

**AGREEMENT  
BETWEEN THE CITY OF COLORADO SPRINGS  
AND  
ROCKY MOUNTAIN COMMUNITY LAND TRUST,  
A COLORADO NON-PROFIT CORPORATION  
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)  
FOR HOME LOAN OF \$10,000.00 FOR ACQUISITION**

This Agreement, between the City of Colorado Springs, a home rule city, a Colorado municipal corporation ("City") and the Rocky Mountain Community Land Trust, a Colorado Non-Profit Corporation ("RMCLT"), is entered this \_\_\_\_ day of March, 2001.

RECITALS:

1. The RMCLT was conceived during an affordable housing strategic planning retreat held by the Comprehensive Homeless Assistance Providers (CHAP) May 14, 1996. Since that time, a broad-based community effort has taken place to create the RMCLT.

**ARTICLE I. DEFINITIONS AND IDENTIFICATIONS**

1.1 "Agreement Administrator" -- The City employee responsible for overseeing, monitoring and communicating with the RMCLT during the term of this Agreement.

1.2 "Low and Moderate Income" -- The family income range defined by HUD to be at or below eighty percent (80%) of the median income for the area, with any necessary adjustments for small or large families, prevailing construction costs, fair market rents or unusually high or low family incomes.

1.3 "HOME" -- Home Investment Partnership Program - Federal grants allocated to the City from HUD to provide services which primarily benefit low-income persons.

1.4 "CDBG" - Community Development Block Grant - Federal grants allocated to the City from the U.S. Department of Housing and Urban Development (HUD) to provide services which primarily benefit low income persons.

**ARTICLE II. PURPOSE**

The following statements, representations and explanations are made to establish the background, context and frame of reference for this Agreement and to manifest the objectives and intentions of the parties. These statements, representations and explanations are essential elements of the mutual considerations upon which this Agreement is based and are accepted as prerequisites to this Agreement.

2.1 Title I of the Housing and Community Development Act of 1974, P.L. 93-383, consolidated several existing categorical programs for community development into a single CDBG

program to allow local discretion in determining community development needs and priorities. The City's needs and priorities were determined by the Mayor and City Council, City Administration, Neighborhood Services Group, neighborhood associations and citizens at large through the citizen participation process, by which citizens are provided an opportunity to comment and make suggestions on the use of federal funds.

**2.2** Pursuant to 24 C.F.R. 570.200(a)(2), the projects included in the City's submission to HUD must address at least one (1) of the following three (3) National Objectives:

1. Activities benefiting low and moderate income persons (primary); \*
2. Activities aiding in the prevention or elimination of slums or blight; or
3. Activities meeting community development needs having a particular urgency.

\*Activity benefits this objective.

**2.3** RMCLT covenants and warrants that it will expend funds in accordance with this Agreement and for no other purpose other than to acquire the Property.

### **ARTICLE III. SCOPE OF SERVICES; AMOUNT AND TERM OF AGREEMENT**

**3.1** This Agreement shall become effective on the \_\_\_\_day of March, 2001, and shall terminate when the loan is paid in full.

**3.2** RMCLT will purchase the 61% of the land of the project which is a single family residence located at **1110 Otteman Court** no later than March 2, 2001. The Property is legally described as

Lot 1, in Otteman Shultz Subdivision, County of El Paso County, State of Colorado

(the "Property").

**3.3** The fair market value and appraised value of the Property, according to an appraisal dated February 17, 2001, is One Hundred Nine Thousand Nine Hundred Dollars (\$109,900.00). The fair market value of the land is estimated at Thirty Five Thousand and no/100 Dollars (\$35,000.00).

**3.4** On February 21, 2001 Affordable Housing Committee approved a request for Neighborhood Services to loan RMCLT Ten Thousand and no/100 Dollars (\$10,000.00) in HOME funds for acquisition of the Property. Loan approval was contingent upon the homebuyer's income being at or below 80% of area median income. The loan will be at zero percent (0%), secured by a Promissory Note and Fourth Deed of Trust against the Property.

