

HOLLYWOOD HOME PROGRAM AGREEMENT  
BETWEEN  
CITY OF HOLLYWOOD, FLORIDA  
AND  
LIBERIA, ECONOMIC AND SOCIAL DEVELOPMENT, INC.  
FOR THE CONSTRUCTION OF TWELVE TOWNHOMES

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Hollywood, a municipal corporation of the State of Florida (hereinafter "City") and Liberia, Economic and Social Development, Inc., a non-profit corporation authorized to do business in the State of Florida (hereinafter "LES") whose Federal I.D. No. is \_\_\_\_\_.

WITNESSETH:

WHEREAS, the City has been designated by the United States Department of Housing and Urban Development ("HUD") as a participating jurisdiction for the receipt and use of funds as provided by the HOME Investment Partnership Program (HOME Program) as set forth in 24 CFR Part 92; and

WHEREAS, the City has entered into an agreement with HUD for a grant for the execution and implementation of a HOME Investment Partnership Program pursuant to the Cranston-Gonzalez National Affordable Housing Act of 1990; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained and other valuable consideration, the receipt of which is hereby acknowledged, the City and LES do hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

The following terms for purposes of this Agreement shall have the following meanings:

**City** shall mean the City of Hollywood, Florida.

**Community Development Approval** shall mean the written approval of the Manager of the Community Development Division of the Department of Development Services after a submitted request or a report has been properly processed in accordance with the City's financial accounting procedures.

**Division** shall mean the Community Division of the Department of Development Services.

**Manager** shall mean the Manager of the Community Development Division of the Department of Development Services

**HOME** shall mean the HOME Investment Partnership Program.

**HUD** shall be the United States Department of Housing and Urban Development.

**LES** shall mean Liberia Economic and Social Development, Inc.

All other terms used herein shall be as defined in 24 CFR Section 92.2, which is deemed as being incorporated herein by reference and deemed as though set forth in full in this Article.

## **ARTICLE II** **SCOPE OF SERVICES**

LES shall be responsible for administering the Project Activity as more specifically set forth in Exhibit "A" attached hereto and incorporated herein by reference, and in accordance with the applicable HOME Investment Partnership Act of 1990 regulations as more specifically set forth in 24 CFR Part 92. Further, LES shall comply with the Timetable/Schedule for the Project Activity as more specifically set forth in Exhibit "D" attached hereto and incorporated herein by reference. The Project Activity set forth in Exhibit "A" shall meet all requirements set forth in 24 CFR Sections 92.251 through 92.258.

Timely completion of the work specified in this Agreement is an integral and essential part of performance. The expenditure of HOME funds is subject to Federal deadlines and could result in the loss of Federal funds. By acceptance and execution of this Agreement, it is understood and agreed to by LES, that the Project Activity will be completed as expeditiously as possible and that LES will make every effort to ensure that the Project Activity will proceed and will not be delayed. Failure to meet these deadlines as set forth in Exhibit "D" may result in termination of this Agreement and the revocation of HOME funds.

Since it is mutually agreed that time is of the essence as regards to this Agreement, LES shall cause the 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 Activity will be completed according to the timetable set forth in Exhibit "D". 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 City and enforceable by the City against LES and its successors and assigns to the project or any part thereof or any interest therein.

## **ARTICLE III** **TERM**

The term of this Agreement shall commence on November 15, 2017 and shall expire on September 30, 2019. As a condition precedent to the effectiveness of this Agreement, funds for this Project Activity must be timely released pursuant to the United States HUD Home Investment Partnership Act Grant to the City. If such condition precedent fails to occur, then this Agreement shall become null and void and the parties shall be

discharged from their respective obligations thereunder. This Agreement may be extended upon the approval of the City and acceptance by LES.

In addition, this Project Activity is subject to ongoing compliance requirements of HOME for fifteen (15) years from the date of initial occupancy. During this compliance period, LES will assure continued compliance with HOME requirements. As this Project Activity involves homeowner units, then this includes monitoring the single family homes for principal residency and recapture of funds at time of resale.

#### **ARTICLE IV**

#### **ALLOCATION OF FUNDS AND PAYMENTS TO LES**

4.1 The maximum amount of the City's HOME funding contribution under this Agreement shall not exceed \$282,000.00, in HOME funds. All HOME funds shall be solely used by LES for the new construction of townhomes developed by LES as more specifically set forth in Exhibit "A" and expended in accordance with the Budget set forth in Exhibit "B" attached hereto and incorporated herein by reference. LES acknowledges and agrees that all HOME funds shall be used in accordance with 24 CFR Part 92. The City has agreed to loan LES the funds at zero percent deferred interest, until construction of the single family townhomes are complete. The loan may be converted to a grant if all home construction is timely and satisfactorily completed in accordance with the requirements set forth in Exhibit "A" and said grant funds shall be utilized by LES in accordance with the requirements set forth in Exhibit "A". Pursuant to Section 92.201(a) of the HOME program regulations, this debt will be waived if all home construction is timely and satisfactorily completed in accordance with the requirements set forth in Exhibit "A". City shall not be responsible or liable to LES for any payments beyond the maximum funding set forth herein for eligible expenditures and encumbrances.

No HOME project funds will be advanced, and no costs can be incurred, until the City has conducted an environmental review of the proposed project site as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the project. Notwithstanding this provision, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the CITY of release of funds from HUD under 24 CFR Part 58. Further, LES will not undertake or commit any funds to physical or choice-limiting actions, including movement, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under this Agreement.

