

# CITY CLERK ORIGINAL

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MARICOPA COUNTY RECORDER  
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WHEN RECORDED, RETURN TO:

City of Glendale  
City Clerk  
5850 West Glendale Avenue  
Glendale, Arizona 85301

## DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING DEVELOPMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM III

THIS DEVELOPMENT AGREEMENT FOR MULTI-FAMILY HOUSING DEVELOPMENT UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM III ("Agreement") is entered this 20th day of February, 2012 by and between the City of Glendale, an Arizona municipal corporation ("City"), and Norwood Village Apartments, LLC, a wholly owned subsidiary of Gorman & Company, Inc., a Wisconsin corporation authorized to do business in Arizona ("Gorman").

### RECITALS

- A. The City has received an allocation of \$3,718,377 from the United States Government under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) of 2010 for the Neighborhood Stabilization Program ("NSP") that was originally established under the Housing Economic Recovery Act of 2008.
- B. The purpose of NSP is to address neighborhood destabilization created by foreclosed-upon homes and residential properties;
- C. Gorman is a corporation that provides community development, and affordable housing development and management services;
- D. The City allocated **\$1,800,000** in NSP funding for the development and/or preservation of affordable rental properties in its HUD-approved Community Development Block Grant ("CDBG") Consolidated Plan Substantial Amendment;
- E. The City selected Gorman through a competitive process to develop and/or preserve one hundred fifteen (115) multifamily living units ("Units," or individually a "Unit") for low-income households with incomes at or below 50 percent of Area Median Income ("AMI") ("Project"); and
- F. The City desires to enter into this Agreement and provide Gorman **\$1,800,000** in NSP funds to pay for the costs to acquire the Norwood Village housing development located at 6738 North 45th Avenue, Glendale, Arizona 85301 more specifically described in **Exhibit A** ("Property") and for development of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### AGREEMENT

1. **Scope of Service.**

1.1 Activities. Gorman will be responsible for undertaking the activities described in this Agreement consistent with NSP requirements. *See* Scope of Work attached as **Exhibit B**. Gorman's scope of services shall include the following activities eligible under NSP:

- a. Activity #1 Acquisition of Property.

- b. Activity #2 Renovation of existing units on Property.
- c. Activity #3 Rent Units in Project to Qualified Families.

1.2 NSP Objectives. Gorman certifies that the activities carried out under this Agreement will benefit individuals and households whose income does not exceed 50 percent of AMI or a pro rata basis of NSP to non-NSP funding. Specifically, it will rent the Units within the Property redeveloped with NSP funds to qualified families, which means individuals and/or households with incomes at or below 50 percent of AMI ("Qualified Families"). The objectives of the City and Gorman, in compliance with the requirements applicable to NSP are to acquire foreclosed-upon property, develop the Project on the Property, and rent the Units to Qualified Families ("NSP Objectives").

1.3 Levels of Accomplishment – Goals and Performance Measures.

- a. Gorman agrees to provide the following levels of program services:

<u>Activity</u>	<u>Completion Date</u>
Acquisition of Property	March 2012
Renovation of existing units on Property	July 2013
Rent Units to Qualified Families	December 2013

- b. The deadlines included in these performance goals and measures are the same as those imposed on the City by HUD under the requirements of NSP. If these NSP deadlines are modified by Congress and by HUD, the City shall likewise modify deadlines for Gorman.

1.4 Performance Monitoring. The City will monitor the performance of Gorman against the goals and performance measures as stated above. Substandard performance as reasonably determined by the City will constitute non-compliance with this Agreement.

2. **Agreement Term.** This Agreement shall commence on the 28 day of February, 2012 and shall remain in effect until a pro rata share of the one hundred fifteen (115) Units in the Property are rented to Qualified Families or a lesser of number of Units, as may be required by the City to meet its obligation to expend 25 percent of its NSP allocation under HERA to house households with incomes at or below 50 percent of AMI.