**3.5.** RMCLT will retain title to an undivided sixty one percent (61%) of the land. Using the land trust model, one hundred percent (100%) interest in the improvements and 39% of the land will be purchased at loan closing by a first time Homebuyer. The first time Homebuyer's income



amount of Eighty-Six Thousand Seven Hundred and no/100 Dollars (\$86,700.00) will be provided by Colorado Rural Housing. Colorado Housing Enterprises, LLC will also loan the homebuyer three thousand seventy-eight and no/100 Dollars (\$3,078.00). El Paso County Housing Authority will loan RMCLT Ten Thousand Dollars (\$10,000.00); and the City of Colorado Springs will loan RMCLT \$10,000.00 in HOME funds. The homebuyer will pay any additional closing costs. RMCLT has scheduled the loan closing for March 1, 2001. Since the City funds will not be available by the closing, RMCLT will bring \$10,000 to the closing and the City check, when available, will reimburse RMCLT.

#### **ARTICLE IV HOME REQUIREMENTS:**

**4.1** This Project must qualify as affordable housing under the Home Investment Partnerships Program, 24 CFR Parts 92.218, 92.219, 92.220, 92.221. Specifically, the following criteria apply:

- Income targeting as defined at 24 CFR Parts 92.217
- Income determinations as defined at 24 CFR Parts 92.203.
- Match requirements as defined at 24 CFR Parts 92.218, 219, 220, 221, 222
- Property standards as defined at 24 CFR Parts 92.251
- Single-family housing limitation defined at 24 CFR Parts 92.254(a)(1)
- Purchase-price limitation defined at 24 CFR Parts 92.254(a)(2)
- Project occupancy requirements defined at 24 CFR parts 92.254(a)(3)
- Period of Affordability defined at 24 CFR Parts 92.254(a)(4)
- The Period of Affordability for the home will be five (5) years based on the HOME per unit investment of \$10,000.00. The Period of Affordability will begin after the Property is sold to RMCLT and to the Homebuyer. The **loan** affordability period will begin after the HOME affordability period ends and will continue until the loan is paid in full.
- Resale/recapture provisions defined at 24 CFR Parts 92.254(a)(5)

The above listed federal requirements can be accessed through HUD's web site: [www.hud.gov/cpd/home/homereg.html](http://www.hud.gov/cpd/home/homereg.html).

#### **ARTICLE V. REQUIRED REPORTS AND INFORMATION**

**5.1** RMCLT must maintain all records demonstrating compliance with the applicable uniform administrative requirements required by 24 CFR 570.505.

- a) Financial records required by OMB Circular A-133.
- b) Other records necessary to document compliance with the HOME program.
- c) RMCLT will provide to the City yearly, a County Treasurer's receipt showing that property taxes have been paid.
- d) RMCLT shall notify the City if the Homebuyer becomes delinquent in lease payments and if the RMCLT anticipates any legal action to rectify the situation.
- e) Copy of appraisals of the Property
- f) Records providing proof that the Homebuyer qualifies for the purchase of the Property,

including loan application, employee verifications, credit report, and any other documentation that will establish compliance with the income targeting requirements of 24 CFR Parts 92.203.

g) RMCLT must submit a report documenting all type, sources and amounts of matching funds (i.e. cash, materials, or labor donations) utilized on the Project. A form for this report is attached as Exhibit D and made a part of this Agreement.

**5.2** RMCLT shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the termination of all activities funded under this Agreement, or after resolution of all Federal audit findings, whichever occurs later. Records for non-expendable Property acquired with funds under this Agreement shall be retained for five (5) years after disposition of that Property. Records for any displaced persons must be kept for five (5) years after final payment has been received.

**5.3** The only program income anticipated by RMCLT is the monthly lease fees under the Lease. RMCLT shall report (quarterly) all program income, defined at 24 CFR 92.503 generated by activities carried out with HOME or CDBG funds made available under this Program.

**5.4** All reports, information or assurances required to be kept by RMCLT, if maintained in an electronic format, shall be Year 2000 compatible and capable of accurately reading, producing, presenting and calculating date data from, through and after the Year 2000, including accurate treatment of leap years. Any request for reimbursement and supporting documentation submitted to the City in an electronic format shall also be Year 2000 compatible and capable of accurately reading, producing, presenting and calculating date data from, through and after the Year 2000.

