



# TOWN OF APPLE VALLEY

## TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council                      **Date:** October 27, 2015

**From:** Christopher Moore, HCD Specialist                      **Item No:** 13  
Community Development Department

**Subject:** AGREEMENT WITH NEIGHBORHOOD HOUSING SERVICES OF THE  
INLAND EMPIRE (NHSIE) FOR RECONSTRUCTION/RESALE OF A  
SINGLE-FAMILY RESIDENCE

**T.M. Approval:** \_\_\_\_\_                      **Budgeted Item:**  Yes    No    N/A

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### RECOMMENDED ACTION:

Authorize the Town Manager to enter into the attached Agreement between the Town of Apple Valley and Neighborhood Housing Services of the Inland Empire for the Reconstruction/Resale of a fire damaged and foreclosed single-family residence project approved for funding in the 2015-2016 Fourth Year Action Plan.

### SUMMARY:

As part of the 2015-2016 Fourth Year Action Plan, \$95,943.00 in HOME funds was allocated for the reconstruction of a single-family residence located at 20682 Crazy Horse Court, Apple Valley. This property had been foreclosed upon in 2008-2009, abandoned, vacant and subsequently damaged by fire. Due to title issues, the responsible owner was in dispute and the property was neglected for several years. Code Enforcement became involved with the property in 2009 handling complaints from residents in the neighborhood concerning health, safety and blight issues. Numerous citations were issued, accumulating over \$40,000.00 in fines and liens. In early 2014, an agreement was reached with the owner (Wells Fargo Bank) to waive the fines provided the property was donated to Neighborhood Housing Services of the Inland Empire (NHSIE), a non-profit affordable housing developer. NHSIE removed the fire-damaged portion of the structure and secured the property. NHSIE submitted an application for HOME funds for the 2015-2016 fiscal year to assist in the reconstruction of the property, which once completed would then be sold to an income eligible household at an affordable price.

The application was reviewed by staff and determined an eligible activity; recommended by the Community Development Citizens Advisory Committee (CDCAC); and approved by Council on May 26, 2015, as part of the 2015-2016 Fourth Year Action Plan.

NHSIE is a non-profit housing agency specializing in the development, operation and sale of affordable housing for low-income households in Southern California. NHSIE has been qualified as a Community Development Housing Organization (CHDO) and is eligible to receive HOME funds to develop affordable housing. A minimum of fifteen percent (15%) of each year's HOME allocation must be reserved for CHDO projects. Annually, the Town's allocation (approx. \$27,000.00) is not sufficient to develop affordable housing through a CHDO. Enough funding has accumulated to fund this project. This project will remedy a lingering blighted property in the Town, as well as offer an affordable property to an eligible household.

NHSIE will use HOME funds to rebuild the property and place it on the market for resale to an eligible buyer. NHSIE shall qualify the potential homebuyer to ensure that they meet the regulations and standards for the HOME program for low-income households. NHSIE will receive a development fee of \$20,000.00 to manage the construction, sale and monitoring compliance through the affordability period (20-year minimum). NHSIE shall recoup actual costs for acquisition, cleanup, demolition, maintenance and security of the property prior to the effective date of the agreement from proceeds of the sale. Any remaining funds from the proceeds of the sale would be returned to the Town for reinvestment in the HOME program. Covenants shall be placed on the property for twenty (20) years to ensure compliance with HOME regulations including maintaining the property as the principal residence of the Qualified Buyer.

Based upon the foregoing, staff recommends adoption of the form motion.

**FISCAL IMPACT:**

There is no fiscal impact to the General Fund. This is a budgeted project funded through Federal HOME funds allocated for rehabilitation projects such as this one in accordance with the adopted 2015-2016 Fourth Year Action Plan.

**ATTACHMENT:**

CHDO Commitment of HOME Program Funds and Development Agreement between the Town of Apple Valley and NHSIE.

**COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)  
COMMITMENT OF HOME PROGRAM FUNDS  
AND DEVELOPMENT AGREEMENT**

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By and between

**TOWN OF APPLE VALLEY**

A California Municipal Corporation

And

**NEIGHBORHOOD HOUSING SERVICES OF THE INLAND EMPIRE, INC**

A California 501 (c) (3) Public Benefit Corporation

Agreement for reconstruction and resale of a single-family residence  
not to exceed \$95,943.00 in HOME funds

October 27, 2015

This **COMMUNITY HOUSING DEVELOPMENT ORGANIZATION COMMITMENT OF HOME PROGRAM FUNDS AND DEVELOPMENT AGREEMENT** (“Agreement”) dated **October 27, 2015**, (“Effective Date”) is entered into by and between the **TOWN OF APPLE VALLEY (TOWN)**, and the **NEIGHBORHOOD HOUSING SERVICES OF THE INLAND EMPIRE, INCEMPIRE (NHSIE)**, a California nonprofit corporation. The TOWN and NHSIE may be individually referred to herein as a “Party” and together as the “Parties.”

### **RECITALS**

**WHEREAS**, TOWN is a United States Department of Housing and Urban Development (“HUD”) approved participating jurisdiction in the form of a ‘Consortium’ that has received funds from HUD pursuant to the HOME Investment Partnerships Act and HOME Investment Partnerships Program, Title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. §12701, *et seq.*), and the implementing regulations thereto (24 CFR Part 92) (collectively “HOME Program”) for the purposes of providing more decent, safe, sanitary, and affordable housing for low income households in the Town of Apple Valley; and

**WHEREAS**, pursuant to the HOME Program, the TOWN has reserved not less than fifteen percent (15%) of its allocation of HOME Program funds for investment in housing to be developed, sponsored, or owned by community housing development organizations (CHDOs) (24 CFR § 92.300); and

**WHEREAS**, NHSIE has been certified with the TOWN as a qualified CHDO under the HOME Program that has among its purposes the provision of decent housing that is affordable to low income persons, and has submitted a proposal for use of CHDO set aside funds for a CHDO-eligible project under the HOME Program; and

**WHEREAS**, NHSIE is the owner of certain real property located in the Town of Apple Valley more particularly described in Exhibit ‘A’ which is attached hereto and incorporated herein by this reference (the ‘Property’); and

**WHEREAS**, the TOWN as a participating jurisdiction for the HOME Program has evaluated the Project (defined in Section IV below), assessed NHSIE’s capacity and its fiscal soundness, and examined the neighborhood market conditions to ensure that there is an adequate need for the Project being funded with HOME Program funds hereunder.

**WHEREAS**, the purpose of this Agreement is, among things, for the TOWN to reserve and commit up to **Ninety Five Thousand Nine Hundred Forty Three Dollars (\$95,943.00)**, part HOME set-aside funds for a CHDO and part non-set-aside funds, pursuant to Section 24 CFR §92.2 of the HOME Program, to be used by the TOWN to provide financial assistance to NHSIE to pay costs related to the **rehabilitation and sale of one single family home** for an Affordable purchase price to a Qualified Buyer as more fully described herein.

