



**Roll Call Number**

20-1450

**Agenda Item Number**

42

**Date** September 14, 2020

**APPROVE HOME INVESTMENT PARTNERSHIPS PROGRAM (HOME) FUNDING FOR GREATER DES MOINES HABITAT FOR HUMANITY TO CONSTRUCT AFFORDABLE SINGLE-FAMILY HOMES (1911 FRANKLIN AVE., 1915 FRANKLIN AVE., AND 1603 23RD ST.)**

**WHEREAS**, the City has entered into an Agreement with United States Department of Housing and Urban Development ("HUD") for funding of its HOME Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act; and

**WHEREAS**, the City's HOME Program is designed to provide affordable rental and home ownership opportunities for low- and very-low income households through acquisition, rehabilitation, and new construction; and

**WHEREAS**, the construction of new affordable housing is consistent with the City's 2020-2024 Consolidated Plan, which was approved by City Council for submission to HUD on November 4, 2019 by Roll Call 19-1792; and

**WHEREAS**, on March 23, 2020 by Roll Call 20-0527, City Council approved a five-year financial commitment, totaling up to \$1,965,000 of HOME funds in the form of forgivable loans, to Greater Des Moines Habitat to construct at least 10 homeownership housing units each year from 2020-2024, which will result in 50 homeownership HOME units for low-income households; and

**WHEREAS**, Greater Des Moines Habitat for Humanity's proposals for 1911 Franklin Avenue, 1915 Franklin Avenue, and 1603 23<sup>rd</sup> Street—which included the construction schedules, budgets, site plans, construction drawings, and any other documentation used to review and underwrite the Project—have been reviewed by the City's Community Development Department, which administers the HOME Program, and it has been determined that the Borrower meets all the eligibility requirements; and

**WHEREAS**, City staff has determined that HOME funds are needed to fill a gap in the sources and uses of the development to serve the targeted income populations.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, that:

1. The HOME Agreements, whereby the City will provide to each project to Greater Des Moines Habitat for Humanity \$35,000, of which \$3,500 will be used for homebuyer assistance, totaling \$105,000 for 1911 Franklin Avenue, 1915 Franklin Avenue, and 1603 23rd Street, is hereby approved.



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- 2. The Community Development Director is hereby authorized to execute, on behalf of the City, said HOME Agreement following approval as to form by the Legal Department, and to execute any other document necessary to implement the Agreement and to fund the above-described project.

MOVED BY Gatto TO ADOPT.

**FORM APPROVED:**

Judy K Parks-Kruse  
 Judy K. Parks-Kruse  
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
<b>TOTAL</b>	<b>7</b>			

**CERTIFICATE**

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED 7 APPROVED  
J. M. Franklin Cowrie  
 Mayor

P. Kay Cmelik  
 City Clerk





City of Des Moines
HOME Agreement with Owner, Developer, Sponsor, or Subrecipient

Borrower Name and Address: Greater Des Moines Habitat for Humanity
2200 E. Euclid Avenue
Des Moines, IA 50317

Borrower Role:
[ ] Owner [x] Developer [ ] Sponsor [ ] Subrecipient

Amount of HOME Assistance: \$35,000

Form of Assistance: [ ] Repayable Loan [x] Forgivable Loan

Project Name and Address: 1911 Franklin Avenue
Des Moines, IA 50314

Project Type (check all that apply):
[x] Acquisition (Homebuyer) [x] New Construction [x] Homeownership
[ ] Demolition [ ] Rehabilitation [ ] Rental

Affordability Period: 5 years after sale to eligible homebuyer

Total Number of Units in Project: 1

Number of HOME-Assisted Units: 1

Contract or Loan Number: 20-HM-800-000\_23

Effective Date: September 14, 2020

Exhibits Attached

- A. Legal Description
B. Statement of Work or Project Description
C. Project and Construction Schedule
D. Project Budget
E. Sources and Uses
F. Declaration of Restrictive Covenants (separately recorded)
G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy
H. Recapture Agreement
I. Mortgage (separately recorded)
J. Promissory Note
K. Loan Repayment Schedule (if applicable)
L. Assurance of Compliance with Section 3 Requirements
M. Insurance Requirements and Proof of Insurance