4.2 Affordability. With respect to the subject property being assisted with HOME funds, LES shall meet the affordability requirements of 24 CFR Sections 92.252 or 92.254, as applicable by requiring compliance with said requirements in any and all contracts, grants, deed restrictions, leases, or other documents. Income documentation

shall be in a form consistent with HOME requirements as state in the HUD ***Technical Guide for Determining Income and Allowances Under the Home Program***. The HOME funds for the Project Activity will be secured by a note and mortgage.

Prior to the closing, LES will provide to the City the estimated settlement statement, along with a reconciliation statement, the draft note and mortgage, and the Declaration of Covenant and Restrictions which is attached hereto as Exhibit "E" . The reconciliation statement shall account for the pro-ration of HOME project funds to the individual single family home, and identify those funds that are not lent to the 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 sales proceeds to be retained from the settlement funds, if any.

4.3 LES shall submit its request for reimbursement of eligible costs to the City in accordance with the reimbursement procedure set forth in Exhibit "B." LES shall be paid by the City in accordance with the expenditure of funds procedure set forth in Exhibit "B" and 24 CFR Section 92.502. LES shall provide adequate and proper documentation of eligible costs incurred in compliance with 24 CFR Section 92.206. Invoices submitted to LES by any of its subcontractors are subject to City review. Upon review of all documentation, City will either approve or deny payment. However, all payments will be made directly to LES and City shall not be liable to any of LES' subcontractors for any payments due and owing under any subcontracts between LES and said subcontractor.

4.4 The Project Activity is to be owner-occupied. LES will ensure that the HOME assisted units (townhomes) are in compliance with 24 CFR 92.254, including documentation that the property is eligible under Section 92.254(a)(1)-(2), and will maintain compliance during the minimum compliance period.

4.5 All services materials and labor eligible for payment under this agreement must be performed and processed for payment by September 30, 2019.

4.6 Payment to LES shall be contingent upon the following:

a LES implementing and facilitating the Project Activity in accordance with all applicable Federal, State and local laws, the City's Housing Policies and Procedures and in accordance with the timetable/schedule as more specifically set forth in Exhibit "D" attached hereto and incorporated herein by reference.

b. LES providing City with annual independent audits in order for the City to determine LES' ability to fiscally manage the Project Activity in accordance with Federal, State, Local and City requirements. LES shall bear all costs and expenses for each audit. Each annual audit shall be submitted to the City no later than 120 days prior to the end of the City's Fiscal Year (September 30<sup>th</sup>). The annual independent audits shall adhere to the requirements set forth in Article VII herein.

c. All reporting requirements, deadlines and reporting approvals as set forth in this Agreement and in Exhibit "C" attached hereto and incorporated herein by reference must be complied with prior to LES receiving any payments for its services.

4.7 City has the right to suspend or terminate this Agreement in the event that LES fails to comply with any applicable terms, conditions to this Agreement, laws and regulations referenced herein. Upon expiration or termination of this Agreement, all HOME funds remaining on hand on the date of expiration or termination shall remain as City HOME funds and LES shall not be entitled to said funds.

4.8 Prior written approvals. Activities that require the prior written approval of the Director in order for there to be a reimbursement payment to LES, include without limitation the following:

- a. Commitment of financing not covered under this Agreement;
- b. All subcontracts and agreements required to fulfill the services under this Agreement;
- c. All change orders; and
- d. Requests to use uncommitted funds prior to the expiration of this Agreement.

## **ARTICLE V** **RECORDKEEPING**

5.1 LES shall comply with the Performance Report requirements set forth in Exhibit "C".

5.2 LES shall maintain records sufficient to meet the requirements set forth in 24 CFR Section 92.508(a)(3) and 24 CFR Section 92.509. All records and reports required herein shall be retained by LES and made accessible as provided for in Chapter 119, Florida Statutes, and in accordance with 24 CFR 85.42 and 24 CFR Section 92.508(c) and (d).

5.3 LES shall comply with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as Super Circular) as amended from time to time. In addition, all grant funds from the CITY should be shown via explicit disclosure in the annual financial statements and/or the accompanying notes to the financial statements.

5.4 LES shall maintain records specific to each townhome located on the property set forth in Exhibit "A", so that all disbursements of funds with regard to the project activities can be reconciled with construction, completion and sale of each townhome.

5.5 All original reports and records shall be retained by LES for a five (5) year period following the date of termination of this Agreement or of the submission of the final close-out report, whichever is later, with the following exceptions:

a. If any litigation, claim or audit was started before the expiration of the five (5) year period and extends beyond the five (5) year period, the records shall be maintained until litigation, claims or audit findings involving the records and/or reports have been resolved.

b. Records relating to real property acquisition shall be retained for the period of affordability required under 24 CFR Section 92.254.

5.6 All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and objectives set forth in Exhibit "A" and all other applicable laws and regulations.

5.7 LES, its employees, officers, or agents, including any and all subcontractors and consultants to be paid from funds provided pursuant to this Agreement shall allow access to its records at reasonable times to the City, its employees, agents, or contractors, to HUD, the Comptroller General. For purposes of this subsection, "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday. "Agents" shall include, but not be limited to, City employees and auditors retained by the City.

5.8 In the event that during the five (5) retention period for records and the timeframe set forth in subsection 4.5, LES is dissolved then, LES shall submit all original reports and records as set forth in this Article and this Agreement to City prior to LES' dissolution date.

