

## **CONTRACT TO RESTRUCTURE THE REBUILD DURHAM HOME RENTAL PROGRAM**

This contract is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by the City of Durham ("City") and Rebuild Durham, Inc. ("RDI" or "Contractor") a corporation organized and existing under the laws of the state of North Carolina.

### **SECTION 1: BACKGROUND AND PURPOSE**

In the year 2000, The City and RDI entered into CHDO (Community Housing Development Organization) Loan Agreement No. 10102, DATED August 3, 2000, which, with its Amendment #1 dated August 15, 2003, provided a total of \$810,000.00 intended to provide RDI with the means to purchase and rehabilitate 13 single-family homes, to provide affordable rental units to low- and very-low-income households in Durham, NC. These 13 properties are collectively referred to as the Rebuild Durham, Inc. HOME Rental Program Project.

Under the CHDO Loan Agreement No. 10102 and its Amendment, each property in the Rebuild Durham Project was to meet all requirements of regulations found at 24 CFR 92 for a Period of Affordability of 15 years after each property was put in service. The Contractor has been unable to achieve compliance with the governing regulations for more than a year, and the City wishes to restructure the Project and withdraw the federal HOME funds in the amount of \$810,000.00.

CHDO Loan Agreement No. 10102 and its Amendment, and all of the attending terms and conditions and all of the obligations of the parties, remain in effect until all Work under this contract has been completed.

### **SECTION 2: SERVICES AND SCOPE TO BE PERFORMED.**

The Contractor shall expeditiously perform all Work listed in Attachment A, which is made an integral part of this contract. In this contract, "Work" means the services that the Contractor is required to perform pursuant to this contract, and all of the Contractor's duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

### **SECTION 3: COMPLETE WORK WITHOUT EXTRA COST**

Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, insurance and licenses necessary to perform the Work.

### **SECTION 4: COMPENSATION**

The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation under this Contract.

### **SECTION 5: INSURANCE**

Until all work has been completed and all federal funds have been withdrawn from the Project, the Contractor shall carry liability, workers compensation, auto and property insurance in not less than the amounts stipulated in Attachment B, and shall maintain a City of Durham Business License.

**SECTION 6: EVENTS OF DEFAULT AND REMEDIES**

If the Contractor fails to perform the Work in accordance with the schedule in Attachment A, the City may, in its discretion, in order to bring the contract to completion, address any default with any or all remedies on default allowed under the law, as listed in CHDO Loan Agreement #10102 and its Amendment. Before taking any action, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work or any remedy to default pursuant to this section.

**SECTION 7: ATTACHMENTS**

In any case where there is a conflict between an attachment and the contract, the text of this contract shall control. The following attachments are made a part of this contract:

Attachment A: Scope of Work and Payment Schedule

Attachment B: Insurance Requirements

**SECTION 8: NOTICE**

(A) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City of Durham

Reginald J. Johnson  
Interim Director  
Department of Community Development  
City of Durham  
807 East Main St, #2-200  
Durham, NC 27701  
Tel: 560-4570  
Fax: 560-4090  
Email: [Reginald.johnson@durhamnc.gov](mailto:Reginald.johnson@durhamnc.gov)

To the Contractor

Stancil M. Clark  
Board Chairman  
Rebuild Durham, Inc.  
201 West Main St. #202-E  
Durham, NC 27701  
Tel: 733-2220  
Fax: 723-0100  
Email: [smclark@ncdot.gov](mailto:smclark@ncdot.gov)

(B) **Change of Address. Date Notice Deemed Given.** A change of address, fax number or person to receive notice may be made by either party by notice given to the other party in writing. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

**SECTION 9: INDEMNIFICATION**

(A) **Indemnification:** To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection, the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the City.

(B) **Definitions.** As used in this contract:

“Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (including without limitation within “charges” are

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(i) interest and reasonable attorneys' fees assessed as part of any such item, and  
(ii) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract).

"Indemnitees" means the City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor

(C) **Other Provisions Separate.** Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(D) **Survival.** This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

**SECTION 11: MISCELLANEOUS**

(A) **Choice of Law and Forum.** This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(B) **Waiver.** No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(C) **Performance of Government Functions.** Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(D) **Severability.** If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(E) **Assignment, Successors and Assigns.** Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(F) **Compliance with Law.** In performing all of the Work, the Contractor shall comply with all applicable law.

(G) **City Nondiscrimination Policy.** The City opposes discrimination on the basis of race and sex and urges all of its contractors to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contracts.