## **ARTICLE VI. FEDERAL REQUIREMENTS:**

**6.1** RMCLT agrees to comply with all applicable Federal guidelines and regulations relative to the program, including but not limited to the following:

a) Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended; Section 109 of Title I of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; Executive Orders 11063, 11373 and 12086; Clean Air Act, 42 U.S.C. Section 1857 et seq.; Federal Water Pollution Control Act, as amended; 33 U.S.C. Section 1251, et seq., as amended, Section 1318 relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and 308, and all regulations and guidelines issued thereunder; Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. part 50 as amended; National Environmental Policy Act of 1969; HUD Environmental Procedures, 24 C.F.R. part 58; and Flood Disaster Protection Act of 1973 (P.L. 93-234), as it may apply to the provisions of this Agreement.

b) RMCLT agrees to abide by the federal requirements on Non-Discrimination and Equal Opportunity and will not discriminate against any employee or applicant for employment nor exclude any person from participation in or deny the benefits of the Project for which federal funds are received due to race, color, creed, ancestry, religion, national origin, sex, disability, or other handicap, marital

status, or status with regard to public assistance. RMCLT will take affirmative steps to insure that all employment practices and participant selection criteria are free from discrimination. The Equal Opportunity Clause is attached as Exhibit “E” and made a part of this Agreement. RMCLT must include a nondiscrimination clause in any Agreements connected with the performance of this Agreement.

**6.2** RMCLT agrees that any sale of the property, 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 C.F.R. part 35. Lead-based paint brochure is attached as Exhibit F.

**6.3** RMCLT agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which could conflict in any manner or degree with the performance of services as required under this Agreement. RMCLT further covenants that in the performance of this Agreement, no person having a financial interest shall be employed or retained by RMCLT hereunder. This conflict of interest provision applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies or providers which are receiving funds under the HOME program. RMCLT shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties. RMCLT further agrees to abide by the Anti-Lobby Certification attached as Exhibit “G” and made a part of this Agreement.

**6.4** RMCLT understands it is prohibited from using CDBG or HOME funds or personnel employed in the administration of the Project for political activities, sectarian or religious activities, lobbying, political patronage and nepotism activities.

**6.5** RMCLT must abide by the First Amendment principles set forth in 24 CFR 92.257, HOME assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

**6.6** This project does not fall within the requirements of the Davis-Bacon Act (40 USC Section 276a).

**6.7** If applicable, RMCLT agrees to provide relocation assistance for displaced persons 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. 4601 et seq.)

**6.8** RMCLT agrees to comply with all applicable Federal guidelines and regulations relative to the program, as outlined in Subpart K. If RMCLT wants copies of any section referenced in Subpart K, please contact the Agreement Administrator. This Agreement may be canceled or terminated should RMCLT fail to comply with any of the conditions outlined in Subpart K.

**6.9** RMCLT must also include a nondiscrimination clause in any Agreements connected with the performance of this Agreement.

**6.10** In accordance with First Amendment principles set forth in 24 CFR 570.200(j), as a general rule, CDBG assistance may not be used for religious activities or provided to primarily religious entities for any activities, including secular activities.

**6.11** If this Agreement results in any copyrightable material, the City reserves the right to a royalty free, non exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use, the work for government purposes.

**6.12** RMCLT must comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, attached as Exhibit "H" and incorporated as a part of this Agreement. RMCLT shall include the provisions for Section 3 Compliance in each Agreement for services with a contractor. RMCLT shall maintain full and adequate records of compliance with all applicable laws, rules and regulations. Such records shall be open for inspection by the City, HUD or their authorized representatives.

**6.13** All advertising for contractors must contain an equal housing opportunity logotype, statement or slogan. In addition, no words, phrases, symbols or forms which indicate preferences for race, religion, sex, handicap, familial status or national origin may be used by the RMCLT.

## **ARTICLE VII. OTHER PROVISIONS**

**7.1** RMCLT agrees that it shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with RMCLT's obligations or actions under this Agreement.

**7.2** In the performance of RMCLT's obligations under this Agreement, it is understood, acknowledged and agreed between the parties that RMCLT is at all times acting and performing as an Independent Contractor. The City shall neither have nor exercise any control or direction over the manner and means by which RMCLT performs its obligations under this Agreement, except as otherwise stated within the Agreement terms. RMCLT understands and agrees that it and its employees, agents, servants, or other personnel are not City employees. RMCLT shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to it or any of its employees, agents, servants or other personnel performing services or work under this Agreement, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes neither RMCLT nor its employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

**7.3** RMCLT understands and agrees this Agreement does not constitute continued funding under the HOME or CDBG programs or any similar federal, state, or local program. RMCLT must submit required applications for subsequent funding.

**7.4** RMCLT shall not assign or otherwise transfer this Agreement, or any right or obligation thereunder, without the prior written consent of the City.

