

MEMORANDUM OF UNDERSTANDING BETWEEN THE
TEXAS STATE AFFORDABLE HOUSING CORPORATION
AND
NAME OF LOCAL PARTNER
CONCERNING THE NATIONAL COMMUNITY STABILIZATION TRUST

Dated: _____, 20_____

WHEREAS, the Texas State Affordable Housing Corporation is a public non-profit corporation organized and created under the laws of the State of Texas (hereinafter referred to as the “**Corporation**”) organized for purposes that have been determined by the Internal Revenue Service to be exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, The Corporation’s purpose in awarding all goods, resources and/or services governed by this agreement is generally to promote the public health, safety and welfare through the provision of adequate, safe and sanitary housing primarily for individuals and families of low, very low and extremely low income in the State of Texas, and to perform activities and services related to this purpose and for other purposes as set forth in §2306 subchapter Y of the Texas Government Code (the “**Act**”); and

WHEREAS, NAME OF LOCAL PARTNER is a non-profit corporation established pursuant to the laws of the State of Texas (hereinafter referred to as the “**Local Partner**”); and

WHEREAS, the parties wish to enter into this Memorandum of Understanding (the “**Agreement**”) whereby they will cooperate in achieving common charitable and humanitarian objectives in accordance with the policies of the Corporation and pursuant to the Corporation’s agreement with the National Community Stabilization Trust (the “**Stabilization Trust**”); and

WHEREAS, the Stabilization Trust provides access to foreclosed property listings from multiple mortgage servicers, banks and other public or private financial institutions (the “**Sellers**”) and offers properties to the Corporation that NAME OF LOCAL PARTNER may have an interest in purchasing; and

WHEREAS, the Stabilization Trust has designed its process, agreements and other program policies to comply with the U.S. Department of Housing and Urban Development’s Neighborhood Stabilization Program rules and regulations; and

NOW THEREFORE, in consideration of the covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to provide an avenue through which the Corporation and the Local Partner can assist one another with the fulfillment of the obligations under the Neighborhood Stabilization Program, to acquire foreclosed homes and residential properties, and to stabilize local housing markets for the benefit of low and moderate income households to achieve their common charitable and humanitarian objectives.

2. **Agreement.** This Agreement provides the basic terms and conditions of the relationship between the Corporation and Local Partner for the purpose of acquiring properties through the Stabilization Trust. This Agreement shall be subject to any and all federal and state statutory limitations placed on the Corporation and the Local Partner. This Agreement is subject to termination and amendment according to the provisions listed herein, and does not represent a commitment of funds to the Local Partner on behalf of the Corporation.
3. **Term of Agreement.** Subject to Section 20 hereof, the term of this Agreement shall be three (3) years and shall terminate upon the third anniversary of the execution of the Agreement, unless otherwise amended and agreed to by both parties.
4. **Responsibilities of the Corporation.** Under this Agreement, the Corporation shall provide the following scope of services and resources to the Local Partner to carry out the charitable purpose of this Agreement:
 - a. Collect listings of foreclosed properties within the Local Partner's service area from the Stabilization Trust and manage all communications, documents and other tasks as required of the Corporation under its agreement with the Stabilization Trust;
 - b. The Corporation will negotiate option agreements, sales contracts or other forms of real property contracts, with the Stabilization Trust and Sellers as instructed by Local Partner;
 - c. Assist the Local Partner with the collection of due diligence materials necessary to complete acquisition requirements of the Local Partner's funding sources;
 - d. The Corporation will manage the process of property closing with the Stabilization Trust and Seller, and will provide for a simultaneous close with Local Partner, in compliance with NSP guidelines; and
 - e. The Corporation will preserve and provide access to its copies of closing documents for each property or acquisition to the Local Partner for the purpose of auditing and reporting of performance measures.
5. **Responsibilities of Local Partner.** Under this Agreement, the Local Partner shall provide the following scope of services, resources and funds to the Corporation to carry out the charitable purpose of this Agreement:
 - a. Local Partner will review foreclosed property lists provided by the Stabilization Trust, and notify the Corporation of the Local Partner's interest in acquiring specific properties;
 - b. Local Partner will inspect, or hire a third party inspector to inspect, each property to determine the feasibility of acquisitions, the physical condition of the property and to estimate the cost of rehabilitation or redevelopment;
 - c. Local Partner will provide the Corporation a copy of any evaluations of price, including broker's price opinions (the "BPO"), agent's estimate of value or other form of acquisition estimate available from a qualified real estate broker, rehabilitation specialist or licensed appraiser;