## **ARTICLE VI** **REPORTS**

6.1 LES shall provide City with monthly reports based upon the reporting schedule set forth in Exhibit "C". LES shall comply with any additional reporting requirements as set forth in 24 CFR Part 92 and Exhibit "C" of this Agreement.

6.2 LES shall provide City with a close-out report within thirty (30) days after the completion of the Project Activity. In the event this Agreement is terminated, then LES shall provide City with a close-out report within thirty (30) days from the date of termination.

6.3 If all required reports and copies as prescribed in this Agreement, are not sent to the City or are not completed in the manner required by this Agreement or applicable regulations, the City may withhold any further payments to LES unless LES submits the

require reports and/or corrected reports within ten (10) days of written notice by the City. The City may terminate this Agreement if LES if the required reports are not received by the City within the time frames set forth herein or within ten (10) days of a written request by the City.

6.4 LES shall provide any and all reports necessary for the City to meet its reporting requirements pursuant to 24 CFR Part 92, including but not limited to Section 92.509, with respect to LES' use of the HOME funds.

## **ARTICLE VII** **AUDIT REQUIREMENTS**

7.1 LES agrees to maintain financial procedures and support documents in accordance with generally accepted accounting principles in order to account for the receipt and expenditure of HOME funds under this Agreement.

7.2 LES shall provide the City or other authorized representatives or employees with the records, reports or financial statements upon request for the purpose of auditing and monitoring the HOME funds awarded pursuant to this Agreement and applicable laws and regulations.

7.3 For the purposes of auditing and monitoring the HOME funds awarded pursuant to this Agreement, LES shall provide the City with an annual financial audit report which meets the applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (also known as Super Circular) as amended from time to time. The annual financial audit reports shall include but not be limited to the following:

- a. The annual financial audit report shall include all management letters and LES' response to all findings, including corrective actions to be taken;
- b. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and grant revenue by the sponsoring City and Agreement number; and
- c. The complete annual financial audit report, including all items specified in this Article and as required by the applicable laws and regulations shall be sent directly to:

Director of Financial Services  
City of Hollywood, Florida  
2600 Hollywood Boulevard, Rm. 120  
Hollywood, Florida 33020

7.4 In the event the financial audit shows that the entire HOME funds, or any portion thereof, was not expended in accordance with the conditions set forth in this Agreement

and pursuant to any applicable law or regulation, LES shall be held liable for reimbursement to the City of all HOME funds not expended in accordance with this Agreement or applicable laws or regulations. LES shall reimburse the City within thirty (30) days after receipt of the written notice from the City of such non-compliance.

7.5 LES shall retain all financial records, reports, supporting documents, statistical records, and any other documents pertinent to this Agreement for a period of five (5) years after the date of submission of the final expenditures report. However, if litigation or an audit has been initiated prior to the expiration of the five (5) year period, the records shall be retained until the litigation or audit findings have been resolved.

7.6 LES shall have all audits completed by an independent public account (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Florida Statutes. The IPA shall certify that the audit complied with the applicable provisions referenced in this Agreement and in accordance with the applicable laws and regulations.

### **ARTICLE VIII** **MONITORING**

Monitoring for this agreement falls into the following general compliance areas:

- Program monitoring assesses the overall performance and operation of the program and activities are carried out effectively and in compliance with HOME rules.
  
- Administrative and financial monitoring assesses the fiscal and administrative management of the HOME funds.
  
- Project monitoring assesses compliance with requirements related to the specific HOME activity.

The City shall conduct two forms of monitoring:

1. Desk Reviews – Desk reviews shall involve reviewing reports as required in Article VI of this agreement to determine how well the project is being managed, and whether it is achieving its goals and compliance obligations.
  
2. Onsite Monitoring - Onsite monitoring involves a visit to the funded entity's office to review documents and source information, observe actual project operations, and discuss programs and projects with the staff carrying them out. Onsite monitoring will take place at least annually or whenever the desk review suggests that there may be complications to project completion. Once scheduled, a formal



notification letter shall be sent to LES at least ten (10) days prior to the planned visit. The formal notification letter shall include:

- Confirmation of the date and time for the review;
- Name of the City staff performing the review;
- Elements of the project to be monitored;
- Information needed for review during the visit (files and records);
- Staff needed for interviews or other assistance during the review.

Follow-up – At completion of each On-site Monitoring staff shall prepare and distribute a report summarizing the results of the review and describing any required follow-up.

## **ARTICLE IX** **SUBCONTRACTS**

9.1 In the event that LES determines that it is necessary to subcontract any or all of the construction work required under this Agreement, then LES shall obtain the prior approval of the Director for such subcontracting work prior to execution of any subcontract. Upon approval, LES shall provide the Director with a copy of the executed subcontract within ten (10) days of execution. If said subcontract is not approved by the Director, LES shall remain obligated to complete the Scope of Services and work required.

9.2 Any and all subcontracts shall include a provision that the subcontractor shall be bound by the terms and conditions of this Agreement and all Federal, State and Local laws and regulations relating to the Project Activity. Said Agreement shall be attached to the subcontract and incorporated therein. Any and all contracts, subcontracts or agreements entered into by LES shall contain language comparable to the provisions in Article VII herein so as to assure access by authorized parties to the pertinent records of any contractor or subcontractor.

