

PROJECT NAME: (Project Name)
PROJECT NUMBER: (Project Number e.g., DD011 HUDHOM-22)
CFDA 14.239

**LOAN AGREEMENT – RENTAL HOUSING DEVELOPMENT
AHF & HOME**

THIS LOAN DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the (Date of Agreement) day of (Month of Agreement), (year) by and between, (Project Owner or LLC) a Wisconsin limited liability company (“Borrower”), whose principal business office is located at, (Address Borrower), and THE CITY OF MADISON, a Wisconsin municipal corporation (the “City”) whose business address for matters related to this Agreement is at its Community Development Block Grant Office (“CDBG Office”) 215 Martin Luther King, Jr. Blvd., Suite 300, Madison, Wisconsin 53703.

WITNESSETH:

WHEREAS, the City of Madison issued a Request for Proposals in February 2022 for the purpose of creating, preserving and repairing affordable housing; and

WHEREAS, the City of Madison 2022 Capital Budget approved on November (Date), 2021 allowed for the provision of funds from the Affordable Housing Fund (“AHF”) to support the expansion of affordable rental housing units; and

WHEREAS, the Common Council approved (**Project Name**), a (**number (# units)**) unit rental housing development with (**number (# units)**) affordable units (the “Project”) and awarded up to \$(Dollar amount) in AHF funds and up to \$(Dollar amount) in HOME funds toward its development and authorized the execution of a loan agreement on (Month) (Date), 2022 (RES # 22-00XXX); and

WHEREAS, the City is a “Participating Jurisdiction” under the U.S. Department of Housing and Urban Development’s (“HUD”) HOME Investment Partnerships Program (the “HOME Program”) as described in 24 CFR Part 92 (the “HOME Regulations”) as amended; and

WHEREAS, the Borrower is to acquire and construct the real estate further described on the attached **Exhibit 4** which is incorporated herein by reference (the “Property”), which will be operated as required by this Agreement and the HOME Regulations (the “Project”); and

WHEREAS, the City has agreed to partially finance the Project with the proceeds of a loan that totals \$(Dollar amount) (the “Loan”). One-hundred percent (100%) of the funds shall be applied to City approved Project costs as demonstrated on the attached **Exhibit 2**. The Loan funds are evidenced by three Promissory Notes (the “Notes”) dated as of the date hereof from the Borrower to the City, and secured by a Real Estate Mortgage (the “Mortgage”) from the Borrower to the City for the Property; and

WHEREAS, the City and the Borrower are entering into a Land Use Restriction Agreements (the “Land Use Restrictions”) dated as of the date hereof for the Property in favor of the City, encumbering the Property, and providing for certain restrictions on the use of the Property; and

WHEREAS, the City believes the development of the Property pursuant to this Agreement and the City’s loan are in the best interests of the City and its residents and are in accord with the

intent and criteria of the AHF, the goals expressed in the City's 2020-2024 Five-Year Consolidated Plan and the HOME Regulations; and

WHEREAS, as an inducement to the City to provide the Loan to the Borrower, the Borrower warrants that it is willing and able to enter into this Agreement, to perform such housing development upon the terms and conditions set forth herein, and that (Authority) has authority to execute this Agreement on behalf of Borrower.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. THE DEVELOPMENT AGREEMENT DOCUMENTS

The terms of the Notes, Mortgage and Land Use Restriction Agreements, together with this Agreement (the "Loan Documents"), are hereby incorporated herein by reference, and noncompliance with any term or condition of any of them shall be deemed a default hereunder, after the expiration of any applicable notice, cure, or grace period(s).

This Agreement includes the following Exhibits which are attached hereto and incorporated herein by reference, all of which constitute one Agreement;

1. Project Requirements;
2. Budget and Reimbursement Request Form;
3. Activity Report and CDD Completion Data and Annual Forms;
4. Legal Property Description
5. Conflict of Interest Requirements;
6. Prohibition on Lobbying;
7. Environmental Review Regulations;
8. Uniform Administrative Requirements and Cost Principles;
9. Non-Discrimination, Equal Opportunity And Fair Housing, Minority/Women Business Enterprises, Non-Discrimination on the Basis of Disability, and Section 3 Requirements;
- 9B. HOME Contractor and Subcontractor Report
10. Affirmative Action Requirements;
11. Lead-Based Paint Requirements (if applicable);
12. Certificate of Exemption From Federal Fair Labor Standards, or;
12A. Federal Labor Standards Provisions and Use of Volunteers (if applicable);
13. Participation in HUD Programs by Faith-Based Organizations;
14. Displacement, Relocation, and Acquisition Requirements (if applicable);
15. Program Income Requirements (if applicable);
16. Vulnerable Populations Requirements (if applicable);
17. Ban the Box Requirements.

For the purposes of this Agreement, the term Contractor in these Exhibits applies to the Borrower.

2. PROJECT REQUIREMENTS

The Borrower will comply with the specific Project Requirements as listed in **Exhibit 1**. All development activities shall be performed in material compliance with the applicable budget, as detailed in **Exhibit 2** of this Agreement (the "Budget"). Eligible development expenses, pursuant to the HOME Regulations and Project Requirements as detailed in **Exhibit 1** and Budget as

detailed in **Exhibit 2** incurred after approval of the funding by Common Council, shall be eligible for reimbursement by the City from proceeds of the Loan.

This Agreement shall become effective upon the date first stated above. In accordance with the HOME Regulations, the City's agreement to provide the Borrower with AHF and HOME funds to partially finance this specific local Project is based on the Borrower having submitted documentation demonstrating that all necessary financing has been secured, an adequate budget and feasible project schedule have been established, and construction is scheduled to start, as evidenced by a building permit, within twelve (12) months of the agreement date.

The Borrower certifies that all necessary project financing has been firmly committed at the time of execution of this Agreement.

The Borrower further agrees to furnish all information, reports, and recommendations regarding the development activities conducted under this Agreement and reasonably requested by the City including, but not limited to, financial statements and reports, reports related to development activities and beneficiaries, and any other reports or documents reasonably requested. Any other reports or documents shall be provided within ten (10) business days after the Borrower receives the City's written request, unless the parties agree in writing to a longer period.

In addition, the Borrower will respond to questions regarding the community's need for the Borrower's development activities and related services and the cost of such development activities, including questions from City officials or employees, as defined in Sec. 2.40 (3)(i), MGO.