4. **Payment.**

4.1 It is expressly agreed and understood that the total amount to be paid by the City to Gorman is **\$1,800,000**. Gorman will expend the **\$1,800,000** to acquire the Property and for development of the Project. Prior to disbursement of any funds to Gorman, the City and Gorman will execute for the benefit of the City a Promissory Note; Loan Agreement; Declaration of Covenants, Conditions and Restrictions; Mortgage Agreement; and, if required by any other financing sources, a subordination agreement.

4.2 Any funds that are not expended or not expended in accordance with the applicable guidelines or restrictions set forth herein shall be returned promptly to the City.

4.3 Payments are contingent upon environmental review requirements. Upon the City's request, Gorman will provide to the City information necessary to ensure compliance with environmental review requirements.

5. **Notices.**

5.1 Notices required by this Agreement shall be in writing and delivered by United States Postal Service (postage prepaid), commercial courier, or personal delivery or by facsimile or other

electronic means. Any notice delivered or sent as stated above is effective on the date of delivery, or if electronically, the date of sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

- 5.2 Communication and details concerning this Agreement shall be directed to the following representatives:

To the City: City of Glendale  
5850 West Glendale Avenue  
Glendale, Arizona 85301  
Attention: Gilbert Lopez, Revitalization Administrator  
Phone: 623-930-3671  
Fax: 623-435-8594

With a copy to: City of Glendale  
City Attorney  
5850 West Glendale Avenue  
Glendale, Arizona 85301

To Norwood Village: Norwood Village Apartments, LLC  
2375 East Camelback Road, 6<sup>th</sup> Floor  
Phoenix, Arizona 85016  
Attention: Brian Swanton, Arizona Market President  
Phone: 602-708-4889  
Fax: 608-835-3922

To Gorman: Gorman & Company, Inc.  
2375 East Camelback Road, 6<sup>th</sup> Floor  
Phoenix, Arizona 85016  
Attention: Brian Swanton, Arizona Market President  
Phone: 602-708-4889  
Fax: 608-835-3922

## 6. Special Conditions and Covenants.

- 6.1 The City and Gorman understand and affirm that this Agreement is made pursuant to the NSP program and agree to abide by requirements of that program. Those requirements are specified in: HERA, as amended by ARRA; the HUD Notice dated October 6, 2008, entitled "Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Under the Housing and Economic Recovery Act, 2008," published in 73 Fed. Reg. 194 ("HUD Notice"); and the regulations pertaining to the CDBG program, set forth in 24 C.F.R. Part 570, except to the extent that they are modified or superseded by HERA, as amended, and the HUD Notice. The requirements have also been clarified and elaborated upon by HUD in its responses to Frequently Asked Questions ("FAQs"), posted on HUD's NSP website at:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nspfaq.cfm>.

- 6.2 The key NSP requirements applicable to this Agreement are as follows:

- a. *Income Requirements.* Gorman agrees that a percentage of Units in the Property developed pursuant to this Agreement will be rented to Qualified Families, which means families with incomes that are at or below 50 percent of AMI.
- b. *Affordability Requirements.* Gorman agrees that a percentage of Units in the Property will remain affordable to individuals and families whose incomes do not exceed 50 percent of AMI for the applicable affordability period ("Affordability Period"), which period shall be based upon the amount of NSP assistance provided in connection with a Property and shall be no less than the periods specified for rental housing assisted under the HOME Investment Partnership Act ("HOME"), as specified in 24 C.F.R. 92.252(e). Those requirements are as follows:

<u>Assistance (per unit)</u>	<u>Minimum period</u>
Under \$15,000	5 years
\$15,000 to \$40,000	10 years
Over \$40,000	15 years
New Construction	40 years

- (1) The requirement to house households with incomes at or below 50 percent of AMI shall commence upon the later to occur of occupancy of the Unit or the time the funds are committed for the Project.
- (2) Gorman further agrees that if NSP funds are used to assist a Property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 C.F.R. Part 92, the HOME affordability restrictions will be revived for the greater of the remaining period of HOME affordability or the Affordability Period specified above.
- c. *Principal Residence.* Gorman agrees that all Properties acquired, redeveloped, and rented by it pursuant to this Agreement will be rented for use as a principal residence and will be used as a principal residence during the Affordability Period. This requirement shall be implemented pursuant to the Declaration of Covenants recorded against the Property and included in the rental agreement for the Units.
- d. *Foreclosed Upon Property.* Gorman agrees that the Property purchased by it with funds provided pursuant to this Agreement will be "foreclosed upon" ("Property"). A Property has been "foreclosed upon" at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former owner under some type of foreclosure proceeding, in accordance with state or local law.

