

- a) Each house, upon completion of acquisition and construction, will be transferred to qualified low, moderate and middle income applicants with Annual Household Incomes of less than 120% of area median income as permitted by NSP regulations adopted for CDBG-DR. The Project units will be marketed to same which meet the Income Limits as defined by NSP..
- b) Developer will provide documentation to the Community Development Department demonstrating that each home buyer meets the Income Limits.
- c) Developer is responsible for determining CDBG-DR eligibility based on current HUD Regulations. Developer is also responsible for its compliance with all CDBG-DR regulations and HUD regulations including revisions and updates as the case may be.
- d) At the City's discretion, sale proceeds shall be returned to the City minus closing costs or be used by the Developer for additional home construction.

10. REVERSION:

At the conclusion of the Agreement any unsold units may be, at the City's discretion, returned to the City or transferred to a non-profit agency. The City shall notify Developer in writing of which transfer method is preferable.

11. PROJECT ADMINISTRATION:

The Project shall be owned by Developer. Developer will manage the Project and assure compliance with the following:

- a) The development and operation of the Project shall comply with applicable CDBG-DR regulations and development regulations as required by the City of Birmingham.
- b) All units developed under this Agreement will meet applicable HUD requirements, where feasible, for adaptable housing and fully accessible in the event that a buyer's physical condition requires such accessibility. All CDBG-DR housing construction must meet the applicable accessibility standards found at 24 CFR Part 8.
- c) Developer agrees to record a restrictive covenant on each housing unit developed under this Agreement. The covenant shall run with the property upon sale and its terms shall be based on applicable CDBG-DR Program Regulations which include the Period of Affordability as defined by the HOME Program at 24 CFR Part 92 of either 5, 10, 15 years as determined by the City and the appropriate CDBG-DR Program Regulations and the City's Substantial Amendments to its 2013 Action Plan. Developer will execute City approved loan documents including, but not limited to, a loan agreement, note and mortgage ("Loan Documents"). The Loan Documents shall reflect the use of CDBG-DR funds as a loan to Developer and a first mortgage on the Project during the construction period. The Loan Documents executed by Developer shall reference (and incorporate therein by such reference) the CDBG-DR Program regulations, further providing that Developer's failure to comply with such CDBG-DR Program regulations shall constitute a breach of the Loan Documents.
- d) Total reimbursements by City may exceed appraised value in areas where development costs exceed marketability in Community Development Department's sole discretion. The maximum sales price for a property shall be determined by the post construction appraised value. The loan documentation executed by the ultimate home buyer in connection with any loan from The City of Birmingham and shall reference (and incorporate therein by such reference) the CDBG-DR Program regulations including Affordability restrictions, further providing that ultimate home buyer's failure to comply with such CDBG-DR Program regulations shall constitute a breach of such loan documents.
- e) All property sold by Developer will be conveyed to the buyer by warranty deed.
- f) Developer must meet all applicable federal, State and local regulations with respect to any land sold to any buyer.
- g) Developer will require all buyers to submit proof of comprehensive home ownership counseling for home buyers of all units.

- h) In addition to the counseling normally provided by Developer to homebuyers, Developer understands and will comply with the CDBG-DR requirement that each CDBG-DR assisted homebuyer is obligated to receive and complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan.
- i) Any housing unit sold to a disabled home buyer shall meet the accessibility needs of the home buyer. Developer understands that it is a violation of federal law to discriminate against persons with disabilities. Every unit built under this Agreement shall, where feasible, be fully adaptable as defined by HUD.
- j) Developer shall be responsible for compliance with all applicable building and zoning requirements including permits and inspections.
- k) Units sold as part of the Project must be financed with fixed rate terms and at competitive or below-market interest rates.
- l) Developer approves and understands the use of funding by the City under the applicable CDBG-DR program regulations. Therefore, Developer and the City have agreed that use of the funds being granted herein are only to be used for eligible reimbursement items as set forth under CDBG-DR regulations. Developer shall be further required to provide the City a cost certification for each unit in such form as is satisfactory to the City.

12. SCHEDULE FOR COMPLETION OF SERVICES:

All units shall be completely constructed and invoices provided to the City by July 15, 2019. In the event that Developer has not sold all units within the date specified above, Developer shall (a) transfer to the City any remaining unsold units free and clear of charges, debts or liens and other encumbrances; or (b) assign the ownership of the unit to a City approved non-profit.

The City may issue an extension of the Agreement subject to approval by the Director of Community Development and the Birmingham City Council. A request for an extension shall be provided in writing to the City no later than ninety (90) days before the expiration of the Agreement.

13. FUNDING:

The City shall provide funding to Developer for development of the Project in accordance with the following terms and conditions:

- a) The City will make available up to a total of \$4,500,000 CDBG-DR for home construction and related costs. Any funds not used in this Project shall remain with the City.
- b) Developer shall submit to the Community Development Department copies of paid invoices on a reimbursement basis. Developer must incur costs for all improvements to the Project prior to submitting invoices for reimbursement by the City of Birmingham.

- c) Developer will execute a mortgage on each parcel of property purchased by Developer as provided in Section 8 above.

14. AFFORDABILITY: 24 CFR § 92.504(c)(3)(ii) (HOME Regulations Adopted for CDBG-DR use) (See Attachment B):

All units to be sold under this Project must comply with applicable CDBG-DR program requirements governing affordability, including but not limited to those included in the City of Birmingham CDBG-DR Program Description and incorporated herein.