(H) **EEO Provisions.** During the performance of this contract the Contractor agrees as follows:

(i) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated equally during employment, without regard to race,

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color, religion, sex, sexual preference, national origin, political affiliation or belief, age or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these Equal Employment Opportunity ("EEO") provisions.

(ii) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, national origin, political affiliation or belief, age, or handicap.

(iii) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.

(iv) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts.

(v) Unless exempted by the City Council of the City of Durham, the contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(I) **SDBE.** The Contractor shall comply with all applicable provisions of Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that chapter is binding on the Contractor. Section 26-10(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Chapter 26 and not to the Contractor's alleged violations of other obligations.

(J) **No Third Party Rights Created.** This contract is intended for the benefit of the City and the Contractor and not any other person.

(K) **Principles of Interpretation and Definitions.** In this contract, unless the context requires otherwise:

(i) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulations. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation.

(ii) References to a "Section" or "section" shall mean a section of this contract.

(iii) "Contract" and "Agreement," whether or not capitalized, refer to this instrument.

(iv) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract.

(v) "Duties" includes obligations.

(vi) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities.

(vii) The word "shall" is mandatory.

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(viii)The word “day” means calendar day.

(L) **Modifications. Entire Agreement.** A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(M) **City Manager’s Authority.** To the extent, i that the City has the power to suspend or terminate this contract or the Contractor’s services under this contract, that power may be exercised by the City Manager or a deputy or assistant City Manager without City Council action.

**IN WITNESS WHEREOF**, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

**CITY OF DURHAM**

ATTEST:

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**REBUILD DURHAM, INC.**

By: \_\_\_\_\_  
Stancil M. Clark, Board Chair (date)

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_,  
Corporate Secretary

(Affix corporate seal.)

STATE of North Carolina  
COUNTY of Durham

I, a Notary Public in and for the aforesaid County and State, certify that \_\_\_\_\_ personally appeared before me this day and stated that he or she is Secretary of Rebuild Durham, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract with the City of Durham was signed in its name by its Board Chair, whose name is Stancil M. Clark, sealed with its corporate seal, and attested by him/herself as its said Secretary.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**ATTACHMENT A  
SCOPE OF WORK AND PAYMENT SCHEDULE**

**Responsibilities of the City of Durham:**

***Release of Restrictive Covenants***

Within 30 days of the execution of this Contract, the City will prepare a Release, Cancellation and Termination of Declaration of Restrictive Covenants for all thirteen (13) properties listed in Attachment A, for execution by the City and for proper recording with the County.

***Release of Deeds of Trust***

The City shall mark satisfied and release the following deeds of trust granted by Rebuild Durham, Inc. and having the City of Durham as beneficiary and the City Manager of the City of Durham as Trustee, all with book and page numbers as filed at the Registry of Deeds for Durham County:

1. The deed of trust upon the property commonly known as 110 Chestnut Street and recorded at Book 5331, page 889-896 on August 24, 2006; and
2. The deed of trust upon the property commonly known as 1126 Delano Street and recorded at Book 4379, page 683-690 on May 5, 2004; and
3. The deed of trust upon the property commonly known as 1302 Castlebay Road and recorded at Book 3089, Page 223-237 on May 21, 2001; and
4. The deed of trust upon the property commonly known as 1408 Bacon Street and recorded at Book 5199, Page 176-185 on May 4, 2006; and
5. The deed of trust upon the property commonly known as 1508 West Club Boulevard and recorded at Book 3239, Page 680-695 on October 26, 2001; and
6. The deed of trust upon the property commonly known as 1807 North Alston Avenue and recorded at Book 3239, Page 690-706 on October 26 2001; and
7. The deed of trust upon the property commonly known as 2107 Concord Street and recorded at Book 3594, Page 404-410 on September 30, 2002; and
8. The deed of trust upon the property commonly known as 2314 Curtis Street and recorded at Book 4656, Page 997-1013 on December 30, 2004; and
9. The deed of trust upon the property commonly known as 2507 White Oak Avenue and recorded at Book 4504, Page 114-119 on August 12, 2004; and
10. The deed of trust upon the property commonly known as 2521 Kirby Street and recorded at Book 2933, Page 152-157 on October 24, 2000; and
11. The deed of trust upon the property commonly known as 2534 South Alston Street and recorded at Book 3262, Page 537-543 on November 15, 2001; and
12. The deed of trust upon the property commonly known as 2626 Ross Road and recorded at Book 3072, Page 490-505 on May 2, 2001; and
13. The deed of trust upon the property commonly known as 2919 Chapel Hill Road and recorded at Book 3204, Page 865-879 on September 18, 2001.