3. USE OF FUNDS

The Borrower shall apply the proceeds of the Loan to the expense of acquiring and/or constructing the Property which includes at least **(number (# units))** units to be used as affordable housing for rent to income eligible households (the "AHF Units") within a **(number (# units))** unit project. The Loan proceeds are to be applied as shown in the Budget attached hereto as **Exhibit 2** which is incorporated herein by reference. The Borrower shall complete the Project on or before **(Project Completion Date)**, which is consistent with the Project Timetable in **Exhibit 1** and in accordance with the HOME Regulations.

The Borrower shall provide all funds in addition to the proceeds of the Loan which may be necessary or convenient to complete the Project.

Borrower acknowledges that its ability to obtain and receive future funding awards and loans from the City may be contingent upon satisfactory compliance with and progress toward completion and ongoing management of this Project during the Period of Affordability.

In accordance with 92.205, HOME-assisted projects which are not completed within four (4) years of commitment of funds, as evidenced by the execution of the written agreement, or do not meet the requirements for affordable housing, shall be considered terminated resulting in repayment of all HOME funds invested.

4. THE LOAN

(a) Subject to the terms and conditions of the Loan Documents and such other documents related to this transaction, the City agrees to loan the Borrower the sum of **(Dollar amount spelled out)** dollars (**\$(Dollar amount)**) for the purpose of the acquisition and/or construction of the Project. The loan amount is subject to a reduction if financial projections for the Project

change from those submitted at the time of application and indicate a lesser need for City loan funds or if the project does not incur eligible expenses to utilize the full loan amount.

- (b) At least seven (7) days prior to closing and prior to the City releasing the Loan funds, the Borrower shall:
 - 1) Submit to the City a standard ALTA commitment for a loan policy of title insurance in the amount of the Loan for such Property, which will be subject only to municipal and zoning ordinances and any other encumbrances acceptable to the City (the "Permitted Encumbrances"); and
 - 2) Provide evidence of property insurance as required by the Mortgage listing the City as mortgagee. Borrower agrees to provide evidence of property insurance annually by February 10th or before expiration of current policy.
 - 3) The City shall have the right to request removal of exceptions to the title commitment, and request title policy endorsements reasonably determined necessary to secure City's mortgage at the expense of Borrower.
- (c) Borrower shall execute a Mortgage, Promissory Notes and a Land Use Restriction Agreement for the Property, each in a form acceptable to the City. The Mortgage and Land Use Restriction Agreements shall be recorded by the Borrower. Failure to record either the Mortgage or the Land Use Restrictions shall be considered an Event of Default.
- (d) The Land Use Restriction Agreement shall be recorded on the Property before any other documents creating an encumbrance upon the Property, except the documents evidencing the first mortgage or construction loan to the Borrower, and other documents if determined necessary or acceptable by the City. Borrower shall provide the City a list of the proposed final order of recording all documents no less than seven (7) business days before closing on the Property. All recording fees shall be paid by the Borrower.
- (e) In advance of Closing, the Borrower shall provide the CDD with the original Promissory Note(s), and within fifteen (15) days of financial closing, the following in electronic format:
 - 1. Copy of final signed Settlement Statement
 - 2. Copy of recorded Mortgage
 - 3. Copy of recorded Land Use Restriction Agreements
 - 4. Copy of the recorded Subordination Agreement in favor of First Mortgage Lender
 - 5. Other related closing documentation signed at closing.

5. REQUESTS FOR DISBURSEMENTS/PAYMENT

Each draw request shall be submitted with **Exhibit 2** of this document, an Owners Sworn Statement, and detailed documentation of the related expense, such as invoices, at least ten (10) business days prior to the City's release of funds. All requests for payment of construction costs shall include an affidavit or certification (which shall be in the form of an AIA completion certificate) from the architect stating that construction has been completed in all material respects in accordance with the Plans and Specifications. Progress reports documenting the extent of completed services shall be prepared by the Borrower and submitted to the City in electronic format along with each draw request. An architect's report may be submitted as a progress report monthly when funds are not requested to be drawn. The Borrower shall not request reimbursement of Loan proceeds until such funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Additional funds may be withheld if Federal Labor Standards wage rate errors are identified in accordance with **Exhibit 12A**, if applicable.

The CDD shall withhold at least 10% of the total amount of AHF and HOME funds awarded (unless a lesser amount is authorized by the CD Grants Supervisor) until such time as: (i) a certificate of occupancy for the Project has been issued by the City, (ii) the Borrower has submitted to the CDD all required documentation and reports detailed in **Exhibit 1**; and (iii) the Borrower is otherwise in compliance with the Loan Documents. Final payment will be processed within thirty (30) days of satisfaction of the requirements set forth in this paragraph.

6. PROGRAM REQUIREMENTS

(a) **General Requirements.** The Project shall be operated as “affordable housing” as defined in **Exhibit 1** and 24 CFR 92.252. The Borrower shall comply with the HOME Regulations as applicable to the Project and the HOME Units and as defined in the Land Use Restriction Agreement. The Borrower is required to rent or sell each HOME assisted and AHF Unit to a household which meets the eligibility and related compliance requirements further described in the HOME Regulations and **Exhibit 1**.

The Period of Affordability for the HOME units is **20** years (“HOME Period of Affordability”). The HOME Period of Affordability shall terminate on the appropriate anniversary of the date of project completion, per the terms and requirements of 24 CFR 92.252 (Rental). Prepayment of the Loan prior to the expiration of the HOME Period of Affordability shall not relieve the Borrower of the application of the HOME requirements 24 CFR 92 detailed in this Agreement, except as provided in the Land Use Restriction Agreement.

The Period of Affordability for the AHF units is **40** years (“AHF Period of Affordability”). The AHF Period of Affordability shall terminate on the anniversary of the date of project completion, defined as the date final payment is issued by the City. Prepayment of the Loan prior to the expiration of the AHF Period of Affordability shall not relieve the Borrower of the application of the Period of Affordability requirements detailed in this Agreement, except as provided in the Land Use Restriction Agreement.

(b) **Match Requirements.** HUD requires the City of Madison make a minimum contribution of 25% of HOME funds drawn in a fiscal year to affordable housing as set forth in Sec. 92.218 of the HOME Regulations. To help meet this requirement, the Borrower agrees to make a good faith effort to provide eligible HOME Match contributions, as set forth in Sec. 92.220 of the HOME Regulations. The Borrower’s eligible activity Match effort is 25% of the HOME funds provided as assistance to the project. The Borrower shall report to the City matching contributions with the CD Activity Report Form **Exhibit 3** at the time of Project Completion. The City shall have final determination on the eligibility of any match documented by the Borrower.