### Recitals

This Home Investments Partnership Program (HOME) Agreement (hereinafter the "Agreement") is entered into by and between the City of Des Moines, Iowa (hereinafter the "City" or "Lender") and Greater Des Moines Habitat for Humanity, (hereinafter called "Borrower"), who is the Owner, Developer, Sponsor, or Subrecipient, effective the date on which the contract has been both approved by the City Council and signed by the Neighborhood Services Director; and

**WHEREAS**, the City has entered into an Agreement with United States Department of Housing and Urban Development ("HUD") for funding of its HOME Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act; and

**WHEREAS**, the City's HOME Program is designed to provide affordable rental and home ownership opportunities for low- and very-low income households through acquisition, rehabilitation, and new construction; and

**WHEREAS**, the construction of new affordable housing is consistent with the City's 2020-2024 Consolidated Plan, which was approved by City Council for submission to HUD on November 4, 2019 by Roll Call 19-1792; and

**WHEREAS**, the Borrower is a non-profit entity registered with the Iowa Secretary of State and experienced with owning and operating affordable housing; and

**WHEREAS**, the Borrower applied to the City for a HOME forgivable loan in the amount of \$35,000 (hereinafter referred to as the "Loan") for construction of one homeownership HOME unit for a low-income household (hereinafter referred to as the "Project") within the Borrower's overall development; and

**WHEREAS**, the property upon which the Project will be undertaken is locally known as 1911 Franklin Avenue, Des Moines, Iowa, and legally described on Exhibit A attached hereto; and

**WHEREAS**, the Borrower's development proposal—which includes the construction schedule, budget, site plans, construction drawings, and any other documentation used to review and underwrite the Project—have been reviewed by the City's Neighborhood Services Department, which administers the HOME Program, and it has been determined that the Borrower meets all the eligibility requirements; and

**WHEREAS**, City staff has determined that HOME funds are needed to fill a gap in the sources and uses of the development to serve the targeted income populations; and

**WHEREAS**, on September 14, 2020, by Roll Call 20- 1450, the City Council approved this HOME Agreement and related documents; and

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



1. **Use of HOME Funds; Completion Date.** The Project is new construction of one residential unit, and that one unit in the Project will be a HOME Assisted Unit. The HOME Funds will be used for certain Project costs as eligible per 24 Code of Federal Regulations (CFR) Part 92.206 and in accordance with the attached Exhibit B Statement of Work, Exhibit C Project and Construction Schedule, Exhibit D Budget, and Exhibit E Sources and Uses. Construction of the Project shall be within three years of the effective date of this Agreement, to be completed by September 14, 2023 ("completion date".)
2. **Affordability Requirements and Duration of Agreement.** The Borrower agrees to meet the affordability requirements of 24 CFR Part 92.252 (rental) or 254 (homeownership), as applicable, and outlined below and imposed by a Restrictive Covenant, attached hereto as Exhibit F and to be recorded separately by City as a lien against the Project property.

The Affordability Period will start after Project completion and closeout, which includes Certificate(s) of Occupancy, final demographic information, construction reports, final addresses or unit numbers submitted to City, and lease or sale of all HOME units to eligible HOME tenants or homebuyers. If the Project is completed sooner than completion date in Section 1, the City will notify the Borrower in writing as to the revised completion date and beginning of the Affordability Period.

a. **Rental Projects.** This agreement is in effect through the Affordability Period, or 20 years. The rents for the HOME Units will not exceed the annual HOME rents of the then-current calendar year as annually published by HUD. Initial rent guidelines are provided as attached in Exhibit G Rent Limits and Sales Limits. Rent increase requests from Borrower must be presented in writing to the City's Neighborhood Services Department, Neighborhood Conservation Services (NCS) Division. NCS will provide written responses to rent increase requests within 30 days of receipt.

The Project will have a total of one HOME unit. HOME units will be affordable to households at or below 60% of area median income and will be considered High HOME units. In rental projects with five or more HOME-assisted rental units, at least 20% of the HOME-assisted units must be Low HOME units and affordable to households at or below 50% of area median income. Collectively this number and proportion of units constitutes the HOME Project Unit mix.

The HOME units will be floating. The Borrower must maintain the HOME Project Unit mix throughout the Affordability Period and restore compliance with the HOME Project Unit mix requirements if tenant income changes.

b. **Homeownership Projects.** This Agreement is in effect until the Project is transferred from developer to an eligible homebuyer. The purchase price of a home will not exceed the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing, provided on attached Exhibit G Rent Limits and Sales Limits. The purchase price will not exceed the final appraisal. HOME funds used for down payment assistance will not be greater than 10% of the amount of HOME funds for development of the housing.

