

AGREEMENT

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

This Agreement made and entered into by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas (hereinafter referred to as County) and Fort Bend Habitat for Humanity, a non-profit corporation under the laws of the State of Texas (hereinafter referred to as Developer).

WITNESSETH:

WHEREAS, the County, has entered into a Grant Agreement with the United States of America, No. B-08-UN-48-0400, acting by and through its Department of Housing and Urban Development, hereinafter referred to as HUD, for federal funding of sections 2301 – 2304 of the Housing and Economic Recovery Act of 2008 (Public Law 110-289); and

WHEREAS, the program established pursuant to sections 2301-2304 is known as the Neighborhood Stabilization Program (NSP); and

WHEREAS, the Developer meets the definition of “development entity” or “developer” under the NSP which includes provisions that the developer must acquire site control of the property in order to (1) acquire for the purpose of rehabilitation and/or to rehabilitate properties for use or resale for residential purposes and (2) construct new housing in connection with the redevelopment of demolished or vacant properties.

WHEREAS, the County wishes to engage the Developer to assist the County in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I.

SCOPE OF AGREEMENT

1.01 The County and Developer agree to administer the Project in accordance with the guidelines, rules, and regulations required by the U. S. Department of Housing and Urban Development (hereinafter referred to as HUD).

1.02 Activities

The Developer will be responsible for administering a Program Year 2008 NSP funded program to purchase vacant property and construct new housing for low-to moderate income households in a manner satisfactory to the County and consistent with any standards required as a condition of providing these funds.

1.03 Program Delivery

The Developer shall utilize its grant for new home construction. The Developer will clear suitable vacant properties to prepare for redevelopment; Developer shall complete a minimum of the following activities:

Activities

10 Property Acquisitions in which the Developer will take title to the properties and construct 10 New Homes

1.04 Project Implementation

The Developer shall utilize its grant for project implementation. Project implementation shall include but not be limited to the following activities:

Property search shall begin immediately upon execution of this Agreement.

Identification of vacant or abandoned properties shall be complete within 9 months of execution of this Agreement.

Property acquisition shall be complete within 15 months of execution of this Agreement.

Construction shall be complete within 24 months of execution of this Agreement..

1.05 General Administration

The Developer or its Representatives shall be responsible for the administration of the acquisition and demolition program.

1.06 National Objectives

The Developer certifies that the activities carried out with funds provided under this Agreement will meet one or more of the CDBG's program's National Objectives - 1) benefit low/moderate income persons, specifically low-mod housing providing permanent residential structures that will be occupied by households whose annual income is at or below 120 percent of the median income, as defined in 24 CFR 570.208 and redefined in 2301 (f) (3) (A).

II.

TIME OF PERFORMANCE

2.01 Services of the Developer shall begin upon execution of this agreement and end on September 30, 2012.

III.

PROJECT COSTS

3.01 For and in consideration of the Project as herein set forth, the County agrees to fund project costs not to exceed the total sum of Nine Hundred Thirty Thousand One Hundred Ninety and No/100 Dollars (\$930,190.00) as set forth in the Budget for NSP Funds, which shall be in full and total compensation for payment of all expenses allowed under this Agreement and the Grant Agreement with HUD.

Budget for NSP Funds

Program Administration		\$3,000.00
Salary and Fringe Benefits	\$3,000.00	
Executive Director		
Project Delivery		\$20,250.00
Salary and Fringe Benefits	\$6,000.00	
Executive Director		
Building Inspections	\$ 750.00	
Surveys	\$7,500.00	
Permits and Fees	\$6,000.00	
Construction Tools		\$6,000.00
Construction Materials		\$148,670.00
Lease Space and Services		\$21,470.00
Construction Fees and Contract Services		\$127,500.00
Property Acquisition		\$200,000.00
Construction Contracting		\$400,000.00
Contingency		\$3,300.00
TOTAL		\$930,190.00

3.02 The County shall not be liable for the payment of expenses or costs, which are not allowable under the terms of this Agreement and the Grant Agreement with HUD.

3.03 The Developer and the Grantee, through its Director of the Fort Bend County Community Development Department may, by prior written agreement, mutually agree to re-allocate the funds among the various line items of the budget or to new line items created in the budget.

IV.

AFFORDABILITY

4.01 Housing assisted with NSP funds must meet the affordability requirements of Sections 92.254 of the HOME Program, as applicable, and incorporated as Exhibit C. Failure to meet the affordability requirements for the specified periods will require repayment of NSP funds.

V.