(c) **Other Federal Requirements.** The Borrower shall carry out its responsibilities hereunder in compliance with all local, state, and federal laws, particularly those regulations described in 24 CFR Part 92 including Subpart H as detailed in the attached Exhibits, except for the City’s responsibilities for environmental review in 24 CFR Section 92.352 and the intergovernmental review process in 24 CFR Section 92.357.

1) **Affirmative Marketing.** The Borrower shall comply with the City’s affirmative marketing procedures and requirements adopted pursuant to 24 CFR Section 92.351 with respect to the HOME units. These require the Borrower to adopt an affirmative marketing plan and procedures, and market the HOME Units in accordance with the approved plan.

- 2) Environmental Review. An Environmental Review must be completed for each specific site identified for possible acquisition, construction, and/or rehab prior to making any choice limiting actions related to the specific site and prior to release of funds as detailed in **Exhibit 7**.
 - 3) Non-Discrimination, Procurement and Equal Opportunity. The Borrower shall comply with the applicable federal requirements as detailed in **Exhibits 8 and 9** and must ensure compliance with the provisions in 92.350, 92.351, and related Executive Orders.
 - 4) Non-Displacement. The Borrower shall design its HOME-assisted activities to minimize both direct and indirect displacement of persons and businesses in the implementation of its projects, either through judicious choice of project locations, or through the provision of facilitating assistance for continued residency within the Project. The Borrower hereby ensures that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as well as comply with One-for-One Replacement requirements triggered as a result of a project assisted with federal funds for acquisition, rehabilitation and/or new construction in compliance with 92.353 and as detailed in **Exhibit 14**. The Borrower must comply with all applicable federal and state relocation compensation procedures for all persons eligible for displacement and relocation assistance.
 - 5) Conflict of Interest. The Borrower shall comply with the Conflict of Interest requirements as detailed in **Exhibit 5**. Specific to HOME-assisted projects, the Borrower must ensure compliance with the Conflict of Interest provisions in 92.356.
- (d) Policies and Procedures. The Borrower understands the City has discretion to establish and revise policies and procedures necessary to administer the AHF and HOME programs. In the event of a conflict between the City policies and procedures and the HOME Regulations, related guidance provided by HUD, any subsequent amendments or changes to the HOME Regulations, State, and/or the Wisconsin Housing and Economic Development Authority (WHEDA) policies and procedures in connection with the affordable housing, the more stringent regulations shall apply as determined by the City, provided that in no event shall the City enforce any AHF or HOME policy and procedure which would result in a violation by Borrower of any Tax Credit Laws or other loan documents.

7. RECORDS AND REPORTS

The Borrower shall, without charge to the City, maintain such records and shall make such reports related to the Project available as the City may reasonably require from time to time during the term of this Agreement. The Borrower shall, without charge to the City, make such records available for inspection and copying by the City, the Department of Housing and Urban Development, and/or the Office of Inspector General, and shall make the Property available to the City for inspection, at any time during normal business hours and upon reasonable advance notice from the City to the Borrower of the City's wish to make any such inspection.

8. EVENTS OF DEFAULT

Any one or more of the following events is an Event of Default under this Agreement:

- (a) If payment due required under any of the Loan Documents is not paid when due and the nonpayment continues for fifteen (15) days after written notice to Borrower and Borrower's investor member ("Investor Member") as is listed in paragraph 24, as applicable;
- (b) Material nonperformance by Borrower of any covenant, agreement, term or condition in this Agreement not involving the payment of money and where no other time period for cure is specified, and the continuation thereof for a period of thirty (30) days after receipt by the

Borrower and Investor Member of written notice from the City specifying such nonperformance and demanding that it be corrected, provided, however, if such nonperformance is not a health or safety violation, and if the nature of the nonperformance reasonably requires more than thirty (30) days to fully cure, the defaulting party shall not be deemed to be in default if it commences and diligently proceeds to cure within a reasonable period of time;

- (c) Failure of Borrower to materially perform any covenant, agreement, term or condition of any of the Loan Documents and any addendum or amendment thereto which is not described in paragraph 8(b) above, and Borrower has failed to cure such default within the applicable required time period as provided in the Loan Documents;
- (d) Borrower becomes insolvent or the subject of insolvency proceedings and such actions are not dismissed within 90 days thereof fails to pay debts as they become due or makes an assignment for the benefit of creditors; or a receiver, trustee, custodian or other similar official is appointed for, or takes possession of any substantial part of the property of Borrower.

Upon the occurrence and continuance of an Event of Default, the City by written notice to Borrower and the Borrower's Investor Member, may declare the Loan and Note to be immediately due and payable and/or may pursue any available remedy by suit at law or in equity to insure or realize the payment of the principal under the Note, including such remedies as are provided in the Mortgage. The Investor Member shall have the right (but not the obligation) to cure any breaches or events of default by Borrower hereunder.

No remedy conferred upon, or reserved to the City hereunder, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power occurring upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Section, it shall be necessary to give only such notice as may be herein expressly required.

In the event Borrower should default under any of the provisions of this Agreement, and the City should employ or assign attorneys or incur other expenses for the collection of the Loan or the enforcement of performance of any obligation or covenant on the part of Borrower under this Agreement, Borrower will on demand pay to the City the reasonable costs, charges or fees of such attorneys and such other expenses so incurred, provided the default is not contested or, if contested, provided the City is the prevailing party.

Nothing in this Section or this Agreement shall constitute a waiver of the City's rights and protections under Wis. Stat. §893.80.

9. DURATION OF THE AGREEMENT

This Agreement shall continue in full force and effect until the Loan is repaid and the expiration of the HOME and AHF Periods of Affordability, provided, however that if the Loan is repaid prior to the expiration of the AHF Period of Affordability, Borrower's obligations hereunder for the remainder of the Affordability Periods shall be limited to compliance with the LURAs and the applicable provisions of Exhibit 1.