9.3 Any and all subcontracts shall include the following provision:

a. LES' contractor shall indemnify and hold harmless City, its officers, agents and employees, from and against any and all claims, causes of actions, demands, liabilities, damages, losses, expenditures and costs, including but not limited to, reasonable attorney fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of LES' contractor, and other persons employed or utilized by LES' Contractor in the performance of the Agreement between LES and City, incorporated herein by reference. These indemnifications shall survive the term of the Agreement between LES and City and this Agreement, to the extent permitted by law, in the event that any action or proceeding is brought against City by reason of any such claim, demand or cause of action, LES' Contractor shall, upon written notice from City,

resist and defend such action or proceeding by counsel satisfactory to the City. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the CITY relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the CITY in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes.

b. To the extent permitted by law, the indemnification provided above shall obligate LES' Subcontractor to defend, at its own expense, to and through appellate, supplemental, or bankruptcy proceedings, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description covered by this Article, which may be brought against the City, whether services were performed by LES' Contractor or persons employed or utilized by LES' Contractor.

c. In order to insure the indemnification obligation noted above, LES' Contractor shall, at a minimum, provide, pay for, and maintain in full force at all times during the term of the Agreement (unless otherwise provided), the insurance coverage set forth in Article X herein.

## **ARTICLE X** **INDEMNIFICATION**

LES shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses caused or alleged to be caused by the intentional or negligent act of, or omission of, LES, its employees, agents, servants, subcontractors, or officers, accruing, resulting from, or related to the subject matter of this Agreement, including without limitation, any and all claims, losses, liabilities, expenditures, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event of a lawsuit or other proceeding is brought against City by reason of such claim, cause of action or demand, LES shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by the City Attorney to defend City. To the extent considered necessary by the Director and City Attorney, any sums due LES under this Agreement may be retained

by City until all of City's claims for indemnification under this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by City. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the CITY relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the CITY in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. Nothing in this Agreement shall be construed to affect in any way the City's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

The City gives as independent and specific consideration the sum of \$10.00 for the granting of this indemnification/hold harmless. The receipt and sufficiency of this consideration is acknowledged by LES.

If construction and/or design work is being funded by this Agreement, then these provisions will be interpreted to comply with the applicable provisions of Sections 725.06 and 725.8, Florida Statutes as applicable.

## **ARTICLE XI** **INSURANCE**

LES shall provide, at its sole expense, and maintain in full force and effect for the term of this Agreement and any extensions thereof, the insurance coverage set forth below. LES shall provide the Director, at the time of execution of this Agreement, with Certificates of Insurance, reflecting evidence of the required insurance, along with the Insurance Agent's certification document which certifies that the insurance requirements have been met and there are no exclusions. These Certificates shall contain a provision that coverage afforded under these policies will not be cancelled, will not expire and will not be materially modified until at least thirty (30) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act. Insurance shall be in force until all work and services required to be performed under the terms of this Agreement are satisfactorily completed as evidenced by the formal acceptance by the City. In the event the Insurance Certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, LES shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of this Agreement and

extension thereunder is in effect. All Certificates of Insurance shall include the City of Hollywood, Florida as an additional insured.

Insurance Coverage is as follows:

- A. Comprehensive General Liability. Commercial Liability Insurance with not less than the following limits:

General Aggregate	\$500,000
Products-Comp/Op Aggregate	\$500,000
Personal and Advertising Injury	\$500,000
Each occurrence	\$500,000
Fire Damage	\$ 50,000

- B. Commercial Automobile Liability. Commercial Automobile Liability Insurance shall be provided with not less than following limits:

Combined Single Limit	\$300,000
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Coverage shall include owned, non-owned and hired vehicles.

- C. Worker's Compensation. Worker's compensation insurance shall be provided and shall cover the LES', contractor and contractor's employees not less than the following limits:

Each accident	\$100,000
Disease Policy Limit	\$500,000
Disease Each Employee	\$100,000

## **ARTICLE XII** **INDEPENDENT CONTRACTOR**

LES is and shall be, in the performance of the Project Activity under this agreement an independent contractor, and not an employee, agent, or servant of the CITY. Services provided by LES shall be performed by employees of LES and subject to supervision by LES, and shall not be deemed officers, employees, or agents of CITY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to LES' sole direction, supervision and control. LES, its agents, officers or employees are not entitled to any stipend, benefit or privilege of the City. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and

other similar administrative procedures applicable to services rendered under this Agreement shall be those of LES, which policies of LES shall not conflict with CITY, H.U.D., or Federal policies, rules or regulations relating to the use of HOME funds provided for herein. The City and LES are not partners, joint ventures or affiliated entities. LES has no authority to bind the City nor is the City a guarantor or promisor of any obligation of LES.

### **ARTICLE XIII** **MAINTENANCE OF EFFORT**

The intent and purpose of this Agreement is to increase the availability of LES' services. This Agreement is not a substitute for nor replaces existing or planned projects or activities of LES. LES agrees to maintain a level of activities and expenditures planned or existing for projects similar to those being assisted under this Agreement which is not less than that level existing prior to this Agreement.

### **ARTICLE XIV** **TERMINATION**

14.1 In the event of termination of this Agreement, LES shall not be relieved of liability to the City for any and all damages sustained by City but virtue of any breach of a contract by LES. The City may withhold any payments due to LES until such time as the exact amount of damages due to the City from LES is determined.