PAYMENT

5.01 It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed Nine Hundred Thirty Thousand One Hundred Ninety and No/100 Dollars (\$930,190.00). Developer shall submit an invoice upon delivery of the Project. Such invoice shall include any other documentation requested by the County. All invoices shall be approved by the Fort Bend County Community Development Department prior to payment.

VI.

SOURCE OF FUNDING

6.01 The County has no County funds for the costs of goods and services to be rendered under this Agreement. It is expressly agreed and understood that this Agreement is predicated upon and conditioned on the County receiving funds for the purpose of paying the entire obligation of the County under this Agreement from funds to be received from the U. S. Department of Housing and Urban Development, by virtue of Grant No. B-08-UN-48-0400, entitled Neighborhood Stabilization Program. Accordingly, notwithstanding anything herein to the contrary, the maximum liability of the County under the terms and provisions of this Agreement shall not exceed \$930,190.00 amount actually received by the County from HUD pursuant to the Block Grant.

6.02 The Developer admits knowledge of the fact that the County's obligation hereunder for payment of compensation and costs, if any, is limited to Federal funds received pursuant to the Grant Agreement in connection with the Neighborhood Stabilization Program of the U. S. Department of Housing and Urban Development, and that unless and until adequate funds have been received by the County under the Grant Agreement to pay the Developer's compensation and expense reimbursement, the County shall have no obligation to the Developer.

VII.

AGREEMENT DOCUMENTS

7.01 This Agreement includes the following exhibits and such exhibits are attached hereto and made a part hereof for all purposes:

Exhibit A – NSP Program Requirements

Exhibit B – Certification for Contracts, Grants, Loans and Cooperative Agreements

Exhibit C – 24 CFR 92.254 Qualification as Affordable Housing: Homeownership

7.02 This Agreement and the attached exhibits represent the entire Agreement between the County and the Developer, and there are no other effective agreements, representations or warranties between the County and the Developer that are not contained in the Agreement Documents.

VIII.

NOTICE

8.01 Unless otherwise provided in this Agreement, any notice provided for or permitted to be given must be in writing and delivered in person or by depositing same in the United States mail, postpaid and registered or certified, addressed to the party to be notified, with return receipt requested, or by delivering the same to an officer of such party. Notice deposited in the mail as described above shall be conclusively deemed to be effective, unless otherwise stated in this Agreement from and after the expiration of three (3) days after it is so deposited.

8.02 For the purpose of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

County

Marilynn Kindell, Director
Fort Bend County
Community Development Department
4520 Reading Road, Suite A
Rosenberg, TX 77471

Developer

Sharon D. Heldt, Executive Director
Fort Bend Habitat for Humanity
13570 Murphy Road
Stafford, TX 77477

8.03 Each party shall have the right, at any time, to change its respective address and each shall have the right to specify as its new address, provided that at least fifteen (15) days written notice is given of such new address to the other party.

IX.

RIGHTS OF TERMINATION

9.01 The Developer or the County, by and through its Director of the Fort Bend County Community Development Department, or the Developer, may terminate this agreement without cause prior to the Developer's award of the construction contract by providing thirty (30) days notice. The County may terminate this agreement after the Developer's award of the construction contract only for cause, by providing thirty (30) days written notice to the Developer. In accordance with 24 CFR 85.43, suspension or termination may occur if the Developer materially fails to comply with any term of this Agreement.

9.02 In the event the Developer is unable to meet the timeline for the use of NSP funds as outlined in its project schedule or is unable to use the funds for eligible activities, the Director may terminate any unused funding to the Developer and take action to recover any NSP funds that may have been previously disbursed to the Developer. Prior to taking this action, written notice must be provided to the Non-Profit Developer and the Developer must be given a period of time to correct the problem. In addition, the Director must attempt to meet with the head of the Developer and offer technical assistance to assist the Developer to meet the requirements of the program.

X.

REVERSION OF ASSETS

10.01 Upon expiration of the Agreement, the Developer shall transfer to the County any NSP funds on hand at the time of expiration, any accounts receivable attributable to the use of NSP funds, and any non-expendable personal property which was purchased with NSP funds. Any real property under Developer's control that was acquired or improved in whole or in part with NSP funds must be conveyed to the County and will be covered by the regulations 24 CFR Part 570.503(B)(8).

XI.

PROJECT PRE-IMPLEMENTATION

11.01 The Developer must demonstrate that it has the capability to receive the NSP funded properties. Prior to taking title to any NSP funded property, the Developer must submit to the Director the following information:

1. A marketing plan describing how the NSP-assisted Homes will be sold upon completion.

2. A project schedule showing that the lots will be acquired and new houses constructed on the site and sold within 24 months.
3. A detailed budget for the each house that includes all anticipated costs of the house including the acquisition, construction, activity delivery/developer fees, soft costs such as surveys, architectural fees, appraisal, etc. and closing costs.