10. APPLICABLE LAWS

This Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The parties agree, for any claim or suit or other dispute relating to this Contract that cannot be mutually resolved, the venue shall be a court of competent jurisdiction within the State of Wisconsin and the parties agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

The Borrower shall at all times comply with and cause the Project to be in compliance with, all federal, state, county and city laws and regulations, and any amendments or notices thereto which may be subsequently enacted, including related regulatory guidance, which are applicable to the Project or applicable to Borrower as recipient of AHF and/or HOME funds for the Project. The Borrower shall independently determine which such laws and regulations are applicable to the Project or Borrower, and is not, and shall not, rely upon the City, or the City's officers, officials, employees or agents, in making any such determination. The specific references to particular statutes, regulations, and related regulatory guidance referenced in this Agreement and Exhibits mean those which are in effect on the date hereof. Any amendments or notices thereto which may be subsequently enacted shall be applied as required by HUD and/or City.

A copy of the HOME Regulations, as well as subsequent and related regulatory guidance related to the HOME program, is available on HUD's website at: <https://www.hudexchange.info/home/>.

11. SIGN/CITY LOGO

Within 30 days of the start of any construction or rehab of the Project, the Borrower shall provide and erect a sign on the Property that is easily visible from the street and sidewalk which credits the City with financing a portion of the Project. The Borrower shall credit the City of Madison and use the City's current logo for inclusion in publications, publicity or site signs related to this Project.

12. NO THIRD PARTY RIGHTS

Nothing in this Agreement or any other agreement between Borrower and the City, and no act by the Borrower or City, shall be deemed or construed by the Borrower or City or any other person or entity to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture or any association or relationship involving the City.

13. REPRESENTATIONS

(a) Corporate Status. The Borrower represents and warrants to the City as of the date hereof that the Borrower is a (Corporate Status). The Borrower is in good standing under the laws of the State of Wisconsin, and has all requisite power, licenses and authority necessary to conduct its business, including operating the Project, and that the Loan Documents constitute the legal, valid and binding obligations of Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally. The Borrower shall maintain its existence and will not dissolve, assign or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into, except as provided in Section 20 below or in the Note, another business entity or permit one or more business entities to consolidate with or merge into it or suffer, cause or permit any modification of its equity structure without the express written approval of the City.

If the Borrower is a Limited Liability Company, the Borrower represents and warrants to the City that its Managing Member is an LLC and is in good standing under the laws of the

State of Wisconsin and has all requisite power, licenses and authority necessary to conduct its business, including operating the Project. The Borrower shall ensure that the Managing Member complies with all the requirements of this Loan Agreement and all other Loan Documents.

- (b) CHDO Certification Status. If development funds have been awarded to Borrower as a Community Housing Development Organization (CHDO) for this Project, Borrower certifies that it or its managing member has current CHDO certified status, as determined by the City, and will maintain CHDO certified status throughout the HOME Period of Affordability and continuing thereafter until HOME funds have been fully repaid. Pursuant to the HOME Regulations, Borrower agrees that at no point shall control of the managing member change without the express written consent of the City.
- (c) Development Team and Property Management Experience. The Borrower certifies that it has sufficient development experience amongst its paid staff, development team, including and not limited to Property Management, and organizational capacity to complete, operate and manage the Project under the terms of this Agreement conforming to all current requirements, regulations, and subsequent amendments or changes in a timely fashion for the duration of the Periods of Affordability.

14. INDEMNIFICATION

The Borrower shall be liable to and hereby agrees to indemnify, defend and hold harmless the City of Madison, and its officers, officials, agents, and employees against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of personal injury, bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the Borrower's and/or its Contractor's and/or Sub-contractor's acts or omissions in the performance of this Agreement. Negligence on the part of the City does not relieve the Borrower of its obligations under this paragraph. The obligations of Borrower under this paragraph shall survive the expiration or termination of this Agreement.

15. INSURANCE

The Borrower will insure and will require Contractor and/or Sub-contractor to insure, as indicated, against the following risks to the extent stated below. The Borrower shall not commence work under this Agreement, nor shall the Borrower allow its general contractor to commence work pursuant to the agreement between Borrower and Borrower's general contractor, until the insurance required of the Borrower as outlined below has been obtained and corresponding certificate(s) of insurance have been approved by the City Risk Manager.

- (a) Commercial General Liability. The Borrower shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to, products and completed operations, bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. Borrower's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. The Borrower shall require its Owner's general contractor to procure and maintain insurance meeting the above criteria.

- (b) Automobile Liability. The Borrower shall procure and maintain during the life of this Agreement Automobile Insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. The Borrower shall require its general contractor to procure and maintain insurance meeting the above criteria.
- (c) Worker's Compensation. The Borrower shall require all Contractors and/or Sub-contractors under this Agreement (if any) to procure and maintain during the life of this contract statutory Workers' Compensation insurance as required by the State of Wisconsin. The Borrower shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.
- (d) Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. The Borrower shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. The Borrower shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. The Borrower shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

The Borrower and/or Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

16. ASSIGNMENT

The Borrower's obligations under this Agreement may not be assigned without the prior written consent of the City.

17. JUNIOR LENDERS

The Borrower shall not create, suffer or permit any mortgage, lien, charge or encumbrance to attach or be recorded or filed against the Property, whether such lien is superior or inferior to the lien of the City, without the City's prior written approval, other than Permitted Encumbrances and taxes not then delinquent.

18. SUBORDINATION

The City agrees to execute a subordination agreement in a form approved by the City Attorney when requested by the First Mortgage construction and permanent lender(s) providing the first mortgage financing as the same may be modified, extended or refinanced from time to time (the "First Mortgage"). This Agreement and any interest the City may have in and to the Property pursuant to this Agreement and the Mortgage are at all times and shall remain subordinate to the First Mortgage.

19. AMENDMENT

This Agreement may be amended at any time by mutual agreement of the parties, expressed in writing. No oral statement of any person, and no written statement of any person shall modify or otherwise affect the terms and conditions of this Agreement.

20. DUE ON SALE

Owner shall use commercially reasonable effort to give the City 180 days' notice of its intent to sell the Property and 30 days' notice prior to any sale of the Property. Upon the sale, change in

use, or other transfer of the Property (except as otherwise permitted herein), the Loan shall be immediately due and payable as provided in the Note(s). Furthermore, notwithstanding anything to the contrary, the following shall not require the consent of the City and shall not be deemed an Event of Default: (a) transfer by the Investor Member of its membership interest in Borrower to a limited partnership or limited liability company affiliated with Investor Member; (b) the transfer of a partner, member or other ownership interest in the Investor Member; or (c) those transfer provisions set forth under Section 13(a) of this Agreement.

21. LIMITATION ON DISBURSEMENT

Notwithstanding any other provision contained in any of the Loan Documents, the City shall be under no obligation to disburse to Borrower more than \$(Dollar amount) in AHF and \$(Dollar amount) HOME proceeds.