A homeownership Project will be affordable to households whose annual income does not exceed 80% of the area median income, as determined by HUD, with adjustments for smaller and larger households and certain exceptions as provided in 24 CFR Part 92. The parties specifically agree that the Project will meet the affordability requirements of 24 CFR 92.254(a)(5)(ii), and an affordability period will be determined at the time of sale to a low-income homebuyer ("End Purchaser"). If the



property is sold, refinanced, other than for rate or term, or transferred prior to the end of the Affordability Period, the End Purchaser will be subject to recapture provisions in attached Exhibit H Homebuyer Recapture Agreement. Recaptured funds must be returned by the End Purchaser to the City.

The Borrower will market and sell the Property within nine months from the date of the City's final inspection to an eligible End Purchaser. If the Property is not sold within nine months after the City's final NCS inspection and certificate of occupancy issuance, the Project must be converted to a rental unit and is subject to subsection (a) of this Section 2, or all HOME funds must be repaid by the Borrower to the City. A ratified sales contract between the Borrower and the End Purchaser is sufficient to demonstrate a sale.

3. **Loan Repayment.** The Loan will be repaid according to attached Exhibit I Mortgage, Exhibit J Promissory Note, and Exhibit K Loan Repayment Schedule, including repayment if the housing does not meet the affordability requirements within the Affordability Period. Nothing in this section will be construed to diminish or impair City's rights, in its sole discretion, to require repayment under this Agreement, the Mortgage, Promissory Note, or Restrictive Covenant in the event of default or noncompliance by Borrower.
4. **Program Income.** Borrowers who are non-profit subrecipients, which excludes Community Housing Development Organizations (CHDOs), must remit any program income to the City of Des Moines. Upon expiration of this Agreement, the Borrower must transfer any HOME funds attributable to this Project in Borrower's accounts receivable to the City.
5. **Uniform Administrative Requirements.** The Borrower must comply with applicable uniform administrative requirements as described in 24 CFR 92.505 and 2 CFR 200.
6. **Project Requirements.** The Borrower specifically agrees to comply with each of the HOME Program Project requirements set forth at 24 CFR, Part 92, Subpart F, as applicable in accordance with the type of Project receiving HOME funds. The Borrower will not exceed the maximum per-unit subsidy as provided on Exhibit G hereto.
7. **Property Standards.** The Borrower hereby agrees to maintain the Project in compliance with local housing code requirements and HOME standards for the duration of the Affordability Period, as required by 24 CFR 92.251 and 92.504(c)(3)(iv). The Borrower will allow the City access to the Project's written cost estimates, construction contracts, and construction documents as necessary.
  - a. **Accessibility.** The Borrower and its contractors must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act, implemented at 28 CFR parts 35 and 36, as applicable.

Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act. A minimum of 5% of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments by Borrower.

- b. **Disaster Mitigation.** Where relevant, the Project must mitigate the impact of potential disasters in accordance with state and local building code.



