City of Las Vegas

REAL ESTATE COMMITTEE MEETING
CITY HALL, 400 EAST STEWART
8TH FLOOR CONFERENCE ROOM
MONDAY, MARCH 1, 1999
3:00 P.M.

REAL ESTATE COMMITTEE - COUNCILMEN ADAMSEN AND REESE

CALL TO ORDER.

ANNOUNCEMENT RE: COMPLIANCE WITH OPEN MEETING LAW

MINUTES· Approval of the Minutes of the Regular meeting of February 16, 1999.

NEW BUSINESS.

1. **ABEYANCE ITEM** - Discussion and possible action to approve a revocable rights-of-way agreement to Level 3 Communications, LLC for placement of fiber optic and related equipment in certain parts of the City

2. Discussion and possible action to approve a new program and boilerplate management agreement for the Incubator Without Walls program

3. Discussion and possible approval of a sales agreement between the City of Las Vegas and Bob and Jean Kochever to purchase the Bel Aire Apartment Complex (situated at 4124-4172 Pennwood, 4123-4171 Silver Dollar, and 4055-4167 Tara Avenue)

4. Discussion and possible approval of a lease agreement between the City of Las Vegas and Bel Aire for office space located in the Bel Aire Apartment Complex (situated at 4124-4172 Pennwood, 4123-4171 Silver Dollar, and 4055-4167 Tara Avenue)

5. Discussion and possible approval of lease addendum #2 for the lease agreement on a building located at 731 South Fourth Street

6 Discussion and possible approval of an agreement for the purchase of real property, parcel #138-14-402-001, located in the vicinity of Torrey Pines Drive and Smoke Ranch Road, for future construction of a Fire Station

CITIZENS PARTICIPATION

ITEMS RAISED UNDER THIS PORTION OF THE AGENDA CANNOT BE DELIBERATED OR ACTED UPON UNTIL THE NOTICE PROVISIONS OF THE OPEN MEETING LAW HAVE BEEN MET. IF YOU WISH TO SPEAK ON A MATTER NOT LISTED ON THE AGENDA, PLEASE CLEARLY STATE YOUR NAME AND ADDRESS. IN CONSIDERATION OF OTHERS, AVOID REPETITION, AND LIMIT YOUR COMMENTS TO NO MORE THAN THREE (3) MINUTES. TO ENSURE ALL PERSONS EQUAL OPPORTUNITY TO SPEAK, EACH SUBJECT MATTER WILL BE LIMITED TO TEN (10) MINUTES.

THIS MEETING HAS BEEN PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS:
Downtown Transportation Center, City Clerk's Board
Senior Citizens Center, 45 0 E. Bonanza
Clark County Government Center, 500 S. Grand Central Parkway
Court Clerk's Office Bulletin Board, City Hall Plaza
City Hall Plaza, Special Outside Posting Bulletin Board

223

AFFIDAVIT OF MAILING

(Mailing required under the provisions of NRS Chapter 241)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

Eva Cotton, an employee of the City of Las Vegas, Nevada being first duly sworn, deposes and says that on the **23rd** day of **February 1999,** a copy of NOTICE, the attached of which is a true and correct copy of the Public Hearing - re **Real Estate Committee Meeting** to be held on the **1st** day of **March, 1999,** was deposited in the United States Mail, Postage prepaid, First Class Mail, to each person and/or organization whose name appears on the list maintained in the Office of the City Clerk.

SIGNATURE

City Clerk
DEPARTMENT

Subscribed and sworn to before me
this 23rd day of February, 1999.

NOTARY PUBLIC in and for
said County and State

Notary Public - State of Nevada
COUNTY OF CLARK
BEVERLY K BRIDGES
My Appointment Expires July 25 2001
No 93-4081-1

AFFIDAVIT OF POSTING

(Posting required under the provisions of NRS Chapter 241)

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

Eva Cotton, an employee of the City of Las Vegas, Nevada being first duly sworn, depose and say that on the **24th day of February 1999**, at the hour of **8:00 A.M.,** there were posted copies of a NOTICE, the attached of which is a true and correct copy of a **Real Estate Committee Meeting** to be held on the **1st day of March, 1999, at 3:00 P.M. in City Hall, 8th Floor Conference Room, 400 E. Stewart Avenue, Las Vegas, Nevada;** to be posted on Public Bulletin Boards at the following locations:

1. ek On the City Clerk's Bulletin Board at the Downtown Transportation Center;
2. ek Senior Citizens Center, 450 E. Bonanza Road;
3. ek On the Special Bulletin Board at the Plaza Level of City Hall, 400 E. Stewart Avenue (near the entrance to the Court Clerk's Office);
4. ek On the Special Bulletin Board at the Plaza Level of City Hall, 400 E. Stewart Avenue (in the walkway area between Metro and Municipal Court)
5. ek Clark County Government Center, 500 S Grand Central Parkway (sent by fax to the County Manager's Office for posting)

[signature]
SIGNATURE

City Clerk
DEPARTMENT

Subscribed and sworn to before me
this 24th day of February, 1999.

Beverly K. Bridges
NOTARY PUBLIC in and for said County and State

ANNOTATED MINUTES
REAL ESTATE COMMITTEE MEETING
CITY HALL, 400 EAST STEWART AVENUE
8TH FLOOR CONFERENCE ROOM
3:00 P.M.
MARCH 1, 1999

CALL TO ORDER: Councilman Reese called the meeting to order at 3 08 p m

EXCUSED: Councilman Adamsen

ATTENDANCE:
Arnie Adamsen, City Councilman
Ann Holland, Deputy City Manager
Terri Ponticello, Deputy City Attorney
David Roark, Manager, Real Estate & Asset Management (arrived at 3·04 P M)
Charlie Kajkowski, City Planning Engineer
Peggy Proestos, Sr Development Project Officer

MINUTES:

The Minutes of the Regular meeting of February 16, 1999, were approved by reference

(3 03)
1-7

1. DISCUSSION AND POSSIBLE APPROVAL OF A REVOCABLE RIGHTS-OF-WAY AGREEMENT TO LEVEL 3 COMMUNICATIONS, LLC FOR PLACEMENT OF FIBER OPTIC AND RELATED EQUIPMENT IN CERTAIN PARTS OF THE CITY

Charles Kajkowski, Public Works, advised that Mr. Roark is requesting that the matter be held to the Real Estate Committee meeting of 3/15/99

There was no further discussion

Councilman Reese directed that Item 1 be held in abeyance to the 3/15/99 Real Estate Committee meeting.

(3 03)
1-9

2 DISCUSSION AND POSSIBLE ACTION TO APPROVE A NEW PROGRAM AND BIOLERPLATE MANAGEMENT AGREEMENT FOR THE INCUBATOR WITHOUT WALLS PROGRAM.

Peggy Proestos, Neighborhood Services, outlined the success of the incubator program which has been full since opening This program is in response to people seeking help to improve their business skills and interact within a professional environment to meet people while operating their businesses from their homes The boilerplate management agreement would be a standardized agreement which could be signed by the Director of Neighborhood Services rather than appear before Council. The form agreement approved by Deputy City Attorney Ponticello would simply have the applicant's name inserted Deputy City Attorney Ponticello added that the amount involved with the program is very nominal and should not require being taken before the Real Estate Committee This can be handled administratively

No one appeared to speak on the matter.

There was no further discussion.

Councilman Reese recommended that Item 2 be forwarded to the Full Council with a "Do Pass" recommendation.

(3:04)
1-34

3 DISCUSSION AND POSSIBLE APPROVAL OF A SALES AGREEMENT BETWEEN THE CITY OF LAS VEGAS AND BOB AND JEAN KOCHEVER TO PURCHASE THE BEL AIRE APARTMENT COMPLEX (SITUATED AT 4124-4172 PENNWOOD, 4123-4171 SILVER DOLLAR, AND 4055-4167 TARA AVENUE)

Mr Roark stated that the subject agreement has been completed and requested authorization to go forward with the sale of the property Councilman Reese indicated that the Kochevers are the best buyers for the property and should generating the greatest possible revenue Deputy City Attorney Ponticello interjected that the item should use Mr Kochever's proper name, Robert E , rather than Bob

Councilman Reese expressed his appreciation to Mr. Roark for negotiating efforts

No one appeared to speak on the matter

There was no further discussion

Councilman Reese recommended that Item 3 be forwarded to the Full Council with a "Do Pass" recommendation.

(3 05)
1-95

4. DISCUSSION AND POSSIBLE APPROVAL OF A LEASE AGREEMENT BETWEEN THE CITY OF LAS VEGAS AND BEL AIRE FOR OFFICE SPACE LOCATED IN THE BEL AIRE APARTMENT COMPLEX (SITUATED AT 4124-4172 PENNWOOD, 4123-4171 SILVER DOLLAR, AND 4055-4167 TARA AVENUE)

Mr Roark advised that the City currently leases office space for Neighborhood Services for $750 per month at this location. The renegotiated five-year lease is with the potential buyers of the property and in conjunction with the sale agreement and contains a five-year option. The renegotiated rate is $500 per month with the City continuing to pay the electric and gas bills. This will save approximately $3,000 per year. Deputy City Manager Houchens explained that the City has had an office located in the property since it was purchased He recommended approval.

No one appeared to speak on the matter

There was no further discussion

Councilman Reese recommended that Item 4 be forwarded to the Full Council with a "Do Pass" recommendation.

(3.08 - 3.09/3 17)
1-148/1-418

5. DISCUSSION AND POSSIBLE APPROVAL OF LEASE ADDENDUM #2 FOR THE LEASE AGREEMENT ON A BUILDING LOCATED AT 731 SOUTH FOURTH STREET

Mr. Roark indicated that staff has been negotiating with the owners of the leased building. The current lease is in the first five-year option The original lease agreement grants the landlord vacation of the alleyway in exchange for which the Department of Public Works receives rights-of-ways for public ingress/egress along the south property line That vacation was approved by the Planning Commission and City Council. However, the vacation became void when it was not recorded within one year. This amendment to the contract renews the vacation provision In addition, the term of the lease has been renegotiated Previously, the five-year lease included a five-year option with an escalator up to 4%. This is will limit our payment over the term of the contract to 1.5% By November 2006, the City will be paying a $1.13 per square foot versus under the existing contract, the City would be paying $1 40 to $1 50 Those savings could reach as high as $370,000 over the term of the lease. This would offset the $350,000 penalty clause should be the City not exercise its renewal option

Councilman Reese asked whether the City has attempted to find other locations if it does not exercise the five-year option. Deputy City Manager Steve Houchens answered that the City will be building on its current campus in about seven years, coinciding with the termination of this lease. Therefore, the City would only exercise that option in the event of some significant event. The City was unsuccessful in having the penalty clause deleted during renegotiation In the event the City needed less square footage, the City would have the option to sublet the building as well Councilman Reese outlined past direction by the Council to bring City Hall back together and eliminate the satellite offices The Council has also directed staff to get the campus concept completed as soon as possible The money spent on refurbishing the building makes it almost mandatory to stay there to receive the full benefit of the expense Mr Roark fully concurred, adding that this amendment entirely deletes Paragraph 29, which contained ambiguous language resulting the previous court action That will remove any future challenge as experienced in the past. Staff's recommendation is that the amendment go forward with a Do Pass to Council

Dave Mason, 730 Limited, indicated that he was present to answer questions and pointed out that the amendment provides the City with a lot of gains and no losses Under this amendment, the penalty clause becomes moot Councilman Reese noted that it is good for the City and beneficial to those the Council represents when there can be a saves of $350,000

There was no further discussion

Councilman Reese recommended that Item 5 be forwarded to the Full Council with a "Do Pass" recommendation.

(3 09 - 3 17)
1-188

6 DISCUSSION AND POSSIBLE APPROVAL OF AN AGREEMENT FOR THE PURCHASE OF REAL PROPERTY, PARCEL #138-14-402-001, LOCATED IN THE VICINITY OF TORREY PINES DRIVE AND SMOKE RANCH ROAD, FOR FUTURE CONSTRUCTION OF A FIRE STATION

Mr Roark indicated that he has been working with the Fire Department for three to four months to locate possible sites for future fire stations There could be a fire bond issue next year and the Fire Department has identified six sites in that bond election that would need almost immediate construction The City has been able to acquire five of these site free through BLM leases Two locations, one Downtown and one in the Northwest along the border line between Wards 2 and 4, have not been located. This is a location identified by using an anonymous realtor because there is no BLM land to get free A contract has been entered into with the realtor without jeopardy since the City does not have to pay anything and can terminate the contract for any reason whatsoever within 90 days The asking price is $770,000 for approximately 3 8 acres located off of US 95 and Rainbow, providing excellent access to the highway The Fire Department identified this location in a future commercial area as the most appropriate of 14 sites

Councilman Reese discussed available funding from interest earnings within the fire bond for the purchase with Mr Roark and Deputy City Attorney Steve Houchens Mr Roark added that the intent is for repayment if there is a future fire bond and that will be calculated into that reserve It is believed that this is the best deal possible and will be subject to the City getting an appraisal in the event the Council approves this request If the Council does not approve this request, the contract will be canceled Councilman Reese questioned whether purchasing the property prior to the fire bond issue would be premature and the priority of the sixth site given that the City has five sites now Mr Roark explained that this location is second on the priority list The number one priority is the Downtown location, which will also have to be purchased The further out in the Northwest, the lower the priority Councilman Reese emphasized that this would be one of the first stations to be built and that this is the best property for the purpose Mr Roark stated that his recommendation would be for purchase of the property subject to an appraisal He added that the seller, and not the City, will pay the commission

There was no further discussion

Councilman Reese recommended that Item 6 be forwarded to the Full Council with a "Do Pass" recommendation.

(3 18 - 3 23)
1-458

CITIZENS PARTICIPATION:

None

(3 23)
1-279

ADJOURNMENT:

The meeting adjourned at 3 23 p m

/ac

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:

COUNCILMAN ARNIE ADAMSEN
COUNCILMAN GARY REESE
REAL ESTATE COMMITTEE

FROM:

DAVID ROARK, MANAGER
REAL ESTATE & ASSET MGMT. DIVISION

SUBJECT:

March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible action to approve a revocable rights-of-way agreement to Level 3 Communications, LLC for placement of fiber optic and related equipment in certain parts of the City.

COPIES TO:

MAYOR JAN LAVERTY JONES
COUNCILMAN MICHAEL J. MCDONALD
COUNCILMAN LARRY BROWN
VIRGINIA VALENTINE
STEVEN P HOUCHENS
ANN HOLLAND
WILLIE COOK

BACKGROUND:

Level 3 is laying fiber optic cable and installing some equipment throughout the valley area for rental to other telecommunication companies. Since they are not selling to an "end-user", it does not fall within the scope of an actual franchise agreement. However, in order to use our right-of-way, they must have an agreement in place with the City, and pay the City for such use

They will be paying the city per linear foot of usage per this agreement, providing a $250,000 bond and also providing $1,000,000 in insurance coverage, and indemnifying the City from suit

Approximate linear footage is 410

FISCAL IMPACT:

Approximately $500 per year.

In addition, Public Works can invoice the company for any and all expenses relating to repair of our rights-of-way.

STAFF RECOMMENDATION

The Real Estate & Asset Management Division recommends approval of this revocable rights-of-way agreement

030199relevel3

CITY OF LAS VEGAS, NEVADA
REVOCABLE RIGHTS-OF-WAY AGREEMENT
GRANTED TO
LEVEL 3 COMMUNICATIONS

THIS RIGHTS-OF-WAY AGREEMENT (hereafter called "Agreement") is entered into this ___________________, 1999, by and between the City of Las Vegas, a municipal corporation of the State of Nevada, (hereafter called "City"), and Level 3 Communications, LLC (hereafter called "Company"), a Delaware Limited Liability Company authorized to do business in the State of Nevada.

WITNESSETH:

WHEREAS, the Company, organized and existing under and by virtue of the laws of the State of Delaware, has applied to the City for permission to construct, maintain and operate fiber optic network facilities within the City's rights-of-way to provide non-subscription service (no sales to local users);

WHEREAS, the City is prepared to grant a revocable, non-exclusive right and privilege to construct, maintain and operate such facilities in certain specified streets within the City of Las Vegas; and

WHEREAS, the Company hereby attests that the Company's order granting it a Certificate of Public Convenience and Necessity from the Nevada Public Utilities Commission is labeled as Exhibit A and made a part hereof, is true and correct;

NOW, THEREFORE, in consideration of the premises and of the performance by the Company of the requirements hereinafter set forth, and subject to the following terms and conditions, the City hereby grants to the Company this Revocable Rights-of-Way Agreement, and the parties agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS. For the purpose of this Agreement, the following definitions shall apply:

(A) "Abandoned" means the automatic relinquishing of facilities to the City that occurs when any company no longer has a business license, or franchise or rights-of-way agreement, or certificate of public convenience and necessity from the Public Utilities Commission if required by the laws of the State of Nevada, or of a facility which the public utility or cable service provider has agreed to transfer to the City of Las Vegas.

(B) "Applicant" means the person who submits the completed application for a franchise or rights-of-way agreement.

(C) "Application" means all written documentation, statements, representations and warranties provided to the City, by a prospective franchisee or rights-of-way applicant, which the City is entitled to rely upon in making its determination of whether to grant or withhold a franchise or rights-of-way agreement.

(D) "Business License" means the written authorization required by the City for any person who commences, carries on, engages in, or conducts a business, occupation, trade, or employment within the City as delineated in Title 6 of the Las Vegas Municipal Code.

(E) "Manager of Real Estate and Asset Management" means the manager of the Real Estate and Asset Management Office of the City appointed by the City Manager or his/her designee.

(F) "Facility" or "Facilities" means antennae, transmitters, poles, wires, cables, conduits, amplifiers, instruments, equipment, and other appliances used in connection therewith or appurtenant thereto.

(G) "Franchise Agreement" means an agreement granting use of public rights-of way to provide Subscription Services to local Nevada consumers.

(H) "Franchisee" means the person to whom a franchise is granted, and its agents, including but not limited to contractors licensed by the State Contractors Board and providing construction, installation, or maintenance services on behalf of a franchisee on facilities located in rights-of-way.

(I) "Person" means a natural person, any form of business or social organization and any other non-governmental legal entity, including but not limited to the estate of a natural person, a corporation, partnership, association, trust, or unincorporated organization. The term "Person" does not include a government, governmental agency, or political subdivision of a government.

(J) "Public Improvement" means new roadways and pavements, sidewalks, curbs and gutters, landscaping, street lights, foundations, poles and traffic signal conduits, water mains, sanitary and storm sewers, tunnels, subways, people movers, viaducts, bridges, underpasses, and overpasses, or other public facilities across, along, over or under any street or streets, or other such improvements which are to be used by the general public.

(K) "Public Utilities Commission" means the Public Utilities Commission of the State of Nevada, and its predecessors and successors.

(L) "Right-of-Way" or "Rights-of-Way" means public property including air space dedicated to, granted to, or held or prescriptively used by the City for public purposes.

(M)"Rights-of-Way Agreement" means the non-exclusive authorization granted by the City in exchange for a rental fee to a company to construct, operate, and maintain its system in specific streets and rights-of-way as authorized routes for non-subscription service. The conditions and requirements of such authonzation will be described within a Rights-of-Way Agreement for such purpose.

(N) "Street" means the surface, the air space above the surface and the area below the surface of the full width of the right-of-way, including sidewalks and thoroughfares, places or ways of any kind by the public or open to the public as a matter of right for the purpose of vehicular traffic or vehicular and pedestrian traffic.

(O) "Transfer or Assign" shall not include any mortgage, pledge, or other encumbrance of the assets, stocks, or the franchise or rights-of-way agreement of the franchisee or right-of-way agreement as secunty for moneys borrowed.

2. AGREEMENT DURATION, CONDITIONS AND EXTENSION

(A) This Rights-of-Way Agreement shall be non-exclusive and revocable on the terms contained herein at the reasonable discretion of the City, and unless sooner revoked shall be in force and effect from the date first written above until one year thereafter, and unless sooner revoked automatically renew each year thereafter for one year periods, up to a total of ten (10) years.

(B) This Agreement shall not be deemed to transfer any real property interest of the City in and to said described public right-of-way. The rights that are granted herein are in the nature of a permit only and are subject to termination by the City as provided for herein.

(C) This Agreement does not authorize any use of said described public right-of-way, or the airspace thereabove, other than for the construction and maintenance of the facilities that are authorized to be constructed therein, as the same are identified in "facilities" herein.

(D) All provisions of this Rights-of-Way_Agreement shall be binding upon the Company, its successors, or assignees. In the event of any conflict between any provisions in the City of Las Vegas Municipal Code, as amended from time to time, and any provisions of this Rights-of-Way Agreement, the Code provision shall control; provided that, however, Company shall be entitled to terminate this Rights-of-Way Agreement in the event the amended Code materially affects the Company's rights or obligations hereunder.

(E) The Company shall not permit use by other persons of its facilities located in rights-of-way, including but not limited to the use by other persons who are required to obtain a business license, Franchise or Rights-of-Way Agreement from the City for such use, unless and until the other persons obtain such agreements or franchises. The Company shall not permit another person to install its own facilities in, on, along, above or below the Company's facilities unless and until the other persons obtain such agreements or franchises from the City.

(F) The Company is hereby licensed, during the term of this Agreement, to install, operate and maintain its facilities in the specific rights-of-way identified in the map attached hereto, labeled Exhibit C and made a part of this Agreement by reference. Prior to the effective date of this License Agreement, the Company shall provide the City with the location of the facilities the Company will install in City rights-of-way during the first 12-month period of this Agreement, which shall be incorporated in Exhibit C.

(G) The Company at its own cost and expense, shall maintain the facilities and the rights-of-way area used for such facilities in good repair and in a clean, good and safe condition at all times during the existence of this Agreement. In the event that the Company fails or refuses to maintain the facilities and rights-of-way in a manner that is satisfactory to the City and further fails or refuses to take corrective action within fifteen (15) calendar days after its receipt of written notice from the City to do so, the City, at its option, may perform or cause to be performed such repair or maintenance that it may deem necessary, and the Company shall pay the cost thereof to the City upon demand. The failure of the Company to pay the cost thereof within thirty (30) calendar days after its receipt of a written demand or invoice thereof from the City shall constitute a material breach of this Agreement.

(H) Following approval of this Agreement by the Las Vegas City Council, the Company may apply to expand its agreement to include additional rights-of-way by submitting in writing to the Manager of Real Estate and Asset Management a request to amend the Rights-of-Way Agreement. Such a request shall include a proposed amendment to the map labeled as Exhibit C, identifying rights-of-way approved in this Rights-of-Way Agreement and the expanded rights-of-way being requested. The Manager of Real Estate and Asset Management may approve a request for expansion of the agreement based on rights-of-way availability, street cut limitations, and public improvements planned in the rights-of-ways requested, if approved by the City's Department of Public Works. The company shall pay a pro-rated annual rental fee in advance for such additional proposed use of rights-of-way as described in Section 4 herein.

(I) The Company acknowledges that the Rights-of-Way Agreement is for installation of facilities in rights-of-way only, and that installation in, on, along, above or below other City property may be permitted only through separate agreement and payment of rental fees.

(J) In the event that the Company receives a franchise granted by the City to construct, maintain and operate its facilities in the rights-of-way of the City, the provisions of this Rights-of-Way Agreement shall be superseded by the terms and conditions of the franchise so granted.

3. COMPANY'S COMPLIANCE WITH LAWS AND REGULATIONS

The Company further agrees that, during the existence of this Agreement, the construction, maintenance and use of the facilities, and the use of the airspace that may be occupied thereby, shall conform in every respect to all current and subsequently enacted building and related statutes, ordinances, codes, orders, resolutions, rules and regulations. A list of Officers and Director for Company is attached hereto labeled as Exhibit B.

4. RIGHTS-OF-WAY PAYMENTS AND FEES

Upon execution of this Agreement and before any action to install the facilities, the Company shall pay to the City an annual rental fee of $1.25 for each linear foot of rights-of-way in, on, along, above or below which the Company has applied to install its facilities as set forth in Exhibit C. The annual rental fee shall be subject to annual adjustment based on a 12-month average of the All Urban Consumer Price Index (CPI-U) for the prior 12-month period being reported pursuant to Section 5 of this Agreement. It is agreed that pursuant to Exhibit C, the initial rental fee for the first year of this Agreement without further additions to the rights-of-way set forth in Exhibit C, is FIVE HUNDRED AND TWELVE DOLLARS AND FIFTY CENTS ($512.50), payable upon execution of this Agreement.

4.1 REPAIR EXPENSES INCURRED

During one (1) year after Company's installation of its facilities, the Company agrees to pay to the City any and all actual reasonable expenses incurred by the City to repair the intersections or streets affected by the Company's installations if the repair is a direct result of the Company's failure to perform its work in a workmanlike manner or in accordance with the City's specifications. The Department of Public Works shall advise the Real Estate and Asset Management Division of such cost so this amount may be invoiced. The Company agrees to remit payment to the City of Las Vegas within thirty (30) days of date of receipt of invoice.

5. RIGHTS-OF-WAY AGREEMENT REPORTING

Each year during the term of this Agreement, within thirty (30) days of the anniversary date of this Agreement, the Company shall submit a written report to the Manager of Real Estate and Asset Management which shall be deemed confidential, shall be maintained by the Manager of Real Estate and Asset Management in a confidential file, and shall be made available only to City officers and employees in the performance of their duties. In addition to any reporting requirements of the City of Las Vegas Municipal Code, the written report shall include the following information:

(A) The number of linear feet of City rights-of-way in, on, along, above or below which the Company has installed its facilities during the previous 12-month reporting period up to the anniversary date of this Agreement. The information shall include copies of any permits, maps and any other relevant information necessary to verify the number of linear feet claimed.

(B) A list of persons who used the Company's facilities in rights-of-way to provide subscription services during the previous 12-month reporting period.

(C) The location of facilities to be installed in authorized City rights-of-way, pursuant to Exhibit C, and any additions to Exhibit C during the next 12-month reporting period of the Agreement, of which the Company is aware at time of reporting.

Upon verification of the Company's report, the Manager of Real Estate and Asset Management shall issue an invoice to the Company for rental of rights-of-way in which the Company has installed its facilities and has been given permission to install facilities during the next year period at the rate per linear foot specified in Section 4. The rental fee shall be delivered to the Manager of Real Estate and Asset Management by the Company, and made payable to the City of Las Vegas, within thirty (30) days of date of receipt of invoice.

6. REVOCATION AND PENALTIES

(A) After providing notice and an opportunity for the Company to be heard and a reasonable opportunity to cure as specified in said notice, the City may impose fines or penalties upon the Company in the event it fails to cure any material breach of this Agreement or applicable provision of City of Las Vegas Municipal Code, in an amount deemed reasonably appropriate by the City, but not exceeding the amount of the security deposit established in Section 9 of this Agreement. Company may dispute any fine or penalty imposed by the City; provided that, however, Company shall notify the City in writing within thirty (30) days from the date it is notified in writing of the fine or penalty. In the event that Company disputes any fine or penalty imposed by the City pursuant to this section, the parties shall meet to discuss in good faith a possible settlement or resolution of the dispute. Any fine or penalty not disputed shall be due within thirty (30) days after receipt of written notification by City, made payable to the City of Las Vegas, and delivered to the City's Manager of Real Estate and Asset Management at the City's address indicated in Section13 of this Agreement. A late charge of five per cent (5%) of the non-disputed fine or penalty imposed shall be assessed if the fine or penalty is not paid within thirty (30) days of the written notification. If a non-disputed fine or penalty is not paid within thirty (30) days from the date of written notification, the Company hereby grants the City authorization to deduct the amount of the fine or penalty plus late charges, if any, from the security deposit provided for such purposes, pursuant to Section 9 of this Agreement and City of Las Vegas Municipal Code. If at any time the City has drawn upon such security deposit pursuant to this Section, the Company shall within thirty (30) days of notification from the Manager of Real Estate and Asset Management replenish such security deposit to the original minimum amount established in Section 9 of this Agreement.

(B) In addition to the grounds for revocation set forth in City of Las Municipal Code, this Agreement may be revoked if, after providing notice and an opportunity for the Company to be heard, and a reasonable opportunity to cure, the City finds that the Company failed to make payment of any non-disputed fine or penalty due under this Agreement or to comply with any other material provision of this Agreement.

(C) Additionally, the City may terminate this Agreement and order the removal of the facilities upon at least one hundred twenty (120) calendar days' written notice if the City reasonably determines, in the exercise of its duties and powers by the City, that the license that is provided for herein is inconsistent with any future need by the City for the unobstructed use of the right-of-way or for expansion thereof for public improvement projects.

(D) Any termination hereunder shall be effective on the date that is specified in the notice if termination. By or before the effective date of such termination, the Owner shall discontinue the use and if determined necessary by the City, commence removal of the facilities. The removal of the facilities shall be at the Company's expense and shall be completed in a manner satisfactory to the City, within 6 months after the Company's receipt of the notice of such termination.

(E) If the Company fails to remove the facilities in a satisfactory and timely manner, the City shall have the right to cause the removal thereof at the Company's expense. The Company shall pay the costs of such removal within thirty (30) calendar days after its receipt of written demand therefor from the City.

(F) Any termination of this Agreement shall not terminate the Company's obligation to the City pursuant to Sections 8 and 9 below, which shall remain in effect.

7. TRANSFERS AND ASSIGNMENTS

Transfer, assignment or assignment of control of this Rights-of-Way Agreement shall be subject to the express written approval of the City; provided that, however, Company shall be entitled to assign this Agreement to an affiliate which shall include any partnership, corporation, or other legal entity that controls, is controlled by, or under common control with Company by providing advance written notice to City.

8. INDEMNIFICATION

(A) The Company hereby agrees to protect, indemnify and hold the City, its officers, employees and agents, harmless from and against any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, awards, attorneys' fees and court costs which the City, its officers, employees or agents, may suffer or which may be sought against, or are recovered or obtainable from the City, its officers, employees or agents, as a result of, or by reason of, or arising out of or in consequence of any act or omission, negligent or otherwise, of the Company or its employees, contractors, subcontractors, agents or anyone who is directly or indirectly employed by, or is acting in concert with, the Company, its employees, contractors, subcontractors or agents in the performance of this Agreement.

(B) In connection with Section 8(A), the Company expressly agrees, at its sole cost and expense, to defend the City, its officers. employees and agents, in any suit or action that may be brought against it or them, or any of them, by reason of any act or omission, negligent or otherwise of the Company, against which the Company has agreed to indemnify the City, its officers, employees and agents. If the Company fails so to do, the City shall have the right, but not the obligation to defend same and to charge all of the direct and incidental costs of such defense, including attorneys' fees and court costs, to the Company.