## **AGREEMENT**

**NOW THEREFORE**, based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all Parties, the TOWN and NHSIE hereby agree as follows:

### **Section I. Definitions**

The following terms as used in this Agreement shall have the meanings given below unless expressly provided to the contrary:

**“Affordable”** shall have the meaning set forth in 24 CFR § 92.254 (a).

**“Affordability Period”** shall mean a period of twenty (20) years that commences to run on the date a Qualified Buyer records Qualified Buyer Covenants against the property acquired pursuant to this Agreement.

**“CFR”** shall mean the Code of Federal Regulations.

**“CHDO”** shall mean a community housing development organization that is a private nonprofit entity that meets the requirements of the HOME Program under 24 CFR § 92.2.

**“Developer Fee”** shall mean the amount of money the TOWN agrees to pay and NHSIE agrees to accept as payment in full for all professional and technical services rendered pursuant to this Agreement to complete the Work as further defined in Section IV - Scope Of Work, hereof. The Developer Fee shall be comprised of program management required to oversee and complete the Project as well as overhead and profit anticipated upon completion of the Project for an amount not to exceed Twenty Thousand and 00/100 Dollars (\$20,000.00). The Developer Fee will cover all costs that are not itemized in the project budget (Exhibit C).

**“Down Payment Assistance”** shall mean HOME funds or other source of funds (if available and necessary) provided to the Qualified Buyer to cover any gap between the qualifying income of the household and the purchase price of the Property.

**“Hazardous Substance”** shall mean any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, (i) any material, substance

or waste which is defined as “extremely hazardous substances”, “hazardous substances”, “hazardous materials”, “hazardous waste” or “toxic substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq., the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended, 49 U.S.C. sections 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901, et seq.; and those substances defined as “hazardous waste” in section 25117 of the California Health and Safety Code, as “infectious waste” in section 27054.4 of the California Health and Safety Code, or as “hazardous substances” in section 25316 of the California Health and Safety Code, or “hazardous material” as defined in section 353 of the California Vehicle Code, or “hazardous substance” as defined in Section 33459(c) of the California Health and Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws; (ii) petroleum, asbestos or any polychlorinated biphenyl; and (iii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as “hazardous” or is harmful to the environment or capable of posing a risk of injury to public health and safety. “Hazardous Substances” do not include materials customarily used in the construction, development, operation or maintenance of real estate, provided such substances are used in accordance with all applicable laws and regulations.

“**HOME Funds**” shall mean the Ninety Five Thousand Nine Hundred Forty Three Dollars (\$95,943.00) reserved and committed to NHSIE to pay Project costs, which funds consist of an annual allocation of funds to the TOWN by HUD under the HOME Program. The HOME funds are comprised of more than one year of allocations, and include both set-aside funds for CHDOs and non-set-aside funds for eligible activities.

“**HOME Program**” or “**HOME**” shall mean the HOME Investment Partnerships Act and HOME Investment Partnerships Program, Title II of the Cranston Gonzalez National Affordable Housing Act, as amended (42 U.S.C. U.S.C. §3535 (d) and §12701, et seq.), and the implementing regulations thereto (24 CFR Part 92, et seq.).

“**Project**” shall have the meaning set forth in Section IV below.

“**Project Completion**” shall mean the date that a property is rehabilitated pursuant to the terms of this Agreement, a final signed permit card is issued by the TOWN for a particular Property and the property is sold and occupied by a ‘Qualified Buyer’

“**Property**” shall refer to the single family residence identified in Exhibit ‘A’ to be rehabilitated and sold to a qualified low income household pursuant to the terms of this Agreement.

“**Qualified Buyer**” shall mean a homebuyer whose family qualifies as a low-income family ( income is less than 80% Area Median Income (AMI) per HUD HOME Income Limits at time of purchase) (<http://www.huduser.gov/portal/datasets/il.html>) and

the housing must be the principal residence of the family throughout the Affordability Period, pursuant to 24 CFR 92.254.

**“Qualified Buyer Covenants”** shall mean the deed restrictions recorded against the Property of a Qualified Buyer restricting the use and occupancy of the Property. A covenant for purchase without down payment assistance shall ensure that the Property is maintained as the principal residence of the Qualified Buyer for twenty (20) years, and shall restrict resale of the Property to another buyer who is a Qualified Buyer. A covenant for down payment assistance shall ensure that the Property is maintained as the principal residence of the Qualified Buyer for a period of thirty (30) years and comply with standards set forth in 24 CFR 92.254 including ‘Recapture’ provisions. ‘Recapture’ provision options to be included in the covenants for down payment assistance will include: Recapture entire amount of down payment assistance; and share net proceeds based on percentage amounts invested by homeowner and Town. The form of covenant shall be provided to the Town for review and approval prior to execution.

**‘TOWN’ or ‘Town of Apple Valley’** shall mean the Town of Apple Valley, a municipal corporation.

**“Work”** shall mean all the professional, technical and construction services to be rendered or provided by NHSIE as described in Section IV below.

## **Section II – Reservation and Commitment of HOME Funds**

### **A. Reservation and Commitment of HOME Funds.**

This Agreement shall serve as a reservation and conditional commitment of HOME Funds and shall qualify as a “commitment” of funds or HOME Program Commitment, pursuant to 24 CFR 92.2. The TOWN hereby commits HOME Funds received by the TOWN as follows:

1) For the Fiscal Year 2015-2016, Ninety Five Thousand Nine Hundred Forty Three Dollars (\$95,943.00) is hereby reserved and committed to NHSIE, a CHDO, for the purpose of rehabilitating and thereafter selling one single family home in the Town of Apple Valley (the ‘Property, Exhibit ‘A’), to Qualified Buyer for an Affordable purchase price pursuant to the terms of this Agreement. The Property assisted pursuant to this Agreement shall remain Affordable for the duration of the Affordability Period.

2) The **term** of this Agreement shall be **nine months**, commencing upon the Effective Date of this Agreement, or until the Property is sold pursuant to the requirements of this Agreement, whichever is longer, unless such term is extended in writing by the TOWN, in its sole discretion. Notwithstanding the foregoing, the rights of the TOWN to enforce NHSIE’s obligations to monitor the Qualified Buyer Covenants and NHSIE’s obligations therefore, shall continue through termination of

said covenants, and shall survive any termination or expiration of this Agreement.

3) The agreement to commit HOME Funds as provided herein is explicitly conditioned upon the TOWN's determination to proceed with, modify or cancel the Project based on the results of a subsequent environmental review as further discussed in Section VIII A. below.