- 6.3 Discount on Purchase Price. Any purchase by Gorman of property with funds provided pursuant to this Agreement shall be at a discount from the current market appraised value of the Property, taking into account its current condition. "Current market appraised value" means the value of a property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 C.F.R. 24.103 and is completed within 60 days of an offer made for the Property by Gorman.
- 6.4 For mortgagee foreclosed properties, Gorman is required to seek to obtain the maximum reasonable discount from the mortgagee, taking into consideration the likely carrying costs of the mortgagee if it were to not sell the Property to the City or Gorman.

- 6.5 The minimum discount that will be permitted under this Agreement is one percent (see rules in HUD Notice re calculation of average discount).
- 6.6 Development Standards. Any construction on the Property acquired with funds provided pursuant to this Agreement shall be to the extent necessary to comply with, at a minimum, Housing Quality Standards as required by Section 8 of the U.S. Housing Act of 1937. In addition, all construction must comply with all other applicable laws, codes, and other requirements relating to housing safety, quality, and habitability.
- 6.7 Repayment. If the requirements contained in this Agreement are violated, Gorman shall be required to repay to the City all NSP funds expended with respect to the non-compliant Property; provided, however, the City agrees to provide Gorman with notice of any such violation and a ninety (90) day opportunity to cure the violation. For the income and affordability requirements contained in paragraphs 6.2(a) and 6.2(b), above, the repayment requirements and cure procedures are set forth in the NSP Declaration of Covenants.

7. **General Conditions.**

- 7.1 General Compliance. Gorman agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning CDBG including subpart K of these regulations, except (1) to the extent that those requirements are modified or superseded by the requirements of the NSP program; (2) to the extent that the requirements do not apply to a developer competitively procured by the NSP grantee; (3) Gorman does not assume the City's environmental responsibilities described in 24 C.F.R. 570.604, as City as grantee is responsible for environmental review under 24 C.F.R. Part 58; and (4) Gorman does not assume the City's responsibility for initiating the review process under the provisions of 24 C.F.R. Part 52 (subsidy layering review). Gorman also agrees to comply with applicable Federal, state and local laws, regulations, and policies governing the funds provided under this Agreement. Gorman further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.
- 7.2 Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. Gorman shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment or performances concerning Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as they may relate to Gorman.
- 7.3 Hold Harmless. Gorman shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of Gorman's performance or non-performance of the activities called for in this Agreement.
- 7.4 Workers' Compensation. Gorman shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.
- 7.5 Insurance. Gorman shall carry, at a minimum, the insurance coverage as required under Exhibit A to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and shall list the City as a certificate holder.
- 7.6 City Recognition. Gorman shall insure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Gorman will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

7.7 Amendments. The City or Gorman may amend this Agreement at any time provided that amendments make specific reference to this Agreement, are executed in writing and signed by a duly authorized representative of each organization. Amendments do not invalidate this Agreement, nor relieve or release the City or Gorman from its obligations under this Agreement.

7.8 Suspension or Termination. In accordance with 24 C.F.R. 85.43, the City may:

- a. Temporarily withhold payments pending correction of a deficiency.
- b. Disallow the use of funds for all or part of the cost of the activity not in compliance.
- c. Wholly or partly suspend or terminate this Agreement if Gorman materially fails to comply with any terms of this Agreement, which include, but are not limited to, the following:
  - (1) Failure of Gorman to fulfill its obligations under this Agreement by the deadlines described in Section 1.3 of this Agreement; or
  - (2) Improper use by Gorman of funds provided under this Agreement.