9. INSURANCE AND SECURITY FOR PERFORMANCE

(A) The Company shall, at its sole cost and expense, obtain and maintain bodily injury liability insurance with respect to the construction, maintenance and use of the facilities in the City's rights-of-way and any and all improvements thereon in the amount of One Million and No/100ths Dollars ($1,000,000.00) for the injury to or the death of any one person, and Three Million and No/100ths Dollars ($3,000,000.00) for injuries to or the death of any number of persons in one occurrence, and property damage liability insurance in the amount of One Million and No/100ths Dollars ($1,000,000.00) which coverages shall be maintained throughout the existence of this Agreement. As a condition to this Rights-of-Way Agreement continuing in force and effect, the Company shall submit to the City a certificate of insurance which evidences the above-required coverages and names the City as an additional insured party. The policies with respect to such insurance coverage's shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for the Company and the City. The insurance coverage shall be with an insurance carrier which is licensed to do business within the State of Nevada and which is acceptable to the City. All policies of insurance, or certificates of insurance which evidence the insurance coverage's required hereby, shall contain a provision that the same shall not be canceled or modified in any material effect unless and until thirty (30) days written notice of such cancellations or modification has been provided to the City.

(B) The Company shall provide to the Manager of Real Estate and Asset Management security for performance of this Agreement a performance bond in the amount of two hundred fifty thousand dollars ($250,000.00). Licensee hereby grants the City authorization to deduct and to retain from such performance bond, late rental fees, together with assessed fines, or penalties and late charges, if any, pursuant to Section 6 of this Agreement. The amount of this performance bond shall be reduced to fifty thousand dollars ($50,000.00) one (1) year after the execution of this Rights-of-Way License Agreement; provided that, however, all construction by Company has been completed within that one (1) year period, to City's specifications.

10. RIGHTS RESERVED TO CITY

The City does hereby expressly reserve its rights, powers, and authorities pursuant to City of Las Vegas Municipal Code and as it may be amended. Subject to Section 2(D) of this Agreement, the City expressly reserves the right to amend this Rights-of-Way Agreement by amendment to the City of Las Vegas Municipal Code to the maximum extent permitted by law.

11. SEVERABILITY

If any provision, section, paragraph, sentence, clause, or phrase of this Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Agreement. It is the intent of the City in approving this Agreement that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision, and to this end all provisions of this Agreement are declared to be severable.

12. GIFTS

No officer or employee of the Company shall offer to any officer or employee of the City, either directly or indirectly, any rebate, contribution, gift, money, service without charge, or other thing of value whatsoever, except where given to and for the use and benefit of the City.

13. NOTICE

All notices shall be sent to the City or the Company at the addresses indicated below. The Company shall notify the City's Manager of Real Estate and Asset Management of any change of address within ten (10) working days of such occurrence. Failure to provide notification, and any resulting delay in receipt of notice, shall not excuse the Company from any obligation imposed by this Agreement, nor shall it serve as cause for reduction or removal of any restriction, fine or penalty imposed by the City.

CITY OF LAS VEGAS:
Real Estate and Asset
Management Division
314 Las Vegas Blvd. North
Las Vegas, NV 89101
(702) 229-6923

COMPANY:
Level 3 Communications, LLC
Director, Network Development
14023 Denver West Parkway, 1st Flr.
Golden, CO 80401
(303) 215-8500

Copy To:

City Attorney
400 E. Stewart Ave. 9th Floor
Las Vegas, NV 89101

Level 3 Communications, LLC
Attn.: General Counsel
3555 Farnam Street, Suite 200
Omaha, NE 68131

...
...
...

14. PARAGRAPH HEADINGS

The paragraph headings which appear herein are for convenience of reference only and shall not be construed as defining, limiting or extending the scope or intent of the paragraphs to which they pertain.

IN WITNESS WHEREOF the parties hereto have set their hands the day and year first above written.

This Agreement is hereby ratified and approved by the City of Las Vegas through the Las Vegas City Council this ______ day of ______________, 1999.

CITY OF LAS VEGAS

By______________________________
JAN LAVERTY JONES, MAYOR

ATTEST:

____
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

Thomas R. Green 2-8-99
By: DATE

LEVEL 3 COMMUNICATIONS, LLC

By______________________________
NAME/TITLE

ry\docs\agreements\1-99revisedlevel3
01/28/99 10 46 AM

EXHIBIT A

Certificate of Public Convenience and Necessity

• See Next 3 Pages •

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Application of LEVEL 3 COMMUNICATIONS, LLC for a Certificate of Public Convenience and Necessity to operate as a reseller of local and long distance telecommunications services within the State of Nevada.	)	Docket No. 98-9028

At a general session of the Public Utilities Commission of Nevada, held at its offices on October 29, 1998.

PRESENT: Chairman Judy M. Sheldrew
Commissioner Timothy Hay
Commissioner Lucy A. Stewart
Commission Secretary Jeanne Reynolds

ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law

1 On September 14. 1998. Level 3 Communications, LLC ("Applicant") filed an application designated as Docket No. 98-9028, with the Commission, seeking authority to provide competitive basic services and interexchange services within the State of Nevada.

2 This application comes within the purview of the Commission's jurisdiction pursuant to the provisions of NRS 704.330.

3 The Commission issued a public notice of this application in accordance with State law and the Commission's Rules of Practice and Procedure. No protests were filed pursuant to this public notice. In accordance with the provisions of NRS 704.370, the Commission may dispense with a hearing under these circumstances.

4. The Regulatory Operations Staff of the Commission ("Staff") has completed its review of this application. Staff recommends that the application be granted and that the

Applicant be issued a Certificate of Public Convenience and Necessity authorizing it to operate as a competitive provider of facilities-based and resold local and long distance telecommunications services within the State of Nevada.

5. Applicant possesses the necessary technical capability to provide the service it has proposed in its application.

6 It is in the public interest to grant this application and issue a Certificate of Public Convenience and Necessity to the Applicant.

Therefore, based upon the foregoing findings and conclusions, it is hereby ORDERED that:

1. The application of Level 3 Communications, LLC, designated as Docket No. 98-9028, is GRANTED.

2. The Commission Secretary is AUTHORIZED to issue to Level 3 Communications, LLC a Certificate of Public Convenience and Necessity authorizing it to operate as a competitive provider of facilities-based and resold local and long distance telecommunications services within the State of Nevada.

3. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order.

By the Commission,

Jeanne Reynolds

JEANNE REYNOLDS, Commission Secretary

Dated: Carson City, Nevada

11-12-98

(SEAL)

PUBLIC UTILITIES COMMISSION OF NEVADA PUC

PUBLIC UTILITIES COMMISSION OF NEVADA

ORDER

and

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

LEVEL 3 COMMUNICATIONS, LLC

CPC 2384
Docket No 98-9028

The Public Utilities Commission of Nevada finds that, pursuant to the Order which the Commission voted to issue on October 29 1998, LEVEL 3 COMMUNICATIONS, LLC is authorized to operate as a competitive provider of facilities-based and resold local and long distance telecommunications services within the State of Nevada.

IT IS ORDERED that LEVEL 3 COMMUNICATIONS, LLC is hereby granted this Certificate of Public Convenience and Necessity as evidence of its authority to operate as a competitive provider of facilities-based and resold local and long distance telecommunications services within the State of Nevada, subject to all applicable provisions of the Nevada Revised Statutes, all applicable rules, regulations and orders of the Commission, and such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privileges granted to the utility.

IT IS FURTHER ORDERED that as a condition of this Certificate, LEVEL 3 COMMUNICATIONS, LLC shall render reasonably continuous and adequate service to the public within its service area and in pursuance of the authority granted, that nothing contained herein shall be construed to create a franchise or to constitute the grant of an irrevocable Certificate, and that failure to comply with all applicable provisions of the Nevada Revised Statutes, all applicable rules, regulations and orders of the Commission, and any applicable terms, conditions and limitations attached to the granted privileges shall comprise sufficient grounds for the suspension or revocation of this Certificate

IT IS FURTHER ORDERED that this authority shall not be sold or transferred without the Commission's prior approval

IT IS FURTHER ORDERED that the Commission retain jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Certificate and Order.

By the Commission,

Judy M. Sheldrew

JUDY M SHELDREW, Chairman

Attest

Jeanne Reynolds

JEANNE REYNOLDS, Commission Secretary

Dated. Carson City, Nevada

11-10-98

(SEAL)

PUBLIC UTILITIES COMMISSION OF NEVADA PUC

EXHIBIT B

Officers and Directors

• See Next 2 Pages •

LEVEL 3 COMMUNICATIONS, INC.

Title	Name
Chairman	Walter Scott, Jr.
President and Chief Executive Officer	James Q. Crowe
Executive Vice President and Chief Financial Officer	R. Douglas Bradbury
Executive Vice President	Kevin O'Hara
Senior Vice President, General Counsel and Secretary	Terrence J Ferguson
Senior Vice President	Michael Frank
Senior Vice President	Joseph M. Howell, III
Senior Vice President	Ronald J Vidal
Vice President, Assistant General Counsel, and Assistant Secretary	Neil J Eckstein
Vice President	Steven L. George
Vice President and Assistant Secretary	Matthew J Johnson
Vice President	Robert J Ludvik
Vice President	Julie M. Stangl
Controller	Eric J Mortensen

Directors

R. Douglas Bradbury[1]
James Q Crowe[1]
Robert B. Daugherty
William L. Grewcock[2]
Charles M. Harper
Richard R. Jaros[3]
Robert E. Julian[2]
David C McCourt[2,3]
Walter Scott, Jr. (Chairman)[1]
Kenneth E. Stinson[1]

---

[1] Executive Committee Member

[2] Audit Committee Member

[3] Compensation Committee Member

LEVEL 3 COMMUNICATIONS, LLC

Name	Title
James Q Crowe	Chief Executive Officer (Omaha)
Kevin J. O'Hara	President and Chief Operating Officer (Louisville)
R Douglas Bradbury	Executive Vice President, Chief Financial Officer and Treasurer (Lousiville)
Colin V.K. Williams	Executive Vice President (London)
Thomas C. Stortz	Senior Vice President, General Counsel and Secretary (Omaha)
Terrence J Ferguson	Senior Vice President (Omaha)
Daniel Caruso	Senior Vice President (Louisville)
Michael Frank	Senior Vice President (Omaha)
Michael Jones	Senior Vice President (Louisville)
Mark L. Gershien	Senior Vice President (Louisville)
Thomas Sweeney	Senior Vice President, Marketing (Louisville)
Neil J Eckstein	Vice President, Assistant General Counsel and Assistant Secretary (Louisville)
Matthew J. Johnson	Vice President and Assistant Secretary (Omaha)
Mitchell Moore	Vice President (Louisville)
Eric J Moretensen	Controller (Westminster)
Brian Hedlund	Assistant (Westminster)

EXHIBIT C

Map of Route

• See Next 3 Pages •

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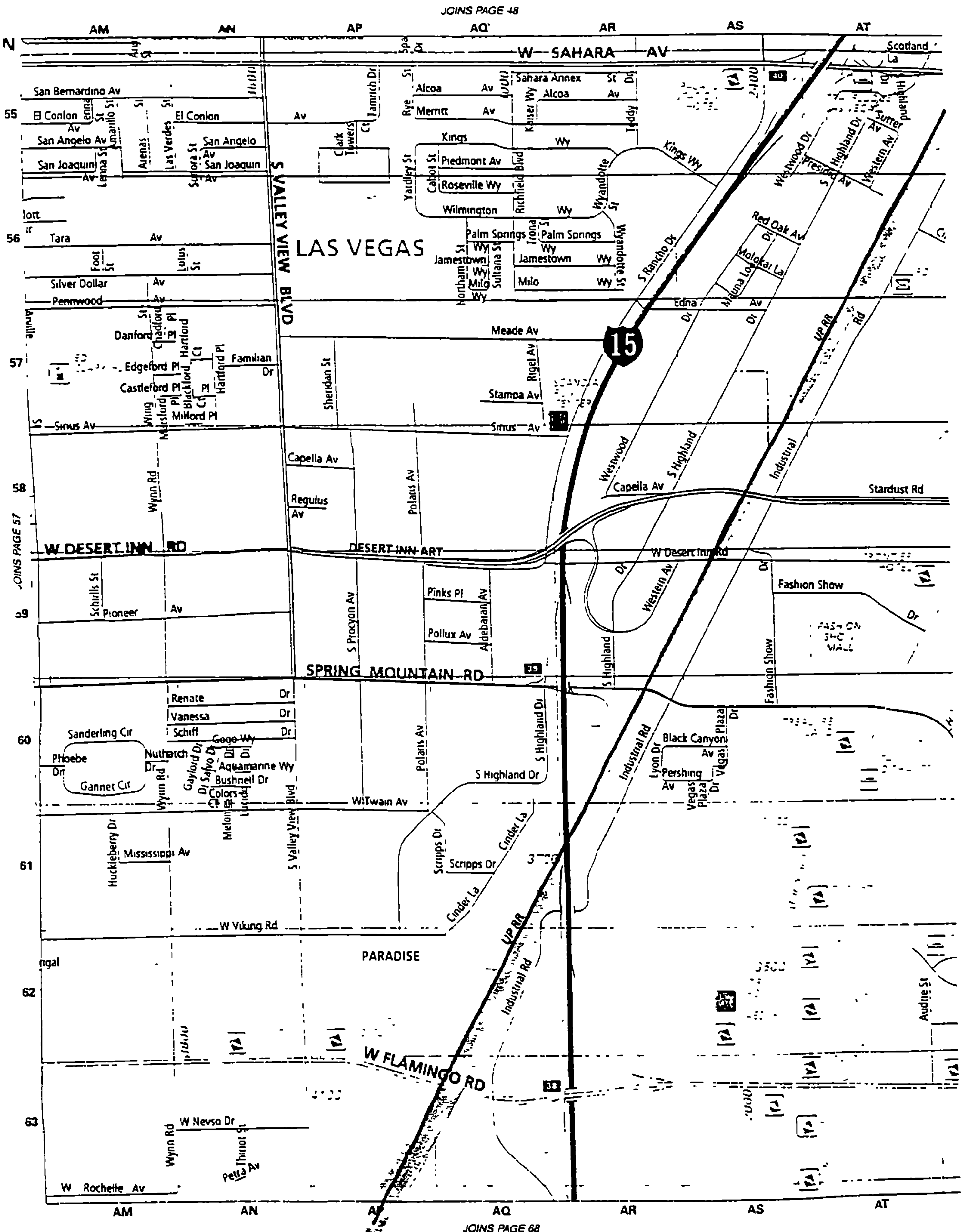

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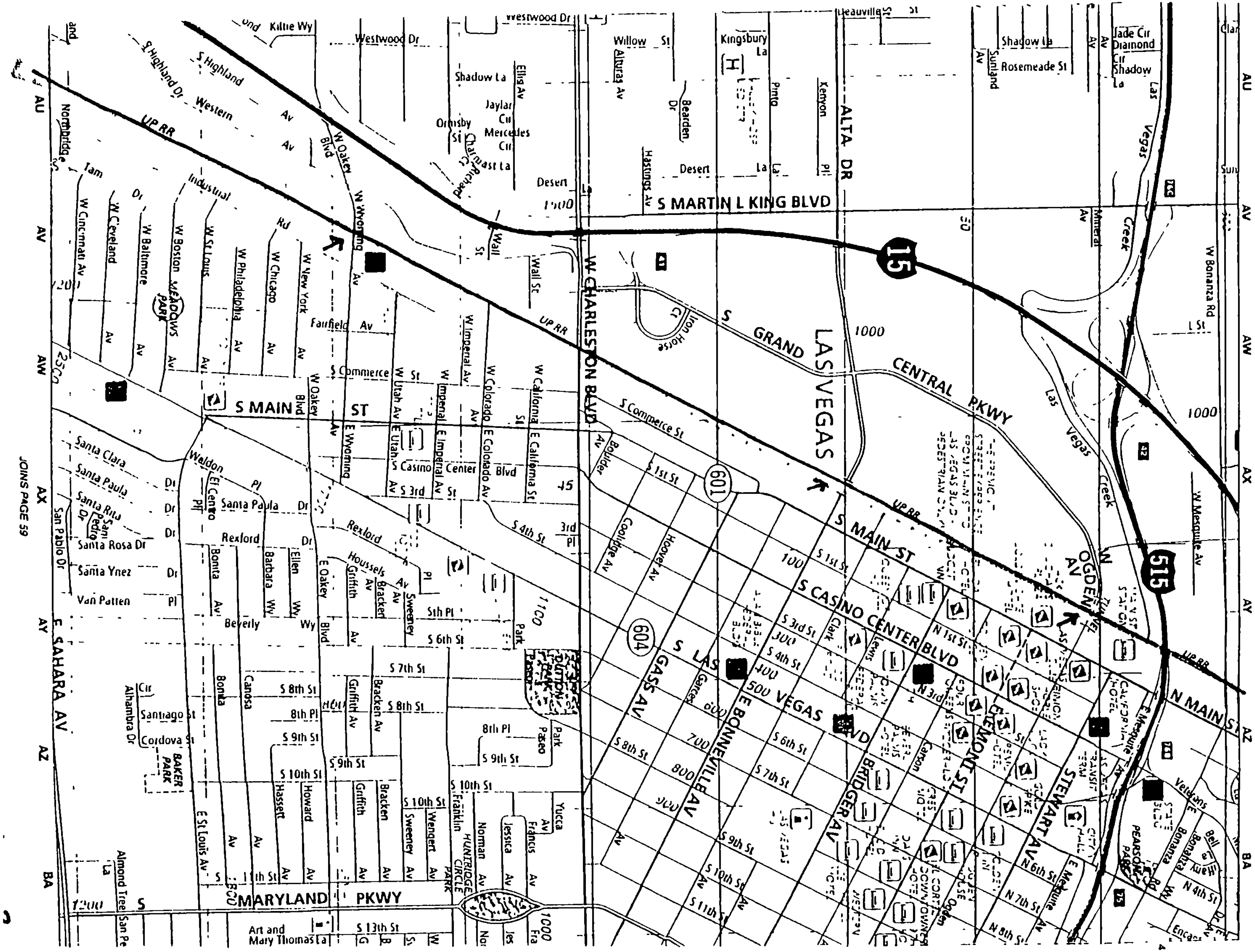
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S CASINO CENTER BLVD
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MARYLAND PKWY
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GASS AV
E BONNEVILLE AV
BRIDGER AV
FREMONT ST
STEWART AV
OGDEN AV
ALTA DR
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601
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W Oakey Blvd
W Wyoming Av
S Highland Dr
Western Av
Industrial Rd
Westwood Dr
Kiltie Wy
Shadow La
Ellis Av
Willow St
Alturas Av
Kingsbury La
Bearden Dr
Pinto
Kenyon Pl
Desert La
Hastings Av
Wall St
W Imperial Av
W Colorado Av
W California Av
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S 4th St
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S 7th St
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Boulder Av
Coolidge Av
Hoover Av
Santa Clara Dr
Santa Paula Dr
Santa Rita Dr
Santa Rosa Dr
Santa Ynez Dr
Van Patten Pl
Rexford Dr
Weldon Pl
El Centro Pl
Bonita Av
Barbara Wy
Ellen Wy
Beverly Wy
Griffith Av
Bracken Av
Sweeney Av
Houssels Av
Santiago St
Cordova St
Alhambra Cir
BAKER PARK
MEADOWS PARK
HUNTRIDGE CIRCLE PARK
PEARSON PARK
Art and Mary Thomas La
Almond Tree La
Hassett Av
Howard Av
Wengert Av
Franklin Av
Norman Av
Jessica Av
Francis Av
Yucca Av
Park Paseo
Las Vegas Creek
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Veterans Memorial Dr
Bonanza Rd
Bell Dr
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N 4th St
N 6th St
N 7th St
N 8th St
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W Cincinnati Av
W Cleveland Av
W Baltimore Av
W Boston Av
W St Louis Av
W Philadelphia Av
W Chicago Av
W New York Av
Fairfield Av
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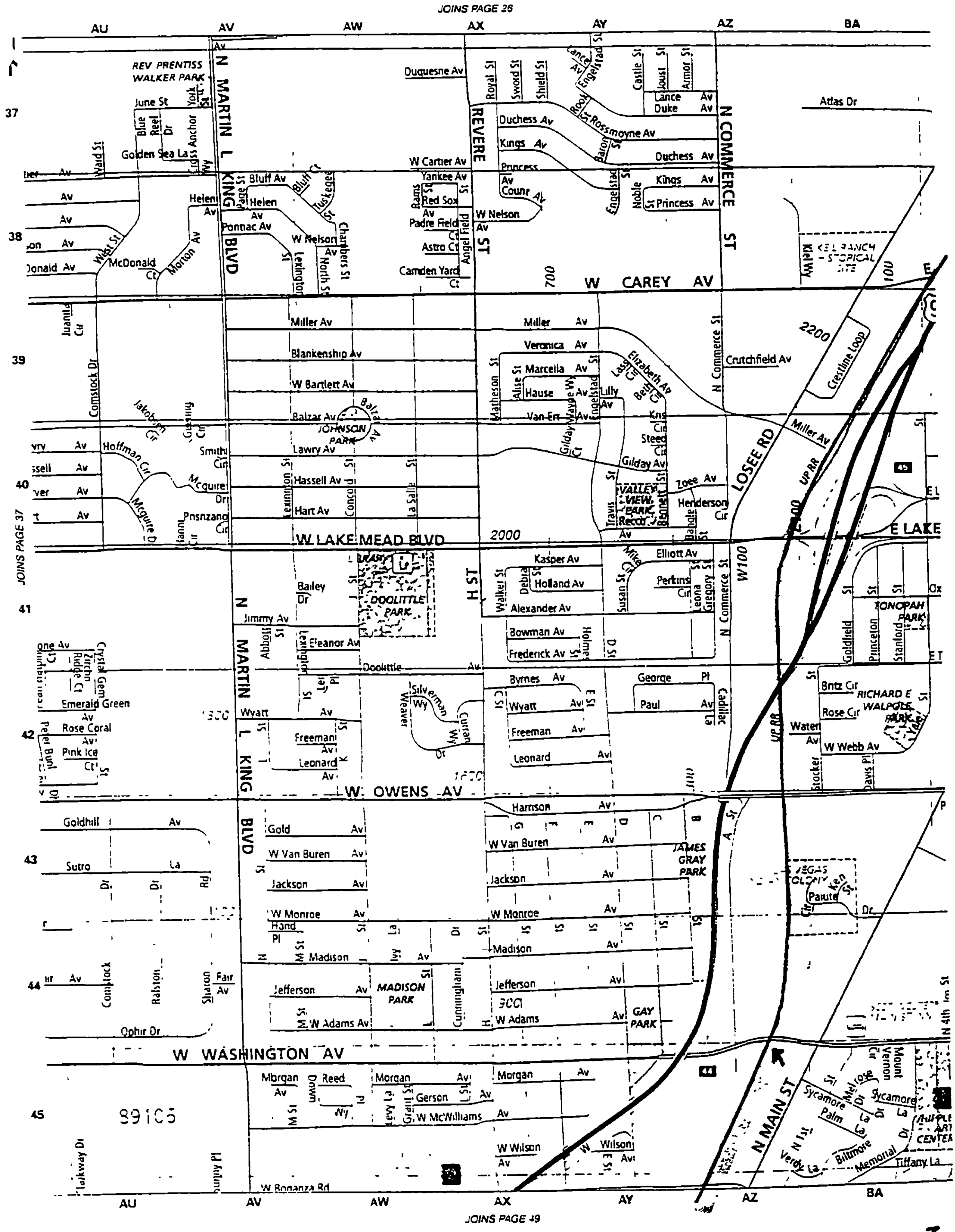


CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:	FROM:
COUNCILMAN ARNIE ADAMSEN COUNCILMAN GARY REESE REAL ESTATE COMMITTEE	DAVID ROARK, MANAGER REAL ESTATE & ASSET MGMT. DIVISION
SUBJECT:	**COPIES TO:**
March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible action to approve a new program and boilerplate management agreement for the Incubator Without Walls program	MAYOR JAN LAVERTY JONES COUNCILMAN MICHAEL J MCDONALD COUNCILMAN LARRY BROWN VIRGINIA VALENTINE STEVEN P HOUCHENS ANN HOLLAND WILLIE COOK

BACKGROUND:

Since the Las Vegas Business Center and the Business Incubator program opened in early 1998, there has been high interest from persons who want to start their own businesses or who have recently begun a business. Many more persons than the space that is available want to be in the incubator or to have the assistance of the incubator As a result, there has always been a waiting list for the Office Incubator program

In response to the high demand, Neighborhood Service Department ("NSD") staff first created the concept of the Industrial Incubator program, where companies can rent a 7' by 8' storage unit to store their products or equipment until office space is available The Industrial Incubator is only effective for companies that are able to work without a defined office space. NSD staff take messages, accept shipments, and collect mail for the tenants, and the tenants have use of the shared facilities, such as the fax and copy machines Industrial tenants automatically go to the top of the waiting list for Office space, in the order in which they were approved by the City Council Nonetheless, there is still a significant amount of interest and the waiting list continues to expand.

The Incubator Without Walls program ("IWW")is a new program developed by NSD staff to provide the services of the Incubator concept to the people in the community IWW Associates are persons who have a business either elsewhere or in their home, such as a Home/Office business. Associates need the assistance of the Incubator and they also need a professional atmosphere where they can meet clients and potential vendors Moreover, they need the shared services of the Incubator, such as fax and copy machines, but do not rent any space. They are still required to complete the obligations of all of the other Incubator tenants, since the purpose of the City's Incubator program is to help businesses develop skills to survive. Since IWW Associates will not actually be renting space, but will be contracting for management assistance, NSD staff and the City Attorney's office have developed a management agreement between City and Associate. The charge for the service to each Associate will be $50 00 per month for as long as the Associate stays in the IWW program, or 24 months, whichever is longer. Since the most that any Associate will pay during the entire term is $1,200, staff is asking that the City Council approve the concept of the IWW program, the boilerplate Management Agreement, and authorize NSD staff to process each individual agreement without City Council approval each time.

FISCAL IMPACT:

The City will receive $1,200.00 of income over the 24 month period for each associate, which will be used for maintenance, repairs, security, and other necessary expenses of the Las Vegas Business Center and Incubator Program.

STAFF RECOMMENDATION:

The Real Estate & Asset Management Division recommends approval of the Incubator Without Walls program and attached boilerplate Management Agreement between the City of Las Vegas and IWW Associates

030199reiww

Approved as to
Boilerplate Form Only:
J. Pontrello 2/4/99
Date

MANAGEMENT AGREEMENT
Las Vegas Incubator Without Walls Program

THIS MANAGEMENT AGREEMENT (hereinafter "Agreement") entered into this ___ day of __________, 1999, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (hereinafter "City"), and _________________. a Nevada corporation (hereinafter "Associate").

WITNESSETH:

WHEREAS, City is the owner of the Las Vegas Business Center ("Business Center"), located at 1951 Stella Lake Street in Las Vegas, Nevada; and

WHEREAS, City has established the Las Vegas Incubator ("Incubator") within the Business Center to provide a supportive environment to improve the management skills of small and new businesses to stabilize them and provide for eventual expansion; and

WHEREAS, City proposes to improve the business environment to enhance the economic well-being of the community and provide employment opportunities for area residents who are of low to moderate income; and

WHEREAS, City desires to make available to Incubator Associate ("Associate"), by means of this Agreement, technical assistance and support on the terms and conditions set forth herein; and

WHEREAS, the Business Center was constructed in part with funds from the Economic Development Administration ("EDA") in the form of a grant (#07-01-03025), whose general and special purpose (hereinafter referred to as the purpose of the EDA grant") was to construct a light industrial/office building for multiple Associates in the Las Vegas Special Impact Area; and

WHEREAS, the Business Center was also constructed in part with funds from the U. S. Department of Housing and Urban Development ("HUD") Community Development Block Grant ("CDBG") as a capital improvement project; and

WHEREAS, the operations of the Incubator are being jointly funded through Business Center Program Income, a grant from Wells Fargo Bank, and a grant from the Southern Nevada Enterprise Community; and

WHEREAS, this Agreement is consistent with the purpose of the separate and various federal and private funds provided for that purpose:

NOW, THEREFORE, in consideration of the foregoing and the covenants and conditions set forth herein, the parties agree as follows:

2. TERM

Unless earlier terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be on a month to month basis commencing on ________________ ___, 1999 ("Commencement Date"). Not withstanding the month to month tenancy, the City and Associate agree that this tenancy shall terminate and expire on __________ __, 2001 ("Final

Expiration Date"). In the event that either City or Associate desires to terminate this Agreement prior to the Final Expiration Date, City (or its designated representative) or Associate shall terminate this Agreement by providing fifteen (15) days notice without cause. Under no circumstances shall the term of this Agreement exceed twenty-four months from the Commencement Date.

3. OBLIGATIONS OF THE CITY

City will provide the Services as detailed in this section. Services shall include:

a) use of shared copy and fax machines;

b) accepting delivery of packages and mail;

c) staff support;

d) use of conference room and training center subject to reservations and availability;

e) business counseling to Associate or refer Associate to persons with the needed business skills;

f) license hang; and

g) a minimum of six free training seminars.

4. OBLIGATIONS OF THE ASSOCIATE

In exchange for the Fee and Services provided by this Agreement, Associate agrees to the following:

a) Attend a minimum of six classes of business skill training during the first six months of occupancy, which training will be agreed by Associate and City staff;

b) Develop a Business Plan by the end of the first year of occupancy;

c) Attend a mandatory "round table" discussion each month of related business topics established and designated by City in advance and with sufficient and proper notice; and

d) Payment of all long distance fax transmittals;

5. FEE

Associate agrees to pay City as a monthly fee, the sum of Fifty Dollars and No/Hundredths ($50.00) in advance, on the first day of each calendar month of the Agreement. Fees made by Associate to City may be by check or draft and are subject to collection. If payment of Fee by check or draft is dishonored upon presentation for payment, Associate shall pay a Twenty-five and No/hundredths ($25.00) return check charge, which shall be payable to City, as an additional Fee. If payment of Fee by check or draft is dishonored upon presentation for payment two times during the same six month period, such event shall be construed a default and City shall have the right to terminate this Agreement with cause by providing fifteen (15) days written notice to Associate.

6. LATE CHARGES

In the event Associate is delinquent in the payment of Fee for a period in excess of ten (10) days, there shall be added to the Fee a late charge equal to three percent (3%) of the monthly Fee.

7. USE OF INCUBATOR

It is understood and agreed that Associate will maintain his/her business primarily as a home business that is eligible to be licensed by the governmental entity within which it is located, with occasional use of the Las Vegas Business Incubator Center ("Incubator") conference room and/or training center during normal working hours for professional and business related activities. Associate agrees to use the Incubator solely for the purpose of conducting its business, which is expressly limited to meeting with clients or vendors and training and educational purposes in the conference room or training center Except as expressly consented to in writing by City, Associate shall not use or permit the Incubator to be used for any purpose other than those which are set forth in this Section 7. In addition, Associate agrees not to use the Incubator or permit its use for any purpose that is inconsistent with City regulations and the purpose of the EDA and CDBG grants. Associate agrees to use reasonable caution and respect other Associates' confidentiality when using shared equipment and space. Because the building was constructed with federal funds, Associate agrees to maintain a drug free environment and will sign the Drug Free Certification, the form of which is attached hereto as Exhibit A.