14.2 Termination for Cause by City. In the event that LES fails to (a) perform any of its obligations under this Agreement; (b) comply with any of the terms and conditions of this Agreement; (c) adhere to the all applicable Federal, State and Local laws and regulations governing this Agreement and the Project Activity, or (d) properly or effectively use the HOME funds, the City shall have the right to suspend payment and terminate this Agreement in whole or in part, by providing at least five (5) days prior written notice of such suspension of payment and termination. Such suspension and/or termination is in accordance with 24 CFR Section 85.43. If payments are withheld, City shall specify in writing the actions that must be taken by LES to cure the violation and the amount of time for curing the violation. If the LES cures the violation, then the City may resume payments to the LES, however, if LES fails to cure the violation then this Agreement shall terminate and the City shall retain any and all HOME funds.

14.3 Termination for Convenience by City. At any time during the term of this Agreement, the City may, at its option for convenience, terminate this Agreement upon thirty (30) days prior written notice to LES. If the City terminates this Agreement for convenience, the City shall pay LES for all eligible services and allowable expenditures pursuant to this Agreement and applicable laws and regulations until the effective date of said termination. In the event that the grant to the City under Title II, the Cranston-Gonzalez National Affordable Act of 1990 is

suspended or terminated, then this Agreement shall be suspended or terminated effective on the date HUD specifies.

14.4 The Division has the right under this Agreement to suspend or terminate payments until LES complies with any applicable additional conditions that may be imposed by the City or the State of Florida at any time during the term of this Agreement.

**ARTICLE XV**  
**NOTICE**

Whenever either party desires to give notice unto the other, such notice must be in writing, either by hand with proof of delivery, by electronic mail with receipt of delivery, or sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

As to the City: Clay Milan, Manager  
Community Development Division  
2600 Hollywood Boulevard #203  
Hollywood, Florida 33020

With a Copy to: Alan Fallik, Acting City Attorney  
Office of the City Attorney  
Hollywood City Hall  
2600 Hollywood Blvd. Room 407  
Hollywood, Florida 33020

As to LES: Henry Graham  
Executive Director, LES, Inc.  
3220 North 24<sup>th</sup> Avenue  
Hollywood, Florida 33022

**ARTICLE XVI**  
**MISCELLANEOUS PROVISIONS**

16.1 The parties hereby agree and acknowledge that this Agreement shall be governed by the applicable Federal, State and Local laws, regulations, and policies for this HOME project.

16.2 The validity of this Agreement is subject to the truth and accuracy of all of the information and representations made by LES, and in all materials submitted or provided by LES in this Agreement, in any subsequent submission or response to the City's request(s), or in any submission or response required to fulfill and comply with the requirements of this Agreement and all applicable laws and regulations. Such information, representations and materials are incorporated herein by reference. The lack of accuracy thereof or any material changes shall, at the option of the City, and within thirty (30) days prior written notice to LES, be cause for termination of this Agreement and release the City from all of its obligations to LES.

16.3 This Agreement shall be governed by the laws of the State of Florida. Any and all legal action between the parties arising out of the Agreement will be brought in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

16.4 Severability. If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

16.5 Conflict of Interest. LES hereby covenants that no person who presently exercises any functions or responsibilities in connection with this Agreement, Scope of Services and Project Activity, has any personal financial interest, direct or indirect, in the Project Activity during their tenure or for one (1) year thereafter, as set forth in 24 CFR Section 92.356 which would conflict in any manner or degree with the performance of this Agreement and that no person having any conflict of interest shall be employed or subcontracted. Any possible conflict of interest on the part of LES or its employees shall be disclosed in writing to the Director. It shall not be deemed a conflict as long as all purchasing for consumable equipment, capital equipment, and services are obtained in conformance with this Article.

16.6 Non-Discrimination. LES shall not discriminate against any person or family on the grounds of race, color, national origin, age, sex, religion, sexual orientation, family status, handicap, nor against persons or families on the basis of their having minor children. LES further agrees to meet the equal opportunity and fair housing requirements as set forth in 24 CFR Section 92.350.

16.7 Each and every provision of any law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein, and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the day and year first above written: CITY OF HOLLYWOOD through its CITY COMMISSION, signing by and through its Mayor, authorized to execute same by commission action on the \_\_\_ day of \_\_\_\_\_, 2017, and LIBERIA, ECONOMIC AND SOCIAL DEVELOPMENT. INC. signing by and through its Executive Director duly authorized to execute same.

CITY OF HOLLYWOOD, a municipal corporation of the State of Florida

BY: \_\_\_\_\_  
JOSH LEVY, MAYOR

ATTEST:

\_\_\_\_\_  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED BY:

\_\_\_\_\_  
GEORGE R. KELLER JR., INTERIM  
DIRECTOR  
DEPARTMENT OF FINANCIAL  
SERVICES

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE CITY  
OF HOLLYWOOD, FLORIDA, ONLY.

\_\_\_\_\_  
ALAN FALLIK, ACTING CITY ATTORNEY



**HOLLYWOOD HOME PROGRAM AGREEMENT WITH LES**

LIBERIA ECONOMIC AND SOCIAL  
DEVELOPMENT, INC.

ATTEST:

BY: \_\_\_\_\_

\_\_\_\_\_  
Corporate Secretary  
Title: \_\_\_\_\_

Print Name \_\_\_\_\_

## EXHIBIT "A"

### PROJECT DESCRIPTION AND SCOPE OF SERVICES

LES, Inc. will construct twelve (12) townhomes to be located on vacant lots legally described as Crispus Commons 170-49 B Parcel A ( Folio – 514204180080) of the Public Records of Broward County, Florida.