7.9 In accordance with 24 C.F.R. 85.44, this Agreement may also be terminated for convenience by either the City or Gorman, in whole or in part. The City or Gorman shall set forth in writing the reasons for termination, the effective date, and, in the case of partial termination, the portion to be terminated ("Termination Letter"). The City shall address its Termination Letter to HUD, and send a copy to Gorman. Gorman shall address its Termination Letter to the City, and send a copy to HUD.

7.10 If in the case of a partial termination by Gorman, the City determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the City may terminate the award in its entirety.

7.11 Upon termination, Gorman shall refund to the City all monies not approved for expenditure by the City at that time and Gorman shall refund to the City any other monies received pursuant to this Agreement but not expended or obligated at the time of termination.

8. **Administrative Requirements.**

8.1 Documentation and Record Keeping

- a. *Records to be Maintained.* Gorman shall maintain all records that are pertinent to the activities to be funded under this Agreement:
  - (1) Records required to determine the eligibility of activities under NSP requirements;
  - (2) Records required to document the acquisition, improvement, and use of real property acquired or improved with NSP funds;
  - (3) Records necessary to document compliance with the NSP affordability requirements.
- b. *Retention.* Gorman shall retain all records pertinent to the Agreement for a period of five (5) years after the rental of the last Unit to a Qualified Family, except that:
  - (1) Documents relating to compliance with the NSP affordability requirements must be retained for five (5) years after the Affordability Period terminates; and
  - (2) Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started

before the expiration of the applicable period, then the records must be retained until completion of the actions and resolution of all issues, or the expiration of the applicable period, whichever occurs later.

- c. *Renter Data.* Gorman shall maintain data demonstrating renter eligibility for services provided. The data shall include, but not be limited to, renter name, address, income level or other basis for determining eligibility, and description of service provided. Information shall be made available to City monitors or their designees for review upon request.
  - d. *Disclosure.* Gorman understands that renter information collected under this Agreement is private and the use or disclosure of information, when not directly connected with the administration of the City's or Gorman's responsibilities with respect to services provided under this Agreement, is prohibited by the Privacy Act, 5 USC § 552a and A.R.S. §§ 44-7601, 44-7701 and 44-1373 *et seq.*, or other applicable law, unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
  - e. *Audits and Inspections.* Gorman records with respect to matters covered by this Agreement shall be made available to the City, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of relevant data. Any deficiencies noted in audit reports must be fully cleared by Gorman within 30 days after receipt by Gorman.
- 8.2 Progress Reports. Gorman shall submit regular Progress Reports to the City in the form, content, and frequency as required by the City.
- 8.3 Procurement. Gorman shall comply with current City policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by policy as may be procured with funds provided herein.
- 8.4 Use and Reversion of Assets. The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 C.F.R. Parts 84 and 24 C.F.R. 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:
- a. Gorman shall transfer to the City any NSP funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination of the Agreement.
  - b. Real property under Gorman's control that was acquired or improved, in whole or in part, with funds under this Agreement shall be used to meet the NSP Objectives. If Gorman fails to use NSP-assisted real property under its control in a manner that meets NSP Objectives, Gorman shall pay the City an amount equal to the current fair market value of the Property less any for acquisition of, or improvement to, the Property. Reversion payments shall constitute program income to the City.
  - c. Equipment not needed by Gorman for activities under this Agreement shall be (a) transferred to the City for the NSP program or (b) retained after compensating the City an amount equal to the current fair market value of the equipment less the percentage of non-NSP funds used to acquire the equipment.
9. **Relocation, Real Property Acquisition and One-for-One Housing Replacement.** Gorman agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 C.F.R. Part 24 and 24 C.F.R. 570.606(b); (b) the requirements of 24 C.F.R. 570.606(c) governing the Residential Anti-displacement

and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act; and (c) the requirements in 24 C.F.R. 570.606(d) governing optional relocation policies. It is not anticipated that persons will be displaced as a result of Gorman's acquisition and rehabilitation of foreclosed upon homes or residential properties, but in the event that such displacement does occur, Gorman shall provide relocation assistance to displaced persons as defined by 24 C.F.R. 570.606(b) (2), and any relocation expenditures shall be paid with NSP funds. The City and Gorman further agree to comply with applicable state requirements at A.R.S. § 11-961 *et seq.*, and any applicable City ordinances, resolutions and policies concerning the displacement of persons from their residences.