- c. **Broadband Infrastructure.** In rental projects with four or more units, construction must include installation of broadband infrastructure, subject to compliance with local, State and Federal laws and regulations.
- d. **Rehabilitation Standards.** Housing rehabilitation must be performed in accordance with the NCS Rehabilitation Standards and in compliance with 24 CFR 92.251(b). A Rehabilitation Project must comply with the lead hazard control requirements in 24 CFR Part 35.
- e. **Housing Quality Standards (HQS).** If the Project assisted with HOME funding is converted to rental property in accordance with Section 2(b) above, the Borrower hereby agrees to maintain the housing in compliance with applicable HQS standards, as included in the HUD Housing Choice Voucher Program, and local housing code requirements for the duration of this Agreement.
8. **Other Federal Program Requirements.** The Borrower agrees to comply with the federal requirements set out at 24 CFR, Part 92, Subpart H, as applicable, as well as with the following:
- a. **Affirmative Marketing.** In soliciting tenants for a Project with five or more HOME units, the Borrower agrees to the following, which will also be incorporated into the Restrictive Covenant and Mortgage:
- i. The Borrower will submit an Affirmative Marketing Plan to the City prior to the final payout of funds. The Affirmative Marketing Plan may be amended and may be monitored annually for conformance.
  - ii. The Borrower will use the Equal Opportunity Housing logo, slogan, or statement in all advertising, including Project signage.
  - iii. The Borrower will advertise and use media, including minority outlets, likely to reach low-income persons. Copies of those marketing materials will be provided to the City.
  - iv. The Borrower will display a Fair Housing poster in any rental office or common areas, if practicable.
  - v. The Borrower's management will maintain a non-discriminatory hiring policy and comply with Equal Opportunity, Affirmative Marketing, and Minority & Women's Business enterprise requirements.
  - vi. The Borrower will keep information on income, race, ethnic, gender characteristics, and other demographic statistics of applicants for the most recent five-year period following Project Closeout, with a copy of that information available to the City.
  - vii. The Borrower will not discriminate against prospective tenants based on their receipt of, or eligibility for, housing assistance, and will not discriminate against tenants that have a minor child living with them (except for elderly housing projects which are legally exempt from this requirement).
  - viii. The Borrower will provide existing and potential tenants or buyers with information relating to federal Fair Housing laws and will affirmatively market vacant units throughout the Affordability Period.
- b. **Tenant Selection.** For rental housing, the Borrower must adopt and implement a Fair Housing Plan. The Fair Housing Plan must include a tenant selection plan with policies and criteria that:





- i. Are consistent with the purpose of providing affordable housing;
- ii. Provide for selection of tenants from a written waiting list in chronological order of application to the extent practical;
- iii. Give prompt written notification to any rejected applicant of the grounds for rejection;
- iv. Adhere to a grievance procedure approved by the City; and
- v. Will not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance Housing Choice Voucher Program (24 CFR part 982) or a participant in a HOME tenant-based rental assistance program.

c. **Environmental Review.** The Borrower agrees to notify the City if any major environmental concerns or hazards are discovered.

d. **Displacement, relocation, and acquisition.** The Borrower agrees that its Project will not displace or relocate any households. If such displacement or relocation will occur, the Borrower has provided a Relocation Plan outlining relocation assistance, notifications, and terms approved by the City and in compliance with 24 CFR 92.353.

e. **Labor.** The Borrower and its Contractors must comply with:

- i. Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.
- ii. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1711u), including but not limited to statements in attached Exhibit L, that requires, to the greatest extent feasible, opportunities for training and employment arising from HOME funds will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work to be performed relating to HOME funds will be awarded to businesses that are in or owned by persons residing in the HOME Program service area. The Borrower will complete a Section 3 form provided by the City.
- iii. Minority/Women's Business Enterprise, under Executive Orders 11625, 12432, and 12138, with City notification procedures of targeted businesses, to provide information, and to complete forms provided by the City on Minority and Women Contractors.
- iv. Davis-Bacon Act, under 40 U.S.C. 3141 and per 24 CFR 92.354, in a Project for the rehabilitation or new construction of housing that includes 12 or more HOME units.

f. **Conflict of Interest.** The Borrower may not occupy a HOME Unit. In addition, no officer, employee, agent, or consultant of the Borrower, owner, developer, or sponsor of the Project may occupy a HOME Unit without express written approval from the City.

g. **VAWA Requirements.** The Borrower will follow admission, occupancy, and termination of assistance policies regarding the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The Borrower of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit:



- i. at the time the applicant is admitted to a HOME-assisted unit,
- ii. denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria, and
- iii. with any notification of eviction or notification of termination of assistance.

9. **Records and Reports.**

a. **Retention Period.** For a period of five years after the Project Closeout date, the Borrower agrees to keep all contracts, invoices, materials, personnel and payroll records, conditions of employment, books of accounts, and any other documentation pertaining to the construction of the Project and the disposition of the Loan proceeds, where applicable, and any other records that might be required from time to time by the City relating to this Agreement and the Project.

b. **Rental Compliance.** For rental housing, the Borrower agrees to keep records related to the HOME Units through the Affordability Period. More specifically, the Borrower or its management agent must submit to the City reports of the following:

- i. **Tenant Income.** The income of each HOME Unit tenant must be determined initially by the Borrower in accordance with 24 CFR 92.203(a)(1)(i). In addition, for each calendar year during the Affordability Period, the Borrower must re-examine each tenant's annual income in accordance with the procedure chosen by the City from options listed in 24 CFR 92.203(a)(1) and submit the information to the City. A Borrower of a rental project, through a statement and certification in accordance with 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with 92.203(a)(1)(i) every sixth year of the affordability period.
- ii. **Rent Restrictions.** The Project is required to meet the affordability requirements of 24 CFR 92.252. The Borrower must annually provide information to the City on the rents that are charged to the HOME Unit tenants. The rents will not exceed the HOME Unit Rents as prescribed by HUD. The rents charged must support the debt against the Property and must not exceed the assumptions made under the original underwriting.
- iii. **Physical Inspections.** The Borrower must make the Property available for City staff to physically inspect the HOME Units annually to ensure the Units meet City HOME standards and are comparable to market rate units.
- iv. **Financial Inspections.** The City will also review the Borrower's annual audit and accounts of the Project to ensure that the Project is maintaining a revenue stream and is able to pay debt and provide funding for long term viability.
- v. **Floating HOME Units.** If the rental housing Project has floating HOME units, the owner must provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements.

c. **Access to Records.** The Borrower will, at all reasonable times, including normal business hours, permit the City, HUD officials, the Comptroller General of the United States, and their designees, to have full and free access to records with respect to the utilization of the Loan proceeds, supplemental financing, rental income and expenses, and affirmative marketing efforts. The Borrower will permit the City, HUD, and the Comptroller General and their designees to audit, examine, and make excerpts or transcripts from his/her/their records, and to review, inspect, and



make audits of all work financed in whole or in part by the Loan, including, but not limited to, all records described above.

10. **Representations by Borrower.**

a. The Borrower represents and warrants to the City that the Borrower has thoroughly reviewed and has freely and voluntarily executed the development proposal approved by the City and on file in the City's Neighborhood Services Department.

b. The Borrower agrees to develop the Project to the extent and in the manner specified in the proposal, to comply with the Borrower's obligations, and to enforce any contractor's or subcontractor's obligations. The Borrower assumes the risks of any non-completion of the Project. The City is not a party to any construction contracts, and the City accepts no legal responsibility to the Borrower for the quality or timeliness of the work performed or materials supplied.

Although the Borrower is responsible to the City for the performance of the Project and the selection of any contractor or subcontractor thereunder, the Borrower agrees as follows for the benefit of the City as lender, to provide additional assurance that the work will be completed in accordance with the development proposal used to underwrite the Project and the local standards required by the City:

- i. No material provision of the development proposal or Agreement, including its exhibits, will be modified, deleted, waived, or terminated without the prior written approval of the City's Neighborhood Services Department Director; and
- ii. Contractors and subcontractors represent that they are not listed on the City's or HUD's Debarred and Suspended Contractor's List and further agrees not to hire or utilize as a subcontractor any person or supplier that is so listed. The Borrower agrees for all persons or companies hired or purchased from to submit a completed Subcontractor Eligibility form to the City prior to entering into a contract with said persons or companies.

11. **Prior Encumbrances and Mechanic's Liens.** The Borrower will not create or suffer mechanic's or materialmen's liens on the Property. The Borrower agrees to defend and hold the City harmless from any such liens, whether or not caused by any action or inaction of the Borrower.

The City may require the Borrower to extend the title evidence obtained at Loan Settlement to the date of each such disbursement, showing no mechanic's or materialmen's liens against the Property. The City may require the Borrower to obtain payment acknowledgments and lien releases from the contractor and all subcontractors covering the period from the inspection of the work to the date of the disbursement, and for the entire job concurrently with the final disbursement. Such acknowledgment and releases will be in the form required by state and local lien laws and will cover all work done, labor performed, and materials, including equipment and fixtures furnished for the work. Notwithstanding any other provision of this Agreement, the City, for additional security relating to the Loan, may also withhold the final payment, under this Agreement until the expiration of any period which mechanics and materialmen may have for filing liens unless lien waivers are obtained simultaneously with payment.