All units sold by Developer to third parties shall be sold subject to certain restrictions. These restrictions shall be incorporated in all Developer and City loan documents and shall restrict the property and the third party home purchaser ("CDBG-DR recipient") as is generally outlined below: Should a CDBG-DR recipient decide to sell their home within the affordability period, the sale shall be subject to "recapture" and the recipient shall repay some or all of the CDBG-DR subsidy to the City. The CDBG-DR recipient shall be able to sell his or her home to any buyer at whatever price the market will bear. The City will require full repayment of outstanding CDBG-DR funds at the time of resale or, if the net proceeds are less than the full amount of the CDBG-DR subsidy, there shall be a recapture of the net proceeds. The net proceeds of a sale shall be a sum equal to the sales price minus any non-CDBG-DR loan repayments and closing costs directly related to this sale. The City may, at its option, reduce the CDBG-DR investment amount to be recaptured on a pro rata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period. These funds will be reinvested into CDBG-DR funded activities. In those cases, where the real estate does not appreciate sufficiently to allow a full recapture, the City will reduce the repayment of the CDBG-DR subsidy to allow the CDBG-DR recipient to resell the unit without incurring a loss. It will be the responsibility of Developer to monitor affordability in accordance with the CDBG-DR Program and in accordance with the City's CDBG-DR Program. Developer will pay particular attention and monitor compliance pursuant to Qualification as Affordable Housing: Home Ownership and Qualification as Affordable Housing: Rental Housing of the City of Birmingham CDBG-DR Program.

15. DEFAULT. Each of the following shall be an "Event of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events:

- (a) Failure by Developer to perform or observe any agreement, covenant or condition required by this Agreement or the Development Agreement-Acquisition to be performed or observed by Developer, which failure shall have continued for a period of thirty (30) days after written notice specifying, in reasonable detail, the nature of such failure and requiring it to perform or observe the agreement, covenant or condition with respect to which it is delinquent, shall have been given to Developer by the City unless (i) the City shall agree in writing to an extension of such period prior to its expiration, or (ii) during such thirty (30) day period or any extension thereof, Developer has commenced and is diligently pursuing appropriate corrective action, or (iii) Developer is time prevented from performing or observing the agreement, covenant or condition with respect to which it is delinquent by reason of acts of God or the public enemy, strikes, lockouts, work slowdowns or stoppages or other labor disputes, insurrections, riots or other civil disturbances, orders of the government of the United States of America or of any state of the United States of America or of any of the departments, agencies, political subdivision or officials of the United States

of America or of any state thereof, or orders of any other civil or military authority, or partial or entire failure of public utilities, adverse economic conditions or any other condition or event beyond the reasonable control of said Developer;

(b) Any material warranty, representation by or on behalf of Developer contained in this Agreement, or in any other document furnished by Developer in connection with this Agreement or the Services being false or misleading in any material respect at the time made;

(c) Institution by Developer of proceedings for Developer to be adjudicated bankrupt or insolvent, or consent by Developer to the filing of a bankruptcy or insolvency proceeding against it, or the filing by Developer of a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, or consent by Developer to the institution of proceeding thereunder or to the filing of any such petition, or consent by Developer to the appointment of, or the taking of possession of any of its property by, a receiver, trustee, custodian or assignee in bankruptcy or insolvency of Developer of an interest in all or a major part of its property, or an assignment by Developer for the benefit of its creditors, or a written admission by Developer of its inability to pay its debts generally as they become due, or the taking of any corporate action by Developer in furtherance of any of the foregoing events or actions;

(d) The entry of a decree or order by a court of competent jurisdiction for relief in respect of Developer or adjudging Developer to be a bankrupt or insolvent or approving as properly filed a petition seeking the arrangement, adjustment or composition of its obligations under Title 11 of the United States Code, as now constituted or as amended, or any other applicable federal or state bankruptcy or other similar law, which decree or order shall have continued undischarged or unstayed for a period of sixty (60) days; or the entry of a decree or order of a court of competent jurisdiction for the appointment of a receiver, trustee, custodian or assignee in bankruptcy or insolvency for Developer or for all or a major part of its property, which decree or order shall have remained in force undischarged or unstayed for a period of sixty (60) days; or

16. AFFIRMATIVE MARKETING:

HOME rules adopted for CDBG-DR as follows:

- a) Developer must comply with all applicable affirmative marketing laws and regulations including Section 92.351 of the HOME regulations.
- b) If Developer's project has five or more HOME-assisted units, Developer must comply with the applicable provisions of the City's affirmative marketing plan. See 24 CFR 92.351 (a)(2).
- c) City reserves the right to review the records that document Developer's affirmative marketing actions annually. Developer must take corrective actions if affirmative marketing requirements are not met per 24 CFR 92.351(a)(2)(v). City reserves the right to amend City's affirmative marketing procedures. Such amendments shall be conveyed, in writing, to Developer without amendment to this Agreement.

17. RECORDS AND REPORTS:

- a) Developer must keep records for the Project, which include the following information and documentation:
 - 1) The Project meets the applicable property standards.
 - 2) The incomes and sizes of the families benefiting from the expenditure of CDBG-DR funds.
 - 3) The per unit amount of CDBG-DR dollars invested, in compliance with HUD's per-unit subsidy amount requirements and with HUD's purchase price requirements.
 - 4) Compliance with the affirmative marketing requirements and existence of acceptable procedures.
 - 5) Equal opportunity and fair housing records including racial and ethnic groups and single-headed household data, and affirmative fair housing actions.
 - 6) Compliance with lead-based paint and any Davis-Bacon requirements, if applicable.
 - 7) Compliance with conflict of interest rules.
 - 8) Records documenting program income.
 - 9) Procurement records for all CDBG-DR Program activities.
- b) Developer shall maintain records relating to matters covered by this Agreement as required by the Uniform Administrative Requirements and by any additional requirements in this Agreement. Such records shall be maintained for a period of five years, starting from the effective date of this Agreement.
- c) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- d) At any time during normal business hours and as often as the City, HUD, and/or the Comptroller General of the United States may deem necessary, Developer shall make available to City, HUD, and/or representatives of the Comptroller General for examination of all of its records at such time and in such forms as HUD or the City may require, with respect to all matters covered by this Agreement, and will permit the City, HUD, and/or representatives of the Comptroller General to audit, examine, and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and any other data relating to matters covered by this Agreement.
- e) Developer shall furnish to HUD or the City such statements, records, reports, and information pertaining to matters covered by this Agreement as HUD or the City may request, including, but not limited to the following:
 - 1) An annual budget showing projected agency income and expenditures for each fiscal year covered by this Agreement.
 - 2) An Annual Performance Report for its CDBG-DR -assisted activities at a time and in a format to be provided by the City.
 - 3) An audit or audited financial statement for each fiscal year covered by this Agreement, or for such other period as the City may agree. Such audit shall be performed by a qualified Independent Certified Public Accountant in accordance with federal