- d. Local Partner will assist the Corporation in the collection of local housing market data, demographics and other data sets necessary to determine the eligibility of a property or group of properties for acquisition;
 - e. If the Local Partner accepts an offer, provided by a Seller, the Local Partner shall advance \$1,000 for the cost of paying the purchase agreement deposit, and shall cover the cost of all due diligence required by the Local Partner's NSP agreement;
 - f. Local Partner will obtain all necessary clearances from the Local Partner's NSP funder prior to closing date. If extensions are needed, Local Partner will notify the Corporation, Stabilization Trust and Seller within 5 days of closing date and pay any fees associated with an extension of the purchase agreement, regardless of when notification was given;
 - g. Local Partner will provide funding to the Seller for simultaneous closings based on a pre-approved HUD-1 settlement sheet. Closing will occur within sixty days of the Local Partner's acceptance of the Seller's price offer;
 - h. Local Partner will not cause the Corporation to advance funding or incur any cost associated with closing.
6. **Service Fee.** Local Partner will pay the Corporation at the time of closing a transfer and service fee of \$750 for each property acquired to cover the administrative costs of Corporation in connection with the services provided under this Agreement. In the event that the Corporation is required to advance its own funds for other due diligence activities, the Local Partner will reimburse the Corporation's actual expenses.
7. **Affordability Threshold.** The redevelopment and use of all properties acquired under this Agreement must be for the benefit of low and moderate income households, pursuant to the NSP program rules and regulations. Low and moderate income households shall be defined as households earning 120% or less of the area median income for the county where a property is located. If at any time or for any reason, a property acquired under this Agreement is used for a purpose that does not benefit low and moderate income households, in the sole determination of the Corporation, this Agreement shall be terminated.
8. **Discrimination.** Each party subject to this Agreement shall not permit discrimination against any person or group of persons on the basis of their gender, race, religion, color, familial status, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability.
9. **Transfer and Assignment.** This Agreement may not be transferred or assigned to any other entity by the Local Partner without the prior written consent of the Corporation, which consent may be withheld in the Corporation's sole and absolute discretion.
10. **Waiver of Trial by Jury.** The Corporation and Local Partner each (a) agrees not to elect a trial by jury with respect to any issue arising out of this Agreement or the relationship between the parties, as Corporation and the Local Partner, that is triable of right by a jury and (b) waives any right to trial by jury with respect to such issue to the extent that any such right exists now or in the future. This waiver of right to trial by jury is separately given by each party, knowingly and voluntarily with the benefit of competent legal counsel.

11. **Termination.** This Agreement may be terminated at the Corporation's option upon thirty (30) days written notice to the Local Partner upon the occurrence of any of the following events:
 - a. The Local Partner makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition of bankruptcy or is adjudicated as bankrupt or insolvent, or files a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation;
 - b. If any material statement or representation made by or on behalf of the Local Partner to the Corporation shall prove to be untrue, or if the Local Partner shall have withheld any material information incident thereto;
 - c. If there shall be a material adverse change, as determined by the Corporation, in the financial condition or business operations of Local Partner;
 - d. If Local Partner fails to comply with any obligation hereunder or to satisfy all of the conditions of this Agreement in a timely manner;
 - e. The Local Partner fails to maintain its existence as a non-profit corporation in the same or similar form it was when it executed this Agreement; or
 - f. The Local Partner uses any funds provided by or through the Corporation in any manner inconsistent with the charitable mission of the Corporation or the purposes of this Agreement.
12. **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements.
13. **USA Patriot ACT Compliance.** As a condition of this Agreement, Local Partner shall certify that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity, or nation.
14. **Amendments.** This Agreement may be changed or amended only by a written agreement, signed by both parties.
15. **Liability.** ALTHOUGH THE LOCAL PARTNER UNDERSTANDS AND HEREBY ACKNOWLEDGES THAT THE ACTS AND ACTIVITIES TO BE ENGAGED IN AND PERFORMED BY THE LOCAL PARTNER UNDER THIS AGREEMENT MAY POTENTIALLY SUBJECT RECIPIENT, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS TO THE RISK OF SERIOUS INJURY, ILLNESS OR EVEN LIFE-THREATENING CONDITIONS, THE LOCAL PARTNER HEREBY INDEMNIFIES THE CORPORATION FOR ANY DAMAGES OR INJURY THAT MAY BE

SUSTAINED IN CONNECTION WITH OR AS A RESULT OF THE PERFORMANCE BY THE LOCAL PARTNER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF THE LOCAL PARTNER'S DUTIES AND RESPONSIBILITIES UNDER THIS AGREEMENT AND AGREES AND UNDERSTANDS THAT THE CORPORATION SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY SUCH DAMAGE OR INJURY, INCLUDING, BUT NOT LIMITED TO, THE GROSS NEGLIGENCE OF THE CORPORATION.

16. **Not a Partnership.** Nothing herein shall be construed as creating a partnership or joint venture between the Corporation and the Local Partner. No person performing any of the work or services described hereunder on behalf of the Local Partner shall be considered an officer, agent, servant or employee of the Corporation, nor shall any such person be entitled to any benefits available or granted to employees of the Corporation.
17. **Notices.** Any notice given under this Agreement shall be in writing and shall for all purposes be deemed to be fully given by a party if sent, by first class mail with proper postage prepaid or by overnight courier, to the other party at its address indicated below. The date of the mailing or pick up by the overnight courier shall be deemed to be the date on which such notice was given. Either party may change its address for the purpose of this Agreement by giving the other party written notice of its new address. The parties' current addresses appear below.

Texas State Affordable Housing Corporation
Attn: Manager of Development Finance
2200 East Martin Luther King Jr. Blvd.
Austin, Texas 78702
Phone #: (512) 477-3555
Fax #: (512) 477-3557

NAME OF LOCAL PARTNER
Attn: Contact Name
Street Address
City, State ZIP
Fax #: FAX Number

18. **Governing Law.** The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Texas, and any dispute arising hereunder shall be subject to the jurisdiction of the courts of the United States of America or the State of Texas sitting in Travis County, Texas.
19. **Headings.** The section and paragraph headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
20. **Severability.** If any term or provision of this Agreement or the application thereof to any party hereto or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to any party hereto or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned parties have caused their duly authorized representatives to execute this Agreement effective as of the date first above written

TEXAS STATE AFFORDABLE HOUSING CORPORATION, a Texas non-profit corporation

By: _____

Name: _____

Title: _____

NAME OF LOCAL PARTNER, a Texas non-profit corporation

By: _____

Name: _____

Title: _____