The total HOME project funding is as follows:

**FY 2015/2016** – \$189,270.00

**FY 2016/2017** - \$92,730.00

**TOTAL** - \$282,000.00

The Total amount of \$282,000.00 shall be used by LES for allowable expenditures, subject to the terms and conditions of the agreement and applicable laws, rules, and regulates. Program Income as defined in 24 CFR 92.2 derived from this project will remain with LES in a separate account to be used by LES to conduct eligible HOME activities. However, in accordance with 24 CFR 92.503(c) recaptured funds shall be returned to the City.

**Impact/Target Area:** Crispus Commons 170-49 B Parcel A (Folio – 514204180080) of the Public Records of Broward County, Florida.

**Target Group:** This program targets individuals who are potential home buyers and are eligible to qualify for HOME Program Purchase assistance.

#### **Program Description:**

“Crispus Commons Townhomes”- In order to provide affordable homeownership opportunities to households at or below 80% of the Area Median Income, LES will construct townhomes in the Liberia Neighborhood in Hollywood (CT 805 BG4). The project will involve the new construction of twelve (12) townhome units in six (6) buildings in the City of Hollywood. Although the proposed development will be a 12-unit townhouse project, the development design shall resemble six (6) single-family units with a similar color scheme and finish as a single family development directly south of the site; giving the appearance of a single development. Each townhome will include 3-bedrooms, 2.5 baths and a 1-car garage. The basic amenities are ceramic tile floors, Energy Saver Appliances: range and microwave, refrigerator, central air and heat, back yard, private entry, and ample guest parking in the rear of the complex. There are two model sizes. Model 1 will be 1,816.87 Square Feet with a sales price of \$195,000.00. Model 2 will be 1,940.41 square feet with a sales price of \$210,000.00. The activity will take place on a 1.24 acre vacant parcel at 22nd Avenue and Evans Street legally described as Crispus Commons 170-49 B Parcel A (Folio – 514204180080) located in a

AH Flood Zone. A Phase II examination of the site detected buried objects such as scrap metal, used tires, construction material debris throughout the northern and western section of the site. The soil analysis reported Benzo(a)anthracene above Soil Clean-up Target Level (SCTL), Benzo(b)fluoranthene slightly above SCTL, Dibenzo(a)anthracene slightly above SCTL and Indeno(1,2,3-cd) Pyrene slightly above SCTL. These wastes are mixed with the top soil and shall be removed (up to a 3 ft. depth) and properly disposed of before construction.

**Recapture:** The HOME assisted housing must meet the affordability requirements for not less than what is specified in 24 CFR Section 92.254. To ensure adherence to this regulation, LES shall require the eligible HOME buyer to execute a Mortgage and Promissory Note at the time of sale. LES shall monitor the single family home for principal residency under 24 CFR Section 92.254(3) for a period of no less than fifteen (15) years.

LES shall also record in the Public Records of Broward County a Deed Restriction which provides for the enforcement mechanisms to recapture any HOME investment not returned with sale proceeds outlined in 24 CFR Section 92.254(a)(4)-(5) and as set forth below:

HOME amount per unit	Minimum period of affordability
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years

All resale proceeds that are received from the buyer from the resale of the property located at Crispus Commons 170-49 B Parcel A (Folio – 514204180080) of the Public Records of Broward County, Florida, during the compliance period to other buyers shall be considered “Recapture Funds” under 24 CFR Section 92.254(a)(5)(ii)(A)(5) and must be repaid to the City for use in eligible HOME projects as required by 24 CFR Section 92.503. LES will promptly notify the City of such transactions and will promptly convey any Recaptured Funds to the City.

**Program Evaluation:** Program evaluation and success will be based on the construction and sale of twelve (12) single-family townhomes.

**Project Work Tasks**

- Obtain Appraisal

- Site Planning
- Site Preparation
- Select Architect
- Obtain Architectural Plans & Drawings
- Prepare Construction Bid (Optional)
- Advertise for Bids (Optional)
- Identify Potential Buyers
- Perspective Buyer Signs Contract with L.E.S.
- Sign Construction Contract
- Pull Permits
- Start Construction
- Monitor Construction
- Complete Construction
- Obtain Final Inspections
- Conduct Walk-through
- Close on House

LES shall establish procurement standards to ensure that materials and services are obtained in a cost-effective manner. When procuring services to be provided under this Agreement, LES shall comply at a minimum with the nonprofit procurement standards at 24 CFR Sections 84.40-84.48.

All program requirements apply to the original \$282,000.00 loaned HOME funds and continue to apply to all accruals, proceeds, and income realized as a result of the use of the original \$282,000.00 loan HOME funds.

The total project goal is the construction of twelve (12) single family townhomes.

**EXHIBIT "B"**  
**BUDGET**

LES and the City anticipate the Total Development Cost for the project to be \$2,342,475 as follows:

Bank Financing	\$132,000.00
Investor Financing	\$1,726,915.00
*City of Hollywood (SHIP)	\$201,560.00
City of Hollywood (HOME)	\$282,000.00
Total Sources	\$2,342,475.00

It is understood that HOME funds shall not be expended on this project until all other funding sources as described above are secured by firm commitments. Total HOME project funding is \$282,000.00. Funds shall mean the original \$282,000.00 and all proceeds thereof, that is, all other monies realized as a result of the use of the original \$282,000.00 HOME loan funds.