requirements in 2 CFR Part 200 and shall be furnished to the City within nine months following the end of Developer's fiscal year.

- 4) Copies of all reports, brochures, advertisements, newsletters, and other material published by Developer pertaining to services provided under this Agreement. Such documents shall contain the statement, "Funding assistance provided by the City of Birmingham, Alabama through a CDBG-DR Program funds, provided to the City by HUD," and shall include a report of how Developer has satisfied the affirmative marking procedures of 24 CFR Section 92.351(a)(2).
- f) Developer will additionally be required to provide to the City monthly reports and a final close out report for each house in a format included in Exhibit B to this Agreement along with any additional documentation as may be required by the City. A completed and accurate report must be received at the City no later than the 15th day of each month following the month being reported on. Reports received late or reports that are incomplete or found to be willfully or negligently inaccurate may be deemed a default under this Agreement if not cured within 30 days of written notice by the City.

18. TERMINATION AND ENFORCEMENT OF THE AGREEMENT:

a) Agreement Termination for Cause:

- 1) It is agreed that any activities undertaken under the provisions of this Agreement may be suspended or terminated by the City if Developer fails to fulfill its material obligations under this Agreement in a timely and proper manner, or if Developer shall materially violate any of the covenants, agreements, or stipulations of this Agreement, after reasonable notice and opportunity for cure. The City shall thereupon have the right to terminate this Agreement by giving written notice to Developer of such termination and specifying the effective date of such termination. In the event that Developer has breached this Agreement, the City, at its option, may withhold any further payments to be made under this Agreement until such time as Developer's breach has been cured. Furthermore, in the event of fraud, misrepresentation, or willful or negligent violations of the CDBG-DR program regulations by Developer, the City may, at its option, require the full and immediate repayment of such funds provided by the City under this Agreement which are specifically related to the unit(s) being the subject of such fraud, misrepresentation, or CDBG-DR violations.
- 2) Notwithstanding the above, Developer shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by Developer. Developer herein agrees to indemnify and hold harmless the City from any claims, damages, losses, fees or actions including, but not limited to, attorneys' fees and accounting fees, sustained or incurred by the City as a result of any breach of this Agreement by Developer.
- 3) If the Agreement is terminated by the City as provided herein, Developer shall have no claim of payment or claim of benefit for any incomplete Project activities undertaken under this Agreement; but, shall have a claim for completed eligible activities.

b) Agreement Termination for Convenience:

- 1) In addition to the above stated termination provision, this Agreement may be terminated by the City upon thirty (30) days written notice. Upon such termination,

both parties will be responsible for the terms of this Agreement through the date of termination.

- 2) If the Agreement is terminated by the City as provided herein, Developer shall have no claim of payment or claim of benefit for any incomplete Project activities undertaken under this Agreement; but, shall have a claim for completed eligible activities.

19. REQUESTS FOR DISBURSEMENTS OF FUNDS:

- a) All funds disbursed by the City to Developer pursuant to the terms of this Agreement shall be disbursed on a monthly basis and shall not exceed the percentage of construction completed. With each draw, Developer will furnish to Community Development Department copies of paid receipts and invoices in the amount of funds requested in the format required by the Department of Community Development.
- b) Billings may be submitted by Developer at any time for review and approval by the Community Development Department. Payment will be made by the City on a periodic basis in conformance with the City Finance Department procedures. All billings submitted by Developer shall be properly documented with invoices and receipts for each expenditure and shall be submitted along with four reimbursement forms in such format as may be required by the City. Each reimbursement form must have an original signature. These requirements for disbursements are in addition to those previously stated herein. There shall be no claim allowed for ineligible expenses as designated under the CDBG-DR program regulations. All work must be accepted by the City prior to payment.

20. DURATION OF THE AGREEMENT AND DURATION OF BUDGET AUTHORITY:

Unless earlier terminated as set forth above, this Agreement shall remain in effect until July 15, 2019, or until completion of the Project and ownership of all units by income eligible families. Unless terminated as set forth above, the budget authority under this Agreement shall remain in effect until July 15, 2019.

21. PROGRAM INCOME, REVENUES AND REPAYMENT FUNDS :

- a) Revenue generated from the use of CDBG-DR funds, i.e. sales proceeds, received by Developer is required to be, at the discretion of the City, returned to City or recycled in additional housing units.
- b) If the Project is terminated through fault of the Developer before completion, any outstanding CDBG-DR funds must be repaid and property transferred to the City immediately.

22. MONITORING:

The Department of Community Development will monitor and evaluate the performance of this Agreement. The Director of the Community Development will represent the City of Birmingham in all instances involving this Agreement.