8. LAWS, WASTE, NUISANCE

Associate covenants that it:

A. Will not use or suffer or permit any persons or persons to use the Incubator or any part thereof for conducting thereon any activity not authorized in this Agreement;
B. Will comply with all laws, ordinances, regulations and requirements, now in force or which hereafter may be in force, of any lawful governmental body or authority having jurisdiction over the Incubator;
C. Will keep the Incubator and every part thereof in a clean, neat and orderly condition, and will in all respects and at all times fully comply with all health and police regulations; and
D Will not suffer, permit or commit any nuisance or waste.

9. CHANGES TO AND OPERATION OF BUSINESS CENTER

City reserves the right at all times to exercise reasonable control over, and from time to time to make changes, alterations or additions to, the Business Center. City shall endeavor to do so with a minimum of disruption to Associate's rights under this Agreement.

10. USE OF PARKING AND OTHER AREAS

In connection with its use of the Incubator pursuant to this Agreement, Associate is entitled to reasonable use of the parking lot for the Business Center under a revocable license. All facilities in or about the Business Center shall be subject to the exclusive control and management of City. City shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same, to change the area, level, location and arrangements of the parking area and other common facilities; to restrict parking by Associates, their officers, agents, and employees; to close all or any portion of said areas or facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right to any person or the public therein; and to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking. City shall operate and maintain the parking area in such manner as City in its discretion shall determine. City shall have full right and authority to employ and discharge all its personnel with respect thereto, and shall have the right, through reasonable rules, regulations and/or restrictive covenants promulgated by it from time to time, to control use and operation of the parking area in order that the same may occur in a proper and orderly fashion. No such rules, regulations or restrictive covenants may be enforced against Associate unless notice thereof is first provided to Associate.

11 RESPONSIBILITY AND LIABILITY

Associate will be financially responsible to City for liability or claims for damages or injury resulting from negligent or intentional acts or omissions by Associate and its employees in connection with an occurrence upon the Incubator during the term of this Agreement, and Associate will resist and defend at its own expense any actions or proceeding brought against City by reason of such claims.

12. INSURANCE

Associate agrees to procure and maintain, at its sole cost and expense by the end of the first year of this Agreement, the following:

A. Workmen's compensation coverage as required by law, whether by self-insurance or otherwise.
B. Minimum limits of general liability and property damage coverage with respect to the Incubator with combined single limits of not less than $10,000 per person and per $20,000 occurrence for bodily injury and a limit of not less than $10,000 per accident or occurrence for property damage.

Associate further agrees to deliver to City evidence of the coverages required herein no later than 30 days after the Commencement Date of the Second Year, ________, 2000.

13. HOLDING OVER

There will be no holding over after the twenty-four month term. Prior to the end of the twenty-four month term, Associate will receive a thirty (30) day written notice to vacant on or before _________ __, 2001.

14. SALE OF BUSINESS CENTER

City reserves the right at any time to sell, convey or otherwise transfer its interest in the Business Center or any portion thereof. In the event of a sale, conveyance or transfer of its interest (other than a transfer for purposes of creating a security interest), City's obligations under this Agreement may be terminated with 30 days' notice.

15. DAMAGE OR DESTRUCTION

A. Associate shall give prompt notice to City in case of fire or accidents in or near the Incubator or in the common areas.

B. If the Incubator is partially damaged by fire or other casualty, City shall repair such damage at its cost, subject to City's option contained in subsection C of this Section, and Associate may be required to meet clients or vendors at another location until such repairs are completed.

C. If the Business Center or common areas are substantially or totally destroyed, or if the Incubator is damaged so extensively that they cannot, in City's opinion, be repaired within sixty (60) days after commencement of such repairs, or if City shall decide to rebuild the Business Center or common areas so that they will be substantially different structurally or architecturally, then either party, at its option and within thirty (30) days after such damage or destruction, may give the other party written notice thereof and this Agreement shall thereupon be canceled effective as of the date of the occurrence of such damage or destruction. If the Agreement is not canceled and City elects to repair and rebuild, this Agreement shall remain in effect and fee shall be abated in proportion to the parts of the Incubator which are unusable by Associate.

D. If any damage referred to in this Section 15 is due in whole or in part to the act, neglect, fault or omission of Associate, there shall be no abatement of fee.

16. ASSIGNMENT AND SUBLETTING

Associate shall not transfer, assign, delegate, mortgage or hypothecate this Agreement, in whole or in part, or permit the use of the Incubator by any person or persons other than Associate, or any part thereof, without the prior written consent of City in each instance. In accordance with 13 C.F.R. Part 314, Associate also agrees not to transfer, assign, delegate, mortgage or hypothecate this Agreement, in whole or in part, or sublet the Incubator, in whole or in part, for any purpose, or with any effect, that is inconsistent with the purpose of the EDA and CDBG grants.

Any assignment or subletting without City's consent shall be voidable by City and shall constitute a default hereunder which, at the option of City, shall result in the termination of this Agreement or the exercise of City's other remedies hereunder, or both. Consent to any assignment or subletting shall not operate as a waiver of the necessity for consent to any subsequent assignment or subletting. The terms of any such consent shall be binding upon any persons holding by, under or through Associate.

17. DEFAULT BY CITY

In the event City fails to fulfill any obligation under this Agreement, Associate shall, before exercising any right or remedy available to it, give City written notice of the claimed breach, default or noncompliance, which City shall have the right to cure for the thirty (30) days following the giving of the notice. Subject to the provisions of Section 25 if City fails or refuses to make repairs or provide services which are required hereunder within thirty (30) days after receiving written notice from Associate of the need therefor, Associate may exercise any right or remedy available to it under Nevada law.

18. DEFAULT BY ASSOCIATE

A. Upon the occurrence of any of the following events, City shall have the remedies set forth in subsection B.

1) Associate's failure to pay any fee or any other sum due hereunder within thirty (30) days after the same shall be due.

2) Associate's failure to perform any other term, condition, or covenant to be performed by it pursuant to this Agreement within thirty (30) days after written notice of such default shall have been given to Associate by City.

3) The falsification by Associate or its agents of any document required to be furnished to City hereunder.

4) The dishonor of a check or draft for the payment of Fee two times during a consecutive six month period.

B. Upon the occurrence of any of the events set forth in subsection A, City shall have the option to take any or all of the following actions, without further notice or demand of any kind to Associate or any other person:

1) Terminate this Agreement by written notice to Associate. In the event of such termination, Associate agrees to immediately surrender possession of the keys and passcodes to Incubator.

2) Seek damages and any other remedy, legal or equitable, available under Nevada law.

19. GOVERNING LAW

This Agreement shall be governed by and interpreted according to the laws of the State of Nevada.

20. NO PARTNERSHIP

City does not by this Agreement, in any way or for any purpose, become a partner or joint venturer of Associate in the conduct of its business or otherwise.

21. FORCE MAJEURE

Each of the parties shall be excused for the period of any delay in the performance of any obligation hereunder when prevented from doing so by cause or causes beyond that party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, or acts of God.

22. NO WAIVER

Failure of City to insist upon the strict performance of any provision or to exercise any option hereunder shall not be deemed a waiver of its right to do so in the future. No provision of this Agreement shall be deemed to have been waived by City unless such waiver is in writing.

23. PARTIAL INVALIDITY

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

24. PROVISIONS BINDING

Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. In the event of any sale or assignment (except for purpose of security or collateral) by City of the Business Center, the Incubator or this Agreement, City shall, from and after the effective date thereof (irrespective of when such sale or assignment occurs), be entirely relieved of all of its obligations which shall, as of the time of such sale or assignment or on the effective date, whichever is later, automatically pass to City's successor in interest. The preceding sentence applies only if City's successor-in-interest is required by the transfer documents to honor City's obligations under this Agreement.

25. NON-DISCRIMINATION

City and Associate each assures that the Incubator are not segregated with respect to race, color, religion or national origin, and each agrees that it will not segregate or discriminate on such grounds with respect to public utilization of or access to the Incubator. Associate agrees to comply with EDA policies concerning nondiscrimination and civil rights by furnishing to City, for transmittal to EDA, a properly executed "Assurance of Compliance with Civil Rights and Other Legal Requirements" form and such other civil rights materials as EDA may require in order to analyze Associate's civil rights posture and practices. City agrees to provide Associate with any forms that Associate may be required to furnish hereunder.

26. ENTIRE AGREEMENT

This Agreement, including any exhibits and addenda attached hereto, set forth the entire agreement between the parties. All such exhibits and addenda mentioned in this Agreement are incorporated herein by reference. Any prior conversations or writings concerning the Agreement of the Incubator are merged herein and extinguished. No amendment to this Agreement shall be binding upon City or Associate unless reduced to writing and executed by the Parties and, in the case of the Associate, executed with the same formality as attended Associate's execution of this Agreement.

27. AUTHORITY OF SIGNATORIES

Each signatory to this Agreement represents that he or she is duly authorized to execute and deliver the same on behalf of the entity for which he or she is signing and that this Agreement is binding upon said entity in accordance with its terms.

28. NOTICES

Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by United States certified or registered mail, postage prepaid, and shall be sent to the following address:

If to the City: City of Las Vegas

Director,

Neighborhood Services Department

400 East Stewart Avenue,

Las Vegas, Nevada 89101

If to the Associate: ______________________________

____

____

____

Either party may designate a different address by giving written notice to the other Party.

29. APPROVAL OR CONSENT BY CITY

Whenever the approval or consent of City is required by this Agreement, such approval or consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF LAS VEGAS

By______________________________

SHARON SEGERBLOM, DIRECTOR or designee

____

By______________________________

Name.

"ASSOCIATE"

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:	FROM:
COUNCILMAN ARNIE ADAMSEN COUNCILMAN GARY REESE REAL ESTATE COMMITTEE	DAVID ROARK, MANAGER REAL ESTATE & ASSET MGMT DIVISION
SUBJECT:	**COPIES TO:**
March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible approval of a sales agreement between the City of Las Vegas and Bob and Jean Kochever to purchase the Bel Aire Apartment Complex (situated at 4124-4172 Pennwood, 4123-4171 Silver Dollar, and 4055-4167 Tara Avenue)	MAYOR JAN LAVERTY JONES COUNCILMAN MICHAEL J. MCDONALD COUNCILMAN LARRY BROWN VIRGINIA VALENTINE STEVEN P HOUCHENS ANN HOLLAND WILLIE COOK

BACKGROUND:

Pursuant to the approval of the bidder priority list as established at the January 25, 1999, City Council meeting, staff has gone forward in preparing a sales contract for the sale of the Bel Aire Apartment Complex. A sales agreement has been prepared and approved by the City Attorney's Office and the number one bidder, Bob and Jean Kochever

The contract is quite expansive because it contains within it the Federal Home Program Regulations for Housing that the buyer will have to follow for a period of at least ten (10) years At present, we anticipate the availability of financing and the closing of escrow on or before April 19, 1999

FISCAL IMPACT:

Over three million dollars ($3,000,000.00)

STAFF RECOMMENDATION:

Staff recommends approval

030199rebelairesales

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
BEL AIRE APARTMENT COMPLEX

Contract Date:	March __, 1999
Seller:	City of Las Vegas 400 East Stewart Avenue Las Vegas, Nevada 89101 Telephone: (702) 229-6501 Facsimile: (702) 388-1807
Purchaser:	Robert E. Kochevar and Jean Kochevar 6396 E. Mississippi Denver, Colorado 80224 Telephone: (303) 399-9023 Facsimile: (303) 399-7171
Escrow Agent:	United Title of Nevada 3980 Howard Hughes Parkway Las Vegas, Nevada 89109 Attn: Jenna Hajewski Telephone: (702) 836-8026 Facsimile: (702) 836-8020
Escrow No:	____________________
Title Company:	United Title of Nevada

ARTICLE 1

AGREEMENT, PROPERTY AND PRICE

Section 1.1 **Agreement**. This Purchase Agreement and Escrow Instructions (referred to as the "Agreement" or "Contract"), when executed by Seller and Purchaser and accepted by Escrow Agent, will constitute a binding and effective agreement of Seller to sell and Purchaser to purchase the Property described in Section 1.2.

Section 1.2 **Inclusions in Property**. As used in this Contract, the term "Property" shall mean all of Seller's right, title and interest in and to the following:

a. All of the real property described on Exhibit "A" ("Land");

b. All buildings, fixtures, landscaping, utility lines, irrigation facilities, irrigation lines, parking structures, parking garages, parking canopies and all other fixtures and improvements located on the Land ("Improvements") (which Improvements include are occasionally referred to as the Bel Aire Apartment Complex (the "Complex"));

c. All leases for occupancy of any portions of the Complex ("Tenant Leases");

d. All security, and other deposits made by tenants within the Complex ("Tenant Deposits");

e. All equipment leases affecting the ownership or operation of the Property ("Business Leases");

f. All licenses, franchises, certificates, authorizations, approvals, certificates of occupancy, building permits and other applicable permits and licenses issued by any governmental authority relating to the ownership or operation of the Property, if any ("Licenses");

g. All contracts and commitments for the service, maintenance, repair, management and operation of the Property ("Project Contracts");

h. All equipment, machinery, appliances, apparatus, fittings, supplies, spare parts, building materials, and other personal property owned by Seller and used solely in connection with or located on the Land ("Personal Property");

i. All as-built plans and specifications (including architectural, mechanical, plumbing, landscaping, engineering and electrical plans and specifications), drawings, working drawings, plans, site plans, mechanical drawings and specifications related to the construction or landscape of the Improvements, if any ("Building Plans"); and

j. All easements, rights, tenements, hereditaments, privileges and appurtenances now or in the future held by Seller which in any way benefit the Property or relate to the ownership or operation of the Property, including, without limitation: (i) any and all oil, gas, mineral, water and irrigation rights running with or pertaining to the Property; (ii) all of Seller's interest in any road, street or alleyway adjoining the Land; and (iii) any rights or interests which may accrue to the benefit of Seller or the Land as a result of the abandonment of any road, street or alleyway adjoining the Land (collectively called the "Appurtenances")

The term "Property" also includes any and all replacements, renewals, substitutions and additions of or to the Property which may be made or acquired after the Contract Execution (as defined at Section 2.1 below) and prior to the Closing and all options or renewal rights associated with any of the Property.

Section 1.3 **Purchase Price** The total purchase price of the Property shall be Three Million Three Hundred Three Thousand and No/100ths Dollars ($3,303,000.00). The total purchase price, subject to adjustments pursuant to this Contract, is referred to as the "Price." The Price, plus or minus the net amount of Purchaser's share of the Escrow and title charges and prorations pursuant to the terms of this Contract will be deposited by Purchaser in immediately available funds into the Escrow on or before the Closing Date.

Section 1.4 **Earnest Money Deposit**. Purchaser shall deposit Fifty Thousand and No/100ths Dollars ($50,000.00) ("Earnest Money Deposit") in immediately available funds into the Escrow on or before the Opening of Escrow.

Section 1.5 **Opening of Escrow**. The term "Opening of Escrow" means the date upon which Escrow Agent has in its possession the Earnest Money Deposit and a fully executed original of this agreement. The exact date of the Opening of Escrow shall be indicated on Escrow Agent's Acceptance attached at the end of this Contract.

Section 1.6 **Close of Escrow**. The Closing of this transaction ("Close of Escrow") shall take place at the office of Escrow Agent in Las Vegas, Nevada, which shall be no later than April 19, 1999 ("Closing Date").

Section 1.7 **Escrow Instructions**. This Contract will constitute the escrow instructions to Escrow Agent, and the standard form escrow instructions of Escrow Agent will not be used for this Escrow unless accepted and agreed to by both parties. In addition, Seller and Purchaser shall, during the term of the Escrow, execute any supplemental escrow instructions which are consistent with this Contract and which are necessary to complete the transaction. No such supplemental escrow instructions shall amend or supersede the provisions of this Contract unless the intention to do so is expressed in writing by Purchaser and Seller. Escrow Agent need be concerned only with those instructions of this Contract where instructed to perform specific acts or with respect to which escrow agents generally and reasonably would be expected to act.

ARTICLE 2

DUE DILIGENCE DOCUMENTS

Section 2.1 **Documents to Purchaser**. Within ten (10) days after the mutual execution of this Contract ("Contract Execution"), Seller agrees, if Purchaser so requests, to provide to Purchaser for review the following documents relating to the Property (the "Initial Due Diligence Documents"):

a. Most recent rent roll (the "Original Rent Roll") prepared by Seller's property manager;

b. Copies of all Tenant Leases and amendments or addenda thereto;

c. Copies of all Project Contracts, including landscaping and security contracts, and any agreements relating to the operation of the Property;

d. Copy of surveys concerning the Land which Seller has in its possession;

e. Copies of all certificates of occupancy relating to the Property;

f. Copies of applicable regulations issued by the United States Department of Housing and Urban Development ("HUD"), specifically the regulations concerning the Home Ownership Investment Program ("HOME"), 24 CFR Part 92, which affect the Property;

g. Three (3) years of Property operating statements, if available;

h. Occupancy summary for the last three (3) years, if available;

i. Accounts receivable schedule, if available; and

j. Schedule of summary sheet of improvements.

In addition to the Initial Due Diligence Documents, during the Contingency Period (as defined in Section 5.1), Seller agrees to make available to Purchaser for Purchaser's review, within a reasonable period after Purchaser's written request therefor, any documents in Seller's possession relating to the Property that Purchaser shall reasonably deem necessary to verify the condition of the Property (such documents, together with the Initial Due Diligence Documents, shall hereinafter be collectively referred to as the "Property Documents"). In connection with Purchaser's review of the Property Documents, to the extent it is impracticable in Seller's reasonable discretion for Seller to provide copies of same to Purchaser, Seller consents to Purchaser's reasonable access to all such documents and materials at reasonable times (i.e., 9:00 a.m. to 5:00 p.m., Monday - Friday, excluding legal holidays), in a reasonable manner, and upon reasonable written notice to Seller for the purpose of such examination. Seller agrees to cooperate in connection with this examination. Purchaser shall have the right to make copies of any documents at Purchaser's expense. If the Closing does not occur, Purchaser shall promptly return all copies to Seller, and Purchaser shall keep confidential all information which it has regarding the Property.

Section 2.2 Costs. All costs and expenses incurred in preparing, causing to be prepared, copying or providing any of the other Due Diligence Documents (the "Due Diligence Preparation") will be paid by Seller; provided, however, that if the sale of the Property does not close for any reason other than a default by Seller of its obligations hereunder, then upon Seller's demand and presentation of appropriate invoices or receipts therefor, Purchaser shall reimburse Seller for all out-of-pocket costs incurred by Seller in connection with the Due Diligence Preparation.

Section 2.3 **Home Funds**. The reconstruction of the Property was funded in part with federal funds from the HOME Program. As such, the Property is subject to applicable HOME Program rules, regulations and conditions which are more specifically set forth in Exhibit "D", 24 CFR Part 92, attached hereto.

ARTICLE 3

INTERIM OPERATION OF PROPERTY

Section 3.1 **General Interim Operation**. After the Contract Execution and until the Closing Date, Seller agrees to operate, manage and maintain the Property in a manner consistent with Current Project Standards. The term "Current Project Standards" means those operational, insurance coverage, management and maintenance standards 'in effect at the Property as of Contract Execution, except as may be modified by this Article 3.

Section 3.2 **Lease-up and Approved Rents**. Notwithstanding Seller's current rental practices, from and after the Opening of Escrow, Seller agrees not to enter into any lease renewals or new leases for a period of greater than six (6) months, unless approved in writing by Purchaser in advance and in its discretion reasonably exercised. Further, Seller agrees not to accept or require any prepayment of rent for more than one (1) month in advance.

Section 3.3 **Review and Approval of Project Contracts**. During the Contingency Period, Purchaser may give written notice to Seller of Purchaser's disapproval of any of the Project Contracts or Business Leases. Purchaser's disapproval notice must identify in reasonable detail the specific grounds for disapproving the particular Project Contract or Business Lease. If Purchaser fails to provide this notice within the Contingency Period , the Project Contracts and Business Leases shall be deemed approved by Purchaser. If Purchaser disapproves any of the Project Contracts or Business Leases, Seller shall investigate the disapproved item and notify Purchaser and Escrow Agent in writing of either: (i) Seller's agreement to use reasonable efforts to cure the disapproved item prior to the Closing Date; or (ii) Seller's inability or unwillingness to cure the disapproved item. Failure of Seller to notify Purchaser of its agreement to use reasonable efforts to cure any disapproved items shall constitute its unwillingness to cure the disapproved items. If Seller notifies

Purchaser and Escrow Agent of Seller's inability or unwillingness to cure the disapproved item, Purchaser shall have five (5) days after receipt of the Seller's notice to notify Seller and Escrow Agent of either (I) Purchaser's waiver of its prior objection and its decision to approve the applicable Project Contract or Business Lease and to proceed to purchase the Property; or (II) Purchaser's election to terminate this Contract and the Escrow, in which event, all monies and other items deposited into Escrow, or exchanged between the parties, shall be immediately returned to the respective parties. In the event of cancellation under this Section 3.3, each party shall pay one-half (½) of all Escrow and title charges (including cancellation charges), and the Escrow and this Contract shall terminate, all without further liability of the parties, subject to the survival of Purchaser's indemnity set forth in Sections 5.2 and 9. 1. If Seller has elected to use its reasonable efforts to cure, but despite its reasonable efforts is unable to cure to Purchaser's satisfaction any disapproved item on or before the Closing Date, Purchaser shall elect either (x) to waive the disapproved matter Seller has failed to cure and proceed to close Escrow; or (y) to terminate this Contract as provided in subparagraph (II) above. Seller shall in no event be liable to Purchaser for any failure to cure any disapproved matter provided it has used its reasonable efforts to cure. The provisions of this Section 3.3 shall relate only to Project Contracts and Business Leases which are not either terminable upon thirty (30) days' notice or terminable on or before the Close of Escrow. Purchaser waives any right to cancel this Escrow and terminate this Contract based on its objection to a Project Contract or Business Lease which can be either terminated with thirty (30) days notice or terminated prior to the Close of Escrow.

Section 3.4 <u>**New Contracts**</u>. After the Opening of Escrow, Seller agrees not to enter into any new Project Contracts or Business Leases which are not either terminable upon thirty (30) days' notice, terminable at the Close of Escrow or approved in writing by Purchaser. Seller will notify Purchaser if any new Project Contracts or Business Leases, which are not either terminable upon thirty (30) days' notice or terminable at the Close of Escrow, are entered into after the Opening of Escrow, and Purchaser will be entitled to a reasonable time within which to exercise its approval rights described in Section 3.3 above with respect to those Project Contracts or Business Leases described above.

Section 3.5 <u>**Maintenance**</u>. After the Opening of Escrow and until the Closing Date, Seller agrees to perform all maintenance to the Property in a manner consistent with Current Project Standards.

ARTICLE 4

<u>TITLE COMMITMENT, TITLE CONTINGENCY AND SURVEY</u>

Section 4.1 <u>**Preliminary Title Report**</u>. Within fifteen (15) days after the Opening of Escrow, Seller shall deliver or cause to be delivered to Purchaser: (i) a preliminary title report issued by Title Company with an effective date after the Opening of Escrow and pursuant to which the Title Company is prepared to issue an ALTA Owner's Policy of Title Insurance ("Report"), providing for deletion of the standard title exceptions, showing all taxes and assessments then existing against the Property and all other exceptions of record; together with (ii) complete and legible copies of all documents and instruments shown as exceptions.

Section 4.2 **Title Objections**. Purchaser will have ten (10) days after the later of Purchaser's receipt of the Report within which to advise Seller in writing of any disapproved title matters, and specifying the grounds for disapproving each such title matter ("Purchaser's Objections"). All of Purchaser's Objections may be made at Purchaser's sole discretion. The date by which Purchaser's Objections must be made, as determined pursuant to the first sentence of this Section 4.2, will be referred to as the "Title Review Date."

Section 4.3 **Title Updates**. In the event Title Company (or its approved underwriter) updates, adds to, or amends the Report (by endorsement, amendment or otherwise) as a result of any new matters or facts known or revealed to Title Company, Purchaser will notify Seller in writing of Purchaser's Objections to any new exception or requirement, and Purchaser's written notice will be sent, if at all, by the later of: (i) the Title Review Date; or (ii) the first to occur of the scheduled Closing Date or five (5) business days following its receipt of the amended Report (including legible and complete copies of all new exceptions or requirements to title).

Section 4.4 **Title Cure**. If Purchaser has not notified Seller of Purchaser's Objections within the time specified in Sections 4 2 or 4.3, as applicable, Purchaser will be deemed to have approved the condition of title as shown by the Report or amended Report, as applicable. If Purchaser's Objections are made within either of the time periods specified above, Seller shall have ten (10) days following receipt of Purchaser's Objections to investigate Purchaser's Objections and to notify Purchaser in writing of either: (i) Seller's agreement to use reasonable efforts to cure Purchaser's Objections prior to the Closing Date; or (ii) Seller's inability or unwillingness to cure the disapproved item. Failure of Seller to notify Purchaser of its agreement to use reasonable efforts to cure any disapproved items shall constitute its unwillingness to cure the disapproved items. If Seller notifies Purchaser of Seller's inability or unwillingness to cure all or any of Purchaser's objections, Purchaser shall have six (6) days after receipt of Seller's notice to notify Seller and Escrow Agent in writing of either: (I) Purchaser's waiver of its prior objections and decision to approve the matter objected to and to proceed to purchase the Property; or (II) Purchaser's election to terminate this Contract and Escrow. If Purchaser so terminates the Contract in the time above provided, all instruments shall be returned to the party depositing the instrument; Purchaser shall return all items previously delivered by Seller to Purchaser; Purchaser and Seller each shall pay one-half (½) of all Escrow and title cancellation charges; and neither party shall have further rights, obligations or liabilities whatsoever to the other party concerning the Property or by reason of this Contract, subject to the survival of Purchaser's indemnity set forth in Sections 5.2 and 9.1. If Seller has elected to use reasonable efforts to cure, but despite its reasonable efforts is unable to cure to Purchaser's satisfaction any of Purchaser's objections on or before the Closing, Purchaser shall elect either: (x) to waive the disapproved matters Seller has failed to cure and proceed to close Escrow; or (y) to terminate this Contract as provided above. Seller in no event shall be liable to Purchaser for any failure to cure any disapproved matters. Seller shall not be required to remove encumbrances it has agreed to remove or satisfy until the Close of Escrow.

Section 4.5 **Interim Encumbrances**. Seller agrees not to permit any voluntary encumbrance of the Property after the Opening of Escrow without the prior written consent of Purchaser, which may be given or withheld in Purchaser's reasonable discretion. Purchaser will not, however, disapprove of any encumbrance which is necessary for the operation or ownership of the Property.

Section 4.6 **Survey**. Within ten (10) days after the Opening of Escrow, Seller shall provide to Purchaser a survey prepared by a surveyor licensed by the State of Nevada, dated not more than thirty (30) days prior to the Opening of Escrow, reflecting, among other things:

a. The courses and measured distances of the exterior property lines of the Land;

b. The total square foot area of the Land;

c. The location of the Improvements, dimensions thereof at the ground surface level, and the distance therefrom to the facing exterior property lines of the Land;

d. The location and names of and distances to adjoining streets, and the distances to the nearest streets intersecting the streets that adjoin the Land;

e. The location of all set-back lines, interior lot lines and easements, identified by recorder's book and page number, if the same are of record;

f. The location of encroachments, if any, upon adjoining property, by the Improvements, and encroachments, if any, upon the Property;

g. A key explaining abbreviations;

h. The metes and bounds legal description of the Property;

i. An unqualified surveyor's certificate addressed to Purchaser and to the Title Company in the form acceptable to Purchaser and Title Company, dated on the date of said Survey as set forth on Exhibit "B" hereto; and

j. A certification that there are no encumbrances or restrictions on the Property other than those shown on the Survey or the Title Report.

The Survey shall show a state of facts which, in the opinion of Purchaser, (i) does not render title unmarketable or uninsurable; (ii) does not adversely affect, diminish, or limit Purchaser's ability to use any portion of the Property for any lawful function permitted by applicable zoning laws. Seller agrees that upon notice by Purchaser, Seller will have any encumbrance or restriction which is unacceptable to Purchaser removed at Seller's expense, and if Seller fails to do so, Purchaser can either (a) terminate this Agreement, in which event this Agreement shall terminate in accordance with the Procedure set forth in Section 4.4 above, or (b) Buyer may waive this condition and proceed to Close of Escrow.

Section 4.7 **Title to Personalty**. Within twenty (20) days of the Opening of Escrow, Seller shall furnish to Purchaser reports of searches made of the Uniform Commercial Code records of the county in which the Land and Improvements are located, and the records maintained in the Office of the Secretary of State of Nevada, which Nevada searches shall show that none of the personal property or fixtures identified in Article 1 (and capable of being subject to a "security interest" or "fixture filing" as those terms are defined in NRS 104.1101, et seq.) are subject to any security interest. Prior to the Close of Escrow, Seller shall cause the foregoing searches to be updated to within seven (7) days of the Close of Escrow.

ARTICLE 5

FEASIBILITY STUDY, ENVIRONMENTAL EVALUATION AND CONTINGENCIES

Section 5.1 **Contingency Date and Period**. As used in this Contract, the term "Contingency Date" means that date which is thirty (30) days following the Opening of Escrow, and "Contingency Period" shall mean the period ending on the Contingency Date.

Section 5.2 **Purchaser Feasibility** At Purchaser's sole cost and expense, Purchaser will have until the Contingency Date within which to approve the Property Documents, and to conduct feasibility studies, physical inspections (including roofs, irrigation systems, electrical systems, mechanical and structural elements, HVAC systems and appliances), due diligence investigations, economic studies, marketing reports, or other tests (collectively, the "Investigation") deemed necessary by Purchaser to determine the feasibility of Purchaser's purchase of the Property (including its economic, physical and operational feasibility). Purchaser's obligation to close the Escrow and consummate the purchase of the Property is expressly contingent upon Purchaser's approval of the results of the Investigation and Purchaser's approval of the Due Diligence Documents. If the Investigation or the Due Diligence Documents are not acceptable to Purchaser, Purchaser shall deliver written notice to Seller and Escrow Agent on or before the Contingency Date that Purchaser may terminate this Agreement pursuant to Section 9.5. If Purchaser timely terminates, all items deposited into Escrow, including earnest money, or exchanged between the parties shall be immediately returned to the respective parties, each party shall pay one-half (½) of all Escrow and title charges (including cancellation charges), and the Escrow and this Contract shall terminate, all without further liability of the parties. If the Purchaser agrees to accept the Property, Purchaser agrees to accept the Property in an "as is" condition.