11.02 The Developer will obtain title to the NSP funded property and execute a Promissory Note and Mortgage for the amount of the purchase price, closing costs, estimated construction costs, the activity delivery/developer's fee and an amount established by the Director for any contingency that may occur during the project.

XII.

CONSTRUCTION PROCESS

12.01 The Developer will select the contractor that will perform the work. Prior to entering into contract with the selected contractor, the Developer must submit the name of the contractor and any other information needed by the County to determine if the contractor has been barred from participating in any federal program. The Developer must demonstrate that the amount being paid to the selected contractor is reasonable.

12.02 The Developer will execute all construction contracts and sign a Notice of Commencement for the NSP Home. All requests for payment from the contractor must be initially submitted to the Developer for payment. The Developer will inspect the construction work, make decisions on the quality of work and recommend the approval of all construction payments. The County will also inspect the property and approve all payments. If the County does not authorize a payment, it will notify the Developer. Partial payments for completed work shall have a 10% construction holdback. Prior to making any final payments, lien releases must be received from the contractor, all subcontractors and any business that has provided materials and who has filed a Notice to Owner and all building permits must have been closed out by the local jurisdiction.

XIII.

PURCHASE OF NSP ASSISTED HOMES BY ELIGIBLE FAMILIES

13.01 The Developer must sell all NSP Homes to Eligible Families that have incomes at or below 120% of the County Median Income, as adjusted by family size, however priority is to be given to families with incomes less than 50% of the County Median Income, as adjusted by family size. The Developer will select the Eligible Family that will purchase the NSP Home using its written criteria provided it is consistent with the NSP regulations.

13.02 All properties must be sold to an Eligible Family for an amount equal to or less than the cost to acquire and any construction costs on the NSP assisted Home. The actual sales price for any NSP Property will be the lesser of the aggregate of all costs of acquisition, construction and redevelopment (including related activity delivery costs, which generally include, among other things, costs related to the sale of the property) and the appraised value after construction is completed.

XIV.

EVALUATION/REPORTING

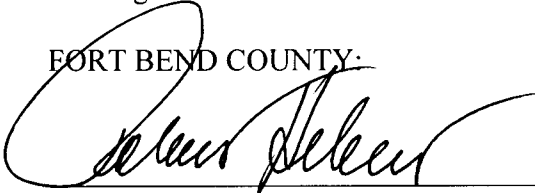
14.01 The Developer shall provide the Director, in a form prescribed by County, monthly reports summarizing progress, timetables, and financial information for monitoring and evaluating all aspects of Project activities. The format prescribed shall be in conformance with HUD reporting requirements and County reporting procedures. These reports may be provided as part of the financial reimbursement process. The County shall have access to and be able to make copies and transcriptions of such records as may be necessary in the determination of the County or HUD to accomplish this obligation.

XV.

EXECUTION

This Agreement shall become effective upon execution by County.

FORT BEND COUNTY:



Robert E. Hebert, County Judge

9-7-2010

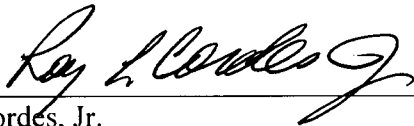
Date

ATTEST:



Dianne Wilson, County Clerk

APPROVED AS TO FORM:

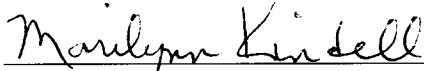


Roy L. Cordes, Jr.
County Attorney

8/10/2010

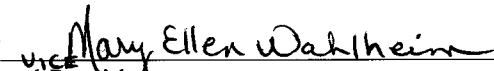
Date

APPROVED: COUNTY PROJECT MANAGER



Marilynn Kindell, Director
Fort Bend County Community Development Department


FORT BEND HABITAT FOR HUMANITY:

By 
Board President

8/24/10

Date

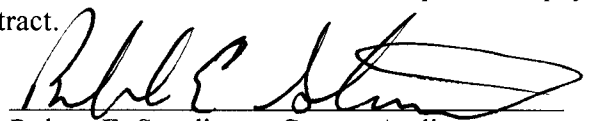
ATTEST:



Board Secretary

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$930,190.00 to accomplish and pay the obligation of the Fort Bend County under this contract.