22. COUNTERPARTS, ELECTRONIC SIGNATURE AND DELIVERY

This Agreement may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Agreement may be exchanged between the parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

23. EASEMENTS

The Borrower shall not allow any structure (other than paving and signage) to encroach upon any easement across the Property without the prior written consent of the City, other than customary utility easements and Permitted Encumbrances that do not adversely impact the use of the Property.

24. NOTICES

All notices to be given under the terms of this contract shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below:

FOR THE CITY: (Project Manager), Community Development Specialist
Community Development Division
215 Martin Luther King, Jr. Blvd., Suite 300
Mail to: P.O. Box 2627
Madison, WI 53701-2627

FOR THE BORROWER: (Name), (Title)
(Development LLC)
(c/o Developer Name)
(Address)
(City, State, Zip)

WITH COPY TO
INVESTOR MEMBER: (Business)
(Address)
(City, State, Zip)

Attn: (Name), (Title)

SAMPLE

IN WITNESS WHEREOF, the parties hereto have set their hands at Madison, Wisconsin.

BY: (DEVELOPMENT LLC)
A Wisconsin Limited Liability Company

By: (Name)
Its: Managing Member

By: (Name)
Its: Manager

Signature DATE

Name and Title (Print or Type)

By: CITY OF MADISON
A Municipal Corporation

Approved:

Satya Rhodes-Conway, Mayor DATE

Eric T. Veum, Risk Manager DATE

Maribeth Witzel-Behl, City Clerk DATE

Approved:

Approved as to Form:

David P. Schmiedicke, Finance Director DATE

Michael Haas, City Attorney DATE

Approved:

Linette S. Rhodes, CD Grants Supervisor DATE

Exhibit 1

**Project Requirements
Rental Housing**

Borrower:	(Project Owner LLC)
CDD Project Name:	(Project Name)
CDD Project Number:	(Project Number)
CDD Project Manager:	(CDD Project Manager)
Total Project Budget	\$(Total Project Budget)
CDD Funds (by source & year):	\$(CDD Funds)

1. Project Description:

(Project Description: type of capital project, # units total, # units affordable, income targeting, etc)

2. Legal Entity of Borrower:

The Borrower is acting in the following capacity for this Project:

- Owner
- Sponsor
- Developer

3. Target Population:

(Project Name) will serve low-income individuals and families in need of affordable housing. A total of (number (# units)) of the units (the "AHF Units") will be affordable to households earning at or below 60% of the Area Median Income (AMI); (number (# units)) units will be designated as market rate, with no explicit income or rent restrictions. (Number (# units)) of the AHF Units will be targeted to households with incomes at/below 30% AMI; (Number (# units)) of the AHF Units at/below 50% AMI; (Number (# units)) of the AHF Units at/below 60% AMI. (Number (# units)) of the AHF Units will be targeted as supportive housing units (the "SH Units") for households that include a member or members who are (Target Population). (Number (# units)) of the SH Units will receive Project-based Section 8 ("PBV") housing assistance payments pursuant to a Housing Assistance Payments Contract ("HAP Contract"), with rent levels for such units consistent with the HAP Contract requirements. Preference will be given to households at/below 30% CMI on the Dane County Housing Authority's PBV waiting list for these (Number (# units)) units. The remaining (Number (# units)) SH units will be set aside for occupancy by households with incomes at/below 30% CMI. Supportive service coordination will be made available to these households as detailed below.

4. Address(es) of Project: (Address(es) of Project) _____

5. Addresses/Unit Numbers of HOME and AHF Units:

The addresses/unit numbers of the HOME Units are: (Addresses/Unit Numbers).

The unit numbers of the HOME Units have not been determined as of the effective date of this Agreement. The unit numbers of the HOME Units shall be identified in a written document which shall be signed by the Borrower and approved by the City prior to executing any leases for this Project or prior to submission of the Exhibit 3 CD Activity Report and final disbursement of funds under this Agreement, whichever is first.

The unit numbers of the HOME Units shall not be changed except as approved by the process to change Floating HOME Units outlined in the Project Requirements below. If the City requires a change in the address of any HOME Unit, Borrower shall notify Department in writing within thirty (30) days after Borrower receives notice thereof.

The addresses/unit numbers of the AHF units are: (Addresses/Unit Numbers).

6. Matching Funds:

Per Section 6(b) of the Loan Agreement, the Borrower's eligible activity match effort is \$(25% of Award Amt).

7. Reporting Requirements and Schedule:

The Borrower, or its Contractor and Subcontractors, must submit the following reports to the City's Department of Civil Rights (DCR) within the timeframes and methods outlined below.

- a) Submit WHEDA's Emerging Business Enterprise (EBE) Participation Plan before construction begins to contractcompliance@cityofmadison.com.

- b) Submit a list of all subcontractors before construction begins using DCR’s standard form to the email address above: [https://www.cityofmadison.com/civil-rights/documents/SubcontractorList for Nonpublic Works.xlsx](https://www.cityofmadison.com/civil-rights/documents/SubcontractorList%20for%20Nonpublic%20Works.xlsx). DCR must be notified of subcontractors added after the start of construction by submitting an updated subcontractor list within 30 days of subcontractor award.
- c) The City’s Committed Cost Status Report (CCSR) and the City’s Monthly Employee Utilization Report (MEUR) must be entered online by the 15th of each month through [Citizen Access](#) during the construction or rehab period. The first reports are due the month after construction begins. Reporting information and instructions can be found on the DCR website at <https://www.cityofmadison.com/civil-rights/contract-compliance>.

8. Project Timetable:

This project is anticipated to be completed within the following timetable. The Borrower shall contact the CDD in writing to request an extension if any segment of the timetable is, or will become, more than two months behind schedule.

If at any time the Borrower believes that the time for final completion of the work should be extended because of unavoidable delays caused by an unexpected event or because of a delay attributable to the City, the Borrower shall notify the CDD as soon as possible, but no later than seven (7) calendar days after such an event. Such notice shall include any justification for an extension of time and shall identify the amount of time claimed to be necessary to complete the work. Work by the Borrower shall proceed continuously and expeditiously through completion of each phase of the work.