Seller grants to Purchaser and Purchaser's agents, employees or contractors the right to enter upon the, Property, at all reasonable times during the term of this Escrow, to conduct any investigations (including, without limitation, the Investigation) , and Seller agrees to cooperate in a reasonable manner with Purchaser's investigations. However, such investigations (including any inspections and tests conducted in connection with the Investigation) shall not damage the Property in any respect, shall not disturb or disrupt the management or operation of the Property or the occupancy of the Improvements by any tenants, and shall be conducted only after giving Seller and any tenants or occupants reasonable prior notice of such inspection. As a condition to Purchaser's right to conduct the investigations pursuant to this Section 5.2, Purchaser shall provide Seller with certificates or other evidence of insurance certifying that Purchaser or Purchaser's agents, employees or contractors conducting the Investigation, carry liability insurance satisfactory to Seller, both in scope of coverage and amount, which names Seller as an additional insured. Upon completion of the investigations, Purchaser shall promptly restore the Property to the condition existing immediately prior to the investigations. Purchaser shall indemnify and hold harmless Seller, and its respective agents and employees, from and against any claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees, court costs and litigation expenses) arising out of any entry on the Property by Purchaser, its agents, employees or contractors, which indemnity shall survive the termination of this Contract or the Close of Escrow notwithstanding any contrary provision contained in this Contract.

Section 5.3 **Purchaser Financing**. Not later than thirty (30) days from the Opening of Escrow ("the financing period"), Purchaser shall obtain a loan commitment for the Property which is acceptable to Purchaser. Purchaser shall make application for financing within ten (10) days of the execution of this Agreement. If Purchaser shall not be able to obtain the permanent loan prior to the end of the financing period, upon material terms and conditions acceptable to Buyer in its sole discretion, the Purchaser may, by written notice delivered to Seller, provide a termination letter to this Agreement, in which case, Purchaser shall be returned its earnest money, less its share of the escrow fees and cancellation charges.

Section 5.4 **Environmental Investigation and Report**

a. In the event that the Phase I Environmental Site Assessment Report is conducted, such assessment shall be performed at Purchaser's sole cost and expense in a reasonably expeditious manner.

b. Within ten (10) days of the signing of this Agreement, Seller shall provide a copy of the Lead Based Paint, Asbestos and Environmental Study in its possession.

ARTICLE 6

CLOSING DOCUMENTS AND CLOSING CONDITIONS

Section 6.1 **Seller's Closing Documents**. Seller, at or prior to the Close of Escrow, will deliver to Escrow Agent (for delivery to Purchaser at the Close of Escrow) the following:

a. A Grant Bargain and Sale Deed ("Deed") conveying to Purchaser fee simple title to the Property, free and clear of all liens and encumbrances, assessments, easements and leases, except those matters approved or waived by Purchaser in writing;

b. An Assignment and Assumption of Leases, Contracts and Rights assigning to Purchaser, among other things, all of Seller's rights in and to the Business Leases, Project Contracts, and Tenant Leases approved by Purchaser in accordance with Section 3.4, and Tenant Deposits, Licenses, Building Plans, and Appurtenances;

c. A Bill of Sale assigning and conveying to Purchaser all of Seller's right, title and interest in and to the Personal Property;

d. Affidavits or qualifying statements that satisfy the requirements of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended ("Code") (and the regulations promulgated thereunder);

e. A Lease Agreement ("Lease Agreement"), the form of which is attached hereto as Exhibit "C" for the premises at the Property to be used as an office by the Seller's Neighborhood Services Department; and

f. Any other documents or instruments reasonably requested by Purchaser, the Title Company or Escrow Agent to effectuate the closing of the transaction in accordance with the terms of this Agreement.

Section 6.2 **<u>Purchaser's Closing Documents</u>**. Purchaser, at the Close of Escrow, will deliver to Escrow Agent (for disbursement to Seller, which disbursement shall be subject only to the satisfaction by Seller or waiver by Purchaser of Seller's performance of its obligations contained in this Contract):

a. The Price in immediately available funds;

b. A Deed of Trust ("Deed of Trust") duly executed by Purchaser in favor of the Seller;

c. Other documents or instruments required under this Contract; and

d. A Lease Agreement for the premises at the Property to be leased to the Seller for use by the Seller's Neighborhood Services Department.

e. Any other documents reasonably necessary to effectuate the closing of the transaction in accordance with the terms of this Agreement.

Section 6.3 **<u>Representations and Warranties</u>**. Seller's and Purchaser's obligations to proceed to the Close of Escrow shall be conditioned upon the representations and warranties of the other being true and correct in all material respects as of the Close of Escrow, as though such representations and warranties were made at and as of such time.

Section 6.4 **<u>Escrow Agent</u>**. At the Close of Escrow, Escrow Agent shall:

a. Record the Deed and Deed of Trust in the Office of the Recorder of Clark County, Nevada (the "Recorder"), and provide Purchaser with a conformed copy of the Deed and provide Seller with a conformed copy of the Deed of Trust;

b. Pay all documentary, transfer, filing or recording taxes;

c. Instruct the Recorder to return the Deed to Purchaser;

d. Instruct the Recorder to return the Deed of Trust to Seller;

e. Record or file such other documents or instruments contemplated by this Agreement, subject to such instructions as are consistent with this Agreement;

f. Release and distribute to Seller the Price, except that Escrow Agent is authorized to deduct from the Price an amount equal to no more than four percent (4%) of the Price for commissions, if any, pursuant to Section 9.1;

g. Deliver to Buyer the Assignment and Assumption, the Bill of Sale and the Title Policy, subject only to the exceptions approved by Purchaser pursuant to the terms of this Agreement;

h. To the extent the valid recordation of the Deed is not prohibited hereby, present any required evidence of Purchase Price or documentary or transfer tax payments in a separate unrecorded statement; and

i. Release and distribute to the broker identified in Section 9.1 the commission.

ARTICLE 7

CLOSING PRORATIONS AND COSTS

Section 7.1 **Real Estate Taxes and Assessments**. All general ad valorem property taxes on the Property, whether paid in installments or not, shall be paid by Purchaser as of the Closing and based on the most current statements and information available to Escrow Agent or otherwise provided by Seller. If the Property is part of a larger tax assessor's parcel, the new tax allocable to the Property shall be determined pro rata on the basis of relative acreage, assessment ratios, and valuations. Any special assessments made prior to the Close of Escrow shall be paid by Seller.

Section 7.2 **Security Deposits**. At the Close of Escrow, Purchaser shall receive a credit against the Price in an amount equal to the Tenant Deposits whereupon the Tenant Deposits shall be deemed to have been delivered to Purchaser, or, in the alternative, Seller shall deliver the Tenant Deposits to Purchaser at the Close of Escrow, and, in either case, Purchaser will be deemed to have assumed all obligations to reimburse to the tenants an amount equal to the Tenant Deposits.

Section 7.3 **Income and Expenses**. Subject to the provisions of Section 7.4, all income and expenses attributable to the leasing and operation of the Property shall be prorated and apportioned between Purchaser and Seller as of the Closing Date, with Purchaser being responsible for and credited with all income and expenses on and after the Closing Date and Seller being responsible for and credited with all income and expenses prior to the Closing Date. Any revenue or expense amounts subject to this Section 7.3 which cannot be ascertained with certainty as of the Closing shall be prorated on the basis of the parties' reasonable estimates of such amount and, within sixty (60) days after the Closing Date, Seller and Purchaser will identify any post-closing adjustments which need to be made to the income and expenses identified in this Section 7.3 based upon income and expenses actually received or paid in the leasing or operation of the Property attributable to the period of time prior to the Closing Date.

Section 7.4 **Rents**. All rents and other revenue payable by any tenants or other persons using or occupying all or part of the Property which are attributable to the period prior to the Closing Date will be paid to Seller to the extent collected on or before the Closing. Rents earned and attributable to the period beginning on the Closing and thereafter will belong to Purchaser. Purchaser shall remit to Seller any delinquent rents paid to Purchaser during the sixty (60) day period following the Closing Date.

Section 7.5 **Utilities**. Payment of final utility charges shall be made through Escrow if actual meter readings can be made on the Closing Date. If actual meter readings are not obtainable, Escrow Agent shall prorate all utility charges using the per diem rate calculated from the latest available billing or other operating history of the Property provided by Seller. On or about the sixtieth (60th) day following Closing, the parties outside of the Escrow shall make any necessary readjustments based upon a final billing obtained by Purchaser or actual subsequent readings of utility meters. All utility security deposits, if any, shall be retained by Seller.

Section 7.6 **Title Insurance**. Seller agrees to pay for the cost of issuing the Title Policy with the standard exceptions deleted. Purchaser will pay for the cost of any endorsements to the Title Policy requested by Purchaser other than any endorsements required for deletion of the standard exceptions (the "Title Policy Endorsements").

Section 7.7 **Sales and Use Taxes**. Seller agrees to be responsible for the payment of all lease taxes and sales and use taxes, if any, attributable to the Tenant Leases, Seller's operations, or the Property prior to the Closing Date. Purchaser, if the Escrow closes, agrees to be responsible for the payment of all lease taxes and sales and use taxes attributable to the Tenant Leases, Purchaser's operations, or the Property on and after the Closing Date.

Section 7.8 **Closing Costs**. Purchaser shall pay for all closing costs associated with this transaction. Seller will pay up to four percent (4%) for the broker's commission associated with the sale of this Property as set forth in Section 9.1. Purchaser and Seller shall each bear their own legal and accounting costs and fees.

ARTICLE 8
WARRANTIES, REPRESENTATIONS AND COVENANTS

Section 8.1 **By Purchaser Only**. In addition to the representations, warranties and covenants of Purchaser contained in other sections of this Agreement, Purchaser hereby represents, warrants and covenants to Seller as follows (all of which shall survive the Close of Escrow):

a. Purchaser has the full corporate right, capacity, power and authority to enter into and carry out the terms of this Agreement. The person or persons executing this Agreement on behalf of the Purchaser have the authority to execute this Agreement and to bind the Purchaser. This Agreement has been duly authorized and executed by Purchaser, and upon delivery to and execution by Seller shall be a valid and binding agreement of Purchaser.

b. Each of the representations and warranties made by Purchaser in this Agreement, or in any document or instrument delivered pursuant hereto or executed in connection herewith shall, to the best of Buyer's knowledge be true and correct in all material respects as of the date hereof

c. Purchaser acknowledges that the Property was constructed with federal funds from the HOME Program and Purchaser consents to the requirement that, upon Close of Escrow, Purchaser shall be bound by certain applicable city ordinances, state and federal statutes, conditions, regulations and assurances which are applicable to the entire HOME Program or are required by the United States Department of Housing and Urban Development ("HUD"), or any combination thereof. The Purchaser covenants to comply with the HUD Home Program regulations and conditions as set forth more specifically on Exhibit "D" attached hereto and amended from time to time. As security for Purchaser's performance to comply with the applicable HOME Program and HUD regulations and conditions pursuant to 24 CFR 92.254, Purchaser agrees to execute and deliver to Escrow Agent prior to the Close of Escrow a Deed of Trust in favor of the Seller for the Property, the form of which is attached in Exhibit "D." The Escrow Agent shall record the Deed of Trust simultaneously with the Deed to the Property.

Section 8.2 **By Seller**. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Purchaser as follows (all of which shall survive the Close of Escrow):

a. Seller is a municipal corporation, organized and validly existing under the laws of the State of Nevada. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. The person or persons executing this Agreement on behalf of the Seller have the authority to execute this Agreement and to bind the Seller. Seller shall provide to Purchaser at the Close of Escrow an executed copy of a resolution adopted by the City Council of the City of Las Vegas authorizing this transaction. Seller has not alienated, encumbered, transferred, leased, assigned or otherwise conveyed its interest in the Property, or any portion thereof, except as set forth in the Title Report or as otherwise provided herein, nor entered into any other agreement, covenant or obligation binding on Seller regarding the Property. This Agreement has been duly authorized and executed by Seller, and upon delivery to and execution by Buyer shall be a valid and binding agreement of Seller.

b. Except as may have been disclosed by Seller to Purchaser in writing:

(i) To the best of Seller's knowledge, no Hazardous Substance (hereinafter defined) or Petroleum (hereinafter defined) has been or is presently being discharged, stored, used or is otherwise located on or beneath the surface of the Property. Seller shall promptly notify Purchaser in writing in the event that Seller acquires knowledge or notice that a Hazardous Substance or Petroleum has been released, discharged or is otherwise located on or beneath the surface of the Property or any parcel of real estate adjacent to the Property;

(ii) To the best of Seller's knowledge, the Property and the use and operation thereof are currently in compliance with all applicable federal, state and local laws, regulations, ordinances and requirements relating to health and safety, and protection of the environment, except as disclosed by the Seller to Purchaser;

(iii) "Hazardous Substance(s)" for purposes of this Agreement shall mean all toxic or hazardous materials, chemicals, wastes or similar substances, including, without limitation, asbestos, radioactive material and hazardous substances or hazardous wastes, as those terms are now or hereafter deemed by the comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U. S.C. §6901 et seq., or any other applicable federal, state or municipal law, regulation, ordinance or requirement, all as amended or hereinafter amended. "Petroleum" for purposes of this Agreement shall include, without limitation, crude oil or any fraction thereof which is liquid at standard conditions of temperature or pressure;

(iv) To the best of Seller's knowledge, the Seller has not been subject to, or received any notice of, any administrative or judicial action, or notice of any intended administrative or judicial action, or received a request for information relating to the presence or alleged presence of Petroleum and/or Hazardous Substances in, under, at or upon the Property (or any parcel of real estate adjacent thereto), and does not know, and has no reason to know, of any basis for any such request, notice or action with respect to the Property (or any parcel of real estate adjacent thereto);

(v) To the best of Seller's knowledge, there are no pending or, to the knowledge of the Seller, threatened actions or proceedings (or notices of potential actions or proceedings) from any governmental agency or any other entity regarding any environmental, health or safety law, waste disposal, lien or other proceedings relating to the Property;

c. To the best of Seller's knowledge, the continued ownership, operation, use and occupancy of the Land or the Improvements thereon does not violate any zoning, building, health, flood control, fire or other law, ordinance, order or regulation or any restrictive covenant. There are no violations of any federal, state, county, or municipal law, ordinance, order, regulation or requirement, affecting any portion of the Land, the Improvements or the Personalty, and no written notice of such violation has been issued to Seller by any governmental authority. There are presently in effect such licenses, certificates of occupancy and permits as are required for the present occupancy and operation of the Property. The aforesaid licenses, certificates of occupancy and permits are transferable to Purchaser at no cost to Purchaser, and all payments due with respect thereto prior to Closing have been made to the appropriate authorities.

d. To the best of Seller's knowledge, there are no proceedings or claims affecting the Land, Improvements or any portion thereof (nor affecting Seller and relating to or arising out of the ownership, operation, use or occupancy of the Property) pending or being prosecuted in any court or by or before any federal, state, county, or municipal department, commission, board, bureau or agency, or other governmental instrumentality nor, to the knowledge of Seller, is any such action, suit, proceeding, or claim threatened or being asserted.

e. To the best of Seller's knowledge, all utilities required for the operation of the Improvements enter the Land through adjoining public streets or, if they pass through adjoining private land, do so in accordance with valid public easements or private easements which will inure to the benefit of the Purchaser. All of said utilities are installed and operating, and all installation and connection charges have been paid in full. All utilities necessary to service the Property will be available to the Property at Closing without the consent of any other person, firm or corporation and without expense (other than normal and usual security deposits or bonds) to Purchaser, and Seller has complied with all laws, ordinances and regulations relating to the delivery of such services and the payment therefor. There are no facts or conditions that will result in the termination of the present access from the Property to any utility services or to existing highways and roads;

f. To the best of Seller's knowledge, there are no agreements or contracts (written or oral) which will affect the ownership, use or operation of the Property after the Closing other than the Project Contracts, Business Leases, Tenant Leases and applicable HOME Program regulations set forth in Exhibit "D" provided by Seller to Purchaser and other than those title matters approved or waived by Purchaser under Article 4 above.

g. To the best of Seller's knowledge, Seller is not aware of any default by it under the Project Contracts, Business Leases, or Tenant Leases, nor is Seller, to the best of Seller's knowledge, aware of any default by any tenant under the Tenant Leases or any contracting party under the Business Leases or Project Contracts.

h. There are no adverse parties in possession of the Property or of any part thereof, and no parties in possession thereof. There are no leases, licenses or other agreements permitting, nor has Seller entered into any course of conduct that would permit, any person or entity to occupy any portion of the Property or otherwise affecting the Property or any part thereof other than as permitted under the Tenant Leases.

i. There are no attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships, or lawsuits pursuant to any debtor relief laws contemplated by Seller or pending against Seller or the Property.

j. All information and data furnished by Seller to Purchaser with respect to the Property, to the best of Seller's knowledge, will be true, correct and complete in all material respects.

k. Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against Purchaser or become a lien against the Property. There are no unpaid assessments against the Property, and Seller has no knowledge of any pending or threatened public improvements that would result in any charge being levied or assessed against the Property.

l. The execution of and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement, and of all other acts necessary and appropriate for the consummation of the transactions contemplated by and provided for in this Agreement, are not in violation of any contract, agreement or other instrument to which Seller is a party, any judicial order or judgment of any nature by which Seller is bound, or the organization documents and all amendments thereto of Seller.

Seller agrees to notify Purchaser within a reasonable period of time of any information or event or circumstance of which Seller first learns after the Contract Date, which makes any representation or warranty of Seller under this Agreement untrue or misleading in any material respect.

ARTICLE 9

GENERAL PROVISIONS

Section 9.1 **Broker's Commission**. Except as herein disclosed, the Seller represents and warrants to the other that it has engaged Hendricks & Partners to market this Property on behalf of the Seller. Purchaser has not engaged or dealt with any broker or any other person who would be entitled to any brokerage commission from the other party concerning this purchase of the Property. The Escrow Agent shall pay on behalf of the Seller the real estate commission of four percent (4%) of the Price. Any broker representing the Purchaser shall receive its commission from that portion of the four percent (4%) commission to be paid to Hendricks & Partners. Each party agrees to indemnify and hold the other entirely free and harmless for, from and against any loss, damage, liability or expense (including, without limitation, attorneys' fees) arising from any claim by any broker or any other person for brokerage commissions because of any act or omission of such party or its representatives. Each party further agrees to defend the other at its sole cost and expense from any such claims. As used in this Contract, the term "broker" will refer to any real estate broker, salesperson, agent, listing agent, finder or any other person entitled to a commission, and the term "commission" will refer to any brokerage, advisory or finder's fees or commissions.

Section 9.2 **Damage**. If the Property is materially damaged prior to the Close of Escrow, Seller shall immediately notify Purchaser and the Escrow Agent of the damage. Purchaser, at its election and within fifteen (15) days from receipt of Seller's notice, may elect by written notice to Seller and Escrow Agent to cancel and terminate this Escrow, in which event all monies and other items deposited into Escrow, or exchanged between the parties, shall be immediately returned to the respective parties, each party shall pay one-half (½) of all Escrow and title charges (including cancellation charges), and the Escrow and this Agreement shall terminate, all without further liability of the parties except for Sections 5.2 and 9.1. If Purchaser elects not to terminate this Escrow after notice of the material damage, the proceeds of any insurance received by Seller, plus the amount of any deductible, shall be paid to Purchaser at the Close of Escrow, and this Agreement shall remain in full force and effect and the Close of Escrow shall occur on the Closing Date specified in Section 1.5 without reduction of the Purchase Price. If any insurance proceeds are withheld by Seller's insurance company, Seller, effective at the Close of Escrow, shall assign to Purchaser the right to collect such proceeds from Seller's insurance company. If the Property is nonmaterially damaged prior to the Close of Escrow, Seller shall immediately notify Purchaser and Escrow agent of the damage; Seller shall assign to Purchaser the proceeds of any insurance received by Seller relating to such damage upon the Close of Escrow; Seller shall pay to Purchaser the deductible portion of any insurance policy; this Agreement shall remain unchanged and in full force and effect; and the Close of Escrow shall occur on the original Closing Date without reduction of the Purchase Price. For purposes of this section, "materially damaged" shall refer to damage requiring Five Hundred Thousand and No/100ths Dollars ($500,000.00) or more to repair. The cost of repair shall be determined by a licensed contractor selected by Seller and subject to the approval of Purchaser, which approval shall not be unreasonably withheld. Seller agrees to cooperate with Purchaser in any proceedings which Purchaser may have with Seller's insurance company in connection with any insurance proceeds.

Section 9.3 **Eminent Domain**. If, prior to the Close of Escrow, all or any significant portion of the Property is taken by eminent domain, Seller shall notify Purchaser of such fact. If the taking is of all or any significant portion of the Property, Purchaser shall have the option to terminate this Agreement and the Escrow upon notice to Seller given not later than fifteen (15) days after receipt of Seller's notice. For purposes of this Section 9.3, a "significant portion" includes any buildings and any portion of the Property which significantly impedes access to and from the Property or significantly reduces the available parking area or number of parking spaces. If this Agreement is terminated, this Escrow shall terminate, all monies and other items deposited into Escrow shall be returned to the respective parties, each party shall pay one-half (½) of all Escrow and title charges (including cancellation charges), and each party shall have no further obligation to the other except for Sections 5.2, and 9.1. If Purchaser does not exercise this option to terminate this Agreement, or if less than a significant portion of the Property is taken by eminent domain, neither Purchaser nor Seller shall have the right to terminate this Agreement, but Seller shall assign and turn over, and Purchaser shall be entitled to receive and keep, all awards for the taking by eminent domain, and Purchaser and Seller shall proceed to the Close of Escrow pursuant to the terms of the Contract without modification of the terms of this Agreement and without any reduction in the Price.

Section 9.4 **Default by Either Party**. If Escrow fails to close when and as provided in Section 1.6 above due to the failure of either party to perform, or if either party breaches any obligation under this Agreement, the non-defaulting party may elect, by written notice to the defaulting party and to Escrow Agent, to terminate the Escrow and this Agreement. Subject to Sections 3.3, 4.4, and 9.6, Escrow Agent and the parties shall, upon such termination, return all funds and documents held by them to the party depositing or delivering the funds or documents. Thereafter, each of the parties shall be discharged and released from any obligations and liabilities, except as otherwise provided in this Agreement except for Sections 5.2 and 9.1.

Section 9.5 **Cancellation Charges**. If the Close of Escrow fails to occur because of either party's default, the defaulting party shall be liable for all Escrow and title cancellation and similar charges, in addition to any other remedies available to the non-defaulting party under Section 9.4 above or Sections 9.6 or 9.7 below. If the Close of Escrow fails to occur for any other reason, Purchaser and Seller shall each pay one-half (½) of any escrow or title cancellation charges.

Section 9.6 **LIQUIDATED DAMAGES—PURCHASER DEFAULT**. UPON CONSIDERATION OF THE ANTICIPATED DAMAGE ACCRUING TO SELLER DUE TO THE PURCHASER'S FAILURE TO CARRY OUT THIS AGREEMENT, AND IN RECOGNITION OF THE COST AND DIFFICULTY INVOLVED IN ESTABLISHING THE CAUSE, FORESEEABLE CONSEQUENCES, AND ACTUAL DAMAGES ATTENDANT TO SUCH A BREACH OF OBLIGATIONS, SELLER AND PURCHASER AGREE THAT THE FOLLOWING CONDITIONS FOR THE IMPOSITION OF, AND THE AMOUNT OF, LIQUIDATED DAMAGES AGAINST PURCHASER ARE REASONABLE UNDER THE CIRCUMSTANCES AS OF THE CONTRACT DATE. IF THE CLOSE OF ESCROW FAILS TO OCCUR DUE TO THE DEFAULT OF PURCHASER UNDER THIS AGREEMENT, SELLER, AT ITS SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND NEVADA LAW, SHALL BE ENTITLED TO OBTAIN AND KEEP AS LIQUIDATED DAMAGES, FIFTY THOUSAND AN NO/100THS DOLLARS ($50,000.00), (TOGETHER WITH ANY ACCRUED INTEREST). IN FURTHERANCE OF THE FOREGOING, SELLER HEREBY WAIVES ANY RIGHT TO RECEIVE ANY EQUITABLE RELIEF, INCLUDING, WITHOUT LIMITATION, SPECIFIC PERFORMANCE, AS A RESULT OF PURCHASER'S DEFAULT UNDER THIS AGREEMENT AS IT IS SELLER'S UNDERSTANDING AND AGREEMENT THAT SELLER'S SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT SHALL BE THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION 9.6.

Section 9.7 **Attorneys' Fees**. If there is any litigation between Seller and Purchaser to enforce or interpret any provisions or rights of this Contract, the unsuccessful party in such litigation, as determined by the court, agrees to pay the successful party, as determined by the court, all costs, legal fees and expenses (through trial and appeal), including, but not limited to, reasonable attorneys' fees incurred by the successful party.

Section 9.8 **Notice**. Except as otherwise required by law, any notice required or permitted under this Contract must be in writing and must be given either: (i) by personal delivery; (ii) by confirmed telecopy; or (iii) by any private overnight, "same day," or "next day" delivery service, delivery charges prepaid with proof of receipt. Notice sent in any of the manners set forth above must be addressed or sent to Seller, Purchaser and/or Escrow Agent at the addresses or telecopy phone numbers set forth on the first page of this Contract. In addition, a copy of every notice delivered to Seller shall be delivered to Seller's attorney in the same manner at the following address: Las Vegas City Attorney's Office, 400 East Stewart Avenue, 9th Floor, Las Vegas, Nevada 89101, Attention: City Attorney. Any party may change its address or telecopy number for the purposes of delivery and receipt of notices by advising all other parties in writing of the change. Notice delivered in one of the foregoing manners will be deemed to be received: (I) on the date of delivery, if personally delivered; (II) on the date sent by telecopy so long as a "hard copy" of same is sent by any of the other means described above no later than the next business day; or (III) on the next business day after deposit with an express delivery service, if given by overnight, "same day," or "next day" delivery service. No notice will be deemed effective unless sent in one of the manners described above.

Section 9.9 <u>**Waiver of Conditions**</u>. Except as otherwise provided in this Contract regarding any deemed waivers for a failure to promptly act or elect, Purchaser's contingencies or conditions precedent may be waived only by Purchaser, and any waiver by Purchaser may be done only in a writing signed by Purchaser.

Section 9.10 <u>**Additional Acts**</u>. The parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably necessary to carry out the purpose and intent of this Contract. Prior to the expiration of the Contingency Date, Purchaser and Seller will agree upon the form of all closing documents which are to be executed at Close of Escrow and which have not been attached to this Contract as exhibits.

Section 9.11 <u>**Governing Law**</u>. This Contract will be governed by and construed and enforced in accordance with the laws of the State of Nevada. Any action brought to interpret, enforce or construe any provision of this Contract must be commenced and maintained in the District Court of the State of Nevada, County of Clark, or, if the District Court lacks or declines jurisdiction, in the United States District Court for the Southern District of Nevada. All parties irrevocably consent to this jurisdiction and venue and agree not to transfer or remove any action commenced in accordance with this Contract.

Section 9.12 <u>**Construction**</u>. The terms and provisions of this Contract represent the results of negotiations between Seller and Purchaser, neither of which have acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Contract should be interpreted and construed in accordance with their usual and customary meanings, and Seller and Purchaser each waive the application of any rule of law which states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared the Contract or any earlier draft of the Contract.

Section 9.13 <u>**Time of Essence**</u>. Time is of the essence of this Contract. The time for the performance of any obligation of the taking of any action under this Contract will be deemed to expire at 5:00 p.m. (Nevada time) on the last day of the applicable time period established in this Contract. In calculating any time period in this Contract which commences upon the receipt of any notice, request, demand or document, or upon the happening of an event (e.g., the Opening of Escrow), the date upon which the notice, request, demand or document is deemed received pursuant to this Contract or the date an event occurs (or is deemed to have occurred) is not included with the applicable time period, but the applicable time period will commence on the day immediately following. If the time for the performance of any obligation or taking any action under this Contract expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday and during which Escrow Agent is open for business. Unless this Contract otherwise specifies, the term "day" will mean a calendar day.

Section 9.14 Interpretation. The terms of this Contract supersede all prior and contemporaneous oral or written agreements and understandings of Purchaser and Seller, all of which will be deemed to be merged into this Contract. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Contract and the terms and provisions of any document, instrument, letter or other agreement executed in connection with or in furtherance of this Contract, the term, provision, document, instrument, letter or other agreement will be consistently interpreted in such manner as to give effect to the general purposes and intention as expressed in this Contract.

Section 9.15 Headings and Counterparts. The headings of this Contract are for reference only and are not intended to limit or define the meaning of any provision of this Contract.

Section 9.16 Incorporation by Reference. All exhibits to this Contract are fully incorporated in the text of this Contract.

Section 9.17 Counterparts. This Contract may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which when taken together will constitute one binding contract and instrument.

Section 9.18 Severability. If any one or more of the provisions of this Contract or the applicability of any provision to a specific situation is held to be invalid or unenforceable, the provision will be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Contract and all other applications of such provisions will not be affected by any such invalidity or unenforceability.

Section 9.19 Approvals. This Agreement and the Seller's obligations under this Agreement are subject to approval by the City Council of the City of Las Vegas.

Section 9.20 Miscellaneous Definitions and Standards. Whenever the terms "sole discretion," "sole and absolute discretion," or "sole option" are used, the terms will mean that the act or decision of the party may be made in the party's independent and individual choice of judgment, without regard to any objective or other standard of consideration. Except for those acts or decisions which may be made in a party's "sole discretion" etc., all acts or decisions of any party to this Contract must be exercised with reasonable discretion.

Section 9.21 **<u>Assignment, Binding on Successors and Assigns</u>**. Except as otherwise expressly provided below, neither party shall assign, transfer or convey any of its rights or obligations under this Contract without the prior written consent of other party, which consent shall not be unreasonably withhold.

EXECUTED as of the Contract Date.

CITY OF LAS VEGAS

By: ______________________________
JAN LAVERTY JONES, Mayor
"SELLER"

ATTEST:

____
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

J. Pinhcello 2/19/99
Date

Robert E Kochevar
ROBERT E. KOCHEVAR

Jean Kochevar
JEAN KOCHEVAR

"PURCHASER"

ESCROW AGENT'S ACCEPTANCE

By its execution below, UNITED TITLE OF NEVADA accepts this Contract as its escrow instructions.

ESCROW AGENT:

UNITED TITLE OF NEVADA

By: ______________________________

Its: ______________________________

______________________, 1999.
Date: ("Opening of Escrow")

EXHIBIT "A"
TO
PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS
BEL AIRE COMPLEX APARTMENTS

Legal Description

Lots Three (3) through Ten (10) in Block Two (2); Lots One (1) through Four (4) and Lots thirty-one (31) through Thirty-four (34) in Block Four (4) of FABULOUS FORTY as shown by map thereof on file in Book 8 of Plats, page 2, in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT "B"

SURVEYOR'S CERTIFICATE:

TO: THE CITY OF LAS VEGAS,
FIRST AMERICAN TITLE COMPANY OF NEVADA,
W.L. GOHRES

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IT IS BASED WERE MADE (I) IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," AND INCLUDES ITEMS 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, AND 13 OF TABLE A THEREOF, AND (II) PURSUANT TO THE ACCURACY STANDARDS (AS AOPTED BY ALTA AND ACSM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION) OF AN URBAN SURVEY.