**B. Conditional Funding**

In addition to the completion of an environmental review of the Project pursuant to 24 CFR Part 58 and 24 CFR § 92.52, the delivery of the HOME Funds to NHSIE to pay Project costs or to any other recipient, sub-recipient or contractor in connection with payment of Project costs is also expressly conditioned upon NHSIE's compliance with the applicable rules and procedures set forth in the United States Federal Code, Code of Federal Regulations, state and local laws and the satisfaction of the conditions precedent set forth in this Agreement, including, but not limited to the conditions set forth in Section V below.

**Section III – Term**

NHSIE expressly agrees to complete all Work required by this Agreement in accordance with the timetable set forth below.

<b>Milestone</b>	<b>Deadline</b>
Project Start Date	Upon the Effective Date of this Agreement
Project Completion Date	Nine months from the Effective Date unless otherwise extended by the TOWN, in writing, in its discretion.

In addition, this Project is subject to ongoing **compliance requirements** of HOME for **twenty (20) years** (thirty years (30) if assisted with HOME funds for down payment assistance) from the date a Qualified Buyer records a Qualified Buyer Covenant on property acquired pursuant to this Agreement. During this compliance period, NHSIE will assure continued compliance with HOME Program requirements. For the Property, this includes annual monitoring of the Property for principal residency verification, and ensuring recapture of funds at time of resale. NHSIE hereby covenants and agrees to cause the Qualified Buyer that acquires the Property assisted pursuant to this Agreement to execute (i) Qualified Buyer Covenants, substantially conforming in form and of substance first approved in writing by the Town of Apple Valley; and (ii) any other document required by the Town of Apple Valley necessary and/or required to implement and carry out the terms of this Agreement.

Timely completion of the Work specified in this Agreement is an integral and essential part of performance. The expenditure of HOME funds pursuant to this Agreement is subject to Federal deadlines and could result in the loss of the Federal funds. By the acceptance and execution of this Agreement, it is understood and agreed by

NHSIE that the Project will be completed as expeditiously as possible and that NHSIE will make every effort to ensure that the Project will proceed and will not be delayed. Failure to meet these deadlines can result in cancellation of this Agreement and the revocation of HOME Funds.

Since it is mutually agreed that time is of the essence as regards this Agreement, NHSIE shall cause appropriate provisions to be inserted in all contracts or subcontracts relative to the Work tasks required by this Agreement, in order to ensure that the Project will be completed according to the timetable set forth. It is intended that such provisions inserted in any subcontracts be, to the fullest extent permitted by law and equity, binding for the benefit of the TOWN and enforceable by the TOWN against NHSIE and its successors and assigns to the project or any part thereof or any interest therein.

In the event NHSIE is unable to meet the above schedule or complete the Work set forth in Section IV of this Agreement because of delays resulting from Acts of Nature and/or God, untimely review and approval by the TOWN and other governmental authorities having jurisdiction over the Project, or other delays that are not caused by NHSIE, the TOWN, in its sole discretion, may grant a reasonable extension of time for completion of the Work. It shall be the responsibility of NHSIE to notify the Town of Apple Valley promptly in writing whenever a delay is anticipated or experienced, and to inform the Town of Apple Valley of all facts and details related to the delay.

#### **Section IV – Scope of Work**

NHSIE, in close coordination with the Town of Apple Valley and subject to the TOWN's determination to proceed with, modify or cancel the project based on the results of a subsequent environmental review pursuant to Section VIII A below, shall perform all professional services (the "Work") necessary to complete the obligations set forth below, hereinafter defined as the, "Project," in full compliance with the terms of this Agreement:

The HOME Funds committed to NHSIE pursuant to the terms of this Agreement shall be utilized and expended to pay for the following costs, (i) costs to rehabilitate the Property as set forth herein, and (ii) costs to thereafter sell and convey the Property to a Qualified Buyer for an Affordable purchase price (iiI) costs for down payment assistance to the Qualified Buyer if necessary and available.

No additional funds are committed hereunder by the Town for down payment assistance. The Parties anticipate that the Project will generate sufficient funds to provide for "Buyer subsidies", as described in Section IX(C)(2) of this Agreement, in the form of down payment assistance, in the approximate amount shown on the attached Project budget.

NHSIE will provide building plans and specifications (approximately 2,000 square feet livable area) approved by the Town Building and Safety department for the approval of Town staff prior to bidding and construction. The Town will be provided the opportunity to review and approve actions relating to the scope of work, bid documents, bid summary, construction contract, contractor qualifications/clearance, change order requests, construction inspections, property marketing plans, buyer eligibility, purchase

price, availability of down payment assistance, choice of eligible Qualified Buyer and other considerations as deemed necessary by the Town. -NHSIE has provided a specific working budget—attached hereto as Exhibit ‘C’ and realistic timetable as relates to: construction/rehabilitation, soft costs, development fees and other allowable costs/activities prior to any fund usage. Any changes to the attached budget shall be approved by the TOWN. The TOWN may require a more detailed budget from NHSIE, which will be promptly provided to the TOWN for approval.

In procuring services for development, construction, maintenance and sale of Property, local vendors and service providers will be included in the procurement process. Procurement procedures shall facilitate and encourage local businesses to compete for the proposed work. NHSIE will consider the benefits of utilizing local resources, but will not use geographic preferences in violation of federal procurement requirements.

*NHSIE hereby acknowledges and agrees that NHSIE shall be prohibited from undertaking or committing any funds to physical or choice-limiting actions, including, but not limited to movement, rehabilitation, conversion, repair or construction, prior to receipt of environmental clearance from the TOWN pursuant to Section VIII A., and NHSIE’s violation of this provision may result in the denial of any HOME Funds under this Agreement.*

#### **Section V-Conditions Precedent to Disbursement of HOME Funds**

The disbursement of HOME Funds to NHSIE pursuant to the terms of this Agreement shall be subject to the satisfaction, unless otherwise provided or waived in writing by the TOWN, of the following conditions precedent:

A. Completion of the environmental clearance and the TOWN’s determination to proceed with the Project pursuant to Section VIII A of this Agreement; and

B. NHSIE shall have submitted to the TOWN, and the TOWN shall have approved, a form of covenant agreement, in recordable form, restricting the sale, use and occupancy of the Property to a Qualified Buyer for an Affordable purchase price pursuant to the HOME Program, which covenant shall be executed by the Qualified Buyer(s) and recorded concurrently with the sale of such Property to the Qualified Buyer(s); and

C. NHSIE shall have delivered to the TOWN, and the TOWN shall have approved, a final Project budget, demonstrating to the satisfaction of the TOWN, the availability of sufficient funds to pay all Project costs; and

D. NHSIE shall have delivered to the TOWN, and the TOWN shall have approved, a construction contract, covering all rehabilitation required by this Agreement and the approved final construction drawings, in an amount that is consistent with the

final TOWN-approved Project budget, together with a construction schedule showing a detailed trade-by-trade breakdown of the estimated periods of commencement and completion of rehabilitation, demonstrating that rehabilitation will be completed within the time provided in this Agreement; provided however, such contract shall not be executed by the parties thereto unless and until the completion of the environmental clearance required under 24 CFR Part 50, Part 58 and Part 92 (“Environmental Review Regulations”) and the TOWN’s determination to proceed with the Project pursuant to the Environmental Review Regulations and Section VIII A of this Agreement ; and