***Repayment of HUD Funds***

The City will remove the restrictions set by the HOME program loans on the RDI properties listed above, by repaying HUD and removing all federal funds from this Project. This action will relieve Rebuild Durham from any future income and other occupancy restrictions and will allow the organization to sell any or all of its properties.

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### ***Loan Modifications***

The City shall forgive the loan balances on the remaining twelve (13) properties, which balances shall be converted into grants, and payment obligations shall be cancelled.

When all of the responsibilities of the City of Durham, as stated in this attachment, have been met, the City will notify Rebuild Durham, Inc. in writing that their work is complete, and RDI shall do the following:

### **Responsibilities of Rebuild Durham, Inc.**

#### ***Transfer of 110 Chestnut Street***

Within 14 days of the receipt of a letter from the City authorizing them to do so, Rebuild Durham shall transfer the deed to the 110 Chestnut Street property, free and clear and for no cost, to a nonprofit acceptable to the City. Upon transfer of 110 Chestnut Street, Rebuild Durham will notify the City in writing, the name and address of the nonprofit to which the property was transferred.

## **ATTACHMENT B INSURANCE REQUIREMENTS**

At all times during which the City has any interest in any of the properties in the RDI HOME Rental Program Project, RDI shall maintain liability, auto, workers compensation and property insurance in amounts shown below:

### **CITY OF DURHAM'S CONTRACTOR AND SUBRECIPIENT LIABILITY, AUTO AND WORKERS COMPENSATION INSURANCE REQUIREMENTS**

It is a condition of doing business with the City of Durham that vendors, contract partners, and recipients of grants and loans maintain continuous insurance coverage in not less than the following values. Absence of proof of ongoing insurance coverage may result in delay of payment, the withdrawal of funds, cancellation of the project, and a demand that the total amount of the grant or loan be immediately reimbursed.

#### ***Commercial General Liability***, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- Combined single limit not less than \$2,000,000 per occurrence, with an annual aggregate on not less than \$4,000,000.

#### ***Commercial Auto Liability***, covering:

- Symbol 1, all vehicles
- Combined single limit of \$2,000,000

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**Workers' Compensation Insurance**, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

**Insurance shall be provided by**

- Companies authorized to do business in the State of North Carolina
- Companies with Best rating of A-, VII or better.

**Insurance shall be evidenced by a certificate**

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- With an original signature of the Agent, in blue ink

**Additional Insured**

- The certificate shall stipulate that *"The City of Durham is additional insured as their interests may apply"*
- An original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)

**Certificate Holder**

The City of Durham shall be listed as the Certificate Holder, in the following way:

City of Durham  
Department of Community Development  
807 East Main Street, Suite 2-200  
Durham, NC 27701

**Mail the original certificate to** the address of the Certificate Holder, and to the **attention of the project manager** responsible for the contract or the project that this insurance will cover.

**OWNER / BUILDER / DEVELOPER ("OBD") POST-CONSTRUCTION PROPERTY AND LIABILITY INSURANCE AND BUSINESS LICENSING REQUIREMENTS**

It is a condition of doing business with the City of Durham that Property Owners, Builders and Developers (OBD) who are recipients of grants and loans, shall maintain continuous insurance coverage in not less than the values listed below. Absence of proof of ongoing insurance coverage may result in the delay of payments, the withdrawal of funds, cancellation of the project, and the grant or loan becoming immediately due and payable. Levels of insurance coverage for construction and rehabilitation projects will vary, depending upon the size of the project. The City will determine the coverage required at the time the loan / grant is made. In the absence of a specific valuation, when the project is in the post-construction phase, Owner/Builder/Developer (OBD) shall provide the default amounts listed here, once a year, on the anniversary of the renewal of the policy.

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There shall be **no gap** in insurance protection during the transition from the Builders Risk Insurance to the Permanent Insurance, and **no gap** in insurance protection during the Period of Affordability of this HOME-assisted project.