DATE: MARCH 30, 1998

RITA M. LUMOS, PLS
NEVADA LICENSE #5094

PROFESSIONAL LAND SURVEYOR — STATE OF NEVADA
RITA M. LUMOS
No. 5094

3/30/98

REFERENCES:

FABULOUS FORTY	BOOK 8	PAGE 2
QUAIL ESTATES WEST PHASE I AMENDED	BOOK 41	PAGE 9
LAS VERDES HEIGHTS 6 UNIT 3	BOOK 7	PAGE 93
LAS VERDES HEIGHTS 6 UNIT 3 AMENDED	BOOK 8	PAGE 29
PARCEL MAP	FILE 55	PAGE 69

EXHIBIT "C"

Form of Lease Agreement
Bel Aire Apartment Complex

THIS LEASE AGREEMENT (hereinafter "Agreement") entered into this ____ day of ____________________, 1999, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (hereinafter "City"), ROBERT E. KOCHEVAR and JEAN KOCHEVAR (hereinafter "Lessor").

WITNESSETH:

WHEREAS, Lessor is the owner of the Bel Aire Apartment Complex ("Complex"), located in the vicinity of 4167 Tara Avenue, Las Vegas, Nevada; and

WHEREAS, the City is desirous of leasing certain property of the Complex for the purpose of operating and maintaining an office for the City's Neighborhood Services Department, and

WHEREAS, the Lessor is desirous of having the City operate and maintain an office at the Complex;

NOW, THEREFORE, in consideration of the foregoing and the covenants and conditions set forth herein, the parties agree as follows:

1. AGREEMENT OF PREMISES

Subject to the provisions of this Agreement, Lessor hereby leases to City and City hereby leases from Lessor certain space within the Complex, specifically known as 4124 Pennwood Avenue, No. B, Las Vegas, Nevada. The suite (hereinafter the "Premises") consists of approximately 1050 square feet and its location and dimensions are shown more particularly on the copy of the Site Plan of the Complex which is attached hereto as Exhibit "C-1" and incorporated herein by this reference.

2. TERM

Unless earlier terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be five (5) years ("Initial Term"). The term shall begin on the date the Grant Deed transferring title and ownership of the Complex from the City to Lessor has been recorded in the Office of the County Recorder, County of Clark, State of Nevada (the "Commencement Date") and shall end on the fifth (5th) anniversary of the Commencement Date. In the event that either the City or Lessor desires to terminate this Agreement, City (or its designated representative) or Lessor shall terminate this Agreement by providing sixty (60) days notice without cause.

The City shall have the right to entend the term for another five (5) years after the Initial Term.

3. OBLIGATIONS OF THE LESSOR

Lessor will provide the following at the Complex:

A. The following utilities: sanitation, sewer and water;

B. Landscape maintenance;

C. Common areas and maintenance; and

D. Three (3) parking spaces in the parking lot of the Complex which are located in close proximity of the Premises.

4. RENT

It is understood and agreed that, in consideration of the City operating and maintaining an office at the Complex, Lessor obtains certain benefits from having the City's presence at the Complex, specifically, the benefits derived from an outreach office of the Neighborhood Services Department. As such, the Lessor agrees to charge $500 in rent throughout the term of this Agreement. Increases to the base rent shall increase in accordance with the adjustments of HUD Guidelines for HOME Program Rent Limits.

5. CONDITION OF PREMISES

The Premises are leased to City on an "as-is" basis.

6. USE OF PREMISES

City agrees to use the Premises solely for the purpose of conducting its business, which is expressly limited to operating an office of the Neighborhood Services Department. Except as expressly consented to in writing by Lessor, City shall not use or permit the Premises to be used for any purpose and shall not operate under any name, other than those which are set forth in this Section. City agrees to maintain the Premises in good condition and to not use any nails, bolts or any other materials to change the walls, floors or any other portion of the Premises without the written consent of Lessor. Lessor agrees to use reasonable caution and respect the City's confidentiality when using shared space of the Premises.

7. LAWS, WASTE, NUISANCE

City covenants that it:

A. Will not use or suffer or permit any person or persons to use the Premises or any part thereof for conducting thereon any activity not authorized in this Agreement;

B. Will comply with all laws, ordinances, regulations and requirements now in force or which hereafter may be in force of any lawful government body or authority having jurisdiction over the Premises;

C. Will keep the Premises and every part thereof in a clean, neat and orderly conditions and will in all respects and at all times fully comply with all health and police regulations; and

D. Will not suffer, permit or commit any nuisance or waste.

8. CHANGES TO COMPLEX

Lessor reserves the right at all times to exercise reasonable control over, and from time to time make changes, alterations or additions to, the Complex. Lessor shall endeavor to do so with a minimum of disruption to the City's rights under this Agreement. This Section does not diminish City's right to seek any remedy available at law or in equity for injury or damage that City may suffer because of Lessor's alteration of the interior of the Premises.

Lessor shall maintain the structural components of the Complex. The structural components of the Complex shall consist of the following: the foundations, bearing and exterior walls and the roof; the electrical, plumbing and sewage systems lying outside the Premises; gutters and downspouts and other structural improvements made by Lessor to the building in which the Premises are located. If Lessor is required to make structural repairs by reason of City's negligent act or omission, City shall pay Lessor's cost for making such repairs within sixty (60) days after presentation of a bill therefor. Failure of City to do so shall constitute a default hereunder by City. Lessor's obligation of repair as provided for herein is expressly conditioned upon City's receipt of written notice, given in the manner set forth in Section 32, of the need for such repair. City shall have no liability to Lessor based upon City's failure to repair in the absence of the notice hereby required to be given.

9. ALTERATIONS

City shall not make or cause to be made to the Premises any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor coverings, interior or exterior lighting, plumbing fixtures or shades or awnings or make any other changes without first obtaining Lessor's written approval. City shall present to the Lessor plans and specifications for such work at the time approval is sought. In the event Lessor consents to the making of any alterations, additions or improvements to the Premises by City, the same shall be made by City at City's sole cost and expense. All such work with respect to any alterations, additions and changes shall be done in a good and workmanlike manner and diligently prosecuted to completion such that, except as absolutely necessary during the course of such work, the Premises shall at all times be a complete operating unit. Any such alterations, additions or changes shall be performed and done strictly in accordance with all laws, regulations and ordinances relating thereto. In performing the work of any such alterations, additions or changes, City shall have the same performed in such a manner as not to obstruct access to any portion of the Premises or the Complex. Any alterations, additions or improvements to the Premises including wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and shall be surrendered with the Premises and to become the property of Lessor unless Lessor otherwise elects at the end of the term hereof. Notwithstanding the above, Lessor agrees to construct, at its cost and expense, the required wall(s) on the Premises which will separate the City's Premises from the portion of the Complex to be used by Lessor.

10. UTILITIES

Lessor shall provide utilities for sanitation, sewer and water. City shall be responsible for gas, electricity and telephone. Lessor shall not be liable in the event of any interruption in the supply of any utility services to the Premises or Complex except and unless said interruption is due to Lessor's negligence. City agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities and that, if any equipment installed by City shall require additional utility facilities, the same shall be installed at City's expense in accordance with plans and specifications previously approved in writing by the Lessor.

11. USE OF PARKING AND OTHER AREAS

In connection with its use of the Premises pursuant to this Agreement, City is entitled to three (3) reserved parking spaces. All facilities in or about the Complex shall be subject to the exclusive control and management of Lessor. Lessor shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same; to change the area, level, location and arrangements of the parking area and other common facilities; to close all or any portion of said areas or facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right to any person or the public therein; and to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking. The term "non-customer parking" does not include members of the public who are on business at the Cty's Neighborhood Services Department. Lessor shall operate and maintain the parking area in such manner as Lessor in its discretion shall determine. Lessor shall have full right and authority to employ and discharge all its personnel with respect thereto, and shall have the right, through reasonable rules, regulations and/or restrictive covenants promulgated by it from time to time, to control use and operation of the parking area in order that the same may occur in a proper and orderly fashion. No such rules, regulations or restrictive covenants may be enforced against the City unless notice thereof is first provided to City.

12. TAXES

Subject to applicable exemptions from tax, Lessor shall be solely responsible for and shall pay before delinquency any and all taxes of any nature that may be levied, assessed or imposed upon the possession or use of the Premises or buildings, structures, improvements, personal property and other taxable interests located in or upon the Premises.

13. INSURANCE

City agrees to procure and maintain, at its sole cost and expense, by the end of the first year of this Agreement and any renewal period thereof, the following:

A. Fire insurance and extended coverage insurance to cover the replacement cost of the City's improvements, trade fixtures, furnishings, equipment and all other personal property;

B. Workmen's compensation coverage as required by law, whether by self-insurance or otherwise; and

C. General liability and property damage coverage with respect to the Premises with combined single limits of not less than $1,000,000 per person and per occurrence for bodily injury and a limit of not less than $1,000,000 per accident or occurrence for property damage. The liability coverage may be provided through self-insurance.

14. ACCESS TO PREMISES

Lessor shall have the right to place, maintain and repair all utility equipment of any kind in, upon and under the Premises as may be necessary for the servicing of the Premises and other portions of the Complex. Lessor shall also have the right to enter the Premises upon reasonable notice to inspect or to exhibit the same to prospective purchasers and City and to make such repairs, additions, alterations or improvements as Lessor may deem desirable.

Lessor may enter the Premises at any time, without notice, in the event of an actual emergency. Lessor shall at all times have and retain a key with which to unlock all of the doors of the Premises, excluding City's vaults and safes, and Lessor shall have the right to use any and all means which Lessor may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of City from the leased Premises or any portion thereof.

15. SURRENDER OF PREMISES

Upon expiration or other authorized termination of this Agreement, City shall surrender the Premises in substantially the same condition as a similar apartment unit at the Complex at the commencement of this Agreement, except for additions, alterations or changes specifically authorized by City and reasonable wear and tear, and shall deliver all keys to Lessor. Before surrendering the Premises, City shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by City as may be specified for removal by Lessor.

16. HOLDING OVER

There will be no holding over after the Initial Term or authorized extension. Prior to the end of the five (5) year term or authorized extension, City will receive a sixty (60) day notice to vacate.

17. EMINENT DOMAIN

In case the whole of the Premises, or such part thereof as shall substantially interfere with City's use and occupancy thereof, shall be taken by any lawful power or authority by exercise of the right of eminent domain, or sold to prevent such taking, either Party may terminate this Agreement effective as of the date possession is required to be surrendered to said authority. City shall not because of such taking assert any claim against Lessor or the taking authority for any compensation because of such taking, and Lessor shall be entitled to receive the entire amount of any award without deduction for any estate or interest of City. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of City's business, Lessor shall be entitled to the entire amount of the award without deduction for any estate or interest of City. In such event, Lessor shall promptly proceed to restore the Premises to substantially their condition prior to such partial taking, and a proportionate allowance shall be made to City and such allowance shall correspond to the time during which, and to the part of the Premises of which, City is so deprived on account of such taking and restoration. Nothing contained in this Section 17 shall be deemed to give Lessor any interest in, or prevent City from seeking any award against the taking authority for, the taking of personal property and fixtures belonging to City or for relocation expenses recoverable against the taking authority.

18. DAMAGE OR DESTRUCTION

A. City shall give prompt notice to Lessor in case of fire or accidents in or near the Premises or in the common areas.

B. If the Premises are partially damaged by fire or other casualty, Lessor shall repair such damage at its cost, subject to Lessor's option contained in subsection C of this Section.

C. If the Complex or common areas are substantially or totally destroyed, or if the Premises are damaged so extensively that they cannot, in Lessor's opinion, be repaired within sixty

(60) days after commencement of such repairs, or if Lessor shall decide to rebuild the Complex or common areas so that they will be substantially different structurally or architecturally, then either party, at its option and within thirty (30) days after such damage or destruction, may give the other party written notice thereof and this Agreement shall thereupon be canceled effective as of the date of the occurrence of such damage or destruction. If the Agreement is not canceled and Lessor elects to repair and rebuild, this Agreement shall remain in effect and Lessor shall provide comparable premises to the City.

19. ASSIGNMENT AND SUBLETTING

City shall not transfer, assign, delegate, mortgage or hypothecate this Agreement, in whole or in part, or permit the use of the Premises by any person or persons other than City, or sublet the Premises, or any part thereof, without the prior written consent of City.

20. DEFAULT BY LESSOR

In the event Lessor fails to fulfill any obligation under this Agreement, City shall, before exercising any right or remedy available to it, give Lessor written notice of the claimed breach, default or noncompliance, which Lessor shall have the right to cure for the sixty (60) days following the giving of the notice. Subject to the provisions of Section 18, if Lessor fails or refuses to make repairs or provide services which are required hereunder within sixty (60) days after receiving written notice from City of the need therefor, City may exercise any right or remedy available to it under Nevada law.

21. DEFAULT BY CITY

Upon the occurrence of City's failure to perform any other term, condition, or covenant to be performed by it pursuant to this Agreement within sixty (60) days after written notice of such default shall have been given to City by Lessor, Lessor shall have, without further notice or demand of any kind to City or any other person, the option to take terminate this Agreement by written notice to City. In the event of such termination, City agrees to immediately surrender possession of the Premises.

22. GOVERNING LAW

This Agreement shall be governed by and interpreted according to the laws of the State of Nevada.

23. NO PARTNERSHIP

Lessor does not by this Agreement, in any way or for any purpose, become a partner or joint venturer of City in the conduct of its business or otherwise.

24. NO FORCE MAJEURE

Each of the parties shall be excused for the period of any delay in the performance of any obligation hereunder when prevented from doing so by cause or causes beyond that party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, or acts of God.

25. NO WAIVER

Failure of Lessor to insist upon the strict performance of any provision or to exercise any option hereunder shall not be deemed a waiver of its right to do so in the future. No provision of this Agreement shall be deemed to have been waived by Lessor unless such waiver is in writing.

26. PARTIAL INVALIDITY

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

27. PROVISIONS BINDING

Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. In the event of any sale or assignment (except for purpose of security or collateral) by Lessor of the Complex, the Premises or this Agreement, Lessor shall, from and after the effective date thereof (irrespective of when such sale or assignment occurs), be entirely relieved of all of its obligations which shall, as of the time of such sale or assignment or on the effective date, whichever is later, automatically pass to Lessor's successor in interest. The preceding sentence applies only if Lessor's successor-in-interest is required by the transfer documents to honor Lessor's obligations under this Agreement.

28. NONDISCRIMINATION

Lessor and City each assures that the Premises are not segregated with respect to race, color, religion or national origin, and each agrees that it will not segregate or discriminate on such grounds with respect to public utilization of or access to the Premises.

29. ENTIRE AGREEMENT

This Agreement, including any exhibits and addenda attached hereto, set forth the entire agreement between the parties. All such exhibits and addenda mentioned in this Agreement are incorporated herein by reference. Any prior conversations or writings concerning the Agreement of the Premises are merged herein and extinguished. No amendment to this Agreement shall be binding upon Lessor or City unless reduced to writing and executed by the Parties and, in the case of the Tenant, executed with the same formality as attended City's execution of this Agreement.

30. SUBMISSION OF THIS AGREEMENT

Submission of this Agreement for examination by City does not constitute an option for the Premises and becomes effective as an Agreement only upon execution and delivery thereof by Lessor to City. If any provision contained in an amendment or addendum is inconsistent with a provision in the body of this Agreement, the provision contained in said amendment or addendum shall control. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any section or paragraph.

31. AUTHORITY OF SIGNATORIES

Each signatory to this Agreement represents that he or she is duly authorized to execute and deliver the same on behalf of the entity for which he or she is signing and that this Agreement is binding upon said entity in accordance with its terms.

32. NOTICES

Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by United States certified or registered mail, postage prepaid, and shall be sent to the following addresses:

IF TO THE LESSOR:	Robert E. and Jean Kochevar 6396 E. Mississippi Denver, Colorado 80224
IF TO THE CITY:	CITY OF LAS VEGAS Attn: City Manager 400 East Stewart Avenue Las Vegas, Nevada 89101

. . .
. . .
. . .

Either party may designate a different address by giving written notice to the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF LAS VEGAS

By: ___________________________
JAN LAVERTY JONES, Mayor

ATTEST:

____
BARBARA JO RONEMUS, City Clerk

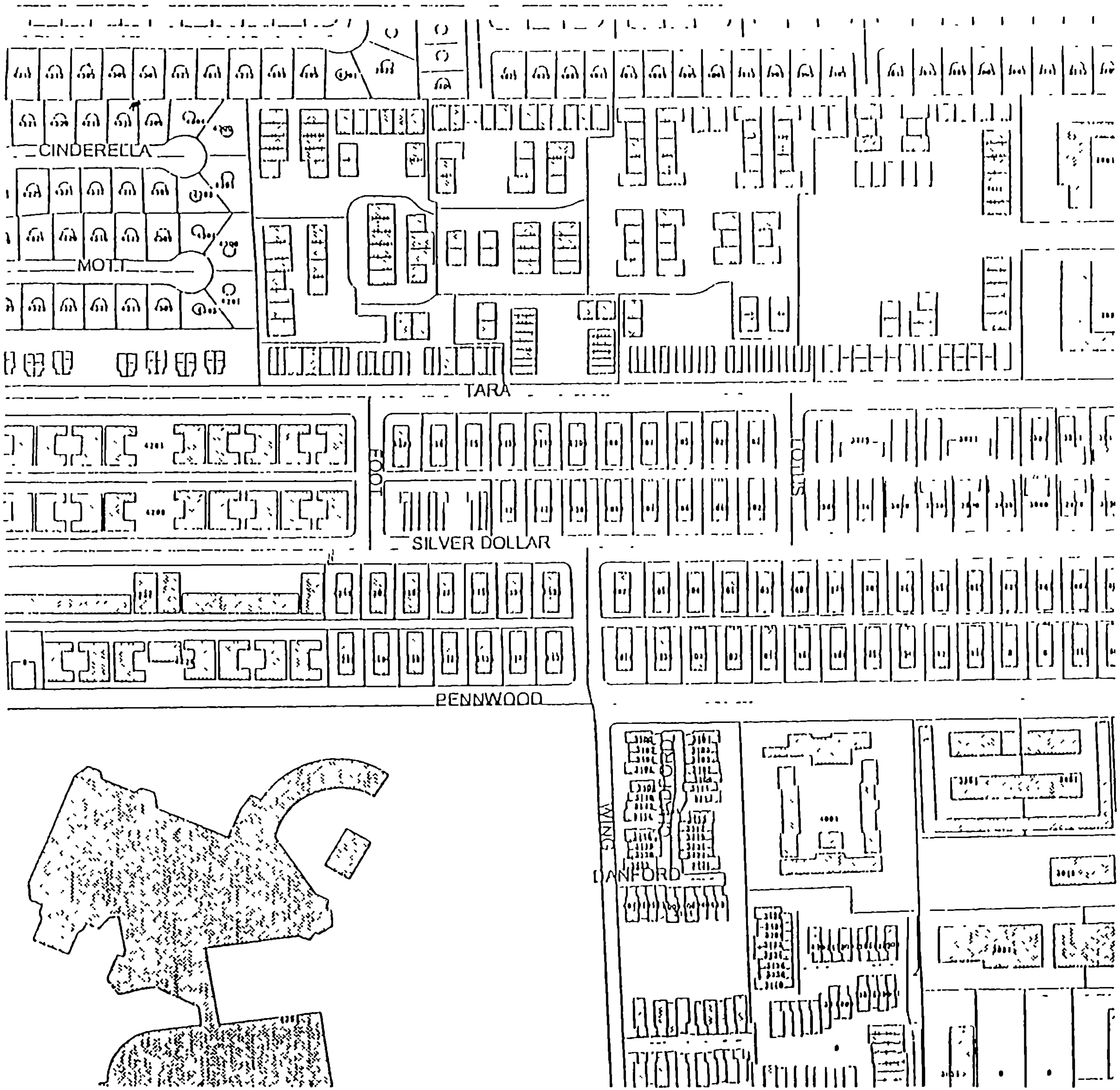
APPROVED AS TO FORM

____
Date

LESSOR:

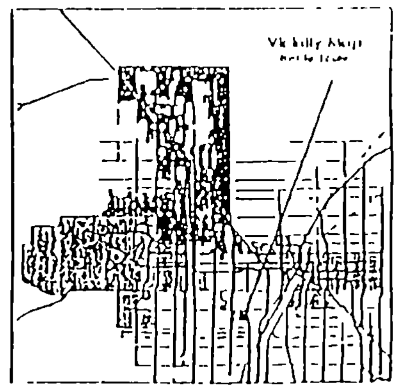
Robert E Kochevar
ROBERT E. KOCHEVAR

Jean Kochevar
JEAN KOCHEVAR



Bel Aire Apartments

Street Centerline
Building Footprints
Bel Aire Apartments
Parcels



Real Estate & Asset Management

1:3600

Attachment "3"

Short Form Deed of Trust

THIS DEED OF TRUST, made this ______ day of ___________________, 1999, between Robert E. Kochevar and Jean Kochevar, whose principal address is located at 6396 E. Mississipi, Denver, Colorado 80224, herein called Trustor, and the City of Las Vegas, a municipal corporation duly organized in the State of Nevada, whose principal office is located at 400 East Stewart Avenue, Las Vegas, Nevada 89101, Attention: City Manager's Office, herein called Trustee and Beneficiary.

WHEREAS, Beneficiary reconstructed certain real property known as the Bel Aire Apartment Complex with federal funds from the Home Ownership Investment ("HOME") Program; and

WHEREAS, the HOME Program requires that the management and operation of the Bel Aire Apartment Complex be in compliance with certain HOME Program conditions, rules and regulations; and

WHEREAS, Trustor and Beneficiary entered into a Purchase and Sale Agreement of even date herewith for the purchase of the Bel Aire Apartment Complex by the Trustor ("Agreement"); and

WHEREAS, as a condition of the Trustor's purchase of the Bel Aire Apartment Complex, the Trustor has agreed to faithfully perform its obligations in accordance with the terms of the Agreement;

NOW THEREFORE, for the purpose of securing each agreement of the Trustor herein contained and in the Agreement, Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain property located in the City of Las Vegas, Clark County, State of Nevada described as:

See Exhibit "1" attached hereto and by reference made a part hereof.

To protect the security of this Deed of Trust, Trustor shall abide by the terms of the Agreement executed; Trustor agrees to operate the above-described property solely to supply decent, safe, and sanitary rental housing for Home Ownership Investment ("HOME") Program eligible tenants; Trustor agrees to maintain and operate the above-described property as a drug-free environment; Trustor agrees to operate the above-described property as Affordable Housing for renters per applicable HOME program regulations for a period of ten (10) years or transfer of title from Trustor, whichever is longer, from the date of execution of this Deed of Trust ("Period of Affordability"); Trustor agrees to abide by the HOME program rules and regulations, specifically 24 CFR Part 92; Trustor agrees not to encumber the property described on Exhibit "1" hereto in any way during the Period of Affordability as defined in the HOME program rules and regulations without the expressed written consent of Beneficiary; Trustor agrees to transfer title of the property described on Exhibit "1" hereto to Beneficiary if Trustor, after proper notice and due process, is found to be in violation of its Agreement with Beneficiary; and

Notwithstanding the rights of Beneficiary to the Property under this Deed of Trust, Trustor agrees to repay to the Beneficiary the amount of Two Million Five Hundred Eighty-one Thousand Four Hundred Seventy-Eight and No/100ths Dollars ($2,581,478.00) HOME program funds which were expended on the Property if the affordable housing units on the Property, or any portion thereof, are subleased without prior written approval of Beneficiary or through foreclosure, sale, or other circumstances Trustor loses legal possession of the Property prior to the transfer of ownership of the units to HOME eligible individuals or families; and

By execution and delivery of this Deed of Trust and the Agreement secured hereby, Trustor agrees that provisions (1) to (17) inclusive of the Deed of Trust, recorded in Book 730, as Document No. 586593, of Official Records in the Office of the County Recorder of Clark County hereby are adopted and incorporated herein and made a part hereof as though set forth herein, that Trustor will observe and perform said provisions, and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default, any Notice of Sale, and or any Notice of Lien hereunder be mailed to the address hereinabove set forth.

TRUSTOR:

Robert E. Kochevar

ROBERT E. KOCHEVAR

Jean Kochevar

JEAN KOCHEVAR

STATE OF NEVADA
} ss.
COUNTY OF CLARK

On this 19th day of February, 199__, before me, the undersigned, a Notary Public in and for said county and State, personally appeared Robert E. + Jean Kochevar known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntary and for the uses and purposes therein mentioned.

David Roark

NOTARY PUBLIC, in ~~and for~~ said County and State

DAVID ROARK
Notary Public - Nevada
No. 94-4460-1
My appt. exp. Apr. 22, 2002

WHEN RECORDED MAIL TO:
City of Las Vegas
Attention: City Manager's Office
400 East Stewart Avenue
Las Vegas, Nevada 89101

EXHIBIT "1"

Legal Description

Lots Three (3) through Ten (10) in Block Two (2); Lots One (1) through Four (4) and Lots thirty-one (31) through Thirty-four (34) in Block Four (4) of FABULOUS FORTY as shown by map thereofon file in Book 8 of Plats, page 2, in the Office of the County Recorder of Clark County, Nevada.

EXHIBIT “D”

HOME Investment Partnerships Program

Final Rule

24 CFR Part 92

September 16, 1996

(with May 28, 1997 technical corrections and August 22, 1997 amendments)

PART 92--HOME INVESTMENT PARTNERSHIPS PROGRAM

Subpart A -- General

Subpart B -- Allocation Formula

Insular Areas Program

Subpart C -- Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

Subpart D -- Submission Requirements

Subpart E -- Program Requirements

Subpart H -- Other Federal Requirements

Subpart I -- Technical Assistance

Subpart J -- Reallocations

Subpart K -- Program Administration

Subpart L -- Performance Reviews and Sanctions

AUTHORITY: 42 U.S.C. 3535(d) and 12701 - 12839.

Subpart A -- General

§ 92.1 Overview.

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 92.2 Definitions.

The terms ***1937 Act, ALJ, Fair Housing Act, HUD, Indian Housing Authority (IHA), Public Housing Agency (PHA),*** and ***Secretary*** are defined in 24 CFR 5.100.

Act means the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 et seq.

Adjusted income. See § 92.203.

Annual income. See § 92.203.

Certification shall have the meaning provided in section 104(21) of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12704.

Commitment means

(1) The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community housing development organization; or has met the requirements to commit to a specific local project, as defined in paragraph (2),

below.

(2) *Commit to a specific local project*, which means:

(i) If the project consists of rehabilitation or new construction (with or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(ii) (A) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.

(iii) If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.209.

Community housing development organization means a private nonprofit organization that:

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be sponsored or created by a for-profit entity, but:

(i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986;

(5) Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;

(6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by:

(i) Maintaining at least one-third of its governing board's membership for

for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing;

(9) Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Family has the same meaning given that term in 24 CFR 5.403.

HOME funds means funds made available under this part through allocations and reallocations, plus program income.

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more. The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities and student dormitories.

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

Jurisdiction means a State or unit of general local government.

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Metropolitan city has the meaning given the term in 24 CFR 570.3.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Participating jurisdiction means a jurisdiction (as defined in this section) that has been so designated by HUD in accordance with § 92.105.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

   (i) Is expected to be of long-continued and indefinite duration;

   (ii) Substantially impedes his or her ability to live independently; and

   (iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income;

(3) Payments of principal and interest on loans made using HOME funds or matching contributions;

(4) Proceeds from the sale of loans made with HOME funds or matching contributions;

(5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;

(6) Interest earned on program income pending its disposition; and

(7) Any other interest or return on the investment permitted under § 92.205(b) of HOME funds or matching contributions.

Project means a site or sites together with any building (including a manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

Single room occupancy (SRO) housing means housing (consisting of single room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this part.

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that:

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

Urban county has the meaning given the term in 24 CFR 570.3.

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.4 Waivers and suspension of requirements for disaster areas.

HUD's authority for waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is described in 24 CFR 5.110 and in section 290 of the Act, respectively.

Subpart B -- Allocation Formula

§ 92.50 Formula allocation.

(a) *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and States.

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for Indian tribes, insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.

(c) *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.

(1) Vacancy-adjusted rental units where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.

(2) Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs). <u>Overcrowding</u> is a condition that exists if there is more than one person per room occupying the unit. <u>Incomplete kitchen facilities</u> means the unit lacks a sink with running water, a range, or a refrigerator. <u>Incomplete plumbing</u> means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. <u>High rent costs</u> occur when more than 30 percent of household income is used for rent.

(3) Rental units built before 1950 occupied by poor families.

(4) Rental units described in paragraph (c)(2) of this section multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost.

(5) Number of families at or below the poverty level.

(6) Population of a jurisdiction multiplied by a net per capita income (pci). To compute net pci for a jurisdiction or for the nation, the pci of a three person family at the poverty threshold is subtracted from the pci of the jurisdiction or of the nation. The index is constructed by dividing the national net pci by the net pci of a jurisdiction.

(d) *Calculating formula allocations for units of general local government.*

(1) Initial allocation amounts for units of general local government described in paragraph (a) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

(2) If any of the initial amounts for such units of general local government in Puerto Rico exceeds twice the national average, on a per rental unit basis, that amount is capped at twice the national average.

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible jurisdictions on each successive recalculation. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of $500,000 or more. Only units of general local government which receive an allocation of $500,000 or more under the formula will be awarded an allocation. In fiscal years in which Congress appropriates less than $1.5 billion of HOME funds, $335,000 is substituted for $500,000.

(4) The allocation amounts determined under paragraph (d)(3) of this section are reduced by any amounts that are necessary to provide

increased allocations to States that have no unit of general local government receiving a formula allocation (see paragraph (e)(4) of this section). These reductions are made on a prorata basis, except that no unit of general local government allocation is reduced below $500,000 (or $335,000 in fiscal years in which Congress appropriates less than $1.5 billion of HOME funds).

(e) *Calculating formula allocations for States.*

(1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to States. The allocation amounts for States are calculated by determining initial amounts for each State, based on the sum of the shares of the six factors. For 20 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for the entire State over the corresponding factor for the total for all States. For 80 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for all units of general local government within the State that do not receive a formula allocation over the corresponding factor for the total for all States.

(2) If the initial amounts for Puerto Rico (based on either or both the 80 percent of funds or 20 percent of funds calculation) exceed twice the national average, on a per rental unit basis, each amount that exceeds the national average is capped at twice the national average, and the resultant funds are reallocated to other States on a prorata basis.

(3) If the initial amounts when combined for any State are less than the $3,000,000, the allocation to that State is increased to the $3,000,000 and all other State allocations are reduced by an equal amount on a prorata basis, except that no State allocation is reduced below $3,000,000.

(4) The allocation amount for each State that has no unit of general local government within the State receiving an allocation under paragraph (d) of this section is increased by $500,000. Funds for this increase are derived from the funds available for units of general local government, in accordance with paragraph (d)(4) of this section.

Insular Areas Program

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established. This restriction does not apply if the HUD Field Office finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular areas in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated in accordance with § 92.66.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation.

§ 92.61 Program description.