E. NHSIE shall have submitted to the TOWN, and the TOWN shall have approved, evidence of the insurance policies (Exhibit B) required by this Agreement; and

F. NHSIE shall have delivered to the TOWN a list of all permits required for the rehabilitation and use of the Property, including the improvements thereon, demonstrating to the satisfaction of the TOWN that all entitlements and approvals have been obtained and that all conditions for the issuance of all necessary permits have been satisfied (with the exception of payment of fees, which payment is provided for in the approved Project budget); and

M. NHSIE shall have delivered to the TOWN, and the TOWN shall have approved, a Qualified Buyer marketing and selection plan for the Property which includes targeting the local Apple Valley market, as required by this Agreement; and

N. NHSIE is not in default under any terms of this Agreement; and

O. NHSIE shall have duly performed each and every obligation to be performed by NHSIE hereunder and NHSIE’s representations, warranties and covenants set forth in this Agreement shall be true and correct as of the date of the first disbursement of HOME Funds.

NHSIE shall satisfy the conditions precedent set forth above prior to disbursement of any HOME Funds by the TOWN to pay eligible costs related to the rehabilitation and sale of the Property pursuant to the terms of this Agreement.

### **Section VI-Project Implementation Documents**

In order to implement the Project pursuant to the terms of this Agreement and the HOME Program, NHSIE acknowledges and agrees to execute, and or cause the execution of, any and all required documents including, but not limited to the following: (i) recordable regulatory agreement, including but not limited to Qualified Buyer Covenants and any other requested deed restrictions ensuring the Property remains Affordable for the Affordability Period and occupied by a Qualified Buyer, (ii) other required HOME Program documents requirements, specifically including without limitation those required under 24 CFR 92.504, and (iii) such other documents as the parties find necessary or appropriate for proper implementation of the Project.

Prior to the sale of the Property by NHSIE to a Qualified Buyer, NHSIE and the Town shall both have met with the Qualified Buyer(s) for the purpose of explaining the conditions of eligibility and also the responsibilities of the Qualified Buyer(s) during the period of the restrictive covenants placed on the Property to insure compliance. Also monitoring requirements will be explained. The Town's meeting will be documented as the 'Homeowner Acknowledgment' meeting; NHSIE will conduct this meeting as part of the Buyer Qualification/ Affirmative Marketing process. The 'Qualified Buyer(s)' will sign documentation at both of these meetings confirming understanding of the program including the covenants and restrictions.

Prior to the sale of the Property by NHSIE to a Qualified Buyer, NHSIE shall have opened up an escrow account with the Escrow Agent and prepared such joint escrow instructions for the Escrow Agent as may be necessary to close the transaction contemplated in this Agreement. The term, "Escrow Agent" as used herein shall mean an escrow and/or title company mutually agreed to by NHSIE and the Town of Apple Valley.

### **Section VII – Reimbursement of Expenses & Developer Fees**

A. Project expenses (excluding developer fee) shall be paid based on vouchers for completed actions and actual expenses incurred or paid. Requests for payment must be submitted by NHSIE on forms specified by the TOWN, with adequate and proper documentation of eligible costs incurred in compliance with 24 CFR §92.206 and necessary for HUD IDIS disbursement requirements. All such expenses shall be in conformance to the approved Project budget. Written TOWN approval of any budget revision shall be required prior to payment of any expenses not conforming to the approved Project budget.

B. The TOWN shall pay to NHSIE, as maximum compensation or **Developer Fee** for the developer services required pursuant to the Scope of Work hereof, no more than **Twenty Thousand Dollars (\$20,000.00)** of HOME Funds for the Property, payable in accordance with the schedule set forth in the following sentence. The Twenty Thousand Dollars (\$20,000.00) Developer Fee shall be paid as follows: 60% upon completion of the rehabilitation/rebuild of the Property, and 40% upon sale of the Property to a Qualified Buyer for an Affordable purchase price. Additionally, upon the sale of the Property to a Qualified Buyer, NHSIE may receive a listing broker/realtor commission of up to 3% of the Affordable purchase price. The buyer's realtor/broker may also receive a commission of up to 3%, for a maximum of 6% selling/listing commission.

C. NHSIE construction management/inspection services will be billed at actual cost for burdened labor. Travel time and vehicle mileage for these services will be included in the Developer Fee and not reimbursed separately. Project manager labor, travel and mileage will be included as costs included in the Developer Fee. Qualified Construction Management/Inspector staff as well as Project Manager will be specified, and approved in writing by the Town, prior to execution of this Agreement. The Town

will be notified prior to changes in personnel for these positions. Replacement personnel shall have experience and qualifications equivalent to the experience and qualifications of the personnel being replaced, and shall be subject to approval of the Town.

D. The TOWN reserves the right to inspect records and the Project site to determine that reimbursement and compensation requests are reasonable. The TOWN also reserves the right to hold payment until adequate documentation has been provided and reviewed.

E. Progress payments shall be made after the Town has received invoicing, confirmation by inspection that work is satisfactorily completed, lien releases, signature releases and photo documentation of progress completed. Final payment shall be made after the TOWN has determined that all services have been rendered, files and documentation delivered, and the Property has been placed in service in full compliance with HOME regulations, including submission of a completion report and documentation of eligible occupancy, property standards and long-term use restrictions.

F. The TOWN shall have the right to review and audit all records of NHSIE pertaining to any payment by the TOWN. Said records shall be maintained for a period of five (5) years after completion of the entire Project including 20-year compliance period. This right shall survive any expiration or termination of this Agreement.

### **Section VIII – Project Requirements**

NHSIE agrees to comply with all requirements of the HOME Program as stated in 24 CFR Part 92, including but not limited to the following:

A. No HOME project funds will be disbursed, and no costs can be incurred, until the TOWN has conducted an environmental review of the proposed project site as required under 24 CFR Part 58 and 24 CFR §92.352. The environmental review may result in a decision to proceed with, modify or cancel the Project.

Pursuant to 24 CFR § 92.352 (a) the environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related activities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

Notwithstanding any provision of this Agreement, the Parties hereto agree and acknowledge that this Agreement approval may occur only upon satisfactory completion of an environmental review and receipt by the TOWN of a release of funds from the U.S. Department of Housing and Urban Development under 24 CFR Part §58. The Parties further acknowledge and agree that the provision of any funds to the Project is conditioned on the TOWN's determination to proceed with, modify or cancel the Project based on the results of a subsequent environmental review.

Further, NHSIE will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and hereby acknowledges and agrees that the violation of this provision may result in the denial of any funds under the Agreement.