## 10. Personnel and Participant Conditions

### 10.1 Civil Rights

- a. *Compliance.* Gorman agrees to comply with applicable civil rights laws, rules, and ordinances of the City and State of Arizona and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
- b. *Non-discrimination.* Gorman agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. 570.607, as revised by Executive Order 13279, and applicable non-discrimination provisions in Section 109 of the Housing and Community Development Act of 1974.
- c. *Land Covenants.* This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 C.F.R. 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Gorman shall cause or require a covenant running with the land to be inserted in the deed or lease for the transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of the land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce the covenants. Gorman, in undertaking its obligation to carry out the program assisted hereunder, agrees to take all measures necessary to enforce the covenant, and neither will Gorman discriminate.
- d. *Section 504.* Gorman agrees to comply with Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide Gorman with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

### 10.2 Affirmative Action

- a. *Approved Plan.* Gorman agrees that it will carry out, pursuant to any City specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The City shall provide its Human Relations Affirmative Action policy statement to Gorman to assist in the formulation of such program. Gorman shall submit a plan for an Affirmative Action Program for approval prior to the disbursement of funds under this Agreement.

- b. *Women- and Minority-Owned Businesses (W/MBE).* Gorman will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Gorman may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.
- c. *Access to Records re Affirmative Action.* Gorman shall furnish and cause each of its subcontractors to furnish information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein regarding Affirmative Action.
- d. *Notifications.* Gorman will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Gorman's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. *Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement.* Gorman will, in solicitations or advertisements for employees placed by or on behalf of Gorman; state that it is an Equal Opportunity or Affirmative Action employer.
- f. *Subcontract Provisions.* Gorman will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its subcontractors.

### 10.3 Employment Restrictions

- a. *Prohibited Activity.* Gorman is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, and nepotism activities.
- b. *Labor Standards.* Gorman agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. Gorman agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 *et seq.*) and implementing regulations of the U.S. Department of Labor at 29 C.F.R. Part 5. Gorman shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Documentation shall be made available to the City for review upon request.
- c. *Less than 8 Units.* Gorman agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction,

renovation or repair work financed in whole or in part with assistance provided under this Agreement, shall comply with any Federal requirements adopted by the City pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 C.F.R. Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve Gorman of its obligation, if any, to require payment of the higher wage. Gorman shall cause or require to be inserted in full, in all contracts subject to the regulations above, provisions meeting the requirements of this paragraph.

d. *"Section 3" Clause & Vicinity Hiring*

(1) Compliance. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 C.F.R. 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this Agreement and binding upon the City, Gorman and any of Gorman's subcontractors. Failure to fulfill these requirements shall subject the City, Gorman and any of Gorman's subcontractors, their successors and assigns, to those sanctions specified by any agreement through which Federal assistance is provided. Gorman certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

(2) Incorporation. Gorman further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

(3) Further Assurances. Gorman further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the NSP-funded Project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the Project or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very

low-income persons residing within the metropolitan area in which the CDBG-funded Project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the Project is located, and to low- and very low-income participants in other HUD programs.