(a) *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description and certifications to HUD.

(b) *Content of program description.* The program description must contain the following:

(1) An executed Standard Form 424;

(2) The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, number of households to be assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(5);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.209;

(6) If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under § 92.351;

(8) If the insular intends to use HOME funds for refinancing along with rehabilitation, the insular area's guidelines described in § 92.206(b).

(c) *Certifications.* The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other governmental assistance than is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.209;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required for § 92.61(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* Within thirty days of receipt of the program description, the HUD Field Office will notify the insular area if determinations cannot be made under § 92.61(b)(4), (b)(6), (b)(7), or (b)(8) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability. The insular area will have a reasonable period of time,agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After HUD Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes and must document any other changes in its file. A substantial change involves a change in the guidelines for resale or recapture (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)) or refinancing (§ 92.61(b)(8)); or a change in the tenure type of the project or activities; or a funding increase to a project or activity of $100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program description, as amended, does not permit determinations to be made under § 92.61(b)(4), (b)(6), (b)(7), or (b)(8), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.

(1) Subpart E (Program Requirements): Administrative costs, as described in § 92.207, are eligible costs for insular areas in an amount not to exceed 15 percent of the HOME funds provided to the insular area. The matching contribution requirements in this part do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for program income. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition, § 92.502(c) does not apply, and instead compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that the funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written

agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required for the fiscal year allocation only after completion of the approved projects funded by the allocation.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.552 does not apply. Instead, § 92.65 applies.

(b) The requirements of subpart H (Other Federal Requirements) of this part apply as follows: § 92.357 Executive Order 12372 applies as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation as a Participating Jurisdiction), subpart D (Submission Requirements), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of commitment, program income, and subrecipient, "participating jurisdiction" means "insular area."

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy an insular area's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

Any HOME funds which are reduced or recaptured from an insular area's allocation and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, will be reallocated by HUD to the States in accordance with the requirements in subpart J for reallocating funds initially allocated to a State.

Subpart C -- Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

§ 92.100 [Reserved]

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met.

(1) One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification by March 1 to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. Provided that subsequent deadlines could be met, the Field Office may accept notification at a later date.

(2) The proposed consortium must provide, at such time and in a manner and form prescribed by HUD, the qualification documents, which will include submission of:

(i) A written certification by the State that the consortium will direct its activities to alleviation of housing problems within the State; and

(ii) Documentation which demonstrates that the consortium has executed one legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of this part.

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD must determine that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make its determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

(b) A metropolitan city or an urban county may be a member of a consortium. A unit of general local government that is included in an urban county may be part of a consortium, only if the urban county joins the consortium. The included local government cannot join the consortium except through participation in the urban county.

(c) A non-urban county may be a member of a consortium. However, the county cannot on its own include the whole county in the consortium. A unit of local government located within the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

(d) If the representative unit of general local government distributes HOME funds to member units of general local government, the representative unit is responsible for applying to the member units of general local government the same requirements as are applicable to subrecipients.

(e) The consortium's qualification as a unit of general local government continues for a period of three successive Federal fiscal years, or until HUD revokes its designation as a participating jurisdiction, or until an urban county member fails to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period, or the consortium fails to receive a HOME allocation for the first Federal fiscal year of the consortium's qualification period and does not request to be considered to receive a HOME allocation in each of the subsequent two years. However, if a member urban county's three year CDBG qualification cycle is not the same as the consortium, the consortium may elect a shorter qualification period than three years to synchronize with the urban county's qualification period. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium. See 24 CFR part 91, subpart E, for consolidated plan requirements for consortia, including the requirement that all members of the consortia must be on the same program year.

§ 92.102 Participation threshold amount.

(a) To be eligible to become a participating jurisdiction, a unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than $750,000; or

(b) If a unit of general local government's formula allocation is less than $750,000, HUD must find:

(1) The unit of general local government has a local PHA and has demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities under this part; and

(2) The State has authorized HUD to transfer to the unit of general local government a portion of the State's allocation or the State, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000.

(c) In fiscal years in which Congress appropriates less than $1.5 billion for this part, $500,000 is substituted for $750,000 each time it appears in this section.

§ 92.103 Notification of intent to participate.

(a) Not later than 30 days after receiving notice of its formula allocation amount, a jurisdiction must notify HUD in writing of its intention to become a participating jurisdiction.

(b) A unit of general local government that has a formula allocation of less than $750,000, or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

§ 92.104 Submission of a consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91.

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with 24 CFR part 91, HUD will designate the jurisdiction as a participating jurisdiction.

§ 92.106 Continuous designation as a participating jurisdiction.

Once a State or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years and the requirements of §§ 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with § 92.107.

§ 92.107 Revocation of designation as a participating jurisdiction.

HUD may revoke a jurisdiction's designation as a participating jurisdiction if:

(a) HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part, including failure to meet matching contribution requirements; or

(b) The jurisdiction's formula allocation falls below $750,000 (or below $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for three consecutive years, below $625,000 (or below $410,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

(c) When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

Subpart D -- Submission Requirements

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, the process of developing the consolidated plan, including citizen participation, the submission date, HUD approval, and amendments.

Subpart E -- Program Requirements

§ 92.200 Private-public partnership.
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MATCHING CONTRIBUTION REQUIREMENT

§ 92.218 Amount of matching contribution.
§ 92.219 Recognition of matching contribution.
§ 92.220 Form of matching contribution.
§ 92.221 Match credit.
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§ 92.200 Private-public partnership.

Each participating jurisdiction must make all reasonable efforts to maximize participation by the private sector in accordance with section 221 of the Act.

§ 92.201 Distribution of assistance.

(a) *Local.*

(1) Each local participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved consolidated plan.

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in joint projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions.

(b) *State.*

(1) Each State participating jurisdiction is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing needs within the State, as identified in the State's approved consolidated plan. The State must distribute HOME funds to rural areas in amounts that take into account the non-metropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved consolidated plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(2) A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a State to receive HOME funds from a State is a State recipient.

(3) (i) A State that uses State recipients to perform program

functions shall ensure that the State recipients use HOME funds in accordance with the requirements of this part and other applicable laws. The State may require the State recipient to comply with requirements established by the State or may permit the State recipient to establish its own requirements to comply with this part.

(ii) The State shall conduct such reviews and audit of its State recipients as may be necessary or appropriate to determine whether the State recipient has committed and expended the HOME funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching contribution requirements.

(4) A State and local participating jurisdiction may jointly fund a project within the boundaries of the local participating jurisdiction. The State may provide the HOME funds to the project or it may provide the HOME funds to the local participating jurisdiction to fund the project.

(5) A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan.

§ 92.202 Site and neighborhood standards.

(a) *General.* A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063, and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

(b) *New rental housing.* In carrying out the site and neighborhood requirements with respect to new construction of rental housing, a participating jurisdiction is responsible for making the determination that proposed sites for new construction meet the requirements in 24 CFR 983.6(b).

§ 92.203 Income determinations.

(a) The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must initially determine annual income using the method in paragraph (a)(1)(i) of this section. For subsequent income determinations during the period of affordability, the participating jurisdiction may use any one of the following methods in accordance with § 92.252(h):

(i) Examine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income; or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families, the participating jurisdiction must determine annual income by examining the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following three definitions of "annual income":

(1) "Annual income" as defined at 24 CFR 5.609 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or

(2) Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social Security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(c) Although the participating jurisdiction may use any of the three definitions of "annual income" permitted in paragraph (b) of this section, to calculate adjusted income it must apply exclusions from income established at 24 CFR 5.611. The HOME rents for very low-income families established under § 92.252(b)(2) are based on adjusted income. In addition, the participating jurisdiction may base the amount of tenant-based rental assistance on the adjusted income of the family.

(d) (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

(2) The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) Jurisdictions other than participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): the matching contribution requirements in § 92.218 through § 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for program income. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that program income may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply as written, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation of Designation as a Participating Jurisdiction), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of commitment, program income, and subrecipient, "participating jurisdiction" means jurisdiction or community housing development organization receiving the competitive reallocation.

ELIGIBLE AND PROHIBITED ACTIVITIES

§ 92.205 Eligible activities: general.

(a) *Eligible activities.*

(1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including

security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

(3) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.

(4) *Manufactured housing.* HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. Except for existing, owner-occupied manufactured housing that is rehabilitated with HOME funds, the manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) **Forms of assistance.**

(1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(2) A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The HOME funds may be used to guarantee the timely payment of principal and interest or payment of the outstanding principal and interest upon foreclosure of the loan. The amount of the loan guarantee account must be based on a reasonable estimate of the

default rate on the guaranteed loans, but under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

(c) *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is $1,000 times the number of HOME-assisted units in the project.

(d) *Multi-unit projects.* HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs of the assisted units may be charged to the HOME program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME-assisted units can be determined by pro-rating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with §92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and § 92.301(b)(3)).

§ 92.206 Eligible project costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;

(2) For rehabilitation, costs:

(i) To meet the property standards in § 92.251;

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing, costs to construct or rehabilitate laundry and community facilities which are located within the same building as the housing and which are for the use of the project residents and their guests.

(5) Costs to make utility connections or to make improvements to the project site, in accordance with the provisions of § 92.206(a)(3)(ii) and (iii) are also eligible in connection with acquisition of standard housing.

(b) *Refinancing costs.* The cost to refinance existing debt secured by housing that is being rehabilitated with HOME funds:

(1) For single-family (1- to 4-family) owner-occupied housing when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable.

(2) For multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the

participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(i) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;

(ii) Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long term needs of the project can be met and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated;

(iii) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both;

(iv) Specify the required period of affordability, whether it is the minimum 15 years or longer;

(v) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community; and

(vi) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent

cost estimate, builders or developers fees.

(3) Costs of a project audit that the participating jurisdiction may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

(6) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(8) Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project.

(e) *Community housing development organization costs.* Eligible costs of project-specific assistance are set forth in § 92.301.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HOME funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section, and

(2) The HOME assistance is part of the original financing for the project and the project meets the requirements of this part.

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program, an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of the program income deposited in its local HOME account during the program year, for administrative and planning costs. Reasonable administrative and planning costs include:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the participating jurisdiction's staff. In charging costs to this category the participating jurisdiction may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The participating jurisdiction may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HOME funds;

(iii) Monitoring HOME-assisted housing for progress and compliance with program requirements;

(iv) Developing agreements and monitoring housing not assisted with HOME funds that the participating jurisdiction designates as a matching contribution in accordance with § 92.219(b) for compliance with applicable program requirements;

(v) Preparing reports and other documents related to the program for submission to HUD;

(vi) Coordinating the resolution of audit and monitoring findings;

(vii) Evaluating program results against stated objectives; and

(viii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services;

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space; and

(5) Costs of administering tenant-based rental assistance programs.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206(d)(6) and (f)(2), at the discretion of the participating jurisdiction.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME funds.

(d) *Fair housing.* Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under 24 CFR part 91.

(e) *Indirect Costs.* Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122 as applicable.

(f) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public hearings, consultations, and publication.

(g) *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs in accordance with § 92.206(d)(8), at the discretion of the participating jurisdiction.

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300(e) and (f).

(b) HOME funds may be used for capacity building costs under § 92.300(b).

92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

(b) *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

(c) *Tenant selection.* The participating jurisdiction must select families in accordance with written tenant selection policies and criteria that are consistent with the following:

(1) *Low-income families.* Tenant-based rental assistance may only be provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

(2) *Federal preferences.* At least 50 percent of the families assisted must qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the 1937 Act. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of their annual income for rent; or families that are involuntarily displaced. [For FY 1996 and FY 1997, the Federal preferences do not apply.]

(3) *Preferences for Individuals with Special Needs.*

(i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(iv) To the extent that a participating jurisdiction is operating a tenant-based rental assistance program targeted exclusively to individuals with special needs or disabilities or to a specific category of individuals with special needs or disabilities, at least 50% of the individuals must qualify or would qualify in the near future for one of the three Federal preferences as described in (c)(2) of this section.

(4) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the requirements of (c)(2) of this section. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

(d) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(g) *Tenant protections.* The lease must comply with the requirements in § 92.253(a) and (b).

(h) *Maximum subsidy.*

(1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or

(ii) For each unit size, may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 24 CFR § 882.106(a)(3) for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR § 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) *Security deposits.*

(1) A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.

(2) The relevant State or local definition of "security deposit" in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(4) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with § 92.503.

(5) Paragraphs (b), (c), (d), (f), (g) and (i) of this section are applicable to HOME security deposit assistance, except that income determinations pursuant to paragraph (c)(1) of this section and Housing Quality Standard inspections pursuant to paragraph (i) of this section are required only at the time the security deposit assistance is provided.

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(l) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 **Pre-award costs.**

(a) *General.* Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs which may be charged to the HOME allocation after the award of the HOME allocation, provided the costs are in compliance with the requirements of this part (including environmental review requirements) and with the statutory and regulatory requirements in effect at the time the costs are charged to the HOME allocation.

(b) *Administrative and planning costs.* Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.

(c) *Project costs.* Eligible project costs may be incurred during the current program year in an amount not to exceed 25% of the current HOME allocation amount, to be charged to the following year's HOME allocation. Before incurring the pre-award costs, the participating jurisdiction must comply with its citizen participation plan requirements addressing 24 CFR 91.105(b)(2), (4), (5) and (g) (local governments) or § 91.115(b)(2), (4), (5) and (f) (States). In lieu of a full action plan, the participating jurisdiction may develop a mini-action plan which describes the proposed pre-award projects and costs in accordance with § 91.220(c) and includes, if applicable, § 91.220(g)(2) (local governments) or § 91.320(c) and, if applicable, § 91.320(g)(2) (States). The mini-action plan must state that HOME funding for the project(s) is subject to the future availability of HOME funds. The subsequent action plan (i.e., action plan for the HOME allocation to which the costs will be charged) must also include the use of HOME funds contained in the mini-action plan.

(d) *Subrecipient or State recipient costs.* The participating jurisdiction may authorize its subrecipient or State recipient to incur pre-award costs in accordance with the requirements of this section. The authorization must be in writing.

(e) *Other pre-agreement costs.* Pre-agreement costs in excess of the amount set forth in paragraph (c) of this section must be approved, in writing, by the HUD Field Office before the costs are incurred.

§ 92.213 [Reserved]

§ 92.214 **Prohibited activities.**

(a) HOME funds may not be used to:

(1) Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;

(3) Provide non-federal matching contributions required under any other Federal program;

(4) Provide assistance authorized under section 9 of the 1937 Act (annual contributions for operation of public housing);

(5) Carry out activities authorized under 24 CFR part 968 (Public Housing Modernization);

(6) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR 248.101;

(7) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(8) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or

(9) Pay for any cost that is not eligible under §§ 92.206 through 92.209.

(b) Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87.

§ 92.215 Limitation on jurisdictions under court order.

Limitations on the use of HOME funds in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

INCOME TARGETING

§ 92.216 Income targeting: Tenant-based rental assistance and rental units.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(a) Not less than 90 percent of:

(1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

(1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

(2) The dwelling units assisted with such funds are occupied by such households.

§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later.

MATCHING CONTRIBUTION REQUIREMENT

§ 92.218 Amount of matching contribution.

(a) *General.* Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year, excluding funds drawn for purposes identified in paragraph (c) of this section.

(b) *Shortfall amount from State or local resources.* Amounts made available under § 92.102(b)(2) from the resources of a State (other than a transfer of the State's formula allocation). the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched and do not constitute matching contributions.

(c) *HOME funds not required to be matched.* HOME funds used for administrative and planning costs (pursuant to § 92.207); community housing development organization operating expenses (pursuant to § 92.208); capacity building (pursuant to § 92.300(b)) of community housing development organizations; and project specific assistance to community housing development organizations (pursuant to § 92.301) when the participating jurisdiction waives repayment under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

(d) *Match contribution for other programs.* Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching contribution requirement for the HOME program.

§ 92.219 Recognition of matching contribution.

(a) *Match contribution to HOME-assisted housing.* A contribution is recognized as a matching contribution if it is made with respect to:

(1) A tenant who is assisted with HOME funds;

(2) A HOME-assisted unit;

(3) The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of § 92.219(b)(2), the percentage requirement for HOME-assisted units does not apply; or

(4) The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.

(b) *Match contribution to affordable housing that is not HOME-assisted.* The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:

(1) For tenant-based rental assistance that is not HOME-assisted:

(i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of §§ 92.203 (Income determinations) and paragraphs (a), (c), (f), and (i) of § 92.209 (Tenant-based rental assistance); and

(ii) The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of §§ 92.203 and 92.209 (except § 92.209(e)).

(2) For affordable housing that is not HOME-assisted:

(i) The contribution must be made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254.

(ii) The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (Tenant protections), or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of §§ 92.203 (Income determinations), 92.252 (Qualification as affordable housing: Rental housing), 92.253(a) and (b) (Tenant protections) and 92.254 (Qualification as affordable housing: Homeownership). No other HOME requirements apply.

(iv) The match contribution may be in any eligible form of match except those in § 92.220(a)(2) (forbearance of fees), (a)(4) (on-site and off-site infrastructure), (a)(10) (direct cost of supportive services) and (a)(11) (direct costs of homebuyer counseling services).

(v) Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be recognized only if the contribution is made to the project's affordable housing units.

§ 92.220 Form of matching contribution.

(a) *Eligible forms.* Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

(1) *Cash contributions from nonfederal sources.* To be recognized as a cash contribution, funds must be contributed permanently to the HOME program (or to affordable housing not assisted with HOME funds), regardless of the form of investment provided to the project. Therefore, to receive match credit for the full amount of a loan to a HOME project, all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.

(i) A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section. A cash contribution made to a nonprofit organization for use in a HOME project may be counted as a matching contribution.

(ii) A cash contribution may be made from program income (as defined by 24 CFR § 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

(iii) The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(1) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(2) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points;

(3) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points; or

(4) With respect to housing receiving financing for rehabilitation, a rate equal to the 10-year Treasury note rate plus 400 basis points.

(iv) Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.

(v) A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by §92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

(2) *Forbearance of fees.*

(i) *State and local taxes, charges or fees.* The value (based on customary and reasonable means for establishing value) of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of its operations, which are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of HOME-assisted projects, may be counted as match. The amount of any real estate taxes may be based on post-improvement property value. For taxes, fees, or charges that are forgiven for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(ii) *Other charges or fees.* The value of fees or charges associated with the transfer or development of real estate that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.

(iii) Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions.

(3) *Donated Real Property.* The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of donated land or other real property may be counted as match. The donation may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section.

(i) Donated property not acquired with Federal resources is a contribution in the amount of 100% of the value.

(ii) Donated property acquired with Federal assistance may provide a partial contribution as follows. The property must be acquired with Federal assistance specifically for a HOME project (or for affordable housing that will be counted as match pursuant to § 92.219(b)(2)). The property must be acquired with the Federal assistance at demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of the acquisition with the Federal assistance. The amount of the contribution is the difference between the acquisition price and the appraised value at the time of acquisition with the Federal assistance. If the property is acquired with the Federal assistance by someone other than the HOME project (or affordable housing) owner, to continue to qualify as a contribution, the property must be given to the HOME project (or affordable housing) owner at a price that does not exceed the amount of the Federal assistance used to acquire the property.

(iii) Property must be appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

(4) The cost, not paid with Federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects. The infrastructure must have been completed no earlier than 12 months before HOME funds are committed to the project.

(5) Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government, or an agency or instrumentality of a State or local government or a political subdivision of a State and repayable with revenues from the affordable housing project financed as follows:

(i) Fifty percent of the loan amount made from bond proceeds to a multifamily affordable housing project owner may qualify as match.

(ii) Twenty-five percent of the loan amount from bond proceeds made to a single-family affordable housing project owner may qualify as match.

(iii) Loans made from bond proceeds may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution.

(6) The reasonable value of donated site-preparation and construction materials, not acquired with Federal resources. The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.

(7) The reasonable rental value of the donated use of site preparation or construction equipment.

(8) The value of donated or voluntary labor or professional services (see § 92.354(b)) in connection with the provision of affordable housing. A single rate established by HUD shall be applicable for determining the value of unskilled labor. The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges.

(9) The value of sweat equity (see § 92.354(c)) provided to a homeownership project, under an established component of a participating jurisdiction's program, up until the time of project completion (i.e., submission of a project completion form). Such labor shall be valued at the rate established for unskilled labor at paragraph (a)(8) of this section.

(10) The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability or receiving HOME tenant-based rental assistance during the term of the tenant-based rental assistance contract. The supportive services must be

necessary to facilitate independent living or be required as part of a self-sufficiency program. Examples of supportive services include: case management, mental health services, assistance with the tasks of daily living, substance abuse treatment and counseling, day care, and job training and counseling.

(11) The direct cost of homebuyer counseling services provided to families that acquire properties with HOME funds under the provisions of § 92.254(a), including ongoing counseling services provided during the period of affordability. These services may be provided as part of a homebuyer counseling program that is not specific to the HOME Program, but only the cost of services to families that complete purchases with HOME assistance may be counted as match.

(b) *Ineligible forms.* The following are examples that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching contribution requirement:

(1) Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined in 24 CFR 570.3) are Federal funds for this purpose;

(2) The interest rate subsidy attributable to the Federal tax-exemption on financing or the value attributable to Federal tax credits;

(3) Owner equity or investment in a project; and

(4) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project. The prohibition in this paragraph (b)(4) does not apply to contractors (who do not own any HOME project) contributing professional services in accordance with paragraph (a)(8) of this section or to persons contributing sweat equity in accordance with paragraph (a)(9) of this section.

§ 92.221 Match credit.

(a) *When credit is given.* Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:

(1) A cash contribution is credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred is credited at the time the state or local government or other public or private entity officially waives, forgoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of donated land or other real property is credited at the time ownership of the property is transferred to the HOME project (or affordable housing) owner.

(5) The cost of investment in infrastructure directly required for HOME-assisted projects is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the project if the infrastructure was completed before the commitment of HOME funds.

(6) The value of donated material is credited as match at the time it is used for affordable housing.

(7) The value of the donate use of site preparation or construction equipment is credited as match at the time the equipment is used for affordable housing.

(8) The value of donated or voluntary labor or professional services is credited at the time the work is performed.

(9) A loan made from bond proceeds under § 92.220(a)(5) is credited at the time of the loan closing.

(10) The direct cost of social services provided to residents of HOME-assisted units is credited at the time that the social services are provided during the period of affordability.

(11) The direct cost of homebuyer counseling services provided to families that purchase HOME-assisted units is credited at the time that the homebuyer purchases the unit or for post-purchase counseling services, at the time the counseling services are provided.

(b) *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made may be carried over and applied to future fiscal years' match liability. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, subject to the annual 25 percent limitation.

(c) Credit for match contributions shall be assigned as follows:

(1) For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other participating jurisdiction to claim the credit.

(2) For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to § 92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.

(3) A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

§ 92.222 Reduction of matching contribution requirement.

(a) *Reduction for fiscal distress.* HUD will determine match reductions annually.

(1) *Distress criteria for local government participating jurisdictions.* If a local government participating jurisdiction satisfies both of the distress factors in paragraphs (a)(1)(i) and (ii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a local government participating jurisdiction satisfies either distress factor in paragraphs (a)(1)(i) or (ii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(2) *Distress criteria for participating jurisdictions that are States.* If a State satisfies at least 2 of the 3 distress factors in paragraphs (a)(2)(i) - (iii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a State satisfies any 1 of the 3 distress factors in paragraphs (a)(2)(i) - (iii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the State was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the State was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(iii) *Personal income growth.* The average personal income growth rate in the State over the most recent four quarters for which the data are available was less than 75 percent of the average national personal income growth rate during that period, as determined according to information from the Bureau of Economic Analysis.

(3) *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is made and for the following fiscal year.

(4) *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is made and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, it may request a reduction of its matching requirement. For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year. For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies. At its discretion and upon request of the participating jurisdiction, the HUD Field Office may extend the reduction for an additional year.

Subpart F -- Project Requirements

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for elevator-type projects that apply to the area in which the housing is located. These limits are available from the Multifamily Division in the HUD Field Office. If the participating jurisdiction's per-unit subsidy amount has already been increased to 210% as permitted under section 221(d)(3)(ii) of the National Housing Act, upon request to the Field Office, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.

(b) *Subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for this purpose and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

§ 92.251 Property standards.

(a) (1) Housing that is constructed or rehabilitated with HOME funds must meet all applicable ~~local~~ codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable: one of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person.. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) The housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

(4) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR Part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the participating jurisdiction must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the property standards in paragraph (a)(1) of this section not later than 2 years after transfer of the ownership interest.

(c) An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(d) All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the housing quality standards in 24 CFR 982.401.

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with HOME funds in accordance with § 92.254.

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

(1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or

(2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(b) *Additional Rent limitations.* In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low-income families and meet one of following rent requirements:

(1) The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a).

(2) The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

(d) *Nondiscrimination against rental assistance subsidy holders.*. The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982–Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(e) *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

Rental Housing Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under $15,000	5
$15,000 to $40,000	10
Over $40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f) *Subsequent rents during the affordability period.*

(1) The maximum HOME rent limits are recalculated on a periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner.

Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(g) *Adjustment of HOME rent limits for a particular project.*

(1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.

(2) HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203(a)(1)(i). In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or more who re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-family projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(i) *Over-income tenants.*

(1) HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) Tenants who no longer qualify as low-income families must pay as

rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42. In addition, in projects in which the HOME units are designated as floating pursuant to paragraph (j), tenants who no longer qualify as low-income are not required to pay as rent an amount that exceeds the market rent for comparable, unassisted units in the neighborhood.[1]

(j) *Fixed and floating HOME units.* In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation must be made at the time of project commitment. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

§ 92.253 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

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[1]This sentence was added by an interim rule published on August 22, 1997.

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:

(1) Are consistent with the purpose of providing housing for very low-income and low-income families;

(2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a Federal preference under section 6(c)(4)(A) of the 1937 Act (see § 92.209(c)(2));

(4) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(5) Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.254 Qualification as affordable housing: homeownership.

(a) *Acquisition with or without rehabilitation.* Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single-family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot).

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in (a)(2)(iii).

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing (1- to 4-unit family residence, condominium unit, cooperative unit, combination of manufactured housing and lot or manufactured housing lot) for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: (1) For 500 or more sales per month, a one-month reporting period; (2) For 250 through 499 sales per month, a two-month reporting period; (3) For less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4).

(4) *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

Homeownership Assistance HOME amount per-unit	Minimum period of affordability in years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

(5) *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan.

HUD must determine that they are appropriate.

(i) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Except as provided in paragraph (a)(5)(i)(B) of this section, deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65% to 80% of area median can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under § 91.215(e)(2) of its consolidated plan or Empowerment Zone or Enterprise Community application under 24 CFR part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

(ii) *Recapture.* Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval.

(1) *Recapture entire amount.* The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(2) *Reduction during affordability period.* The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(3) *Shared net proceeds.* If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2), above, of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(4) *Owner investment returned first.* The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since purchase) before recapturing the HOME investment.

(5) *Amount subject to recapture.* The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit. This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to

recapture, the resale option must be used.

(6) *Special considerations for single-family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of § 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.)

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed and at the time the housing is transferred if more than six months have elapsed since the participating jurisdiction determined that the family was income eligible. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a family qualifies as affordable housing only if:

(1) The estimated value of the property, after rehabilitation, does not

exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "homeownership" in § 92.2.

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.

§ 92.255 Converting rental units to homeownership units for existing tenants.

The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of §92.254. If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under §92.254(a)(4), based on the amount of direct homeownership assistance provided. .

§ 92.256 [Reserved]

§ 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to its property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity, which may be an entity established by the religious organization. The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§92.258 Elder cottage housing opportunity (ECHO) units.

(a) *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.

(b) *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:

(1) The owner-occupant of the single-family host property on which the ECHO unit will be located;

(2) A participating jurisdiction; or

(3) A non-profit organization.

(c) *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly or disabled family as defined in 24 CFR 5.403 and must also be a low-income family.

(d) *Applicable requirements.* The requirements of § 92.252 of this part apply to HOME-assisted ECHO units, with the following modifications:

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of § 92.252.

(3) The ECHO housing must remain affordable for the period specified in § 92.252(e). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with § 92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.

(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

Subpart G -- Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a) (1) Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, funds transferred from a State under § 92.102(b). The funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. The funds must be provided to a community housing development organization, its subsidiary or a partnership of which it or its subsidiary is the managing general partner. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. In addition, a community housing development organization, in connection with housing it develops, sponsors or owns with HOME funds provided under this section, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient.

(2) The participating jurisdiction determines the form of assistance, e.g., grant or loan, that the community housing development organization receives and whether any proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization. While the proceeds the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify

in the written agreement with the community housing development organization whether they are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than $150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation on community housing development organization operating funds.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or $50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans.*

(1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable costs.* A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) *Project-specific seed money loans.*

(1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) *Eligible sponsors.* A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a

preliminary financial commitment, and a capable development team.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support.

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act. HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

Subpart H -- Other Federal Requirements

§ 92.350 Other Federal requirements.

(a) The Federal requirements set forth in 24 CFR part 5, subpart A, are applicable to participants in the HOME program. The requirements of this subpart include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free workplace.

(b) The nondiscrimination requirements at section 282 of the Act are applicable. These requirements are waived in connection with the use of HOME funds on lands set aside under the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.*

(1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

§ 92.352 Environmental review.

(a) *General.* 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) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

(b) *Responsibility for review.*

(1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of

funds and related certification, except as authorized by 24 CFR part 58.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

§ 92.353 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.*

(1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201-4655) and 49 CFR part 24. A "displaced person" must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person.*

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

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

(1) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

(2) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

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

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

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

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

(2) The tenant is required to relocate temporarily, does not return to the building/complex, and either

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

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

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

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a displaced person if:

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

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

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

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term initiation of negotiations means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart B.

(f) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(g) *Appeals.* A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

§ 92.354 Labor.

(a) *General.*

(1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a - 276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one

project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 et seq.) and 24 CFR part 35. The lead-based paint provisions of § 982.401(j), except 24 CFR 982.401(j)(1)(i), also apply, irrespective of the applicable property standard under § 92.251. In a project in which not all units are assisted with HOME funds, the lead-based paint requirements apply to all units and common areas in the project. Unless otherwise provided, the participating jurisdiction is responsible for testing and abatement activities.

§ 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted

activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and Developers.*

(1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

§ 92.357 Executive Order 12372.

(a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

§ 92.358 Consultant activities.

No person providing consultant services in an employer-employee type relationship shall receive more than a reasonable rate of compensation for personal services paid with HOME funds. In no event, however, shall such compensation exceed the limits in effect under the provisions of any applicable statute (e.g., annual HUD appropriations acts which have set the limit at the equivalent of the daily rate paid for Level IV of the Executive Schedule, see the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Pub. L. 104-204 (September 26, 1996)). Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards, and compensation. Consultant services provided under an independent contractor relationship are not subject to the compensation limitation of Level IV of the Executive Schedule.

Subpart I -- Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance in accordance with Subtitle C of the Act.

(b) *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section as appropriate.