B. NHSIE will ensure that any expenditure of HOME funds will be in compliance with the requirements at 92.206, and acknowledges that HOME funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for Work completed, in addition to the negotiated development fee.

C. NHSIE will ensure that all HOME assisted units will be in compliance with 24 CFR 92.254, including documenting that the property is eligible under 92.254(a) (1) – (2), and will maintain compliance during the minimum compliance period.

D. The designated HOME-assisted units of this Project will meet the affordability requirements as found in 24 CFR §92.254 (owner-occupied). NHSIE shall collect and maintain Project beneficiary information pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. This information will be collected during the escrow period and retained for monitoring and reporting purposes. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD Technical Guide for Determining Income and Allowances under the HOME Program.

E. In the selection of occupants for Project units, NHSIE shall comply with all nondiscrimination requirements of 24 CFR 92.350. NHSIE will implement affirmative marketing procedures subject to approval of the Town of Apple Valley.

F. If the Project is occupied at the time of this commitment, NHSIE will comply with the relocation requirements of 24 CFR 92.353.

G. NHSIE shall assure compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (HQS), Accessibility Standards under 24 CFR 92.251(a) (3) as applicable, and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.

H. Since the Project is to be owner-occupied, NHSIE shall assure that any promissory notes and mortgages recorded for homebuyers shall be in compliance with 24 CFR 92.254 and that NHSIE will monitor each unit for principal residency (under 92.254(a) (3)) and resale/recapture (under 92.254 (a) (4) – (5)).

I. NHSIE will provide any documentation required by the TOWN regarding match as may be required to document match for purposes of the HOME program.

J. If the property is sold through a lease-purchase Agreement, NHSIE will ensure compliance with 92.254(a) (7), as modified by the 1999 Appropriations Act, Section 599B.

K. NHSIE will be monitored by the Town of Apple Valley for compliance with the regulations of 24 CFR 92 during the applicable Affordability period. NHSIE will provide reports and access to project files as requested by the Town of Apple Valley during the Project and for Five (5) years after completion of the compliance period and closeout of the Agreement.

### **Section IX – Repayment of HOME Funds**

A. All HOME funds are subject to repayment in the event the Project does not meet the Project Requirements pursuant to Section VIII above.

B. It is understood that upon the completion of the Project, any HOME funds reserved but not expended under this Agreement will revert to the TOWN.

C. Since the Project is for owner-occupancy,

1) All net sales proceeds from the sale of units are considered to be CHDO proceeds that may be retained by NHSIE and used in conformance with 24 CFR 92.300(a) (2) and to be reinvested in NHSIE's acquisition/rehabilitation/resale activities, which activities must occur within the Town of Apple Valley. If there is no current CHDO commitment/development agreement in place at the time that CHDO proceeds are realized, then those funds will revert to the TOWN.

2) Prior to the closing of a sale to a Qualified Buyer, NHSIE will provide to the Town of Apple Valley the estimated settlement statement, along with a reconciliation statement and the draft note and mortgage (if applicable). The reconciliation statement shall account for the pro-ration of HOME Funds to the individual unit, and identify those funds that are to be lent to the Qualified Buyer as "Buyer subsidies" secured by the HOME note and mortgage, the pro-rated HOME development funds that are to be forgiven as "Development subsidies", and the amount of Developer Fee or CHDO sales proceeds to be retained from settlement funds.

3) All resale proceeds that are received from buyers as they resell the properties during the compliance period to other buyers shall be considered "Recaptured Funds" under 24 CFR 92.254(a) (5) (ii) A) (5) and shall be paid to and retained by NHSIE, as a CHDO, for use in eligible Town of Apple Valley HOME projects pursuant to 24 CFR 92.503 (c) if an agreement is in place; otherwise they revert to the TOWN. NHSIE shall promptly notify the Town of Apple Valley of such transactions.

## **Section X-Indemnity and Insurance**

A. To the maximum extent permitted by law, NHSIE agrees to and shall defend, indemnify and hold harmless the Town of Apple Valley and its respective officers, employees, attorneys, contractors and agents. (“Indemnities”) from and against all claims, liability, loss, damage, costs or expenses (including reasonable attorneys’ fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or the property of any person resulting or arising from or in any way connected with the following, provided NHSIE shall not be responsible for (and such indemnity shall not apply to) any gross negligence or willful misconduct of the Town of Apple Valley or their respective officers, employees, contractors or agents:

1. The rehabilitation, marketing, use, operation or condition of the Property to be rehabilitated/rebuilt and conveyed pursuant to this Agreement by NHSIE, its contractors, subcontractors, agents, employees or other persons acting on NHSIE’s behalf (collectively the "Indemnifying Parties");
2. The existence, release, presence or disposal on, in, under, about or adjacent to the Property of any Hazardous Substances;
3. The displacement or relocation of any person from the Property as a result of the acquisition and rehabilitation of the Property by the Indemnifying Parties;
4. Any accident, personal injury or casualty on the Property or any of the improvements thereon;
5. Any plans or designs for improvements prepared by or on behalf of NHSIE or any of the Indemnifying Parties, including without limitation any errors or omissions with respect to such plans or designs;
6. Any loss or damage to the Town of Apple Valley resulting from any inaccuracy in or breach of any representation or warranty of NHSIE, or resulting from any breach or default by NHSIE, under this Agreement; and
7. Any and all actions, claims, damages, injuries, challenges and/or costs or liabilities arising from the approval of any and all entitlements or permits relating to the rehabilitation of the Property and the improvements thereon on by the Town of Apple Valley.

NHSIE agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section X from each and every subcontractor or any other person or entity involved by, for, with or on behalf of NHSIE in the performance of this Agreement. Failure to obtain the required indemnity agreements shall constitute a default of this Agreement. Failure of the TOWN to monitor compliance with these requirements imposes no additional obligations on the TOWN and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend the Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights, which the Town of Apple Valley may have under the law.

For the purpose of this Agreement, the Town of Apple Valley shall act on behalf of the TOWN in the administration and implementation of this Agreement. The term "Approval by the TOWN" or like term used in this Agreement shall in no way relieve NHSIE from any duties or responsibilities under the terms of this Agreement, or obligation State or local law or regulation.

#### B. Insurance Policies

Prior to commencing any Work under this Agreement, and at all times prior to Project Completion, NHSIE shall maintain in effect and deliver to the Town of Apple Valley duplicate originals or appropriate certificates of the insurance policies (collectively, the "Insurance Policies") set forth in Exhibit B attached hereto and incorporated herein by this reference.

All policies or certificates of insurance shall provide that such policies shall not be canceled, reduced in coverage or limited in any manner without at least ten (10) days prior written notice to the Town of Apple Valley. All fire and liability insurance policies (not automobile and Workers' Compensation) may name the Town of Apple Valley as insureds, additional insureds, and/or loss payable parties as their interests may appear.