These funds are to solely be used by LES as follows:

1. The \$282,000.00 HOME loan funds will be used for eligible expenses will include construction hard costs and soft costs necessary to construct the project. This includes professional service fees such as environmental Phase 1, engineering, survey, appraisal, and architectural drawings. Also allowed are infrastructure directly related to the project, including streets, roadways, parking, sidewalks, pathways, storm drainage, water, sewer and sanitary systems, sewer connections, hydrants, meters, utilities and utility easements for telephone, cable, electric lines, and right-of-ways and other acceptable fees. Soft costs include plat reviews, recording fees, permits, environmental reviews and impact studies, land use amendment reviews and other acceptable fees. The strategy also allows for the payment of impact fees. Once the affordable homeownership product is built, HOME funds awarded to the LES that were secured by a Mortgage and Note to ensure purchases by an income eligible buyers shall be forgiven once the sale of each townhome is conveyed to an eligible buyer or may be converted to a subordinate mortgage to the buyer securing down payment, closing costs, mortgage buy down, gap financing and other costs associated with purchasing a home.
  - a. Construction shall only be for the construction of twelve (12) townhomes which shall be offered for sale to eligible homeowners subject to the requirements of this Agreement and the HOME program regulations.
  - b. The \$282,000.00 HOME loan funds shall be maintained in a separate and independent account restricted to the purpose of site preparation and construction cost of a single family home.

\* Pending approval from the State of Florida.

In accordance with the terms and conditions of this Agreement, reimbursement will be based on performance and approval of eligible project expenses incurred for the Project Activity.

LES agrees to submit to the City documentation that verifies the home purchasers meet the HOME eligibility requirements before the signing of the purchase and sale contract.

The process for requesting contract reimbursement is as follows:

Draw 1 - 25% of the total construction contract amount is eligible to be drawn at completion of Soil Testing, Environmental Remediation, Architectural Design, and securing of permits.

Draw 2 - 25% of the total construction contract amount can be drawn at completion of Fillwork/Earthwork, Foundation Slab for twelve (12) townhomes.

Draw 3 - 25% of the total construction contract amount can be drawn at the completion rough framing, rough electrical, plumbing and HVAC for twelve (12) townhomes.

Draw 4 - 15% of the total construction contract amount can be drawn at the completion of drywall installation, insulation, painting, flooring and concrete finish work for twelve (12) townhomes.

Draw 5 - 10% Retainage held until issuance of Certificate of Completion for twelve (12) townhomes.

LES agrees to aid in the dissemination of information and promotional materials relative to City of Hollywood initiatives. This includes, but is not limited, to making available information and promotional materials relative to City of Hollywood initiatives in LES offices and/or project sites. In addition, LES shall provide a complete mailing list of clientele with the exception of the clients where confidentiality is mandatory. LES shall provide such information in a form sufficient so that the City may direct-mail information and promotional materials. LES shall make available staff that can provide referral services complete with appropriate contact person for City of Hollywood initiatives.

**EXHIBIT “C”**  
**PROGRAM PERFORMANCE REPORT**

Beginning the first day of the fourth program month (December) of the fiscal year and each month thereafter, L.E.S., Inc., will submit program performance reports to the Community Development Division. The report shall explain any problems encountered with the project's implementation, the selection policy statement including any preferences for individuals with special needs, clearly indicate the names and address of those individuals who are homeowners of the townhomes located at Crispus Commons 170-49 B Parcel A ( Folio – 514204180080) of the Public Records of Broward County, Florida. (the Project Activity).

The performance report shall include but not be limited to the following:

I. Beneficiary Information:

- a) Client last name
- b) Household size
- c) Hispanic or Latino
- d) Race
- e) Type Client (i.e.) single/not elderly/single parent/two parents, etc.
- f) Household Income (as a percentage of Area Median income)

**EXHIBIT "D"**  
**Timetable/Schedule for Project**

<b>Work Task</b>	<b>Completion Date</b>
<b>Site Preparation</b>	1/15/2018
<b>Start Construction</b>	2/15/2018
<b>Obtain Final Inspection on twelve (12) townhouse units</b>	12/30/2018
<b>Close on first of twelve (12) townhomes</b>	1/30/2019
<b>Close on Final Townhome</b>	3/30/2019



**EXHIBIT "E"**  
**DECLARATION OF RESTRICTIONS**

WHEN RECORDED MAIL TO:

CITY OF HOLLYWOOD  
Community Development Division  
Department of Development Services  
2600 Hollywood Boulevard, Room #203  
Hollywood, FL 33020

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS ("Declaration"), is executed as of this \_\_\_\_\_, by BORROWER(S) FULL NAME ("DECLARANT"), or assignees, in favor of the CITY OF HOLLYWOOD, acting by and through its Community Development Division of the Department of Development Services ("CITY").