- (1) **Fire and Extended Coverage Insurance** shall be provided on a blanket basis or with an agreed amount clause in amounts not less than 80% of the project's current insurable value. Such insurance shall include the project building(s) and its OBD-owned contents, as well as on building and revenues which are pledged to secure the mortgage. Such insurance policies shall name the OBD as the Insured and shall carry a standard Mortgage Clause showing loss or damage, if any, payable to the Owner and the City of Durham, Department of Community Development acting by and through the Departmental Director, as their interests may apply.

The insurable value shall be periodically updated using available residential building cost indices. The amount of property insurance on the project shall be adjusted accordingly to maintain the amount of insurance to 80% of the current insurable value. It is the responsibility of the OBD to provide the City with updates on the project valuations, and to adjust policies and provide continuous coverage and evidence of coverage as may be necessary.

- (2) **Flood Insurance** is required whenever the property is located in an area of special flood hazards in which flood insurance is available under the National Flood Insurance Act. If Flood Insurance is required, it shall be provided for the subject property during the term of the mortgage. The insurance shall be in an amount at least equal to the outstanding principal or the maximum amount of insurance available with respect to the project under the National Flood Insurance Act, whichever is less. The policy shall show the OBD as insured and shall show loss, if any, payable to the City of Durham, Department of Community Development by and through the Departmental Director, as their interests may apply.
- (3) **Use and Occupancy** (Rental Value) Insurance shall be procured on each building. Each such rental value insurance policy shall contain a standard Mortgage Clause making loss or damage, if any, payable to the City of Durham, Department of Community Development, acting by and through the Departmental Director, as their interests may apply.
- (4) **Public Liability Insurance** on a Commercial General Liability Form shall be secured by the OBD, and evidence of such insurance shall be written on a Commercial General Liability form with limits of not less than \$500,000 per occurrence to protect the OBD from claims involving bodily injury and/or death and property damage which may arise from the OBD's operations, including any use or occupancy of its facilities, grounds and structures, and shall include independent contractors coverage, where applicable.
- (5) **Blanket Fidelity Bond** shall be secured by the OBD, covering all officials and employees, including non-compensated officers of the OBD in an amount equal to two months' gross revenues or \$50,000 whichever is greater, unless greater amounts are required by the OBD. (Where the gross revenues for a project are substantially below the minimum \$50,000, bonding requirements for operation, and the bond shall be reduced to that sufficient to cover two months' gross revenues.)

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- (6) **Vehicle Liability Insurance:** If the OBD owns or operates a vehicle in the operation of the project, including non-owned and/or hired vehicles operated for the benefit of the OBD, the OBD shall procure and maintain Vehicle Liability Insurance. Such insurance shall provide for limits of liability of not less than \$300,000 for one person and \$500,000 for more than one person to protect the OBD from claims for bodily injury and/or death, and not less than \$50,000 against claims for damage to property of others.
- (7) **Director and Officers (D&O) Liability Insurance** may be obtained or continued as provided under the related paragraph above.
- (8) **Workers' Compensation and Employers' Liability** (statutory or voluntary) for all employees of the OBD and other facilities, the revenues of which are pledged to project operations, shall be secured and evidence of such coverage provided, continuously for the duration of the HOME Program Period of Affordability or the Mortgage Period, whichever ends last.

All insurance shall be underwritten on the **occurrence** basis by companies authorized to do business in the State of North Carolina that have a Best rating of A or better

- (1) All insurance certificates and the **additional insured** endorsements must be original, signed documents, and must be approved by the City in order for the OBD to continue using City or HUD funds;
- (2) Certificates shall state that the City shall be provided not less than 30 days notice prior to cancellation or reduction of coverage; and
- (3) Certificates shall **list** the City of Durham as the **Certificate Holder** in the following manner:

City of Durham, North Carolina  
Department of Community Development  
807 East Main Street, Suite 2-200  
Durham, NC 27701

Certificates shall be mailed to the attention of **HOME RENTAL MONITORING AGENT**.

OBD is responsible for promptly reporting any losses or accidents to the insurance carriers and to the City of Durham, Department of Community Development.

Loss settlement drafts and checks in settlement of losses sustained under any of the aforementioned insurance coverage shall always include the City of Durham as payee, and should be forwarded to the City of Durham, Department of Community Development, and the Departmental Director is responsible for the endorsement and release of such instruments on behalf of the City of Durham.

**PRIVILEGE LICENSE** – OBD must also hold, and continue to hold throughout the life of the project, a valid City of Durham Privilege License, in accordance with City of Durham business policies, and shall provide the Home Rental Monitoring Agent with a copy of that license each year as well.