The Insurance Policies shall name as additional insureds the following:

"The Town of Apple Valley and their respective officers, officials, employees, attorneys, contractors and agents."

NHSIE agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. NHSIE agrees to submit binders or certificates evidencing such insurance to the Town of Apple Valley prior to commencing any Work under this Agreement. Within thirty (30) days, if practicable, but in any event prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to the Town of Apple Valley. All insurance herein provided for under this Section shall be provided by insurers licensed to do business in the State of California and rated A-VII or better.

If NHSIE fails or refuses to procure or maintain insurance as required by this Agreement, the TOWN shall have the right, but not the obligation, at the TOWN's election, and upon ten (10) days prior notice to NHSIE, to procure and maintain such insurance. The premiums paid by the TOWN shall be treated as a loan, due from NHSIE, to be paid on the first day of the month following the date on which the premiums were paid. The TOWN shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

### **Section XI – CHDO Provisions**

It is understood that NHSIE has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of the Project/Agreement in accordance with 24 CFR 92. NHSIE agrees to provide information as may be requested by the Town of Apple Valley to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance.

Any funds advanced as CHDO pre-development funds must be in compliance with 92.301, and are forgivable only under the terms in 92.301.

Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208.

Any funds that the CHDO is permitted to retain as CHDO proceeds from this Project shall be used in compliance with 24 CFR 92.300(a) (2) or as specified in this Agreement.

### **Section XII – Procurement Standards**

NHSIE shall establish procurement procedures to ensure that materials and services are obtained in a cost-effective and competitive manner. When procuring for services to be provided under this Agreement, NHSIE shall comply at a minimum with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards found at 2 CFR Part 200, adopted by the federal government and applicable to HOME funded projects.

In addition, it is understood that in the event NHSIE is considered to be a religious organization NHSIE shall abide by all portions of 24 CFR 92.257.

### **Section XIII – Conflict of Interest Provisions**

NHSIE warrants and covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of its services hereunder. NHSIE further warrants and covenants that in the performance of this contract, no person having such interest shall be employed.

HOME conflict of interest provisions, as stated in 24 CFR §92.356, apply to the award of any contracts under this Agreement and the selection of tenant households to occupy HOME-assisted units. No employee, agent, consultant, elected official, or appointed official of NHSIE may obtain a financial interest or unit benefits from a HOME-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. This prohibition includes the following:

- 1) Any interest in any contract, subcontract or agreement with respect to a HOME-assisted project or program administered by NHSIE, or the proceeds there under; or
- 2) Any unit benefits or financial assistance associated with HOME projects or programs administered by NHSIE, including:
  - a) Occupancy of a rental housing unit in a HOME-assisted rental project;
  - b) Receipt of HOME tenant-based rental assistance;
  - c) Purchase or occupancy of a homebuyer unit in a HOME-assisted project;
  - d) Receipt of HOME homebuyer acquisition assistance; or
  - e) Receipt of HOME owner-occupied rehabilitation assistance.

This prohibition does not apply to an employee or agent of NHSIE who occupies a HOME assisted unit as the on-site project manager or maintenance worker.

In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the TOWN shall be permitted to receive or share any financial or unit benefits arising from the HOME-assisted project or program.

Prior to the implementation of the HOME-assisted activity, exceptions to these provisions may be requested by NHSIE in writing to the TOWN. NHSIE must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The TOWN may grant exceptions or forward the requests to HUD as permitted by 24 CFR §§ 92.356, 85.36 and 84.42, as they apply.

## **Section XIV – TOWN Responsibilities**

The TOWN shall furnish NHSIE with the following services and information from existing TOWN records and TOWN files:

A. The TOWN shall provide to NHSIE information regarding its requirements for the Project.

B. The TOWN will conduct progress inspections of Work completed to protect its interests as lender and regulatory authority for the Project, and will provide information to NHSIE regarding any progress inspections or monitoring to assist it in ensuring compliance.

The TOWN's review and approval of the Work will relate only to overall compliance with the general requirements of this Agreement and HOME regulations, and all TOWN regulations and ordinances.

Nothing contained herein shall relieve NHSIE of any responsibility as provided under this Agreement.

## **Section XV – Equal Employment Opportunity**

During the performance of this contract, NHSIE agrees as follows:

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

B. NHSIE will, in all solicitations or advertisements for employees placed by or on behalf of NHSIE, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

C. NHSIE will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the TOWN's contracting officer, advising the labor union or worker's representative of NHSIE's commitments under Section 202 of Executive Order

No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. NHSIE will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

E. NHSIE will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the TOWN and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and order.

F. In the event NHSIE is found to be in noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and NHSIE may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulations, or order of the Secretary of Labor or as otherwise provided by law.

G. NHSIE will include the provisions of paragraphs (A) through (G) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. NHSIE will take such action with respect to any subcontract or purchase order as the TOWN may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event NHSIE becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the TOWN, NHSIE may request the United States to enter into such litigation to protect the interest of the United States.

### **Section XVI – Labor, Training & Business Opportunity**

NHSIE agrees to comply with the federal regulations governing training, employment and business opportunities as follows:

A. It is agreed that the Work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, (“HUD Act”) 12 U.S.C. 1701 u, as well as any and all applicable amendments thereto. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given low and moderate income residents of the Project area, and that contracts for Work in connection with the Project

are awarded to business concerns, which are located in, or owned in substantial part by persons residing in the project area.

B. NHSIE shall comply with the provisions of said Section 3 of the HUD Act and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 Code of Federal Regulations and all applicable rules and orders of the Secretary of Housing and Urban Development issued there under as well as any and all applicable amendments thereto prior to the execution of this contract as well as during the term of this contract. NHSIE certifies and agrees that it is under no contractual or other disability, which would prevent it from complying with these requirements as well as any and all applicable amendments thereto.

C. NHSIE will include this Section 3 of the HUD Act clause in every subcontract for Work in connection with the project and will, at the direction of the TOWN, take appropriate action pursuant to the subcontractor upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, in 24 Code of Federal Regulations. NHSIE will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 code of Federal Regulations and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with these requirements as well as with any and all applicable amendments thereto.

D. Compliance with the provisions of Section 3 of the HUD Act, the regulations set forth in 24 Code of Federal Regulations and all applicable rules and orders of the Secretary of Housing and Urban Development issued there under prior to the execution of the contract shall be a condition precedent to federal financial assistance being provided to the Project as well as a continuing condition, binding upon NHSIE for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject NHSIE, its contractors and subcontractors, its successors, and assigns to those sanctions specified by 24 Code of Federal Regulations as well as with any and all applicable amendments thereto.