Description	Projected Dates (Mo/Yr)
Acquisition/Real Estate Closing	(Mo/Yr)
Rehab/Construction Bid Publishing	(Mo/Yr)
Construction/Rehab Start	(Mo/Yr)
Initiate SH Unit Lease-Up Coordination Meetings	(Mo/Yr)
Begin Lease-Up/Marketing	(Mo/Yr)
Construction/Rehab Completion (Certificate of Occupancy)	(Mo/Yr)
Complete Lease-Up	(Mo/Yr)
Submit Completion Report/Final Draw Request	(Mo/Yr)

9. Energy Efficiency, Renewable Energy and Sustainable Design Requirements:

- a. The Borrower affirms that the project has been designed to include the energy efficiency strategies recommended by Focus on Energy’s Energy Design Assistance program **Bundle (#X)**. The Borrower further agrees to use best efforts to incorporate additional recommendations included in higher bundles and/or alternative options that maximize energy efficiency utilizing available construction contingency funds to the greatest extent feasible, subject to investor and lender approval.
- b. The Borrower affirms the following regarding PV solar array:
 - i. Project construction plans include installation of a PV solar array with a generator size of at least **(# kW)**;
 - ii. The Borrower will use best efforts to install a larger solar array to the extent feasible, subject to investor and lender approval; and
 - iii. The Project has been designed to allow for additional solar arrays in the future to the extent feasible.

10. Project Requirements:

The Borrower shall comply with the Program Requirements set forth in this Agreement and 24 CFR Part 92, Subpart F, as applicable to the Project and the HOME Units.

- a) The project shall contain a total of **(total number of units (#))** units of which **(# of AHF Units)** units (the “AHF Units”) will be income and rent restricted affordable units as detailed in the chart under 7(f) below. Of these units, **(number of HOME assisted units (#))** are also HOME-assisted units (the “HOME Units”) which shall be operated as “affordable housing” as defined in 24 CFR 92.252 (Rental).
- b) Of the AHF Units identified in a) above **# of SHU units** units will be set-aside as SH Units for (Target Population). (Supportive Service Manager) (the “Supportive Services Manager”) will coordinate the provision of supportive services for tenants in the SH units. Vacant SH units shall be held open until the Property Management agent (“Property Manager”) finds a tenant meeting the target definition and requisite income qualifications to lease the unit or for a minimum of 30 days, whichever comes first. Before the

vacancy occurs and during the 30 day soft set-aside period, Borrower shall cause the property management agent to make reasonable affirmative marketing efforts to lease the unit to the target population. After the 30 days, the unit may be leased to any otherwise income qualifying family or individual.

Supportive services will be made available to tenants that desire to receive such services. Tenants will have a choice in the selection of service provider(s) and will not be required to receive supportive services as a condition of tenancy. Borrower will provide the CDD with a copy of the Agreement with the above named Supportive Services Manager. The Agreement should at a minimum, include the type of services and service coordination to be offered and the process for connecting residents for these services. The Borrower shall submit a Supportive Services Annual Report by February 10th of each year from the Supportive Service Manager summarizing the services offered and provided to the tenants of the supportive housing units. A change in the designated Supportive Service Manager must be approved by the City.

In the event that the capacity of the approved Supportive Services Manager to deliver and/or coordinate services is reduced below an adequate level for the target population, Borrower will make every reasonable attempt to secure new or increased partnership(s) with another comparable service provider. In the event that the approved Supportive Service Manager goes into default, or if the Borrower and the Supportive Service Manager mutually decide to cancel their agreement, Borrower shall have thirty (30) days to identify a new Supportive Service Manager. Selection of the new Supportive Service Manager is contingent on City approval, which shall not be unreasonably withheld.

- c) In accordance with the requirements of 24 CFR 92.252(j), the HOME Units are designated as:
- "Fixed" units
- "Floating" units.
- d) The HOME Period of Affordability is **(POA # of years (#))** years from the anniversary of the date of project completion as defined in 24 CFR Part 92.2. The AHF Period of Affordability (POA) is **40** years from the anniversary of the date of project completion as defined in the Loan Agreement.
- e) At initial rent-up, not less than 90% of the HOME Units shall be rented to households at or below 60% of CMI in accordance with the requirements of 24 CFR 92.216. For this Project, the minimum number of HOME Units initially rented to households at or below 60% of CMI is **(minimum number of HOME Units (#))**.
- f) After initial rent-up, all HOME Units must be occupied by households with an gross annual income at or below 80% area median income at the time of application for rental housing, in accordance with the definition of low-income family in 24 CFR 92.2. Gross annual income is based on the HUD 24 CFR Part 5 definition of annual income for the HOME Units. The Borrower, or designee, shall perform initial and annual income verifications according to the "Technical Guide for Determining Income and Allowances for the HOME Program" (January 2005) to certify income eligibility.
- g) Projects with five (5) or more HOME Units must ensure that at least 20% of the HOME Units are occupied by households who have an annual income at or less than 50% area median income, in accordance with the requirements of 24 CFR 92.252(b). For this Project, the minimum number of HOME Units rented to households at or below 50% of CMI is **(minimum number of HOME Units (#))**.
- h) In accordance with the requirements of 24 CFR 92.252(a)(b) and by this Agreement, the unit mix at initial occupancy shall be as detailed below. The maximum rent (including utilities) and income levels for the AHF units may be no more than allowed by the Section 42 tax credit program requirements, including, but not limited to, rent limits allowed by the Section 8 voucher program. The unit mix must be maintained in accordance with the respective HOME Regulations and Section 42 tax credit program requirements for the Periods of Affordability.
-

j) (HIGH) HIGH HOME Units (LOW) LOW HOME Rent Units (AHF) AHF Units (Non-HOME) Non-AHF Units

# of units	# of Bedrooms	Income Level (%CMI)	Rent Level (High, Low)	Actual Contract Rent	Monthly Utility Allowance	Total Monthly Rent (including utilities or utility allowance)

*90% of units must be at or <60% CMI at initial occupancy for projects HOME Units.

k) The initial HOME RENT Limits for the HOME Units are as follows:

	Bedrooms per unit							
	SRO	EFF	1	2	3	4	5	6
Low rents	\$667	\$889	\$966	\$1,160	\$1,340	\$1,495	\$1,650	\$1,804
High rents	\$667	\$889	\$1,039	\$1,211	\$1,641	\$1,886	\$2,062	\$2,239

HOME rent limits are adjusted annually and published with detailed usage instructions on the City's website at: http://www.cityofmadison.com/cdbg/doc_library.htm.