**7.5** This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and Charter, City Code, ordinances, rules and regulations of the City of Colorado Springs. Court Jurisdiction shall be exclusively in the District Court for the Fourth Judicial District of Colorado. RMCLT shall insure that its employees, agents and officers are familiar with, and comply, with applicable federal, state and local laws, rules and regulations as now written or later amended.

**7.6** All RMCLT records with respect to any matters covered by this Agreement shall be made available to the City, their designees or the federal government, at any time during normal business hours, as often as the City, its designees or the federal government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by RMCLT within thirty (30) days after RMCLT receives notice of the deficiencies. Failure of RMCLT to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

**7.7** RMCLT hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and, as applicable, OMB Circular A-122-Cost Principles for Non-Profit Organizations and OMB Circular A-133 - Audits of Institutions of Higher Education and Other Non-Profit Institutions. Copies of audits will be submitted to the City. A copy of the 2000 audit shall be provided to the City no later than July 1, 2001.

**7.8** A title commitment for the Property shall be delivered to the City at least twenty-three (23) days prior to closing on the Property for RMCLT's sale to Homebuyer, insuring the City of Colorado Springs as mortgagee. The title insurance policy shall be delivered to the City as soon as issued by the title company.

**7.9** A copy of the certificate of insurance on the Property, naming the City on the mortgagee clause, shall be delivered to the City prior to closing. At least thirty (30) days written notice of cancellation of the policy covering the Property must be provided to the City.

**7.10** A copy of the homebuyer's signed loan application will be submitted to the City before loan closing and loan disbursement.

**7.11** A copy of the recent appraisal will be submitted to the City before loan closing and loan disbursement.

## **ARTICLE VIII                    NOTICES AND AMENDMENTS**

**8.1** The City or RMCLT may amend this Agreement at any time. Amendments must make specific reference to this Agreement and be executed in writing, signed by duly authorized representatives of both parties. Amendments shall not invalidate this Agreement nor relieve or release the City or RMCLT from their obligations. If any amendment constitutes a substantial change, then the parties must follow the procedures outlined by the City's Citizen Participation Plan.



**8.2** The City, at its discretion, may unilaterally amend this Agreement to conform with federal, state or local guidelines, policies, or available funding amounts. The City promises to notify RMCLT within ten (10) days of its decision to make any unilateral amendment to this Agreement.

**8.3** The City's Agreement Administrator shall be Chad Wright, the Affordable Housing Manager, 30 South Nevada Avenue, Suite 302, Colorado Springs, Colorado 80903, telephone (719) 385-5334.

**8.4** All notices and other communications required by this Agreement must be in writing and will be deemed delivered when personally served to the party, or upon receipt if mailed by registered or certified mail, postage prepaid, return receipt requested to the following party representatives:

CITY OF COLORADO SPRINGS  
Agreement Administrator  
Chad Wright  
30 S. Nevada Avenue #302  
Colorado Springs, CO 80903  
(719) 385-5334

ROCKY MOUNTAIN COMMUNITY  
LAND TRUST  
Robert (Bob) Koenig, Jr.  
702 E. Boulder Street  
Colorado Springs, CO 80903  
(719) 447-9300

## **ARTICLE IX BREACH AND TERMINATION**

**9.1** This Agreement is subject to availability of federal HOME & CDBG funds. Should federal HOME or CDBG funds no longer be available, this Agreement shall terminate upon no less than twenty-four (24) hour written notice to RMCLT. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The City shall be the final authority as to the availability of funds.

**9.2** The City may take one or more of the following actions if RMCLT breaches the terms or conditions of this Agreement with respect to any of the Property:

1. Consider the loan in default with respect to such Property, the Promissory Note with respect to such Property becomes due and payable.
2. Withhold further awards in the HOME and CDBG programs.
3. Take any other legally available remedies.

The City will make a reasonable attempt to resolve concerns prior to terminating this Agreement.

**9.3** If RMCLT fails to fulfill in a timely and proper manner its obligations under this Agreement, or if RMCLT shall violate any of the covenants or stipulations of this Agreement, the City shall have the right to terminate this Agreement and to declare RMCLT ineligible for any further participation in City programs and to pursue any other remedies provided by law. In the event there is probable cause to believe RMCLT is not in compliance with any applicable rules or regulations, the City, will notify RMCLT of the non compliance in writing, giving it thirty (30) days to correct the non-compliance.