- (4) Certification. Gorman certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.
- (5) Notifications. Gorman agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (6) Subcontracts. Gorman will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. Gorman will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135 and will not enter into any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

#### 10.4 Conduct

- a. *Assignment.* Gorman will not assign or transfer any interest in this Agreement to any other entity without the prior written consent of the City. However, claims for money due or to become due to Gorman from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without approval. Notice of assignment or transfer shall be furnished promptly to the City.
- b. *Subcontracts.*
  - (1) Approval. Gorman shall be permitted to enter into subcontracts in the performance of this Agreement.
  - (2) Monitoring. Gorman will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of non-compliance.
- c. *Hatch Act.* Gorman agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- d. *Conflict of Interest.* Gorman agrees to abide by the provisions of 24 C.F.R. 84.42 and 570.611, which include (but are not limited to) the following:
  - (1) Gorman shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
  - (2) No employee, officer or agent of Gorman shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

- (3) No covered persons who exercise or have exercised any functions or responsibilities with respect to NSP-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract or subcontract with respect to the NSP-assisted activity, or with respect to the proceeds from the NSP-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, Gorman, or any designated public agency.
  - (4) Gorman also understands that this Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.
- e. *Lobbying.* Gorman hereby certifies that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any 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 any agency, a Member of Congress, 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
  - (3) It will require that the certification language below be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subcontractors shall certify and disclose accordingly: This certification is a 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 or entering into this transaction imposed by section 1352, title 31, U.S.C. 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.
- f. *Copyright.* If this Agreement results in any copyrightable material or inventions, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.
- g. *Religious Activities.* Gorman agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 C.F.R. 570.200(j), such as worship, religious instruction, or proselytization.

10.5 NSP-Specific Certifications. Gorman certifies that Gorman has not been indicted for a violation under Federal law relating to an election for Federal office, nor does it employ an applicable individual, which means an individual who is (1) employed by Gorman in a permanent or temporary capacity; (2) contracted or retained by Gorman; or (3) acting on behalf of, or with the express or apparent authority of, Gorman; and who has been indicted for a violation under Federal law relating to an election for Federal office.

11. **Environmental Conditions.**

11.1 Air and Water. Gorman agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- a. Clean Air Act, 42 U.S.C. 7401, *et seq.*;
- b. Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- c. Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.

11.2 Flood Disaster Protection. In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), Gorman shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

11.3 Lead-Based Paint. Gorman 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 C.F.R. 570.608, and 24 C.F.R. Part 35, Subpart B. Regulations pertaining to NSP-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that those properties may include lead-based paint. 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 and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the Property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

11.4 Historic Preservation. Gorman agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R. Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

12. **Immigration Law Compliance.**

12.1 Gorman, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

- 12.2 Any breach of warranty under subsection 12.1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 12.3 The City retains the legal right to inspect the papers of Gorman or any subcontractor employee who performs work under this Agreement to ensure that Gorman or any subcontractor is compliant with the warranty under subsection 12.1 above.
- 12.4 The City may conduct random inspections, and upon request of the City, Gorman shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection 12.1 above. Gorman agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 12.
- 12.5 Gorman agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Gorman and expressly accrue those obligations directly to the benefit of the City. Gorman also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.
- 12.6 Gorman's warranty and obligations under this Section 12 to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 12.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.
13. **Foreign Prohibitions.** Gorman certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.
14. **Severability.** If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
15. **Section Headings and Subheadings.** The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.
16. **Waiver.** The City's failure to act with respect to a breach by Gorman does not waive its right to act with respect to subsequent or similar breaches. The failure of the City to exercise or enforce any right or provision does not constitute a waiver of that right or provision.
17. **Entire Agreement.** This Agreement, including Exhibits A and B, and which are fully incorporated into the Agreement by this reference, constitutes the entire agreement between the City and Gorman for the use of funds received under this Agreement. Except as stated above, this Agreement supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and Gorman with respect to this Agreement. If there is any conflict between the provisions of this Agreement, the provisions of this Agreement shall be applicable.