WHEREAS, DECLARANT is the owner of the real estate in the County of Broward, State of Florida, consisting of PCN FOLIO NUMBER, which is more particularly described in Exhibit "A", attached hereto and made a part hereof (the "Property"); and

WHEREAS, pursuant to a certain HOLLYWOOD HOME PROGRAM AGREEMENT dated \_\_\_\_\_, incorporated herein, ("HOME Agreement"), and instruments referenced therein, DECLARANT agrees to utilize, and the CITY agrees to provide, certain HOME Funds from the United States Department of Housing and Urban Development, to DECLARANT for certain affordable housing (the "Project"), upon the Property to be sold and maintained as affordable to low, moderate or middle-income families, subject to the terms and conditions set forth in the HOME Agreement; and

WHEREAS, the HOME regulations promulgated by HUD, and the HOME Agreement impose certain affordability requirements upon property benefited thereby, which affordability restrictions shall be enforceable by "recapture terms" as they appear in 24 CFR 92.254(a)(4)(ii), incorporated herein by reference; and

WHEREAS, these restrictions are intended to bind all purchasers and their successors.

NOW, THEREFORE, DECLARANT declares that the Project home upon the Property is held, and will be held, transferred, encumbered, used, sold, conveyed and

occupied, subject to the covenants, restrictions, and limitations set forth in this Declaration, all of which are declared and agreed to be in furtherance of the plan for the construction, sale and occupancy of the home upon the Property. All of the restrictions, covenants and limitations will run with the land and will be binding on all parties having or acquiring any right, title or interest in the Project home upon the Property, or any part thereof, will inure to the benefit of the future Owners of the home or any part thereof, the United States and the CITY, and will be enforceable by any of them. Any purchaser under a contract of sale covering any right, title or interest in any part of the Project Home upon the Property, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all restrictions, covenant, and limitations set forth in this Declaration for the period of thirty (15) years constituting the Affordability Period.

**Period of Affordability:** The HOME Program requires the City to set periods of affordability as provided HOME regulations. The minimum period of affordability is described in a graduated scale based on level of assistance at 24 CFR 92.254 (a)(4), and terminating events are described in 24 CFR 92.254 (5)(i)(A) both of which, are incorporated herein by reference, without limitation.

1. Declarations. Declaring hereby declares that the home upon the Property is, and shall be, subject to the covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of the Project and the HOME Agreement, and are established and agreed upon for the purpose of enhancing and protecting the value of the Project Property and in consideration for CITY entering into the HOME agreement with DECLARANT/assignees. All terms not otherwise defined herein shall have the meaning ascribed to such term in the HOME Agreement.

2. Restrictions. The following covenants and restrictions on the use and enjoyment of the Project home upon the Property shall be in addition to any other covenants and restrictions affecting the Project Property, and all such covenants and restrictions are for the benefit and protection of CITY, and shall run with the home upon the Property and inure to the benefit of and be enforceable by CITY. These covenants and restrictions are as follows:

a. DECLARANT, agree(s) that the Project Property shall be used as a Principal Residence.

b. Recapture Requirements. Should the Project Property not continue to be the principal residence of the family purchasing the Property/home as affordable housing then the entire financial assistance provided by the CITY and allocated to the Property/home, including all HOME Program Funding assistance, shall immediately come due and must be repaid to/recaptured by the CITY's HOME Program Trust Fund and thereupon the balance of the affordability restrictions shall be released. Item (a) above is hereinafter referred to as the Covenant and Restrictions.

3. Enforcement of Restrictions. Without waiver or limitation, the CITY shall be entitled to injunctive or other equitable relief against any violation, or attempted violation, of any Covenant and Restriction, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof.

4. Benefit. This Declaration shall run with and bind the Project Property for a term commencing on the date of this Declaration, as recorded in the Office of the Clerk of Courts, Broward County, State of Florida, and expiring upon the expiration of the Affordability Period. The failure or delay at any time of CITY or any other person entitled to enforce this Declaration shall, in no event, be deemed a waiver of the same, or of the right to enforce the same at any time or from time to time thereafter, or an estoppel against the enforcement thereof.

5. Costs and Attorney's Fees. In any proceeding arising because of failure of DECLARANT or any future owner of the Project homes upon the Property to comply with the Covenant and Restrictions required by this Declaration, as may be amended from time to time, CITY shall be entitled to recover its costs and reasonable attorney's fees incurred in connection with such default or failure.

6. Waiver. DECLARANT may not exempt itself from liability for failure to comply with the Covenant and Restrictions required in this Declaration.

7. Severability. The invalidity of the Covenant and Restrictions or any other covenant, restriction, condition, limitation or other provision of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration and each shall be enforceable to the greatest extent permitted by law.

8. Pronouns. Any reference to the masculine, feminine, or neuter gender herein shall, unless the context clearly requires the contrary, be deemed to refer to and include all genders. Words in the singular shall include and refer to the plural, and vice-versa, as appropriate.

9. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs, and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

10. Amendment. No amendment or modification of this Declaration shall be permitted without the prior written consent of the CITY.

11. Recordation. DECLARANT acknowledges that this Declaration will be filed of record in the Office of the Clerk of Courts, of Broward County, Florida.

12. Capitalized Terms. All capitalized terms used in this Declaration, unless otherwise defined herein, shall have the meanings assigned to such terms in that certain HOME Agreement by and between DECLARANT and CITY, of even date.

13. Headings. The headings of the articles, sections, and paragraphs used in this Agreement are for convenience only and shall not be read or construed to affect the meaning or construction of any provision.

IN WITNESS WHEREOF, DECLARANT has executed this Declaration of Restrictions on the date first written above.

DECLARANT

BY: \_\_\_\_\_  
BORROWER(S) FULL NAME

DATE: CURRENT DATE

BY: \_\_\_\_\_  
BORROWER(S) FULL NAME

DATE: CURRENT DATE