23. OTHER CITY TERMS AND CONDITIONS:

a) Liability:

- 1) Developer agrees to indemnify, hold harmless, and defend the City, its elected officials and its employees, severally and jointly, from and against all liability from loss, claim, suit, action, damage, or cost of every name and description which the City may suffer or for which the City may be held liable by reason of injury, including death, to any person or damage to any property arising out of or in any manner connected with the operations to be performed by Developer under this Agreement. This paragraph shall not be interpreted to require Developer to indemnify, hold harmless, and defend the City from any injury, damage, or death caused by any negligence or breach of Agreement of or by the City.
- 2) Developer shall not, without prior written permission of the City specifically authorizing them to do so, represent or hold themselves out to others as an agent of or on behalf of the City.

b) City Funds Paid:

- 1) Developer and the Developer's representative signed below certify by the execution of this Agreement that no part of the funds paid by the City pursuant to this Agreement nor any part of the services, products or any item or thing of value whatsoever purchased or acquired with said funds shall be paid to, used by or used in any way whatsoever for the personal benefit of any member or employee of any government whatsoever or family member of any of them, including federal, state, county and municipal and any agency or subsidiary of any such government; and further certify that neither the contractor nor any of its officers, partners, owners, agents, representatives, employees or parties in interest has in any way colluded, conspired, connived, with any member of the governing body or employee of the governing body of the City or any other public official or public employee, in any manner whatsoever, to secure or obtain this Agreement and further certify that, except as expressly set out in the scope of work or services of this Agreement, no promise or commitment of any nature whatsoever of any thing of value whatsoever has been made or communicated to any such governing body member or employee or official as inducement or consideration for this Agreement.
- 2) Any violation of this certification shall constitute a breach and default of this Agreement which shall be cause for termination. Upon such termination Developer shall immediately refund to the City all amounts paid by the City pursuant to this Agreement.

c) Disputes:

- 1) Any dispute regarding the interpretation of the terms of this Agreement shall be decided by the City. The City's decision shall be final and binding.

d) Non-Assignability:

- 1) Developer shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment, or novation), without the prior written consent of the City. Any violation is enforceable under the common law of the State of Alabama.

- e) Governing Law:
 - 1) To the extent federal law does not apply, this Agreement shall be constructed in accordance with and governed by the laws of the State of Alabama.
- f) Inurement:
 - 1) This Agreement is binding upon and shall inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.
- g) Compliance:
 - 1) Developer shall comply with all Alabama laws applicable to doing business in this state and all city and county ordinances governing the conduct of a non-profit in the City of Birmingham, Alabama. Developer shall further comply with the provisions of all Federal Laws, including the Disaster Appropriations Act of 2013, Pub. L. 113-2, and Fed. Reg. 32262 (May 29, 2013), applicable to the performance of this Agreement. Developer agrees to pay all necessary fees for all required business licenses, permits, payroll taxes, occupational taxes and file any and all tax returns required by federal, state and local laws in a timely fashion.
- h) Immigration Act Compliance:
 - 1) Developer represents and warrants that it does not knowingly employ, hire for employment, or continue to employ, in Alabama, an "unauthorized alien," as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, § 31-13-1, *et seq.*, Code of Alabama 1975, as amended (the "Act").
 - 2) Developer represents and warrants that it will enroll in the E-Verify program prior to performing any work on the Project in Alabama and shall provide documentation establishing that Developer is enrolled in the E-Verify program. During the performance of this Agreement, Developer shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.
 - 3) Developer agrees to comply with all applicable provisions of the Act with respect to its sub-contractors by entering into an agreement with or by obtaining an affidavit from such sub-contractors providing work for Developer on the Project in Alabama that such sub-contractors are in compliance with the Act with respect to their participation in the E-Verify program. Developer represents and warrants that it shall not hire, retain or contract with any subcontractor to work on the Project in Alabama which it knows is not in compliance with the Act.
 - 4) By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom

24. INSURANCE:

- a) Throughout the term of this Agreement, Developer shall maintain, keep in force and pay premiums on a policy or policies of comprehensive public liability and property insurance

relating to all activities of Developer allowed under this Agreement hereunder in limits not less than:

- 1) \$1,000,000.00 for any occurrence resulting in bodily or personal injury to, or death of, one person;
 - 2) \$1,000,000.00 for any occurrence resulting in bodily or personal injury to or death of, more than one person;
 - 3) \$1,000,000.00 for any occurrence resulting in damage to, or destruction of, any property;
 - 4) the Alabama statutory limits for Worker's Compensation.
- b) Developer shall provide the City with a certificate of insurance evidencing such coverage, if requested, and a copy of the actual insurance policy. With respect to each such policy (except for Worker's Compensation) Developer shall provide at least thirty (30) days' notice if the policy is altered or cancelled before the expiration date thereof in advance of such alteration or cancellation. In the event any such policy is canceled or terminated or if the limits are reduced, Developer shall promptly obtain a new policy or policies in the same limits. Such policy shall name the City of Birmingham as an additional insured. Developer acknowledges that its obligations under this Section 24 shall survive the termination of this Agreement.

25. NOTICES:

- a) All notices and other communications permitted or required under or in connection with this Agreement shall be in writing, shall be delivered by hand or sent by next day express courier or by certified mail, return receipt requested, to the appropriate party at the following addresses, such notice shall be deemed given on the day on which personally serviced; or if mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier:

CITY

Director, Community Development Dept
710 North 20th Street/Room 1000
Birmingham, AL 35203

DEVELOPER

Navigate Affordable Housing Partners
500 Office Park Dr,
Birmingham, AL 35223
Attn: Eric Strong, Chief Executive Officer

- b) Any of the names and addresses given above may be changed by notice given as provided herein. Notices delivered by hand shall be effective on the date of delivery if actually delivered to the person whom the notice is addressed; otherwise, such notice shall be deemed effective on the second business day following hand delivery at the address of such party pursuant to this section; notices sent by next day express courier shall be effective on the next business day following the sending and notices sent by certified mail, return receipt

requested, shall be effective on the fifth business day after placing such notice in the U.S. Mail, marked certified mail, return receipt requested, postage prepaid, addressed as set out in this section; in all events without regard to whether any such hand delivery, next day express courier or certified mail notice is refused, unclaimed or undeliverable because of an uncommunicated change of address.