Exhibit A – Description of Property

Address: 6738 North 45th Avenue, Glendale, Arizona 85301

Legal Description:

PARCEL NO. 1:

TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42 AND CERTIFICATE OF CORRECTION RECORDED IN DOCKET 8965, PAGE 235, RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL NO. 2:

THAT PORTION OF THE ABANDONED ALLEY LOCATED TO THE WEST OF TRACT "A," GRANADA VISTA, ACCORDING TO BOOK 134 OF MAPS, PAGE 42, RECORDS OF MARICOPA COUNTY, ARIZONA, AS ABANDONED BY THE CITY OF GLENDALE ORDINANCE NO. 2019 RECORDED IN RECORDING NO. 98-0823776, LYING BETWEEN THE WESTERLY EXTENSION OF THE NORTH AND SOUTH LINES OF SAID TRACT "A."

Exhibit B – Scope of Work

*(See Attached)*



200 N. Main Street • Oregon, WI 53575

P: (608) 835-3900

F: (608) 835-3922

www.GormanUSA.com

REAL ESTATE DEVELOPMENT

MADISON MILWAUKEE MIAMI PHOENIX

## SCOPE OF WORK

### Norwood Village Apartments – Glendale, AZ

Gorman & Company, in partnership with Catholic Charities, will acquire and substantially rehabilitate the **Norwood Village Apartments**, a foreclosed multi-family development being sold by Fannie Mae located in the heart of Glendale's Centerline Redevelopment Area. This 115-unit project, built in 1971, is located on 5.19 acres of land just south of Glendale Avenue. Gorman will act as the lead developer. Catholic Charities will act as co-developer and on-site service provider. On-site services may include a before-and-after school program, computer training, parenting classes, financial literacy, and job placement services.

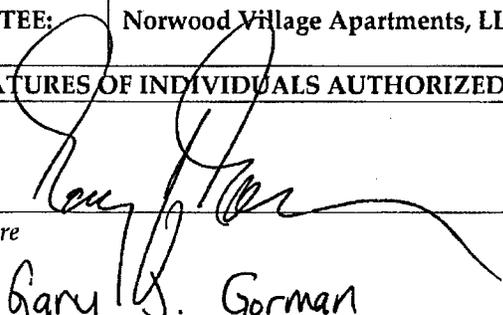
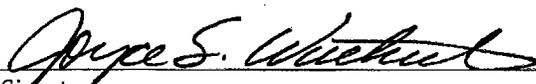
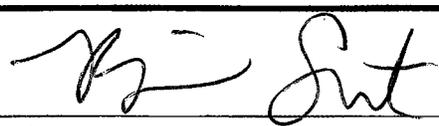
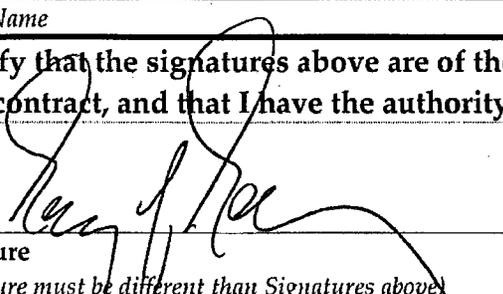
After acquisition with City of Glendale NSP3 funding, Gorman and Catholic Charities will rehabilitate the project to a LEED-Gold standard and increase accessibility for the physically disabled to the greatest extent feasible. Rehabilitation will be financed through 9% Low Income Housing Tax Credits and conventional debt. As part of the comprehensive rehabilitation, the property will be reduced in size from 115 units to 95 total units, including the conversion of 24 two-bedroom units into 12 three-bedroom units to better accommodate the demand for affordable housing from larger families with children. The project scope will also include the conversion of some rental units into community buildings for on-site resident services.

To acquire the property, Gorman & Company, Inc. will utilize a \$1.8 Million subordinate non-interest-bearing loan from the City of Glendale's NSP3 program, along with an acquisition bridge loan from the Raza Development Fund. To finance the substantial rehabilitation of the property, Gorman and Catholic Charities will apply for an allocation of Low Income Housing Tax Credits from the Arizona Department of Housing. The total rehabilitation cost of the project will not exceed \$9,909,200 and the total development cost of the project will not exceed \$16,922,695, resulting in approximately eleven (11) NSP-assisted units serving households at or below 50% of area median income.