The current HOME Income Limits for the HOME Units are as follows:

CMI%	1	2	3	4	5	6	7	8
80%	\$55,950	\$63,950	\$71,950	\$79,900	\$86,300	\$92,700	\$99,100	\$105,500
60%	\$43,320	\$49,500	\$55,680	\$61,860	\$66,840	\$71,760	\$76,740	\$81,660
50%	\$36,100	\$41,250	\$46,400	\$51,550	\$55,700	\$59,800	\$63,950	\$68,050
30%	\$21,700	\$24,800	\$27,900	\$30,950	\$33,450	\$35,950	\$38,400	\$40,900

HOME Income Limits are adjusted annually and published on the City's website at: http://www.cityofmadison.com/cdbg/doc_library.htm.

- l) For the AHF Units, gross annual income is based on the Section 42 definition of annual income. The Borrower, or designee, shall perform income verifications to certify income eligibility according to the Section 42 requirements.
- m) The Borrower will be responsible for obtaining and maintaining the most up-to-date information on LIHTC INCOME and RENT Limits for the Project.
- n) The maximum rent (including utilities) and income levels for the AHF Units may be no more than allowed by Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program. The unit mix at initial occupancy shall be as detailed below. The unit mix must be maintained in accordance with Section 42 of the Internal Revenue Code for the AHF Period of Affordability.

Total Project Unit Mix					
# of units	# of Bedrooms	Income Level (% AMI)	Actual Contract Rent	Monthly Utility Allowance	Total Monthly Rent (including utilities or utility allowance)

- o) The Borrower will use commercially reasonable efforts to limit annual contract rent increases on lease renewals to 2% per year, excluding parking or utility charges. This applies to lease renewals and not new lease agreements. Notwithstanding the foregoing, the Borrower and its Property Manager may increase rents no more than once per year in accordance with the lease agreement.

In the event the rent increase is greater than 2%, then such rent increase shall be limited as follows:

- i. Contract rents for renewed leases of 30% AMI AHF Units may not increase by greater than 5% over the previous year’s contract rent.
 - ii. Contract rents for renewed leases for all other AHF Units may not increase by greater than 10% over the previous year’s contract rent.
 - iii. Exceptions: City shall grant an exception under the paragraph if Borrower can demonstrate that the limits would do the following: (a) Result in the debt coverage ratio below an investor- or lender-required level; or (b) violate WHEDA, first lien lender, and/or investor requirements. The City’s determination under this exception shall be reasonable and Borrower’s evidence shall be viewed in a light most favorable to Borrower. City and Borrower shall cooperate in setting new limits if necessary based on market conditions.
- p) Additional fees not included in the Total Monthly Rent (i.e., application, parking, laundry, pets, etc.) may not be a barrier to low income households accessing the affordable units. Security deposits may not exceed one month’s rent. All fees, including parking, must be consistent with the submarket in which the Property is located, and are subject to City approval. Late fees may not exceed 5% of the monthly contract rent.
 - q) **(Property Management Company)**, which Borrower certifies has adequate training, experience and capacity to manage this Project, will be the Property Manager for the Project. Borrower will not change Property Manager without the prior written notification to the CDD, subject to City approval. The Borrower certifies that the property management company has adequate experience operating and managing HOME-assisted rental housing in accordance with the HOME Regulations.
 - r) **At least 45 days prior to the earliest proposed financial closing on the property or, at the discretion of CDD, the City releasing any funds for this Project, the Borrower shall submit to CDD the complete due diligence package in accordance with the CDD-provided due diligence checklist.**
 - s) **At least 45 days before financial closing, the Borrower and/or Property Management Agent shall provide the following to the CDD unit:**
 - i. A copy of their Affirmative Marketing Plan (“AMP”), subject to City approval, based on review for consistency with the CDD’s AMP Best Practices Guidance available on the City’s website at http://www.cityofmadison.com/cdbg/doc_library.htm.
 - ii. A copy of the Tenant Selection Plan (“TSP”) and Tenant Grievance Procedure, subject to City approval, based on review for consistency with the CDD’s TSP Best Practices Guidance dated as of 5/14/2020, the most recent version of which is available on the City’s website at http://www.cityofmadison.com/cdbg/doc_library.htm.
 - iii. A copy of the Annual HOME Unit lease, including all addendums demonstrating explicit compliance with the prohibited lease provisions as described in 92.253, subject to City approval.
 - iv. A copy and obtain approval of the Tenant Participation Plan, if required by 92.303, including grievance procedure detailing tenant participation in management decisions.

City approval will be contingent upon the above documents consistent with City of Madison General Ordinances and the contract requirements detailed in the Exhibits attached to this contract.

t) At least seven (7) days before closing on the property for this Project, the Borrower shall:

- i. Provide the CDD with an accurate legal description via the Commitment for Title Insurance, which lists the City of Madison as a Mortgagee.
- ii. Provide the CDD with evidence of property insurance as required by the Mortgage listing the City of Madison as a Mortgagee.
- iii. Execute the final Mortgage, Note, and a Land Use Restriction Agreement for the Property, each in a form acceptable to the City.
- iv. Provide the CDD with a draft Settlement Statement with the final copy to be delivered at Closing.
- v. Provide the CDD a draft copy of the Amended and Restated Operating Agreement for this project with the final copy to be delivered at Closing.
- vi. Submit a request for funds via Exhibit 2 if CDD funds are to be used for acquisition costs at the time of closing.
- vii. Submit the final Sources and Uses Statement.
- viii. Submit the final 30-year operating pro forma.
- ix. Provide the City with a copy of the Lead Based Paint Assessment and Stabilization plan conducted by a certified Lead Based Paint Assessor if pre-1978, if applicable.
- x. Ensure that the displacement and relocation requirements have been reviewed with CDD staff, if applicable, so that all reasonable steps have been taken to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as well as comply with one-for-one replacement requirements triggered as a result of a project assisted with federal funds for acquisition, rehabilitation and/or new construction as detailed in Exhibit 14.

u) Before obtaining bids, executing contract(s), and/or starting construction or rehabilitation work for this Project, the Borrower shall:

- i. Review and ensure compliance with procurement requirements listed in Exhibit 8 with CDD pertaining to this Project.
- ii. Obtain from CDD the Additional Federal Requirements document(s) to be attached to all construction contracts and sub-contracts, as further described in Exhibit 8.
- iii. Obtain City approval on rehabilitation plans, if applicable, by submitting to CDD construction plans, construction specifications, written cost estimates and construction contracts. Plans must be in compliance with:
 - a. Lead renovation and/or abatement requirements listed in Exhibit 11; and
 - b. The minimum criteria contained in the City's Residential Rehabilitation Standards which can be found on the City's website at: <http://www.cityofmadison.com/cdbg>.