26. GENERAL PROVISIONS:

- a) Title and paragraph headings are for convenient reference and are not a part of this Agreement.
- b) In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in the Agreement shall control.
- c) No waiver or breach of any provisions of this Agreement shall constitute a waiver of a subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.
- d) The City's failure to act with respect to a breach by the Developer does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.
- e) Should any provisions, paragraphs, sentences, words or phrases contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Alabama or the City, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed void, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect.
- f) Developer shall indemnify and save City harmless from and against any claims, liabilities, losses and causes of action which may arise out of Developer's activities under this Agreement, including all other acts or omissions to act on the part of Developer, including any person acting for or on its behalf, and, from and against any orders, judgments, or decrees which may be entered and from and against all lost, attorney fees, expenses and liabilities incurred in the defense of an such claims, or in the investigations thereof.
- g) Developer and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the City, and shall not attain any rights of benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employee; further they shall not be deemed entitled to statutory compensation benefits as an employee of the City.
- h) Funding for this Agreement is contingent on the availability of funds and continued authorization, reduction of funds, and/or change in regulations.

27. OTHER FEDERAL PROGRAM REQUIREMENTS:

a) Equal Opportunity (24 CFR § 92.350)

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with CDBG-DR funds. In addition, CDBG-DR funds may be made available in accordance with the following:

- 1) The requirements of the Fair Housing Act (42 U.S.C. §§ 3601-3619) and the implementing regulations at 24 CFR Part 100, *et seq.*; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR Part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d -- 2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 1;
- 2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07) and implementing regulations at 24 CFR Part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations at 24 CFR Part 8;
- 3) The requirements of Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964-65 Comp., p. 339, 3 CFR, 1966-1970 Comp. P. 684; 3 CFR, 1966-1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and the implementing regulations issued at 41 CFR chapter 60;
- 4) The requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) and implementing regulations at 24 CFR Part 135; and
- 5) The requirements of Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971-1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, Developer must make efforts to encourage the use of minority and women's business enterprises in connection with CDBG-DR funded activities. Procedures for compliance with these regulations are found in Attachment "D", which are, to the extent consistent with applicable law, hereby included and made a part of this Agreement.

b) Disclosure Requirement; Debarred Contractors; Drug-Free Workplace: 24 CFR §92.350

This Agreement is subject to, and Developer shall assure that the Project complies with the following requirements:

- 1) The disclosure requirements and prohibitions of 31 U.S.C. § 1352 and implementing regulations at 24 CFR Part 87;
 - 2) The requirements for funding competitions established by the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. § 3531 *et seq.*);
 - 3) The prohibitions at 24 CFR Part 24 on the use of debarred, suspended or ineligible contractors; and
 - 4) The Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 *et seq.*) and HUD's implementing regulations at 24 CFR Part 24.
- c) Displacement, Relocation, and Acquisition: 24 CFR § 92.353

Note: CDBG-DR rules require assistance for tenant displacement resulting from foreclosure as well as the other categories covered.

- 1) *Minimizing displacement.* To the extent any person has been or will be displaced by the Project, and consistent with the other goals and objectives of subpart H of 24 CFR Part 92, Developer must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with CDBG-DR funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the development upon completion of the Project.
- 2) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the Project. Such tenants must be provided:
 - a) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.
 - b) Appropriate advisory services, including reasonable advance written notice of the following:
 - i. The date and approximate duration of the temporary relocation;
 - ii. The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - iii. The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the Project; and
 - iv. The provisions of paragraph 2.a. of this section.

3) *Relocation assistance for displaced persons.*

- a) *General.* A displaced person (defined in paragraph 3.b. of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. §§ 4201-4655) and 49 CFR Part 24. A “displaced person” must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

b) *Displaced Person.*

- i. For purposes of paragraph 3. of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with CDBG-DR funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

- a) After notice by the owner to move permanently from the property, if the move occurs on or after:

- i. The date of the submission of an application to the City or HUD, if the applicant has site control and the application is later approved; or
- ii. The date the City approves the applicable site, if the applicant does not have site control at the time of the application; or

- b) Before the date described in paragraph 3.b.i. (a) of this section, if the City or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the Project; or

- c) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

- i. The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the Project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly rent and

estimated average monthly utility costs that do not exceed the greater of:

(aa) The tenant's monthly rent before such agreement and estimated average monthly utility costs; or

(bb) The total tenant payment, as determined under 24 CFR § 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

ii. The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(aa) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(bb) Other conditions of the temporary relocation are not reasonable; or

iii. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move are not reasonable.

ii. Notwithstanding paragraph 3.b.i. of this section, a person does not qualify as a *displaced person* if:

a) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, state or local law, or other good cause, and the City determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action;

b) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the Project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a "displaced person" (or for any assistance under this section) as a result of the Project;

c) The person is ineligible under 49 CFR § 24.2(g)(2); or

- d) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the Project.
- iii. The City may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.
- c) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph three (3) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.
- 4) *Optional relocation assistance.* The City may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with CDBG-DR funds where the displacement is not subject to paragraph three (3) of this section. The City may also provide relocation assistance to persons covered under paragraph three (3) of this section beyond that required. For any such assistance that is not required by state or local law, the City must adopt a written policy available to the public that describes the optional relocation assistance within each class of displaced persons.
- 5) *Residential anti-displacement and relocation assistance plan.* Developer shall take any and all steps necessary to insure compliance by Developer and the City with the requirements of 49 CFR Part 24, subpart B.
- 6) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the Uniform Relocation and Site Acquisition Act (URA) and the requirements of 49 CFR Part 24, subpart B
- 7) *Appeals.* A person who disagrees with the City's determination concerning whether the person qualifies as a *displaced person*, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the City. A low income (50% or less of MHI) person who is dissatisfied with the City's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.
- d) Labor: 24 CFR § 92.354
 - 1) General. Any agreement for construction (rehabilitation, infrastructure or new construction) of affordable housing with 8 or more units assisted with funds made available under this part must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5), will be paid to all laborers and mechanics employed in the development of affordable housing, and such agreements must also be subject to the overtime provisions, as applicable, of the Agreement Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332). If applicable, Developer, contractors, sub-contractors and other participants must comply with regulations issued under these

Acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. The City, through the Community Development Department, will be responsible for monitoring Davis-Bacon Act requirements where applicable and compliance on the construction or for any use of the funds as referenced herein before making any payment under such agreement.