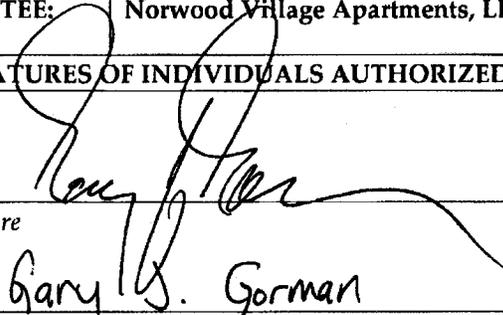
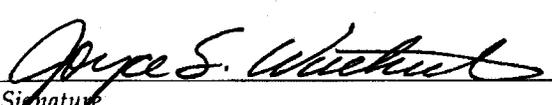
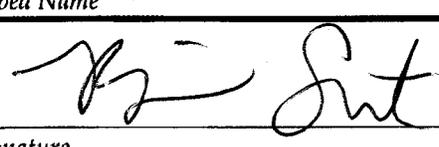
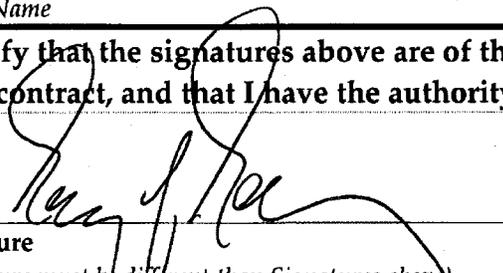
When rehabilitation is complete, the development will serve households at or below 60%, 50% and 40% of area median income.

Acquisition is expected to be completed no later than July 1, 2012. If awarded tax credits in the 2012 allocation round, rehabilitation is expected to begin by November 1, 2012 and completed by December 31, 2013.

City of Glendale  
**AUTHORIZED SIGNATURE CARD**

<b>CONTRACT #</b>		<b>SIGNATURES REQUIRED ON REQUEST:</b>
<b>GRANTEE:</b>	Norwood Village Apartments, LLC	<input checked="" type="checkbox"/> ONE <input type="checkbox"/> TWO
<b>SIGNATURES OF INDIVIDUALS AUTHORIZED TO REQUEST FUNDS ON THE CITED CONTRACT:</b>		
<b>1</b>		
	3-9-12	
Signature	Date	
Gary S. Gorman	President of Member	
Typed Name	Title	
<b>2</b>		
	3-9-12	
Signature	Date	
Joyce S. Wuetrich	Corp. Secretary of Member	
Typed Name	Title	
<b>3</b>		
	3-9-12	
Signature	Date	
Brian Swanton	Arizona Market President	
Typed Name	Title	
<b>4</b>		
Signature	Date	
Typed Name	Title	
<b>I certify that the signatures above are of the individuals authorized to request payments for the cited contract, and that I have the authority to designate these individuals to take such action.</b>		
	3-9-12	
Signature <small>(Signature must be different than Signatures above)</small>	Date <small>(Must be dated after Signatures above)</small>	
Gary S. Gorman	President of Member	
Typed Name	Title	

City of Glendale  
**AUTHORIZED SIGNATURE CARD**

<b>CONTRACT #</b>		<b>SIGNATURES REQUIRED ON REQUEST:</b>
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<b>SIGNATURES OF INDIVIDUALS AUTHORIZED TO REQUEST FUNDS ON THE CITED CONTRACT:</b>		
①		3-9-12
Signature		Date
Gary S. Gorman		President of Member
Typed Name		Title
②		3-9-12
Signature		Date
Joyce S. Wuetrich		Corp. Secretary of Member
Typed Name		Title
③		3-9-12
Signature		Date
Brian Swanton		Arizona Market President
Typed Name		Title
④		
Signature		Date
Typed Name		Title
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		3-9-12
Signature		Date
(Signature must be different than Signatures above)		(Must be dated after Signatures above)
Gary S. Gorman		President of Member
Typed Name		Title