Subpart J -- Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its consolidated plan, in accordance with 24 CFR part 91; or

(2) HUD after providing for amendments and resubmissions in accordance with 24 CFR part 91 disapproves the jurisdiction's consolidated plan.

(b) *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a State, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a State that is a participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a State that is a not a participating jurisdiction, HUD will reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under

§ 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for competitive reallocations.

(a) HUD will invite applications through FEDERAL REGISTER publication of a Notice of Funding Availability (NOFA), in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and the requirements of sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. The NOFA will describe the application requirements and procedures, including the total funding available for the competition and any maximum amount of individual awards. The NOFA will also describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria.

(b) The NOFA will include the selection criteria at sec. 217(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)), with the following maximum number of points awarded for each category of criteria:

(1) *Commitment.* Up to 25 points for the criteria at sec. 217(c)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(1));

(2) *Actions.* Up to 50 points for the criteria at sec. 217(c)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(2)); and

(3) *Policies.* Up to 25 points for the criteria at sec. 217(c)(3) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(c)(3)).

§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under § 92.451 and § 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under 24 CFR 91.520(f) for failure to submit in a timely manner a performance report required by 24 CFR 91.520 that is satisfactory to HUD; and

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.

(b) Any reallocation of funds from a State must be made only among all participating States, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is $1000.

Subpart K -- Program Administration

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.

(b) *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) *Local Account.*

(1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102; any program income (from both the allocated funds and matching contributions in accordance with the definition of program income); and any repayments or recaptured funds as required by §92.503.

(2) The participating jurisdiction may establish a second local account of the HOME Investment Trust Funds if:

(i) The participating jurisdiction has its own affordable housing trust fund that the participating jurisdiction will use for matching contributions to the HOME program;

(ii) The statute or local ordinance requires repayments from its own trust fund to be made to the trust fund;

(iii) The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions; and

(iv) The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part, except as provided under

§ 92.201(a)(2).

(3) The funds in the local account cannot be used for the matching contribution and do not need to be matched.

(d) (1) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(A) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement;

(C) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement; and

(D) Any penalties assessed by HUD under § 92.552 of this part.

(2) For purposes of determining the amount by which the HOME Investment Trust Fund will be reduced or recaptured under paragraphs (d)(1)(A), (B) and (C), HUD will consider the sum of commitments to CHDOs, commitments, or expenditures, as applicable, from the fiscal year allocation being examined from and from subsequent allocations. This sum must be equal to or greater than the amount of the fiscal year allocation being examined, or in the case of commitments to CHDOs, 15 percent of that fiscal year allocation.

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

§ 92.502 Program disbursement and information system.

(a) *General.* The Home Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. [For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.]

(b) *Project set-up.*

(1) After the participating jurisdiction executes the HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58 for release of funds and commits funds to a specific local project, the participating jurisdiction may identify (set up) specific investments in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, and the provision of tenant-based rental assistance. The participating jurisdiction is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 days of the project set-up call, the project may be cancelled by the system. In addition, a project which has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

(c) *Disbursement of HOME funds.*

(1) After complete project set-up information is entered into the disbursement and information system, HOME funds for the project may be drawn down from the United States Treasury account by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the provision of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures, as specified by HUD.

(2) HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account of the HOME Investment Trust Fund. Interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that a local participating jurisdiction may retain interest amounts up to $100 per year for administrative expenses and States are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.).

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account.

(4) A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

(d) *Project completion.*

(1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (e.g., State recipients) will be governed by procedures established by HUD.

§ 92.503 Program income, repayments, and recaptured funds.

(a) *Program income.*

(1) Program income must be used in accordance with the requirements of this part. Program income must be deposited in the participating

jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient or subrecipient to retain the program income for additional HOME projects pursuant to the written agreement required by § 92.504.

(2) If the jurisdiction is not a participating jurisdiction when the program income is received, the funds are not subject to the requirements of this part.

(3) Program income derived from consortium activities undertaken by or within a member unit of general local government which thereafter terminates its participation in the consortium continues to be program income of the consortium.

(b) *Repayments.*

(1) Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section.

(2) Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section except for repayments of project specific community housing development organization loans which are waived in accordance with §§ 92.301(a)(3) and 92.301(b)(3).

(3) If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

(c) *Recaptures.* HOME funds recaptured in accordance with § 92.254(a)(5)(ii) must be used in accordance with the requirements of this part. Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504. If the jurisdiction is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day to day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and subrecipient must be reviewed at least annually.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must ensure compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b).

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(iii) *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(v) *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient.

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds received by the State recipient will be used for housing containing five or more assisted units.

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME requirements. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(xi) If the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities which meets the requirements of this section.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (e.g., whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME Program. The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds administered by the subrecipient will be used for housing containing five or more assisted units.

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(viii) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(x) If the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement which meets the requirements of this section.

(3) For-profit or nonprofit housing owner, sponsor or developer (other than single-family owner-occupant).

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or non-profit housing owner, sponsor or developer must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases. If the owner or developer is undertaking homeownership projects for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements which must be imposed on the housing.

(iii) *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in § 92.355 upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing in compliance with § 92.251 for the duration of the affordability period.

(v) *Affirmative marketing.* If the project contains 5 or more HOME-assisted units, the agreement must specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction or the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(viii) *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.257 for the use of HOME funds by religious organizations.

(xi) *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300 and 92.301.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or a portion of the HOME program, the contract must include at a minimum the following provisions:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in Part 92 that are applicable to the participating jurisdiction, except §§ 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decisionmaking, and action under § 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract. Generally, the duration of a contract should not exceed two years.

(5) *Homebuyer, homeowner or tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner or tenant the written agreement may take many forms depending upon the nature of assistance. As appropriate, it must include as a minimum:

(i) For homebuyers, the agreement must conform to the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HOME funds, the form of assistance, e.g., grant, amortizing loan, deferred payment loan, the use of the funds (e.g., down-payment, closing costs, rehabilitation) and the time by which the housing must be acquired.

(ii) For homeowners, the agreement must conform to the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants, the rental assistance contract or the security deposit contract must conform to §§ 92.209 and 92.253.

(d) *On site inspections.*

(1) *HOME assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252 no less than: every three years for projects containing 1 to 4 units; every two years for projects containing 5 to 25 units; and every year for projects containing 26 or more units. Inspections must be based on a sufficient sample of units.

(2) *Tenant-based rental assistance.* The participating jurisdiction must

perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with the property standards of § 92.251.

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 - 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 - 84.16, 84.21, 84.22, 84.26 - 84.28, 84.30, 84.31, 84.34 - 84.37, 84.40 - 84.48, 84.51, 84.60 - 84.62, 84.72, and 84.73.

(c) OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; telephone: (202) 395-7332.

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 92.507 Closeout.

HOME funds will be closed out in accordance with procedures established by HUD.

§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:

(1) *Records concerning designation as a participating jurisdiction.*

(i) For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.

(ii) For a unit of general local government receiving a formula allocation of less than $750,000 (or less than $500,000 in fiscal years in which Congress appropriates less than $1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 (or $500,000 in fiscal years in which Congress appropriates less than $1.5 billion) as required by § 92.102(b).

(2) *Program records.*

(i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 which are not identified in § 92.205(b).

(iii) The subsidy layering guidelines adopted in accordance with § 92.250 which support the participating jurisdiction's Consolidated Plan certification.

(iv) If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with § 92.206(b), described in the Consolidated Plan.

(v) If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with § 92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with § 92.209(h).

(vi) If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families receiving such rental assistance meet the income requirements of §92.216.

(vii) If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2), in the Consolidated Plan.

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), in the Consolidated Plan.

(ix) Records demonstrating compliance with the matching requirements of § 92.218 through § 92.222 including a running log and project records documenting the type and amount of match contributions by project.

(x) Records documenting compliance with the 24 month commitment deadline of § 92.500(d).

(xi) Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of § 92.300(a).

(xii) Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with § 92.207.

(3) *Project records.*

(i) A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a) and the subsidy layering guidelines adopted in accordance with § 92.250(b).

(iv) Records demonstrating that each project meets the property standards of § 92.251 and the lead based paint requirements of § 92.355.

(v) Records demonstrating that each family is income eligible in accordance with § 92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of § 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.

(xii) Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

(4) *Community Housing Development Organizations (CHDOs) Records.*

(i) Written agreements reserving HOME funds to CHDOs in accordance with § 92.300(a).

(ii) Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds reserved and committed.

(iv) Records demonstrating that each CHDO complies with the written agreements required by § 92.504.

(v) Records concerning the use of CHDO setaside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).

(vi) Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of § 92.208,

§ 92.300(e) and § 92.300(f).

(vii) Records concerning the tenant participation plan required by § 92.303.

(viii) Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.

(5) *Financial records.*

(i) Records identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).

(ii) Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income, repayments and recaptured funds.

(iv) Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

(6) *Program administration records.*

(i) Records demonstrating compliance with the written agreements required by § 92.504.

(ii) Records demonstrating compliance with the applicable uniform administrative requirements required by § 92.505.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(7) *Records concerning other Federal requirements.*

(i) *Equal opportunity and fair housing records.*

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing.

(ii) *Affirmative marketing and MBE/WBE records.*

(A) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351.

(B) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(iii) Records demonstrating compliance with the environmental review requirements of § 92.352 and 24 CFR part 58, including flood insurance requirements.

(iv) Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with the labor requirements of § 92.354, including contract provisions and payroll records.

(vi) Records demonstrating compliance with the lead-based paint requirements of § 92.355.

(vii) Records supporting exceptions to the conflict of interest prohibition pursuant to § 92.356.

(viii) Debarment and suspension certifications required by 24 CFR parts 24 and 91.

(ix) Records concerning intergovernmental review, as required by § 92.357.

(b) *States with State Recipients.* A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under § 92.201(b)(3).

(c) *Period of record retention.* All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

(1) For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

(2) For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.

(3) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates.

(4) Written agreements must be retained for five years after the agreement terminates.

(5). Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

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

(d) *Access to records.*

(1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 Performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report.* For annual performance report requirements, see 24 CFR part 91.

Subpart L -- Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) *Performance review.*

(1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction

will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HOME funds for affected activities; and

(vii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account.

(2) HUD may also change the method of payment from an advance to reimbursement basis; and take other remedies that may be legally available.

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participatıng jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs which HUD has developed in accordance with section 213 of the Act;

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart B or J of this part;

(iv) Require the participating jurisdiction to make matching contributions in amounts required by § 92.218(a) as HOME funds are drawn from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account. Provided, however, that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction or, at HUD's option, the State recipient. Proceedings will be conducted in accordance with 24 CFR part 26, subpart B.

Attachment "3"

Short Form Deed of Trust

THIS DEED OF TRUST, made this ______ day of ___________________, 1999, between Robert E. Kochevar and Jean Kochevar, whose principal address is located at 6396 E. Mississipi, Denver, Colorado 80224, herein called Trustor, and the City of Las Vegas, a municipal corporation duly organized in the State of Nevada, whose principal office is located at 400 East Stewart Avenue, Las Vegas, Nevada 89101, Attention: City Manager's Office, herein called Trustee and Beneficiary.

WHEREAS, Beneficiary reconstructed certain real property known as the Bel Aire Apartment Complex with federal funds from the Home Ownership Investment ("HOME") Program; and

WHEREAS, the HOME Program requires that the management and operation of the Bel Aire Apartment Complex be in compliance with certain HOME Program conditions, rules and regulations; and

WHEREAS, Trustor and Beneficiary entered into a Purchase and Sale Agreement of even date herewith for the purchase of the Bel Aire Apartment Complex by the Trustor ("Agreement"); and

WHEREAS, as a condition of the Trustor's purchase of the Bel Aire Apartment Complex, the Trustor has agreed to faithfully perform its obligations in accordance with the terms of the Agreement;

NOW THEREFORE, for the purpose of securing each agreement of the Trustor herein contained and in the Agreement, Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that certain property located in the City of Las Vegas, Clark County, State of Nevada described as:

See Exhibit "1" attached hereto and by reference made a part hereof.

To protect the security of this Deed of Trust, Trustor shall abide by the terms of the Agreement executed; Trustor agrees to operate the above-described property solely to supply decent, safe, and sanitary rental housing for Home Ownership Investment ("HOME") Program eligible tenants; Trustor agrees to maintain and operate the above-described property as a drug-free environment; Trustor agrees to operate the above-described property as Affordable Housing for renters per applicable HOME program regulations for a period of ten (10) years or transfer of title from Trustor, whichever is longer, from the date of execution of this Deed of Trust ("Period of Affordability"); Trustor agrees to abide by the HOME program rules and regulations, specifically 24 CFR Part 92; Trustor agrees not to encumber the property described on Exhibit "1" hereto in any way during the Period of Affordability as defined in the HOME program rules and regulations without the expressed written consent of Beneficiary; Trustor agrees to transfer title of the property described on Exhibit "1" hereto to Beneficiary if Trustor, after proper notice and due process, is found to be in violation of its Agreement with Beneficiary; and

Notwithstanding the rights of Beneficiary to the Property under this Deed of Trust, Trustor agrees to repay to the Beneficiary the amount of Two Million Five Hundred Eighty-one Thousand Four Hundred Seventy-Eight and No/100ths Dollars ($2,581,478.00) HOME program funds which were expended on the Property if the affordable housing units on the Property, or any portion thereof, are subleased without prior written approval of Beneficiary or through foreclosure, sale, or other circumstances Trustor loses legal possession of the Property prior to the transfer of ownership of the units to HOME eligible individuals or families; and

By execution and delivery of this Deed of Trust and the Agreement secured hereby, Trustor agrees that provisions (1) to (17) inclusive of the Deed of Trust, recorded in Book 730, as Document No. 586593, of Official Records in the Office of the County Recorder of Clark County hereby are adopted and incorporated herein and made a part hereof as though set forth herein, that Trustor will observe and perform said provisions, and that the references to property, obligations and parties in said provisions shall be construed to refer to the property, obligations and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default, any Notice of Sale, and or any Notice of Lien hereunder be mailed to the address hereinabove set forth.

TRUSTOR:

Robert E. Kochevar

ROBERT E. KOCHEVAR

Jean Kochevar

JEAN KOCHEVAR

STATE OF NEVADA } ss.
COUNTY OF CLARK

On this 19th day of February, 199__, before me, the undersigned, a Notary Public in and for said county and State, personally appeared Robert E. + Jean Kochevar known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntary and for the uses and purposes therein mentioned.

David Roark

NOTARY PUBLIC, in ~~and~~ for said County and State

DAVID ROARK
Notary Public - Nevada
No. 94-4460-1
My appt. exp. Apr. 22, 2002

WHEN RECORDED MAIL TO:
City of Las Vegas
Attention: City Manager's Office
400 East Stewart Avenue
Las Vegas, Nevada 89101

EXHIBIT "1"

Legal Description

Lots Three (3) through Ten (10) in Block Two (2); Lots One (1) through Four (4) and Lots thirty-one (31) through Thirty-four (34) in Block Four (4) of FABULOUS FORTY as shown by map thereofon file in Book 8 of Plats, page 2, in the Office of the County Recorder of Clark County, Nevada.

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:

COUNCILMAN ARNIE ADAMSEN
COUNCILMAN GARY REESE
REAL ESTATE COMMITTEE

FROM:

DAVID ROARK, MANAGER
REAL ESTATE & ASSET MGMT DIVISION

SUBJECT:

March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible approval of a lease agreement between the City of Las Vegas and Bel Aire for office space located in the Bel Aire Apartment Complex (situated at 4124-4172 Pennwood, 4123-4171 Silver Dollar, and 4055-4167 Tara Avenue)

COPIES TO:

MAYOR JAN LAVERTY JONES
COUNCILMAN MICHAEL J MCDONALD
COUNCILMAN LARRY BROWN
VIRGINIA VALENTINE
STEVEN P. HOUCHENS
ANN HOLLAND
WILLIE COOK

BACKGROUND:

In addition to the sales agreement prepared and approved by the City Attorney's Office and the number one bidder, Bob and Jean Kochever, staff is also presenting a lease agreement for use by the Department of Neighborhood Services as office space within the complex

The agreement is a five (5) year contract with a five (5) year option and occupies the same space that staff has been utilizing at the Bel Aire complex for the past four to five (4-5) years

Previously, Neighborhood Services has allocated seven hundred and fifty dollars ($750 00) per month for this space The new contract is under the terms for five hundred dollars ($500 00) per month.

FISCAL IMPACT:

Currently paying nine thousand dollars ($9,000 00) annually

New contract is for six thousand dollars ($6,000 00) annually

STAFF RECOMMENDATION:

Staff recommends approval

030199rebelaireoffice

LEASE AGREEMENT
BEL AIRE APARTMENT COMPLEX

THIS LEASE AGREEMENT (hereinafter "Agreement") entered into this ____ day of ____________________, 1999, by and between the CITY OF LAS VEGAS, a municipal corporation of the State of Nevada (hereinafter "City"), ROBERT E. KOCHEVAR and JEAN KOCHEVAR (hereinafter "Lessor").

WITNESSETH:

WHEREAS, Lessor is the owner of the Bel Aire Apartment Complex ("Complex"), located in the vicinity of 4167 Tara Avenue, Las Vegas, Nevada; and

WHEREAS, the City is desirous of leasing certain property of the Complex for the purpose of operating and maintaining an office for the City's Neighborhood Services Department; and

WHEREAS, the Lessor is desirous of having the City operate and maintain an office at the Complex;

NOW, THEREFORE, in consideration of the foregoing and the covenants and conditions set forth herein, the parties agree as follows:

1. AGREEMENT OF PREMISES

Subject to the provisions of this Agreement, Lessor hereby leases to City and City hereby leases from Lessor certain space within the Complex, specifically known as 4124 Pennwood Avenue, No. B, Las Vegas, Nevada. The suite (hereinafter the "Premises") consists of approximately 1050 square feet and its location and dimensions are shown more particularly on the copy of the Site Plan of the Complex which is attached hereto as Exhibit "C-1" and incorporated herein by this reference.

2. TERM

Unless earlier terminated in accordance with the provisions of this Agreement, the term of this Agreement shall be five (5) years ("Initial Term"). The term shall begin on the date the Grant Deed transferring title and ownership of the Complex from the City to Lessor has been recorded in the Office of the County Recorder, County of Clark, State of Nevada (the "Commencement Date") and shall end on the fifth (5th) anniversary of the Commencement Date. In the event that either the City or Lessor desires to terminate this Agreement, City (or its designated representative) or Lessor shall terminate this Agreement by providing sixty (60) days notice without cause.

The City shall have the right to entend the term for another five (5) years after the Initial Term.

3. OBLIGATIONS OF THE LESSOR

Lessor will provide the following at the Complex:

A. The following utilities: sanitation, sewer and water;

B. Landscape maintenance;

C. Common areas and maintenance; and

D. Three (3) parking spaces in the parking lot of the Complex which are located in close proximity of the Premises.

4. RENT

It is understood and agreed that, in consideration of the City operating and maintaining an office at the Complex, Lessor obtains certain benefits from having the City's presence at the Complex, specifically, the benefits derived from an outreach office of the Neighborhood Services Department. As such, the Lessor agrees to charge $500 in rent throughout the term of this Agreement. Increases to the base rent shall increase in accordance with the adjustments of HUD Guidelines for HOME Program Rent Limits.

5. CONDITION OF PREMISES

The Premises are leased to City on an "as-is" basis.

6. USE OF PREMISES

City agrees to use the Premises solely for the purpose of conducting its business, which is expressly limited to operating an office of the Neighborhood Services Department. Except as expressly consented to in writing by Lessor, City shall not use or permit the Premises to be used for any purpose and shall not operate under any name, other than those which are set forth in this Section. City agrees to maintain the Premises in good condition and to not use any nails, bolts or any other materials to change the walls, floors or any other portion of the Premises without the written consent of Lessor. Lessor agrees to use reasonable caution and respect the City's confidentiality when using shared space of the Premises.

7. LAWS, WASTE, NUISANCE

City covenants that it:

A. Will not use or suffer or permit any person or persons to use the Premises or any part thereof for conducting thereon any activity not authorized in this Agreement;

B. Will comply with all laws, ordinances, regulations and requirements now in force or which hereafter may be in force of any lawful government body or authority having jurisdiction over the Premises;

C. Will keep the Premises and every part thereof in a clean, neat and orderly conditions and will in all respects and at all times fully comply with all health and police regulations; and

D. Will not suffer, permit or commit any nuisance or waste.

8. <u>CHANGES TO COMPLEX</u>

Lessor reserves the right at all times to exercise reasonable control over, and from time to time make changes, alterations or additions to, the Complex. Lessor shall endeavor to do so with a minimum of disruption to the City's rights under this Agreement. This Section does not diminish City's right to seek any remedy available at law or in equity for injury or damage that City may suffer because of Lessor's alteration of the interior of the Premises.

Lessor shall maintain the structural components of the Complex. The structural components of the Complex shall consist of the following: the foundations, bearing and exterior walls and the roof; the electrical, plumbing and sewage systems lying outside the Premises; gutters and downspouts and other structural improvements made by Lessor to the building in which the Premises are located. If Lessor is required to make structural repairs by reason of City's negligent act or omission, City shall pay Lessor's cost for making such repairs within sixty (60) days after presentation of a bill therefor. Failure of City to do so shall constitute a default hereunder by City. Lessor's obligation of repair as provided for herein is expressly conditioned upon City's receipt of written notice, given in the manner set forth in Section 32, of the need for such repair. City shall have no liability to Lessor based upon City's failure to repair in the absence of the notice hereby required to be given.

9. ALTERATIONS

City shall not make or cause to be made to the Premises any alterations, additions or improvements or install or cause to be installed any trade fixtures, exterior signs, floor coverings, interior or exterior lighting, plumbing fixtures or shades or awnings or make any other changes without first obtaining Lessor's written approval. City shall present to the Lessor plans and specifications for such work at the time approval is sought. In the event Lessor consents to the making of any alterations, additions or improvements to the Premises by City, the same shall be made by City at City's sole cost and expense. All such work with respect to any alterations, additions and changes shall be done in a good and workmanlike manner and diligently prosecuted to completion such that, except as absolutely necessary during the course of such work, the Premises shall at all times be a complete operating unit. Any such alterations, additions or changes shall be performed and done strictly in accordance with all laws, regulations and ordinances relating thereto.

In performing the work of any such alterations, additions or changes, City shall have the same performed in such a manner as not to obstruct access to any portion of the Premises or the Complex. Any alterations, additions or improvements to the Premises including wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and shall be surrendered with the Premises and to become the property of Lessor unless Lessor otherwise elects at the end of the term hereof. Notwithstanding the above, Lessor agrees to construct, at its cost and expense, the required wall(s) on the Premises which will separate the City's Premises from the portion of the Complex to be used by Lessor.

10. UTILITIES

Lessor shall provide utilities for sanitation, sewer and water. City shall be responsible for gas, electricity and telephone. Lessor shall not be liable in the event of any interruption in the supply of any utility services to the Premises or Complex except and unless said interruption is due to Lessor's negligence. City agrees that it will not install any equipment which will exceed or overload the capacity of any utility facilities and that, if any equipment installed by City shall require additional utility facilities, the same shall be installed at City's expense in accordance with plans and specifications previously approved in writing by the Lessor.

11. USE OF PARKING AND OTHER AREAS

In connection with its use of the Premises pursuant to this Agreement, City is entitled to three (3) reserved parking spaces. All facilities in or about the Complex shall be subject to the exclusive control and management of Lessor. Lessor shall have the right to construct, maintain and operate lighting and other facilities on all said areas and improvements; to police the same; to change the area, level, location and arrangements of the parking area and other common facilities; to close all or any portion of said areas or facilities to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right to any person or the public therein; and to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking. The term "non-customer parking" does not include members of the public who are on business at the Cty's Neighborhood Services Department. Lessor shall operate and maintain the parking area in such manner as Lessor in its discretion shall determine. Lessor shall have full right and authority to employ and discharge all its personnel with respect thereto, and shall have the right, through reasonable rules, regulations and/or restrictive covenants promulgated by it from time to time, to control use and operation of the parking area in order that the same may occur in a proper and orderly fashion. No such rules, regulations or restrictive covenants may be enforced against the City unless notice thereof is first provided to City.

12. TAXES

Subject to applicable exemptions from tax, Lessor shall be solely responsible for and shall pay before delinquency any and all taxes of any nature that may be levied, assessed or imposed upon the possession or use of the Premises or buildings, structures, improvements, personal property and other taxable interests located in or upon the Premises.

13. INSURANCE

City agrees to procure and maintain, at its sole cost and expense, by the end of the first year of this Agreement and any renewal period thereof, the following:

A. Fire insurance and extended coverage insurance to cover the replacement cost of the City's improvements, trade fixtures, furnishings, equipment and all other personal property;

B. Workmen's compensation coverage as required by law, whether by self-insurance or otherwise; and

C. General liability and property damage coverage with respect to the Premises with combined single limits of not less than $1,000,000 per person and per occurrence for bodily injury and a limit of not less than $1,000,000 per accident or occurrence for property damage. The liability coverage may be provided through self-insurance.

14. ACCESS TO PREMISES

Lessor shall have the right to place, maintain and repair all utility equipment of any kind in, upon and under the Premises as may be necessary for the servicing of the Premises and other portions of the Complex. Lessor shall also have the right to enter the Premises upon reasonable notice to inspect or to exhibit the same to prospective purchasers and City and to make such repairs, additions, alterations or improvements as Lessor may deem desirable.

Lessor may enter the Premises at any time, without notice, in the event of an actual emergency. Lessor shall at all times have and retain a key with which to unlock all of the doors of the Premises, excluding City's vaults and safes, and Lessor shall have the right to use any and all means which Lessor may deem proper to open said doors in an emergency in order to obtain entry to the Premises. Any entry to the Premises by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of the Premises, or an eviction of City from the leased Premises or any portion thereof.

15. SURRENDER OF PREMISES

Upon expiration or other authorized termination of this Agreement, City shall surrender the Premises in substantially the same condition as a similar apartment unit at the Complex at the commencement of this Agreement, except for additions, alterations or changes specifically authorized by City and reasonable wear and tear, and shall deliver all keys to Lessor. Before surrendering the Premises, City shall remove all of its personal property and trade fixtures and such alterations or additions to the Premises made by City as may be specified for removal by Lessor.

16. HOLDING OVER

There will be no holding over after the Initial Term or authorized extension. Prior to the end of the five (5) year term or authorized extension, City will receive a sixty (60) day notice to vacate.

17. EMINENT DOMAIN

In case the whole of the Premises, or such part thereof as shall substantially interfere with City's use and occupancy thereof, shall be taken by any lawful power or authority by exercise of the right of eminent domain, or sold to prevent such taking, either Party may terminate this Agreement effective as of the date possession is required to be surrendered to said authority. City shall not because of such taking assert any claim against Lessor or the taking authority for any compensation because of such taking, and Lessor shall be entitled to receive the entire amount of any award without deduction for any estate or interest of City. In the event the amount of property or the type of estate taken shall not substantially interfere with the conduct of City's business, Lessor shall be entitled to the entire amount of the award without deduction for any estate or interest of City. In such event, Lessor shall promptly proceed to restore the Premises to substantially their condition prior to such partial taking, and a proportionate allowance shall be made to City and such allowance shall correspond to the time during which, and to the part of the Premises of which, City is so deprived on account of such taking and restoration. Nothing contained in this Section 17 shall be deemed to give Lessor any interest in, or prevent City from seeking any award against the taking authority for, the taking of personal property and fixtures belonging to City or for relocation expenses recoverable against the taking authority.

18. DAMAGE OR DESTRUCTION

A. City shall give prompt notice to Lessor in case of fire or accidents in or near the Premises or in the common areas.

B. If the Premises are partially damaged by fire or other casualty, Lessor shall repair such damage at its cost, subject to Lessor's option contained in subsection C of this Section.

C. If the Complex or common areas are substantially or totally destroyed, or if the Premises are damaged so extensively that they cannot, in Lessor's opinion, be repaired within sixty (60) days after commencement of such repairs, or if Lessor shall decide to rebuild the Complex or common areas so that they will be substantially different structurally or architecturally, then either party, at its option and within thirty (30) days after such damage or destruction, may give the other party written notice thereof and this Agreement shall thereupon be canceled effective as of the date of the occurrence of such damage or destruction. If the Agreement is not canceled and Lessor elects to repair and rebuild, this Agreement shall remain in effect and Lessor shall provide comparable premises to the City.

19. ASSIGNMENT AND SUBLETTING

City shall not transfer, assign, delegate, mortgage or hypothecate this Agreement, in whole or in part, or permit the use of the Premises by any person or persons other than City, or sublet the Premises, or any part thereof, without the prior written consent of City.

20. DEFAULT BY LESSOR

In the event Lessor fails to fulfill any obligation under this Agreement, City shall, before exercising any right or remedy available to it, give Lessor written notice of the claimed breach, default or noncompliance, which Lessor shall have the right to cure for the sixty (60) days following the giving of the notice. Subject to the provisions of Section 18, if Lessor fails or refuses to make repairs or provide services which are required hereunder within sixty (60) days after receiving written notice from City of the need therefor, City may exercise any right or remedy available to it under Nevada law.

21. DEFAULT BY CITY

Upon the occurrence of City's failure to perform any other term, condition, or covenant to be performed by it pursuant to this Agreement within sixty (60) days after written notice of such default shall have been given to City by Lessor, Lessor shall have, without further notice or demand of any kind to City or any other person, the option to take terminate this Agreement by written notice to City. In the event of such termination, City agrees to immediately surrender possession of the Premises.

22. GOVERNING LAW

This Agreement shall be governed by and interpreted according to the laws of the State of Nevada.

23. NO PARTNERSHIP

Lessor does not by this Agreement, in any way or for any purpose, become a partner or joint venturer of City in the conduct of its business or otherwise.

24. NO FORCE MAJEURE

Each of the parties shall be excused for the period of any delay in the performance of any obligation hereunder when prevented from doing so by cause or causes beyond that party's control, including labor disputes, civil commotion, war, governmental regulations or controls, fire or other casualty, inability to obtain any material or services, or acts of God.

25. NO WAIVER

Failure of Lessor to insist upon the strict performance of any provision or to exercise any option hereunder shall not be deemed a waiver of its right to do so in the future. No provision of this Agreement shall be deemed to have been waived by Lessor unless such waiver is in writing.

26. PARTIAL INVALIDITY

If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Law.

27. PROVISIONS BINDING

Except as otherwise provided, all provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, successors and assigns. In the event of any sale or assignment (except for purpose of security or collateral) by Lessor of the Complex, the Premises or this Agreement, Lessor shall, from and after the effective date thereof (irrespective of when such sale or assignment occurs), be entirely relieved of all of its obligations which shall, as of the time of such sale or assignment or on the effective date, whichever is later, automatically pass to Lessor's successor in interest. The preceding sentence applies only if Lessor's successor-in-interest is required by the transfer documents to honor Lessor's obligations under this Agreement.

28. NONDISCRIMINATION

Lessor and City each assures that the Premises are not segregated with respect to race, color, religion or national origin, and each agrees that it will not segregate or discriminate on such grounds with respect to public utilization of or access to the Premises.