- 2) **Volunteers.** The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who received no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.
 - 3) **Sweat equity.** The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provides labor in exchange for acquisition of a property for CDBG-DR ownership or provide labor in lieu of, or as a supplement to, rent payments.
- e) **Conflict of Interest:**

Developer shall assure that the Project remains in compliance at all times with the following regulations as found in [Code of Federal Regulations] [Title 24, Volume 1] [Revised as of April 1, 2001] From the U.S. Government Printing Office via GPO Access [CITE: 24 CFR 92.356]:

- (a) *Applicability.* In the procurement of property and services by participating jurisdictions, state recipients, and sub-recipients, the conflict of interest provisions in 24 CFR § 85.36 and 24 CFR § 84.42, respectively, apply. In all cases not governed by 24 CFR § 85.36 and CFR § 84.42, the provisions of this section apply. Developer shall comply with all conditions set forth in Attachment "E" incorporated herein by reference.
- (b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG-DR funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities may obtain a financial interest or benefit from a CDBG-DR-assisted activity or have an interest in any contract, sub-contract or agreement with respect thereto or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, state recipient, sub-recipient or for-profit Developer which are receiving CDBG-DR funds.

- (d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the CDBG-DR program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:
- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
 - (2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate state or local law.
- (e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:
- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
 - (2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
 - (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
 - (5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
 - (6) Any other relevant considerations.
- (f) *Sub-Recipient and For-profit Developers.*
- (1) No Sub-Recipient or For-profit Developer of a project assisted with CDBG-DR funds (or officer, employee, agent, elected or appointed

official or consultant of the Sub-Recipient or For-profit Developer) whether private, for profit or for-profit when acting as a Sub-Recipient or For-profit Developer may occupy a CDBG-DR-assisted affordable housing unit in a project.

- (2) *Exceptions.* Upon written request of a housing owner or Developer, the participating jurisdiction (or state recipient, if authorized by the state participating jurisdiction) may grant an exception to the provisions of paragraph (f)(l) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the CDBG-DR program and the effective and efficient administration of the owner's or Developer's CDBG-DR-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:
- (i) Whether the person receiving the benefit is a member of a group or class of low, moderate or middle income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
 - (ii) Whether the person has withdrawn from his or her functions or responsibilities or the decision making process with respect to the specific assisted housing in question;
 - (iii) Whether the tenant protection requirements of 24 CFR § 92.253 (HOME regulation which is incorporated as a part of this Agreement) are being observed;
 - (iv) Whether the Affirmative Marketing Requirements of 24 CFR § 92.351 (HOME regulation which is incorporated as a part of this Agreement) are being observed and followed; and
 - (v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

28. OTHER FEDERAL TERMS AND CONDITIONS:

a) Work Performed by Others:

To the extent that Developer is subject to the provisions of 24 CFR § 92.505(b), Developer shall assure that there is compliance with those provisions and the requirements included therein as they apply to the Project.

b) Project Signs:

Project signs are to be conspicuously placed at each home assisted. The signs shall be designed by Developer subject to review and approval by the City. These are made a part of this Agreement. As part of its efforts to Affirmatively Further Fair Housing, Developer shall include the Fair Housing logo on all signage and printed program materials. The Fair Housing logo shall be done as pursuant to U.S. Department of Housing and Urban Development requirements. These signs shall contain an "Acknowledgment of Support" as described in the General Terms and Conditions of this Agreement. Signage as required by this Agreement is reimbursable under this Agreement.

c) Other Program Requirements:

Developer shall comply with all Federal, state and local laws and regulations, as applicable, governing the allocation and expenditure of CDBG-DR funds and shall comply with all rules and regulations established by the recipient governing the administration of this Agreement.

d) Audit Requirements:

On an annual basis, beginning no later than forty five (45) days from the end of the fiscal year of Developer during which time period Developer executes this Agreement and extending until after the end of the fiscal year during which this Agreement terminates, Developer shall submit to the City a unaudited financial report/statement on the expenditure of funds provided to Developer, pursuant to the terms of this Agreement. Further, on an annual basis and within no less than nine (9) months from the end of the fiscal year, Developer shall submit to the City a final complete financial examination of expenditure of funds. Said examination shall be in the form of an Audit or Single Agency Audit and shall be prepared by a Certified Public Accountant or Accountants, who are sufficiently independent of Developer, to produce unbiased opinions, conclusions, or judgments. They shall meet the independence criteria established in Chapter 3, Part 3 of the U.S. General Accounting Office publication standards for Audit for Governmental Organizations, Programs, Activities, and Functions.

Developer shall assume complete responsibility for the reconciliation of any expenditure in the event that audit exceptions are discovered during the Audit process. If Developer fails to resolve questionable expenditures prior to submittal of the final audit, Developer shall be required to reimburse the City in full.