v) Before occupancy of this Project the Borrower shall:

- i. Initiate facilitation of a Lease-Up Coordination Team for SH Units including the development, property management and the supportive services teams in consult with the CDD, at least 6 months before projected Certificate of Occupancy. This includes developing a detailed pre- and post-initial SH Unit referral and lease up processes designed to screen-in prospective tenants from these target population(s) as well as coordinating with all relevant community partners (e.g., CDA, DCHA, VASH, CE, etc.); and utilizing alternative, flexible tenant screening criteria for prospective tenants who are connected to and/or will have improved access to supportive services.
- ii. Provide, or cause its Property Management Agent to provide, to the City a copy of any advertisement or related materials, subject to City approval, marketing the development at least 14 days before marketing any units and at least 120 days before projected certificate of occupancy, whichever is earlier. Marketing for SH units must begin at least 30 days before marketing to the general population. Marketing must be representative of the likely diversity of the targeted populations for the housing development and include information regarding income and

- rent-restricted units, e.g., income ranges, rent ranges, etc.
- iii. Ensure that the Property meets all state and local building code requirements, including the City's Minimum Housing Code (MHC), the City's Residential Rehabilitation Standards, 24 CFR 92.251 and 24 CFR 35.
- iv. Provide the CDD a Certificate(s) of Occupancy issued by the City of Madison for the project. For rehabilitation, submit the Inspection Request Form, available on the City's website at: http://www.cityofmadison.com/cdbg/doc_library.htm, to be scheduled at least ten (10) business days prior to planned occupancy. Borrower shall not permit any tenants to occupy the Property until an inspector under contract to the City of Madison has completed a satisfactory MHC inspection and, if applicable, Lead Clearance inspection of the unit(s).
- v. Ensure that the program is accessible under Federal Regulations at 24 CFR Part 8 and 24 CFR Part 100 and City MGO 39.05 which require, in part, that the overall program be accessible and ensure that the project meets physical accessibility standards further detailed in Exhibit 9.

w) Before final payout the Borrower shall submit:

- i. Exhibit 2 Final statement of actual project uses including completed the Actual Project Cost Column.
- ii. An executed Owner's Sworn Statement, or equivalent document acceptable to the City.
- iii. A final AIA G704 substantial completion certificate from the project architect certifying that all construction has been finally and substantially completed in accordance with the Plans and Specifications.
- iv. Exhibit 3 CDD Completion Data and Annual Report and Activity Report
- v. HOME Match Report
- vi. Exhibit 9B Contractor & Subcontractor Report (Exhibit 9B: W/MBE Report)
- vii. Final compliance documentation that is acceptable to the Department of Civil Rights, as detailed in Section 7 above.

Final request for payment will not be authorized unless all reports have been submitted in an acceptable manner and format. Required reports may be submitted in a CDD-approved WHEDA format.

x) During the Loan Term and Periods of Affordability for this Project, the Borrower shall:

- i. Ensure that all HOME and AHF Units are occupied by income-eligible households in accordance with the HOME Regulations and this Exhibit.
- ii. Ensure that the rents, including utilities or a utility allowance, on the HOME Units do not exceed HOME rent limits, as determined by HUD, for a unit of that size in accordance with 24 CFR 92.252, unless a higher rent for that unit is allowed by the Section 8 voucher program. The City will provide the Borrower and/or Property Manager with the annually updated HOME rent and HOME income limits as soon as is reasonably possible after publication by HUD. City approval of rents for compliance with HOME limits shall not be unreasonably withheld.
- iii. Ensure that the rents, including utilities or a utility allowance, on the AHF-assisted units do not exceed LIHTC rent limits, as determined by WHEDA, for a unit of that size in accordance with Section 42 of the Internal Revenue Code, including, but not limited to, rent limits allowed by the Section 8 voucher program.
- iv. Ensure the execution of written lease between the tenant and the owner of rental housing of not less than one year, unless by mutual agreement for a specific shorter period of time. All leases shall remain free from the prohibited provisions as detailed in 92.253.
- v. Submit the following by February 10th of each year:
 - a. CDD Completion Data and Annual Report
 - b. Supportive Service Annual Report
 - c. Year-end financial statements, including operational income and expense statement
 - d. Proof of property insurance
 - e. An Affirmative Marketing Plan, if revised from the initially approved plan
 - f. A Tenant Selection Plan, if revised from the initially approved plan.
- vi. Obtain approval prior to changing any HOME Unit designations. Any switch in floating HOME Units must be comparable or better than the originally designated HOME Unit in accordance with 24 CFR 92.252(j). Rent for the proposed unit must be equal to or less than the current HOME Unit. A Floating Unit Request Form is available on the City's website at: http://www.cityofmadison.com/cdbg/doc_library.htm.

- vii. Maintain the AHF Units and property as an attractive, decent, and safe living environment in compliance with all state and local building codes and requirements.
- viii. Facilitate on-site tenant file and physical inspections if required by the CDD.

The CDD may require additional reporting to demonstrate ongoing compliance with the requirements of this Agreement.

y) During the HOME Period of Affordability for this Project, the Borrower and Property Manager are prohibited from charging fees in accordance with 24 CFR 92.504(c) and 92.214(b)(3), that are not customarily charged in rental housing (such as laundry room access fees), except that rental project owners may charge:

- i. Reasonable application fees to prospective tenants;
- ii. Parking fees to tenants only if such fees are customary for rental housing projects in the neighborhood; and
- iii. Fees for services such as bus transportation or meals, as long as the services are voluntary and fees are charged for services provided.

Taken together, application, parking, laundry, and pet fees, etc. may not be a barrier to low income households accessing the HOME and AHF Units.

z) After such time as the Loan(s) for this Project are fully repaid, but while the HOME and/or AHF Period of Affordability is still in effect, the Borrower shall:

- i. Ensure that all HOME and AHF Units are occupied by income-eligible households in accordance with this Exhibit.
- ii. Ensure that the rents, including utilities or a utility allowance, for the units do not exceed rent limits as governed by the funding source.
- iii. Submit a signed copy of the most recent AHTC Form 100 Owner's Certificate of Continuing Compliance to the CDD by February 10th of each year for desk review and approval.
- iv. Maintain the AHF Units and property as an attractive, decent, and safe living environment in compliance with all state and local building codes and requirements.