29. ENTIRE AGREEMENT

This Agreement, including any exhibits and addenda attached hereto, set forth the entire agreement between the parties. All such exhibits and addenda mentioned in this Agreement are incorporated herein by reference. Any prior conversations or writings concerning the Agreement of the Premises are merged herein and extinguished. No amendment to this Agreement shall be binding upon Lessor or City unless reduced to writing and executed by the Parties and, in the case of the Tenant, executed with the same formality as attended City's execution of this Agreement.

30. SUBMISSION OF THIS AGREEMENT

Submission of this Agreement for examination by City does not constitute an option for the Premises and becomes effective as an Agreement only upon execution and delivery thereof by

Lessor to City. If any provision contained in an amendment or addendum is inconsistent with a provision in the body of this Agreement, the provision contained in said amendment or addendum shall control. The captions and section numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any section or paragraph.

31. AUTHORITY OF SIGNATORIES

Each signatory to this Agreement represents that he or she is duly authorized to execute and deliver the same on behalf of the entity for which he or she is signing and that this Agreement is binding upon said entity in accordance with its terms.

32. NOTICES

Any notice, demand, request, or other instrument which may be or is required to be given under this Agreement shall be delivered in person or sent by United States certified or registered mail, postage prepaid, and shall be sent to the following addresses:

IF TO THE LESSOR:	Robert E. and Jean Kochevar 6396 E. Mississippi Denver, Colorado 80224
IF TO THE CITY:	CITY OF LAS VEGAS Attn: City Manager 400 East Stewart Avenue Las Vegas, Nevada 89101

. . .

. . .

. . .

Either party may designate a different address by giving written notice to the other Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF LAS VEGAS

By: ______________________
JAN LAVERTY JONES, Mayor

ATTEST:

____
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM

J. Pontecello 2/19/99
Date

LESSOR:

Robert E. Kochevar
ROBERT E. KOCHEVAR

Jean Kochevar
JEAN KOCHEVAR

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:	**FROM:**
COUNCILMAN ARNIE ADAMSEN COUNCILMAN GARY REESE REAL ESTATE COMMITTEE	DAVID ROARK, MANAGER REAL ESTATE & ASSET MGMT DIVISION
SUBJECT:	**COPIES TO:**
March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible approval of lease addendum #2 for the lease agreement on a building located at 731 South Fourth Street	MAYOR JAN LAVERTY JONES COUNCILMAN MICHAEL J MCDONALD COUNCILMAN LARRY BROWN VIRGINIA VALENTINE STEVEN P. HOUCHENS ANN HOLLAND WILLIE COOK

BACKGROUND:

The City currently has a lease agreement on the building located at 731 S. Fourth Street. The current lease agreement is for a five (5) year term plus three (3) months, with an optional five (5) year term. If the lease is not renewed at the end of the five (5) year term, the City will have to pay a fee of three hundred and fifty thousand dollars ($350,000) to landlord at the end of the initial term of the lease.

The current terms of the lease agreement call for an annual Consumer Price Index (CPI) increase each September 1 Currently, the lease subjects the City to an annual increase of up to four percent (4%). During the past four (4) weeks, we have been discussing the renegotiation of the term of the lease in an effort to stabilize the yearly payment, clean up the arbitrary language within the original agreement, and to settle some outstanding issues agreed to in the original agreement.

- This amendment to the lease lowers the annual CPI increase to only one and a half percent (1 5%) through the remainder of the initial term and the optional period as well by guaranteeing the establishment of fixed monthly payments each year through the entire term.
- In exchange for the City receiving lower yearly increases on the square footage price, the City shall exercise the optional period now, which coincides with plans for the City Hall expansion.
- This amendment grants to the landlord the vacation of the alleyway that is agreed to in the original lease agreement and has previously been approved by the Planning Department and City Council.
- In exchange for this vacation, the City receives a twelve (12) foot easement to public ingress/egress, which Public Works has requested from the Landlord and is presently needed along the south side of the property line.
- This amendment deletes in its entirely Paragraph 29, which contained the vague language in which the City was involved in court action the last six (6) months.
- We have stated in the addendum plainly what each year's lease payment will be throughout the whole term, which equates to one and a half percent (1 5%) per year

Per this amendment, the maximum square footage price we will be paying by the end of 2006 will be one dollar and thirteen cents ($1.13) per square foot The existing agreement has the potential of going as high as one dollar and thirty-seven cents ($1 37) per square foot This addendum stabilizes our payments over a long term at a low incremental set amount.

FISCAL IMPACT:

Unknown

STAFF RECOMMENDATION:

The Real Estate & Asset Management Division and the City Manager's Office recommend approval of lease addendum #2.

LEASE ADDENDUM NUMBER 2

THIS LEASE AGREEMENT is entered into this _____ day of March, 1999, by and between the City of Las Vegas, a municipal corporation of the State of Nevada (herein the "Tenant") and 730 LTD (herein the "Landlord").

WITNESSETH:

A. Landlord and Tenant entered into a Lease Agreement dated May 15, 1996, for the property located at 730 Las Vegas Boulevard South, Las Vegas, Nevada (the "Lease").

B. Tenant's right of first refusal in Paragraph 29 of the Lease has expired and therefore the language of that section of the Lease is no longer operable and should be removed from the Lease to prevent any further litigation by third parties about the meaning of Paragraph 29 or the intent of the parties to the Lease.

C. Tenant desires to exercise its option to extend the term of the Lease for an additional five (5) years from the date of termination of the original term of the Lease and to cap the cost of living increases for the Monthly Base Rent.

D. Tenant desires to complete the vacation of the alley commenced by Tenant in 1996 to accommodate the entrance constructed by Tenant for the Development Services Center ("DSC") on the property and to obtain an easement across the north side of the property.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Paragraph 3.1.2. shall be amended to provide that on anniversary of the Commencement Date during the initial term, the option term and any holdover term the Monthly Base Rent shall be as follows:

	Year	SqFt	Price/ Sqft/ Month	Percent Change	Monthly Rent	Period Rent
	Sep 1999 - Aug 2000		$ 1.02	1 50%	$ 40,619.29	$ 487,431.42
	Sep 2000 - Aug 2001		$ 1.03	1.50%	$ 41,228.57	$ 494,742.89
	Sep 2001 - Aug 2002		$ 1.05	1 50%	$ 41,847.00	$ 502,164.03
	Sep 2002 - Aug 2003		$ 1.06	1 50%	$ 42,474.71	$ 509,696.50
	Sep 2003 - Aug 2004		$ 1.08	1.50%	$ 43,111.83	$ 517,341.94
	Sep 2004 - Aug 2005		$ 1.09	1 50%	$ 43,758.51	$ 525,102.07
	Sep 2005 - Aug 2006		$ 1.11	1 50%	$ 44,414.88	$ 532,978.60
	Sep 2006 - Nov 2006		$ 1.13	1 50%	$ 45,081.11	$ 135,243.32
Option Period	Dec 2006 - Feb 2007		$ 1.13	0 00%	$ 45,081.11	$ 135,243.32

2. Tenant hereby exercises the option to extend the term of the Lease pursuant to Paragraph 28 of the Lease. The Lease will now terminate November 30, 2006. There are no other options to extend under the Lease.

Landlord further agrees to permit Tenant to holdover for a three (3) month period at the end of the lease term, provided Tenant gives Landlord at least six (6) months written notice of Tenant's intent to holdover. Paragraph 13 of the Lease is hereby modified to provide that the Monthly Base Rent for the holdover period shall be $45,081.11 per month.

3. Tenant shall file and approve an application for vacation of the alley separating the parcels of the leased property. Landlord and Tenant agree that the vacation of the alley shall be subject to the following terms and conditions as previously established by the Tenant:

a) Provide a minimum twelve (12) foot wide public access easement across that portion of Parcel No. 139-34-410-156 not used for parking, to accommodate one-way traffic circulation connecting the existing driveway on Las Vegas Boulevard to that portion of the public alley not being vacated by this request as required by the Department of Public Works. The final alignment of the access corridor shall be determined by the Landlord and the City Planning Engineers as required by the Department of Public Works.

b) Public sewer and public drainage easements shall be retained over the entire area to be vacated as required by the Department of Public Works. However, no public drainage easement shall be retained on areas where new building or entrance features are constructed.

c) Reservation of easements for the facilities of the various utility companies together with reasonable ingress thereto and egress therefrom shall be provided if required.

d) All development shall be in conformance with code requirements and design standards of all city departments.

e) The order of vacation shall not be recorded until all of the above conditions have been met. City staff is empowered to modify this application if necessary because of technical concerns or because of other related review actions as long as current city right-of-way requirements are still complied with and the intent of the vacation application is not changed. If applicable, a five (5) foot wide easement for public streetlight and fire hydrant purposes shall be retained on all vacation actions abutting public street corridors that will remain dedicated and available for public use. Also, if applicable and where needed, public easement corridors and sight visibility for other easements that would/should cross any right-of-way being vacated must be retained.

The City of Las Vegas further agrees to cooperate with Landlord to move the twelve (12) foot easement granted by Landlord as a condition to vacating the alley if, at a later date, Landlord desires to expand the building or acquired another piece of property adjacent to the Premises.

4. Paragraph 29 of the Lease was only applicable when and if the Tenant exercised its right of first refusal during the first two (2) years of the Lease. The Tenant's right of first refusal has

expired. Therefore, Paragraph 29 shall be deleted in its entirety and shall be of no further force or effect. The removal of Paragraph 29 from the Lease, now that Tenant's right of first refusal has expired, reflects the intent of Landlord and Tenant when the Lease was executed.

5. All of the other terms of the Lease shall remain in full force and effect except as specifically modified by this Addendum.

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

ATTEST.	"Tenant" CITY OF LAS VEGAS
______________________________	By______________________________
BARBARA JO RONEMUS, CITY CLERK	JAN LAVERTY JONES, MAYOR
APPROVED AS TO FORM.	"Landlord" 730 LTD
John Bedler 2-25-99	By______________________________
DEPUTY CITY ATTORNEY/DATE	Dave Mason, Managing Member DATE

CITY OF LAS VEGAS

INTER-OFFICE MEMORANDUM

Date

March 1, 1999

TO:	FROM:
COUNCILMAN ARNIE ADAMSEN COUNCILMAN GARY REESE REAL ESTATE COMMITTEE	DAVID ROARK, MANAGER REAL ESTATE & ASSET MGMT. DIVISION
SUBJECT:	**COPIES TO:**
March 1, 1999, Real Estate Committee Agenda Item/Discussion and possible approval of an agreement for the purchase of real property, parcel #138-14-402-001, located in the vicinity of Torrey Pines Drive and Smoke Ranch Road, for future construction of a Fire Station	MAYOR JAN LAVERTY JONES COUNCILMAN MICHAEL J MCDONALD COUNCILMAN LARRY BROWN VIRGINIA VALENTINE STEVEN P HOUCHENS ANN HOLLAND WILLIE COOK

BACKGROUND:

For the last several months, the Real Estate & Asset Management (REAM) Division and the Fire Department have been working on land acquisition for future construction of potential fire stations. In order for the Fire Department to be able to respond to an emergency situation within a very defined time limit, the Fire Department has to have fire stations located within specific square mileage acres spread over the entire City limits.

Within the work plan that expands out over a ten (10) year period thus far, we have been able to obtain nine (9) different sites for land through applications submitted to the Bureau of Land Management (BLM) These specific areas are up to ten (10) acre sites These sites have a cumulative total value of approximately two and a half to three million dollars ($2,500,000.00-$3,000,000.00). However, due to the fact that this property can be obtained from the BLM for an intended public use, our total cost thus far was nine hundred dollars ($900.00) for application filing fees to the BLM. However, it is not possible to acquire every parcel required that will provide adequate coverage by the Fire Department that the City needs free of acquisition costs.

The City will have to purchase a few parcels of property in order to construct fire stations in areas they are desperately needed. One (1) such area that we will need to purchase property in lies between Rainbow Boulevard to the West, Decatur Boulevard to the East, and is bordered by Smoke Ranch Road on the North and Washington on the South Through multiple listing, we identified sixteen (16) different locations of vacant property that totaled eight (8) acres or less. By various criteria of the Fire Department and Architectural Services, and obviously taking into consideration price per acre, traffic flow, access to main thoroughfares, terrain, flooding, etc., we selected one (1) site that would be ideal

The property is located in the northwest corner of Torrey Pines and Smoke Ranch Road. It measures approximately four hundred and fifteen (415) feet by two hundred and fifty (250) feet, or about 2.55 acres. This property is currently zoned high density residential, but obviously by its location, it would eventually be changed to commercial zoning.

The owners were asking seven hundred and seventy thousand dollars ($770,000.00) for the property. In order to remain anonymous, the REAM contracted with Priority One Commercial (at no cost to the City) to negotiate with the owners. The owners have now accepted an offer of seven hundred thousand dollars ($700,000 00) for this property and have agreed to pay the commission that would be due to Priority One in the event that the City does purchase the property In order to keep the City's name anonymous in this transaction, Priority One entered into the contract to purchase and paid the ten thousand dollars ($10,000.00) earnest money.

The contract to purchase has a ninety (90) day contingency period for closing of escrow. If anytime during this period we decide not to purchase, the contract states. "Buyer reserves the right to cancel the escrow created herein for "any" reason whatsoever, before the expiration of the Contingency Period " It goes on to state that we notify escrow agent of such and we get the ten thousand dollars ($10,000 00) back plus interest.

So as you can see, the City is at no risk of losing any money in the event that Council does not approve the purchase of the property We would only be subject to losing the time and effort spent in selecting this location and a couple of hundred dollars for expenses owed for miscellaneous items.

In staff's opinion, this is the optimum location to purchase land for the future construction of a fire station I would also add that we believe with some alteration to the design plans of the station, that we can save a critical piece of the parcel on the intersection side and eventually sell it for Commercial Use and recover a large portion of the expenditure after the fire station is built.

It is also planned that if a Fire Bond is approved sometime in the future, that this expenditure shall be reimbursed by the sale of the bonds.

FISCAL IMPACT:

Seven hundred thousand dollars ($700,000.00) plus Shared Closing Costs.

Funding Source is the City Facilities Reserve CIP.

STAFF RECOMMENDATION:

The Real Estate & Asset Management Division and the Fire department recommend approval of the purchase contract and grant staff authority to sign the necessary documents with the Title Company to Close Escrow and receive the recorded title to the property

COPY

PRIORITY ONE COMMERCIAL
REAL ESTATE BROKERAGE

January 27, 1999

Mr. David Roark
Manager
City of Las Vegas
Dept. of General Services
Real Estate & Asset Management Division
314 Las Vegas Blvd. North
Las Vegas, NV 89101

Re: Parcel #138-14-402-001
North West corner of Torrey Pines Drive and Smoke Ranch Road

Dear David:

This letter shall serve as written confirmation that the City of Las Vegas has engaged Cynthia A. Inman and Priority One Commercial to enter into a Purchase Agreement on behalf of the City of Las Vegas on the above referenced parcel of land under the attached terms and conditions. In the event the Seller will not pay to Priority One Commercial the total sales commission of not less than four percent (4%) of the gross sales price, the City of Las Vegas has agreed to pay to Priority One Commercial the difference, not to exceed, a total commission of four percent (4%) of the gross sales price.

If this is your understanding of the agreement between Priority One Commercial and the City of Las Vegas, please sign below and return the original to this office, keeping the copy for your files.

Most sincerely,

Cynthia A. Inman

Cynthia A. Inman
Principal/Broker-Salesman

AGREED AND UNDERSTOOD:

By: David Roark

Date: 1-29-'99

4780 W HARMON / SUITE 12 / LAS VEGAS, NV 89103
(702) 228-7464 FAX (702) 228-7156

COPY

AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY is made and entered into this 19th day of February, 1999 by and between CYNTHIA A. INMAN and/or nominee (hereinafter referred to as "Buyer") and THE SMOKE RANCH PARTNERSHIP C/O DONALD BORSACK AND MILA LEE FAIR, ETAL (hereinafter referred to as "Seller"), with reference to the following facts:

A. Seller is the owner of a parcel of vacant land (the "Property") consisting of approximately 2.53 acres. The Property is located on the Northwest corner of Torrey Pines Drive and Smoke Ranch Road. A Plot Plan of the Property showing the site is attached hereto as Exhibit "A". The Property is further described as Assessor's Parcel No. 138-14-402-001.

B. Seller has represented to Buyer that the Property is currently zoned R-E and is located in the City of Las Vegas, County of Clark, State of Nevada.

C. Buyer now desires to purchase from Seller and Seller desires to sell to Buyer the Property, all improvements now made to the Property.

NOW THEREFORE, in consideration of the mutual covenants, premises and agreements contained herein, the parties hereto do hereby agree as follows:

1. Purchase and Sale. Buyer shall purchase the Property from Seller upon the terms and conditions set forth herein.

2. Purchase Price. The purchase price to be paid for the Property and the improvements thereon shall be Seven Hundred Thousand and no/100 Dollars ($700,000.00), all cash. Said sum shall be paid as follows:

(a) Buyer shall deposit Ten Thousand Dollars ($10,000.00) into escrow as earnest money (the "Deposit"). Buyer reserves the right to cancel the escrow created herein, for any reason whatsoever, before the expiration of the Contingency Period.

(b) Upon the expiration of the Contingency Period, the Deposit shall become non-refundable. The Deposits shall apply toward the purchase price of the Property.

(c) Prior to close of escrow, Buyer shall deposit the balance of the purchase price, Six Hundred Ninety Thousand and no/100 Dollars ($690,000.00).

(d) Should Buyer wish to terminate this Agreement and escrow prior to the expiration of the Contingency Period, Buyer must notify Seller and Escrow Agent in writing. Should Buyer notify Seller and Escrow Agent in writing of Buyers wish to terminate this Agreement, Escrow Agent shall release to Buyer the Deposit plus interest within two (2) business days from date of notification. Should no such notice be received, Buyer shall be deemed to have approved or waived any and all contingencies. Upon approval, waiver or no notice given of Buyer's intentions with regard to the contingencies, the Deposits shall be immediately released to Seller without any further instruction required of Buyer.

3. Title to the Property. Title conveyed is to be subject to encumbrances, easements, rights of way, restrictions, conditions and covenants of record as shown on a current preliminary title report with readable copies of all exceptions to title provided through escrow to be furnished at Seller's expense, if any. Buyer shall have twenty (20) working days following receipt of said report to approve the condition of title; provided that if written disapproval is not received by Seller within said period, buyer shall be deemed to have accepted the condition of the title. Seller agrees to deliver, at its expense, good and merchantable title as evidenced by an CLTA policy of title insurance. Buyer, at his option, may terminate this offer to purchase and his earnest money shall be returned if the Seller fails to deliver good and merchantable title as herein provided.

4. Disclosure of Conditions. Buyer shall take title subject to declarations, covenants, conditions and restrictions, articles of incorporation, bylaws, rules and regulations currently in force, to be delivered to Buyer. Buyer shall be deemed to have approved said documents unless written notice to the contrary is delivered to Seller within twenty (20) working days of receipt by Buyer.

5. Escrow. The purchase and sale provided for herein shall be consummated through an escrow to be opened with Angie Galindo at United Title of Nevada, within three (3) business days after the execution and delivery of this Agreement. The escrow shall be deemed open when Buyer and Seller have executed and deposited signed purchase contract with the escrow company. Said escrow shall be upon the usual form of instructions of the escrow holder for transactions of the type provided for herein, except that said instructions shall incorporate all terms and provisions of this Agreement, and in addition shall provide the following:

(a) to close escrow within thirty (30) days from the expiration of the contingency period. Upon the opening of escrow, the escrow officer shall set a specific date for the expiration of the Contingency Period. If the expiration date of the Contingency Period or the anticipated close of escrow date falls on a holiday or weekend, the date for the closing of escrow shall be set on the next succeeding working day.

(b) Promptly after the opening of escrow, Seller shall cause to be procured and delivered for Buyer's approval the Preliminary Title Report and copies of documents referred to in paragraph 3;

(c) Seller shall pay any Documentary Transfer Tax, and the cost of the CLTA title insurance policy and all endorsements thereto, and all other fees and costs shall be divided in accordance with the usual practices in Clark County, Nevada;

(d) real property taxes shall be prorated to close of escrow;

(e) any Special Assessments or Fees outstanding on the Property which are of record shall be delineated by Escrow and prorated to Close of Escrow; and

(f) in the event of any conflict between the terms of this Agreement and the terms of the escrow, the terms of this Agreement shall prevail except where the escrow instructions specifically provide otherwise.

If escrow fails to timely close solely as the result of Buyer's default, all earnest monies previously deposited by Buyer into escrow and not previously disbursed to Seller shall be paid by escrow over to Seller as liquidated damages. If escrow fails to close as a result of Seller's default, Buyer shall be entitled to seek specific performance remedies only. The provisions of this paragraph shall be the sole remedies available to each respective party hereunder in the event of a default under this Agreement.

6. Contingencies. The purchase of the Property is contingent upon:

INITIAL

(a) Buyer's approval of the Preliminary Title Report, and all documents described within the Preliminary Title Report, issued by Angie Galindo at United Title of Nevada concerning the Property within twenty (20) business days after Buyer's receipt of same from ~~First American Title~~ UNITED TITLE OF NEVADA (see paragraph 3).

INITIALS

(b) The expiration or Buyer's written waiver of the ninety (90) day Contingency Period as described herein. The Contingency Period shall commence on the day following the opening of escrow. Escrow shall be deemed opened for purposes hereof when escrow agent receives an original of this Agreement signed by both Buyer and Seller, and Buyer's Deposit. Escrow agent shall notify both Buyer and Seller in writing of the date escrow is opened, the day the Contingency Period expires, and the day escrow is to close. Seller hereby grants Buyer the right to enter on the Property to conduct such tests and investigations as Buyer deems appropriate. Buyer agrees to indemnify and hold seller harmless from any actual damage including any legal fees as a result of Buyer's tests and investigations during the Contingency Period on the Property or to any neighboring properties or structures. Buyer further agrees to indemnify and hold Seller harmless from any injury to persons or actual damage including any legal fees to the personal property of others which results from the Buyer's tests and investigations during the Contingency Period. Within ten (10) days following the escrow, Seller shall make available to Buyer or to Buyer's agents copies of any site plans, marketing studies, environmental studies, grading plans, surveys, or other tests or any additional information or studies pertinent to the subject property that may have been taken by if any, at the request of Buyer.

(c) The above contingencies in Paragraphs 6 (a) and (b) are solely for the Buyer's benefit. Buyer may elect, for any reason or no reason whatsoever, to terminate this Agreement and the purchase contemplated herein during the Contingency Period. Should Buyer so elect to terminate this Agreement, then prior to the expiration of the Contingency Period Buyer shall so notify Seller and escrow holder in writing (via U.S.

mail, hand-delivery or by fax). In the event Buyer terminates this Agreement for any reason during the Contingency Period, any deposits made by Buyer, plus any interest earned, shall be immediately returned to Buyer, less any escrow costs incurred and Buyer shall have no further obligations under this Agreement. Buyer shall be solely responsible for all costs involved in satisfying the above stated contingencies.

7. Offer Expiration. Unless the Seller's acceptance of this offer to purchase is delivered to buyer by the 19th of February, 1999, at the hour of 5:00 P.M., this offer shall be deemed revoked and the above earnest money shall be returned to Buyer's account herein on demand.

8. Broker Commissions/Disclosure. Buyer represents and warrants that he has not retained or dealt with any broker with respect to this Agreement except Priority One Commercial, 4780 West Harmon, Suite 12, Las Vegas, NV 89103, who shall be paid through escrow a commission by Seller of 4% of the Property's gross sales price. Buyer discloses to Seller that Buyer is a Nevada Licensed Real Estate Broker/Salesman with Priority One Commercial. Seller shall be responsible for any real estate sales commission due to any listing or other broker retained by Seller.

9. Notices. Any and all notices, demands, or other communications required or desire to be given hereunder shall be in writing and shall be validly given or made to another party if served either personally or if deposited in the United States mail certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be serviced personally or by facsimile transmission, service shall be conclusively deemed made at the time of such personal service or transmission. If such notice, demand or other communication be given by mail, such shall be conclusively deemed given forty-eight (48) hours after the deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth.

To Seller: The Smoke Ranch Partnership
c/o Donald Borsack
El Portal Corporation
711 Pilot Raod, Suite F
Las Vegas, NV 89119
897-5660 897-5573 (fax)

Mila Lee Fair, etal
5804 Alta Drive
Las Vegas, NV 89107
878-4285

To Buyer or Assignee: Cynthia A. Inman
Priority One Commercial
4780 W. Harmon Ave., Suite 12
Las Vegas, NV 89103
(702) 228-7464
(702) 228-7156 fax

Any party hereto may change his address for the purpose of receiving notices, demands and other communications as herein provided by written notice given in the manner aforesaid to the other party or parties hereto. After opening of escrow a copy of all notices, demands and other communications shall be given to the escrow office.

10. Applicable Laws and Severability. This Agreement shall, in all respects, be governed by the laws of the State of Nevada applicable to agreements executed and to be wholly performed with the State of Nevada. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision of this Agreement which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

11. Entire Agreement. The foregoing represents the entire Agreement between the parties and no verbal statements made by any party are a part hereof unless incorporated in writing. In the event either party shall prevail in any legal action commenced to enforce this Agreement, he shall be entitled to all costs incurred in such action including attorney's fees, costs and expenses as may be fixed by the Court.

12. Modifications or Amendments. No amendment, change or modification of this Agreement shall be valid unless in writing and signed by all parties hereto.

13. Successors or Assigns. All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

14. Time of the Essence. Time is of the essence of this Agreement and all terms, provisions, covenants and conditions hereof.

15. Buyer agrees to cooperate with Seller if Seller determines to undertake a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code.

The undersigned Buyer, offers and agrees to purchase the Property on the terms and conditions herein stated and acknowledges receipt of a copy of this Agreement.

Date: 2/19/99 Time: 11:00 am/pm

BUYER or ASSIGNEE:

Cynthia A. Inman

Cynthia A. Inman

ACCEPTANCE OF OFFER TO PURCHASE

The undersigned Seller accepts the foregoing offer to purchase and agrees to sell the Property described above, on the terms and conditions stated herein, and acknowledges receipt of a copy of this Agreement.

Date: Time am/pm

SELLER:

The Smoke Ranch Partnership
C/o Donald Borsack

By: ____________________

Its: ____________________

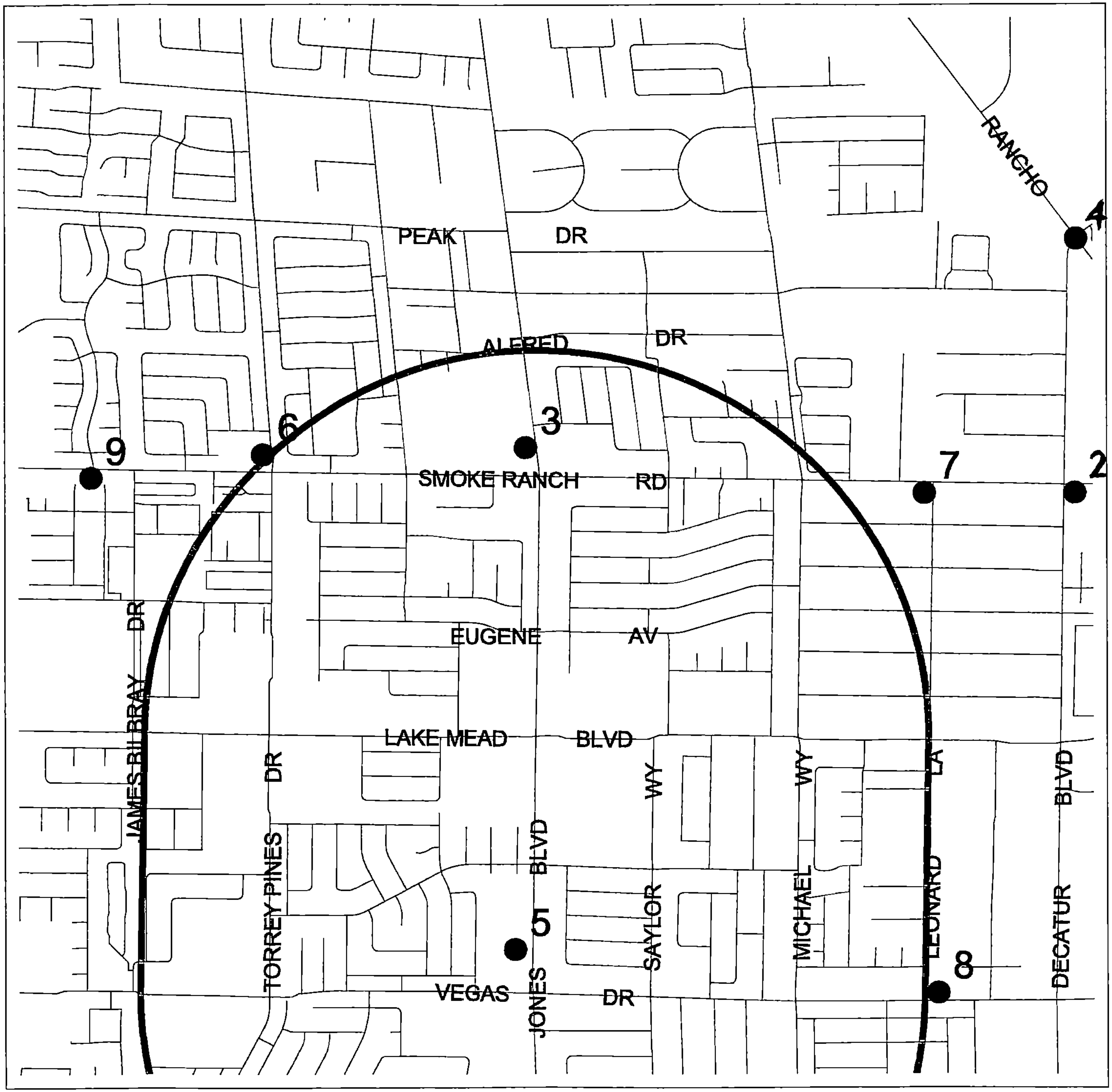
Mila Lee Fair, etal

By: Mila Lee Fair

Its: ____________________

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT, IF NOT FULLY UNDERSTOOD, SEEK COMPETENT COUNSEL.

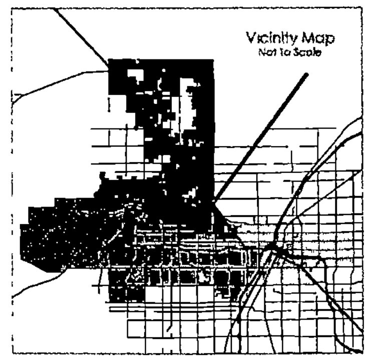
Station 43 Site Location Boundries



Potential 43 Sites

Street Centerline

Station 43 Site Boundary



Real Estate & Asset Management

1:18000

Date of Data 1999/02/22