Developer shall comply with all applicable provisions of OMB Circular Part 84/A-122 (Information on Cost Principals for For-profit Organizations) and OMB Circular A-133 "Audits of States, Local Governments & For-profit Organizations".

e) Acknowledgment of Support:

Developer shall, in any publication, or media presentation regarding this Project, provide the following statement:

"This Project is supported by funds awarded through the Community Development Block Grant – Disaster Recovery Program and The City of Birmingham, Alabama."

f) Drug Free Workplace:

By signing this Agreement, Developer is providing on its own behalf the certification set out below. The certification is a material representation of fact upon which reliance is placed in this transaction. If it is later determined that Developer knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City, in addition to any other remedies available, may take action authorized under the Drug-Free Workplace Act.

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Developer's attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. § 812) and as further defined by regulation (21 CFR §§ 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of Developer, directly engaged in the performance of work under this Agreement, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the Project; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under this Agreement and who are not on Developer's payroll. This definition does not include workers not on the payroll of Developer (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the payroll of Developer; or employees of sub-recipients or sub-contractors in covered workplaces).

Developer will or will continue to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

2. Establishing an ongoing drug-free awareness program to inform employees about
 - a. The dangers of drug abuse in the workplace;
 - b. The City's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
3. Making it a requirement that each employee to be engaged as an employee of Developer in the performance of the grant be given a copy of the statement required by paragraph (l);
4. Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under this Project, the employee will--
 - a. Abide by the terms of the statement; and
 - b. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every Project officer or other designee on whose Project activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of notices. Notice shall include the identification number(s) of each affected grant;
6. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, 5 and 6.
8. Place of Performance (Street address, city, county, state, zip code)

g) Influence on Grant Awards:

To the best of Developer's knowledge and belief, the following statements are true, complete and correct.

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of it 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 Federally 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 Developer, as appropriate, will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. Developer will assure that the requirements of the language of this paragraph K of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was approved and executed. 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.

- h) Notwithstanding any other provisions of this Agreement, all of the City's obligations hereunder, including but not limited to any obligations to loan money to Developer shall not be effective and the City shall not be bound thereby unless and until all of the following conditions are and remain satisfied:
 1. Developer furnishes evidence to the City of cash availability or private line of credit for the Project in an amount not less than 25% of the Project Budget as outlined in this Agreement;
 2. Developer obtains fee simple interest in the real properties to be acquired.
- i) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion:

By signing this Agreement, Developer is providing the certifications set out below. The certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that Developer knowingly rendered an erroneous certification, the City may pursue any and all available remedies, including suspension and/or debarment. Developer shall provide immediate written notice to the

City if at any time Developer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.

Developer agrees that by signing this Agreement that it shall not knowingly enter into any lower tier coverage transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the City.

Developer further agrees that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion," without material modification, in all lower tier covered transactions.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of Developer is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized by the City, if Developer enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the City may pursue any and all available remedies, including suspension and/or debarment.

1. Developer certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where Developer is unable to certify any of the statements in the certifications, Developer shall attach a written explanation to this Agreement.

j) National Environmental Policy Act of 1969:

Developer's Chief Executive Officer acknowledges that the Mayor of the City of Birmingham has assumed the status of a responsible Federal official under National Environmental Policy Act (NEPA), and consents to assist the Mayor in accepting Federal courts for the purpose of discharging of the enforcement responsibilities as such an official.

k) Compliance with Air and Water Acts:

1. Developer certifies that any facility to be utilized in the performance of any non-exempt contract or sub-contract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency EPA) pursuant to 40 CRF 15.20.

2. Developer agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act as amended (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
3. Developer further certifies that as a condition for the execution of this Agreement prompt notice will be given of any notification received from the Director, Office of Federal Activities, of the EPA, indicating that a facility utilized or to be utilized for this Agreement is under consideration to be listed on the EPA list of Violating Facilities.
4. Developer agrees that it will include or cause to be included the criteria and requirements in paragraph (a) through (d) of this section in every non-exempt contract, or sub-contract and will take such action as the Government may direct as a means of enforcing such provision.

In no event shall any amount of the funds provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113 (c) (1) of the Clean Air Act or Section 309 (c) of the Federal Water Pollution Control Act. Executive Order 11128 provides guidelines relating to prevention, control, and abatement of water pollution which are to be followed and utilized by the City.

I) Flood Insurance:

1. This Agreement is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and the National Flood Insurance Act of 1968, as amended (42 USC 4001), *et seq.* The City is participating in the National Flood Insurance Program; therefore, contracts for acquisition, clearance, construction or other purposes in areas identified by the Secretary as having special flood hazards are subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said public law.
2. Every contract or sub-contract for the sale, lease or other transfer of land acquired, cleared or improved in whole or in part with Community Development Block Grant funds (CDBG-DR), shall contain, if such land is located in an area having special flood hazards, the following flood provisions apply:
 - a. The transferee and its successors, or assigns, are hereby obligated to obtain and maintain, during the ownership of land acquired, cleared or improved under this Agreement, now and at some date in the future, such flood insurance as required with respect to Federal financial assistance for acquisition or construction purposes under Section 102 (a) of the Flood Disaster Protection Act of 1973.
 - b. The obligation shall be binding on the transferee and its successors, or assigns, notwithstanding the fact that the construction, rehabilitation or other improvements on the land is not itself funded with assistance under the Community Development Block Grant Program or under this Agreement.