Robert E. Sturdivant, County Auditor

ORDER AUTHORIZING AGREEMENT BETWEEN
FORT BEND COUNTY AND
FORT BEND HABITAT FOR HUMANITY

THE STATE OF TEXAS §
§
COUNTY OF FORT BEND §

On this the 7 day of Sept., 2010, at a regular meeting of Commissioners Court sitting as the governing body of Fort Bend County, Texas, upon motion of Commissioner Prestage, seconded by Commissioner Morrison, duly put and carried,

IT IS ORDERED that the Fort Bend County Judge execute the Agreement between Fort Bend County and Fort Bend Habitat for Humanity for federal funding of a Neighborhood Stabilization Program (NSP) , said Agreement being incorporated herein by reference for all purposes as though fully set forth herein word for word.

EXHIBIT A

NEIGHBORHOOD STABILIZATION PROGRAM REQUIREMENTS

I.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

The Developer shall comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and Title 24 Code of Federal Regulations Part 1. In accordance with the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity for which the Developer receives Federal financial assistance. The Developer will immediately take any measures necessary to comply with Title VI. If any real property or structure is thereon provided or improved with the aid of Federal financial assistance, this clause shall obligate the Developer, or in the case of any transfer of such property, any transferee, to comply with the requirements and restrictions contained in this clause for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. The Developer will further comply with federal regulations, 24 CFR Part 1, which implement the act.

II.

FAIR HOUSING REQUIREMENTS

The Developer shall comply with the Fair Housing Act (42 U.S.C. 3601-20) and implementing regulations at 24 CFR Part 100, Part 109, and Part 110. No person in the United States shall, on the basis of race, color, religion, sex, national origin, handicap or familial status, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with NSP funds.

III.

EXECUTIVE ORDER 11063

The Developer shall comply with Executive Order 11063 as amended by Executive Order 12259 and as contained in 24 CFR Part 107. Developer will take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities area, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government.

IV.

SECTION 109 OF THE COMMUNITY DEVELOPMENT ACT OF 1974

The Developer shall comply with Section 109 of the Community Development Act of 1974, in that no person in the United States shall on the ground of race, color, religion, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with NSP funds.

V.

EXECUTIVE ORDER 11246

The Developer shall comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (451 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally-assisted construction contracts.

Developer agrees that Cities on Federal or federally-assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

VI.

RELOCATION, ACQUISITION & DISPLACEMENT

The Developer agrees to comply with 24 CFR 570.606 relating to the acquisition and disposition of all real property utilizing grant funds, and to the displacement of persons, businesses, nonprofit organizations and farms occurring as a direct result of any acquisition of real property utilizing grant funds. The Developer agrees to comply with applicable County Ordinances, Resolutions, and Policies concerning displacement of individuals from their residences.

VII.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

The Developer shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

- A. The Developer shall, to the greatest extent feasible, give opportunities for training and employment to lower-income residents of the County and shall award contracts for work

in connection with the Project to business concerns which are located in or owned in substantial part by persons residing in the County.

- B. The Developer shall include the phrase in paragraph A in all contracts for work in connection with this project.

VIII.

LEAD-BASED PAINT

The Developer agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, and in particular Sub-Part B thereof. Such regulations pertain to all HUD-assisted housing and require that all owners, prospective owners, and tenants or properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning.

IX.

USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS

The Developer shall not use assistance to directly or indirectly employ, award contracts to, or otherwise engage the services of, or fund any contractor or subcontractor during any period of debarment, suspension or placement in ineligibility status under provisions of 24 CFR Part 24.

X.

CONFLICT OF INTEREST

- A. No member of or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit direct or indirect which arises from the Agreement.
- B. No persons described in paragraph C who exercise or have exercised any functions with respect to NSP activities or who are in a position to participate in a decision making process or gain inside information with regard to NSP activities, may obtain a personal or financial interest or benefit from, or have any interest in any contract, subcontract, or agreement 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. The requirements of paragraph B apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the County, Developer, and

of any designated public agency, or Developer which receives funds under the NSP grant agreement with HUD.

XI.

ELIGIBILITY RESTRICTIONS FOR CERTAIN RESIDENT ALIENS

The Developer agrees to abide by the provisions of 24 CFR 570.613 with respect to the eligibility restrictions for certain resident aliens. Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in this part of the regulation. The County shall provide the Developer with any guidelines necessary for compliance with that portion of the regulation.

XII.

ARCHITECTURAL BARRIERS ACT AND AMERICANS WITH DISABILITIES ACT

The Developer agrees to comply with any federal regulations issued pursuant to compliance with the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) which requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with the standards that insure accessibility to, and use by, physically handicapped people. The Developer also agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act (42 U.S.C. 12131 U.S.C. 155, 201, 218 and 225) which provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. The County shall provide the Developer with any guidelines necessary for compliance with that portion of the regulation in force during the term of this Agreement.