### **Section XVII – Compliance with Federal, State & Local Laws**

NHSIE covenants and warrants that it will comply with all applicable laws, ordinances, codes, rules and regulations of the state local and federal governments, and all amendments thereto, including, but not limited to; Title 8 of the Civil Rights Act of 1968 PL.90-284; Executive Order 11063 on Equal Opportunity and Housing Section 3 of the Housing and Urban Development Act of 1968; Housing and Community Development Act of 1974, as well as all requirements set forth in 24 CFR 92 of the HOME Program. NHSIE covenants and warrants that it will indemnify and hold the TOWN forever free and harmless with respect to any and all damages whether directly or indirectly arising out of the provisions and maintenance of this contract.

NHSIE agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

NHSIE further warrants and agrees to include or cause to be included the criteria and requirements of this section in every non-exempt subcontract in excess of \$100,000. NHSIE also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

### **Section XVIII – Suspension & Termination**

In accordance with 24 CFR 85.43, suspension or termination may occur if NHSIE materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44. If, through any cause, NHSIE shall fail to fulfill in timely and proper manner its obligations under this contract, or if NHSIE shall violate any of the covenants, agreements, or stipulations of this contract, the TOWN shall thereupon have the right to terminate this contract by giving written notice to NHSIE of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, NHSIE shall be entitled to receive just and equitable compensation for any Work satisfactorily completed hereunder to the date of said termination. Notwithstanding the above, NHSIE shall not be relieved of liability to the TOWN for damages sustained by the TOWN by virtue of any breach of the contract by NHSIE and the TOWN may withhold any payments to NHSIE for the purpose of setoff until such time as the exact amount of damages due the TOWN from NHSIE is determined whether by court of competent jurisdiction or otherwise.

### **Section XIX – Termination for Convenience of the TOWN**

The TOWN may terminate for its convenience this contract at any time by giving at least thirty (30) days notice in writing to NHSIE. If the contract is terminated by the TOWN, as provided herein, the TOWN will reimburse for any actual and approved expenses incurred.

### **Section XX – Default-Loss of Grant Funds**

If NHSIE fails in any manner to fully perform and carry out any of the terms, covenants, and conditions of the Agreement, and more particularly if NHSIE refuses or fails to proceed with the Work with such diligence as will insure its completion within the time fixed by the schedule set forth in Section IV of this Agreement, NHSIE shall be in default and notice in writing shall be given to NHSIE of such default by the Town of Apple Valley. If NHSIE fails to cure such default within thirty (30) days of receipt of such written notice, the TOWN, acting by and through the Town of Apple Valley, may at its option terminate and cancel the contract.

In the event of such termination, all grant funds awarded to NHSIE pursuant to this Agreement shall be immediately revoked and any approvals related to the Project shall immediately be deemed revoked and canceled. In such event, NHSIE will no longer be entitled to receive any compensation for Work undertaken after the date of the termination of this Agreement, as the grant funds will no longer be available for this project.

Such termination shall not effect or terminate any of the rights of the TOWN as against NHSIE then existing, or which may thereafter accrue because of such default, and the foregoing provision shall be in addition to all other rights and remedies available to the TOWN under the law and the promissory note and deed of trust (if in effect), including but not limited to compelling NHSIE to complete the project in accordance with the terms of this Agreement, in a court of equity.

The waiver of a breach of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant, or condition hereof.

### **Section XXI – Reporting Responsibilities**

Since the term of the Project is nine months, NHSIE agrees to submit any and all reports required by HUD or the TOWN to the Town of Apple Valley once a month commencing one month after the Effective Date of the Agreement. Reports shall provide information on the progress and status of the Project.

The Town of Apple Valley will send NHSIE one reminder notice if the report has not been received fourteen (14) days after the due date. If NHSIE has not submitted a report fourteen (14) days after the date on the reminder notice, the TOWN will have the option to terminate the contract as described in this Agreement. In addition, NHSIE agrees to provide the Town of Apple Valley information as required to determine program eligibility, in meeting national objectives, and financial records pertinent to the project.

### **Section XXII – Inspection, Monitoring & Access to Records**

The TOWN reserves the right to inspect, monitor, and observe Work and services performed by NHSIE at any and all reasonable times.

The TOWN reserves the right to audit the records of NHSIE any time during the performance of this Agreement, the compliance period and for a period of five years after the compliance period.

If required, NHSIE will provide the TOWN with a certified audit of NHSIE's records representing the fiscal year during which the Project becomes complete if the HOME Funds disbursed are at or exceeds \$300,000, pursuant to the requirements of OMB Circular A-133.

Access shall be immediately granted to the TOWN, HUD, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of NHSIE or its contractors, which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

### **Section XXIII – General Conditions**

A. All notices or other communication which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

TOWN address: Town of Apple Valley  
14955 Dale Evans Parkway  
Apple Valley, CA 92307  
Attn: Christopher Moore, HCD Specialist

NHSIE address: Neighborhood Housing Services, Inland Empire  
1390 N. D St  
San Bernardino, CA 92405  
Attn: Dawn Lee, Executive Director

B. Title and paragraph headings are for convenient reference and are not a part of this Agreement.

C. NHSIE shall comply with the provisions of the Copeland Anti-Kick-Back Act (18 U.S.C. 874) as supplemented in the Secretary of Labor Regulations (29 CFR Part 3), as amended.

D. NHSIE shall comply with the provisions of sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by Town of Apple Valley of Labor regulations (29 CFR, Part 5), as amended.

E. NHSIE further warrants and agrees to include or cause to be included the criteria and requirements of paragraphs (G) through (H) of this section in every nonexempt subcontract. NHSIE also agrees to take such action as the federal, state or local government may direct to enforce aforesaid provisions.

F. The Agreement shall be binding upon the parties hereto, their heirs, executors, legal representative, successors and assigns.

G. NHSIE and its employees and agents shall be deemed to be independent contractors, and not agents or employees of the Town of Apple Valley and shall not attain any rights or benefits generally afforded classified or unclassified employees.

H. Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and is subject to amendment or termination due to lack of funds, or authorization, reduction of funds, and/or change in regulations.

I. No member, official, employee or agent of the Town of Apple Valley shall be personally liable to NHSIE, or any successor(s) in interest, in the event of any default or breach by the Town of Apple Valley, or for any amount that may become due to NHSIE or their successors, or on any obligations under the terms of this Agreement.

J. This Agreement including its Exhibits integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous Agreements among the Parties with respect to all or any part of the subject matter hereof. In the event of conflict between the terms of this Agreement and any terms or conditions contained in any attached documents, the terms in this Agreement shall rule. All waivers, rescissions and/or releases of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of the TOWN and NHSIE.

K. The internal laws of the State of California shall govern the interpretation of this Agreement. All legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, or in any other appropriate court in San Bernardino County.

L. In addition to any other remedies provided hereunder or available pursuant to law, if any Party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing Party shall be entitled to recover from the other Party(ies) its costs of suit and reasonable attorneys' fees.

M. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

N. The qualifications and identity of NHSIE are of particular concern to the TOWN. It is because of those qualifications and identity that the TOWN has provided financial assistance to NHSIE and entered into this Agreement with NHSIE. Accordingly, NHSIE shall not, whether voluntarily, involuntarily or by operation of law, undergo any significant change in ownership or assign all or any part of this Agreement or any rights hereunder associated with the Project, a site (once selected), or other Project

related Activities without Town of Apple Valley prior written approval, which the Town of Apple Valley may grant or withhold in their sole and absolute discretion.

O. The person or persons executing this Agreement on behalf of NHSIE warrants and represents that he/she has the authority to execute this Agreement on behalf of NHSIE and has the authority to bind NHSIE to the performance of its obligations hereunder.

P. Except as otherwise expressly provided in this Agreement, approvals required of the TOWN shall be deemed granted by the written approval of the TOWN Manager or designee. The TOWN agrees to provide notice to NHSIE of the name of the designee on a timely basis, and to provide updates from time to time.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE  
TO  
COMMUNITY HOUSING DEVELOPMENT  
ORGANIZATION (CHDO)  
COMMITMENT OF HOME PROGRAM FUNDS  
AND DEVELOPMENT AGREEMENT**

**IN WITNESS WHEREOF**, the Parties have approved and executed this Agreement on the dates specified below:

**TOWN OF APPLE VALLEY**

Dated:   October 27, 2015  

By: \_\_\_\_\_  
Frank W. Robinson, Town Manager

**ATTEST**

By: \_\_\_\_\_  
La Vonda M-Pearson, Town Clerk

**APPROVED AS TO FORM:  
BEST, BEST & KRIEGER, LLP**

By: \_\_\_\_\_  
John E. Brown  
Town Attorney

[Signatures Continued On Following Page]

**SIGNATURE PAGE  
TO  
COMMUNITY HOUSING DEVELOPMENT  
ORGANIZATION (CHDO)  
COMMITMENT OF HOME PROGRAM FUNDS  
AND DEVELOPMENT AGREEMENT  
(Continued)**

**NHSIE**  
**NEIGHBORHOOD HOUSING SERVICES OF THE INLAND EMPIRE, INC.,** a  
California nonprofit corporation

Dated: \_\_\_\_\_, 2015

By: \_\_\_\_\_

Name: Dawn Lee

Its: Executive Director

**EXHIBIT A  
LEGAL DESCRIPTION**

**LOT 17, TRACT NO 13749-1, AS PER PLAT RECORDED IN BOOK 214 OF MAPS,  
PAGE(S) 58 THROUGH 60, INCLUSIVE, RECORDS OF SAID COUNTY.**

**Property Address: 20682 Crazy Horse Court, Apple Valley, CA 92308**

**APN: 3087-621-08-0000**

## **EXHIBIT B INSURANCE REQUIREMENTS**

The Developer shall maintain insurance, as set forth below, throughout the term of this Agreement. The Developer shall remain liable to the Town to the extent the Developer is not covered by applicable insurance for all losses and damages incurred by Town that are caused directly or indirectly through the actions or inactions, willful misconduct or negligence of the Developer in the performance of the duties incurred by the Developer pursuant to this Agreement.

The Developer shall maintain insurance policies issued by an insurance company or companies authorized to do business in the State of California and that maintain during the term of the policy a “General Policyholders Rating” of at least A-VII, as set forth in the then most current edition of “Bests Insurance Guide,” as follows:

A. Automobile Insurance. The Developer and each of its subcontractors shall maintain comprehensive automobile liability insurance of not less than \$1,000,000.00 combined single limit per occurrence for each vehicle leased or owned by the Developer or its subcontractors and used in performing work under this Agreement.

B. Worker’s Compensation Insurance. The Developer and each of its subcontractors shall maintain worker’s compensation coverage in accordance with California workers’ compensation laws for all workers under the Developer’s and/or subcontractor’s employment performing work under this Agreement

C. Liability Insurance. Town requires comprehensive liability insurance, including coverage for personal injury, death, property damage and contractual liability, with a limit of at least One Million Dollars (\$1,000,000), including products and completed operations coverage. Said insurance shall be primary insurance with respect to Town. The Developer shall require and ensure that the Developer’s contractors include Town as additional insureds on all general liability insurance covering work at the Eligible Property. If required by Town from time to time, the Developer shall increase the limits of the Developer’s liability insurance to reasonable amounts customary for owners of improvements similar to the Project. The policy shall contain a waiver of subrogation for the benefit of Town.

D. Property Insurance. The Developer shall maintain insurance against loss or damage to real property under an “all risk” or “special form” property insurance policy, which shall include coverage against all risks of direct physical loss, including loss by fire, lightning, terrorism, ordinance or law, and other risks normally included in the standard ISO special form (which shall include flood insurance if the property is located within a flood hazard area and which shall include earthquake insurance if the property is located in an area where earthquake insurance is customarily maintained for similar residential property). Such insurance shall be in amounts sufficient to prevent Town from becoming a co-insurer under the policy, and in any event, after application of deductible, in amounts not less than 100% of the full insurable replacement cost. Town shall be named as a “loss payee” for amounts invested by the Developer up until the time that each Eligible Property is sold.

## EXHIBIT C Project Budget

Project Budget			
SINGLE FAMILY RESIDENCE- REBUILD/RESALE			
20682 Crazy Horse Court, Apple Valley, CA 92308			
Description		Cost	Note
<b>Estimated Sale Price (market)</b>	<b>210000</b>		
Acquisition		0.00	
Property Insurance (12 month)		1,800.00	
Property Taxes		500.00	
Termite/Pest Control		200.00	
Appraisal		350.00	
Construction Cost for Rebuild		160,000.00	
Construction Management		7,750.00	
Contingency		24,000.00	
Construction Loan Interest Fees? 6.5% x 4 mos		3,400.00	
<b>Resale</b>			
Escrow/Title		1,850.00	Includes binder
Home Warranty		500.00	
R E Commissions 6%		12,900.00	
Asset Preservation, Security, Maintenance ?		10000	Fencing, patrols, window boards, repairs, theft/vandalism prevention
Utilities, holding costs		3600	Gas, electric, water, sewer
Developer Fee		20,000.00	Fixed rate
Pre Costs NHSIE estimated		20,000.00	Acquisition, escrow, insurance, demolition, cleanup, security, etc. from acquisition to agreement- documented items- recoup from proceeds of sale
<b>Total Development Costs</b>		<b>266,850.00</b>	
HOME CHDO		-95,943.00	Will reduce interest costs for leveraged funds
Leveraged NHSIE Construction Loan		170,907.00	
Contract term- 9 months			
Original 2661 sq ft, now proposed as 2001 Sq ft			
	Development Cost	266,850.00	Estimated
	Proceeds	210,000.00	Market value sale- estimated
	HOME Subsidy	56,850.00	
		95,943.00	allocation
		56,850.00	subsidy
		39,093.00	Available down payment assistance if needed for eligible buyer; balance- program income to be reallocated to HOME projects