- c. No properties acquired and rehabilitated under this Agreement may be located within a Flood Hazard Area (100 year floodplain or floodway).

m) Interest of Public Officials and Kickbacks:

1. Interest of a Member of or Delegate to Congress: No member of or delegate to the Congress of the United States of America or resident commissioner shall be admitted to any share or part of this Agreement or to any benefits which may arise there from.
2. Interest of Members of the Local Government: No member, officer, or employee of the City or Developer or its designees or agents, no member of the governing body of the City or Developer, and no other public official of the City or Developer who exercises any functions or responsibilities with respect to the Program and Projects during his tenure or for one year thereafter shall have any interest, direct or indirect, in any contract or sub-contract, or the proceeds thereof, for work to be performed in connection with the City of Birmingham Community Development Program.
3. Interest of Contractors and Employees: Developer covenants that no person who presently exercises any functions or responsibilities in connection with this Project has any personal financial interest, direct or indirect, in this Agreement. Developer further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. Developer further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Developer or its employees must be disclosed to the City. Provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirements that maximum opportunity be provided for employment of and participation by low income residents of the area.
4. Provisions of the Hatch Act: Neither the funds provided by this Agreement nor the personnel employed in the administration of the agreed upon work shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, U.S. Code.
5. Developer agrees to incorporate in full the provision of paragraphs (a) through (e) of this section in every contract or sub-contract for construction, rehabilitation, supplies and professional services which is in any way entered into with respect to this Agreement.

n) Prohibition Against Payments of Bonus or Commission:

Funds provided under this Agreement shall not be used in the payment of any bonus or commission for the purpose of obtaining from the City or the U.S. Department of Housing and Urban Development of this or future Agreements, or any other approval or concurrence of said agencies that may be required under this Agreement, Title I of the Housing and

Community Development Act of 1974, or the Department regulations with respect thereto; provided, however, that reasonable fees or bona fide technical consultant, managerial or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as agreement costs.

o) Compliance with Section 3 of the Housing and Urban Development Act of 1968.

Every contractor and sub-contractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):

1. The work to be performed under this Agreement is subject to the requirements of Section 3 of the 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.
2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. The parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
3. Developer agrees to send to each labor organization or representative of workers with which the Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Developer's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where visible to both employees and applicants for training and employment positions. 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.
4. Developer agrees to include this Section 3 clause in every sub-contract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the sub-contract or in this Section 3 clause, upon a finding that the sub-contract is in violation of the regulations in 24 CFR Part 135. Developer will not sub-contract with any sub-contractor where Developer has notice or knowledge that the sub-contractor has been found in violation of the regulations in 24 CFR Part 135.
5. Developer will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent Developer's obligations under 24 CFR Part 135.

6. Developer covenants that noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
7. Developer covenants that with respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and sub-contracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

p) Regulations Pursuant to so-called "Anti-Kickback Act":

Developer shall comply with the applicable regulations herein incorporated by reference of the Secretary of Labor, United States Department of Labor, made pursuant to the so-called "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948: 62 Stat. 862; Title 40 U.S.C., Section 276c), and any amendments or modifications thereof and shall cause appropriate provisions to be inserted in all sub-contracts to insure compliance therewith by all sub-contracts subject thereto, and shall be responsible for the submission of affidavits required by Sub-contractors there under, except as said Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances, and exemptions from the requirements thereof.

q) Copyrights:

If this Agreement results in a book or other copyrightable materials, the author is free to copyright the work, but the federal grantor and the commission reserve a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use and authorize the use of all copyrighted material and all material which can be copyrighted resulting from this Agreement.

r) Discovery and Invention:

Any discovery or invention arising out of or developed in the course of work aided by this Agreement shall be promptly and fully reported to the commission and if applicable, to the administrator of the federal grantor agency for determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including right under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

s) Energy Efficiency:

Developer shall know and follow the mandatory standards and policies relating to energy efficiency which are contained in the State of Alabama's Energy Conservation Plan and Conservation Act (Pub.L.94-163).

t) Discrimination Prohibited:

1. No person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, be denied the benefits of or be otherwise subject to discrimination under any program or activity made possible by or resulting from this Agreement. Developer will comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964. Should any real property or structure thereon be provided or improved with the aid of Federal financial assistance extended to the contractor, this paragraph shall be binding for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.
2. Developer shall administer all programs, responsibilities and activities relating to Housing and Community Development in a manner to affirmatively further fair housing, so as to comply with Title VIII of the Civil Rights Act of 1968, Section 109 of the Housing and Community Development Act of 1974 and HUD Regulations issued pursuant thereto at 24CFR570.601, and Executive Order 11063, which governs equal opportunity in housing.
3. Developer shall maintain racial, ethnic, and gender data showing the extent to which these categories of persons have participated in, or benefited from activities funded under this Agreement.
4. Developer certifies and covenants that it does not nor will not maintain or provide for any segregated facility under its control, and that it does not nor will not permit any of its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this paragraph, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time-clocks, locker rooms and other storage or dressing areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact, segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise.

u) Contract Selection:

Developer, in regard to the use of CDBG-DR funding, shall be subject to applicable Federal Procurement Rules regarding competitive bidding as well as applicable State of Alabama competitive bid laws.


29. **ENTIRE AGREEMENT.** This Agreement and the Development Agreement-Acquisition are the only agreements between the parties and includes all promises and representations, express or implied, made by the City and Developer. No prior or contemporaneous stipulations, agreements or understandings of the parties hereto shall be valid or enforceable unless contained in this Agreement or the Development Agreement-Construction. No oral conditions, warranties or modifications hereto shall be valid between the parties.


IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first set forth above.

CITY

ATTEST:

CITY OF BIRMINGHAM, ALABAMA

By: 
Lee Frazier, City Clerk

By: 
William A. Bell, Sr., Mayor

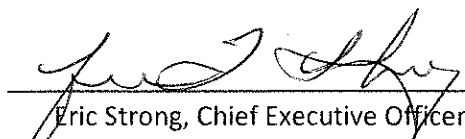
Date: 01/30/2017

Approved as to Form by Law Department:


Assistant City Attorney/Date

DEVELOPER

NAVIGATE AFFORDABLE HOUSING PARTNERS, INC.

By: 
Eric Strong, Chief Executive Officer

Date: 1-24-17

Exhibit A: Pratt Focus Area