XIII.

MINORITY AND WOMEN'S BUSINESS ENTERPRISES

The Developer shall comply with Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the Developer must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

XIV.

DISCRIMINATION ON THE BASIS OF AGE OR HANDICAP

The Developer shall not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 61-1-07) and implementing regulations at 24 CFR part 146. The Developer shall not discriminate against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

XV.

RECORDS FOR AUDIT PURPOSES

Without limitation to any other provision of this Agreement, the Developer shall maintain all records concerning the Project that will facilitate an effective audit to determine compliance with program requirements. Records shall be kept for three (3) years from the expiration date of the Agreement. The Developer will give the County, HUD, and the Comptroller General of the United States, the General Accounting Office or any of their authorized representatives access to and the right to examine, copy or reproduce all records pertaining to the acquisition and construction of the Project and the operation of the Project. The right to access shall continue as long as the records are required to be maintained.

XVI.

DRUG FREE WORKPLACE ACT OF 1988

The Developer shall comply with the Drug Free Workplace Act of 1988 and certify that it will maintain a drug-free workplace in accordance with the requirements of 24 CFR part 24, subpart F.

EXHIBIT B

Certification for Contracts, Grants, Loans and Cooperative Agreements

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all Developers shall certify and disclose accordingly.

This certification is material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making for entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Executed this 24 date of August, 2010.

By Mary Ellen Wahlheim
(Signature)
MARY ELLEN WAHLHEIM
(Typed or Printed Name)
BOARD VICE PRESIDENT
(Title, if any)

Covered Action: NEIGHBORHOOD STABILIZATION PROGRAM
(Type and Identity of Program, Project or Activity)

EHXIBIT C

TITLE 24--HOUSING AND URBAN DEVELOPMENT

PART 92_HOME INVESTMENT PARTNERSHIPS PROGRAM--Table of Contents

Subpart F_Project Requirements

Sec. 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.
 - (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 paragraph (a)(2)(iii) of this section.
 - (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 (12 U.S.C. 1709(b)) (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 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: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a two-month reporting period; 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) of this section.

- (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 Sec. 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. In establishing its recapture requirements, the participating jurisdiction is subject to the limitation that when the recapture requirement is triggered by a sale (voluntary or involuntary) of the housing unit, the amount recaptured cannot exceed the net proceeds, if any. The net proceeds are the sales price minus superior loan

repayment (other than HOME funds) and any closing costs.

- (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) 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:
 - (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 Sec. 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 Sec. 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of Sec. 92.254.)

- (7) Lease-purchase. HOME funds may be used to assist homebuyers through lease-purchase programs for existing housing and for housing to be constructed. 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. 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 Sec. 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.
- (8) Contract to purchase. If HOME funds are used to assist a homebuyer who has entered into a contract to purchase housing to be constructed, the homebuyer must qualify as a low-income family at the time the contract is signed.
- (9) Preserving affordability of housing that was previously assisted with HOME funds.
 - (i) To preserve the affordability of HOME-assisted housing a participating jurisdiction may use additional HOME funds for the following costs:
 - (A) The cost to acquire the housing through a purchase option, right of first refusal, or other preemptive right before foreclosure, or at the foreclosure sale. (The foreclosure costs to acquire housing with a HOME loan in default are eligible. However, HOME funds may not be used to repay a loan made with HOME funds.)
 - (B) The cost to undertake any necessary rehabilitation for the housing acquired.
 - (C) The cost of owning/holding the housing pending resale to another homebuyer.
 - (D) The cost to assist another homebuyer in purchasing the housing.
 - (ii) When a participating jurisdiction uses HOME funds to preserve the affordability of such housing, the additional investment must be treated as an amendment to the original project. The housing must be sold

to a new eligible homebuyer in accordance with the requirements of Sec. 92.254(a) within a reasonable period of time.

- (iii) The total amount of the original and additional HOME assistance may not exceed the maximum per unit subsidy amount established under Sec. 92.250. Alternatively to charging the cost to the HOME program under Sec. 92.206, the participating jurisdiction may charge the cost to the HOME program under Sec. 92.207 as a reasonable administrative cost of its HOME program, so that the additional HOME funds for the housing are not subject to the maximum per-unit subsidy amount. To the extent administrative funds are used, they may be reimbursed, in whole or in part, when the housing is sold to a new eligible homebuyer.
- (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 Sec. 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.