12. **Disbursement of HOME Funds.** The City will disburse HOME funds to the Borrower as reimbursement for eligible costs. The disbursement will be limited to the amount of eligible costs expended by Borrower minus a retainage of 10%, which will be withheld until Project Closeout has been completed, and subject to the following:
- a. The Borrower must request at least a partial disbursement of the HOME Loan within ten months of the Agreement's effective date. The City will make disbursements at the times and in the amounts, minus the retainage mentioned previously, requested by the Borrower, and no later than 30 days from the most recent NCS inspection date, provided that:
    - i. The request meets the requirements of and follows the City's HOME policies and this Agreement;
    - ii. The City has not issued any notice of Loan termination and/or of default under this Agreement or related documents;
    - iii. NCS staff has completed an on-site inspection; and
    - iv. The City has received the necessary invoice and supporting documentation from Borrower, including the inspection report from NCS staff.
  - b. Prior to final payment disbursement and beginning the Affordability Period, the Borrower agrees to furnish to the City:
    - i. Final sources and uses of funds for the project showing the costs are reasonable;
    - ii. Borrower's Affirmative Marketing Plan and Tenant Selection Policies (if applicable);
    - iii. Initial tenant or homebuyer certifications of all HOME rental units in the Project;
    - iv. Demographic information, on a form to be provided by City;
    - v. Copy of lease or sales contract between Borrower and tenant or End Purchaser;
    - vi. Completed Section 3 Report, on form to be provided by City;
    - vii. Completed Minority/Women Contractor Report, on form to be provided by City;
    - viii. Location and number of Section 504 units in the Project; andAny other such statements, records, data and information pertaining to any matter as required by this Agreement upon the request of the City or HUD official monitoring the Project.
  - c. The City may suspend any disbursements if the Borrower fails to comply with the Agreement's terms. At any time should the Borrower fail to comply with each provision of this Agreement, including Exhibits hereto, the City will directly advise the Borrower of the reasons for the suspension and the deadline for compliance before the Loan and this Agreement are terminated. Such suspension is an additional remedy, and not a prerequisite to termination.
  - d. The Borrower understands and the City agrees that no disbursements will be made for materials stored on-site or off-site for the Project. Payments may only be made for completed work which has been inspected and approved by the Borrower and authorized by the City.
  - e. No provision of this section will limit, or prescribe procedures for the exercise of, the City's rights to complete the Project using the Loan proceeds and other advances secured by the Note and Mortgage, in the event the Borrower fails to complete the Project.



13. **Pre-Disbursement Inspection.** Prior to disbursement of Loan proceeds or for any other purpose relating to the completion of the Project, the City will have reasonable access and right of entry at any reasonable time of the day to inspect all or any portion of the Project. These inspections are for the benefit of the City as lender, to assure that the Loan proceeds are being expended in accordance with the Loan Application or development proposal used to underwrite the Project.

In the event of any such inspection, the City may inform the Borrower of any noncompliance, but the City will not issue direct orders or instructions to the Contractor or subcontractor performing the work, except as authorized by the Borrower. The Borrower will take all steps necessary to assure that the City is permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the Borrower.

14. **Fees to the Borrower.**

a. **Application Fee.** The application fee charged to review the Project's Application or development proposal is non-refundable.

b. **Late Fees.** The Borrower will provide annually certain information to the City as mentioned in Section 9 Records and Reports. The City may assess a late fee of \$500 for failure to submit any of the required and requested information as mentioned in 9(c) within two (2) months of the initial request from City staff.

15. **Termination and Other Remedies.** Termination of this Agreement may be accomplished by City by mailing via certified mail or by personally delivering written notice of termination to the Borrower at the address set forth for "Notices" herein below. Termination/cancellation will be effective on the date stated on the notice of termination.

- a. The Borrower agrees that the City will have the unilateral right to cancel or terminate this Agreement, and discontinue all funding of the Loan, if any one or more of the following events of default occur:
- i. For a period of 180 days from the date that the City executed the Agreement, the Borrower has failed or refused to cause the commencement of the Project, unless this period has been extended by the City in writing, which City consent may not be unreasonably withheld or delayed;
  - ii. The Borrower fails or refuses to complete the Project within the time frame as established in Exhibit C Project and Construction Schedule, unless this period has been extended by the City in writing;
  - iii. Notwithstanding any other provision of this Agreement, the Loan proceeds have not been fully disbursed by the City after completion of the work on or by the completion date as specified in this Agreement, unless such date has been extended by the City in writing and unless failure to fully advance is not caused by or any fault of the Borrower;
  - iv. The Borrower makes changes in or terminates the Project, without the prior written approval of the City, which consent may not be unreasonably withheld or delayed;
  - v. The Borrower will not submit a dispute between the Borrower and the Contractor or a subcontractor to the dispute resolution procedure provided under the City's



- HOME policies, if applicable, or to litigation, and the City's inspection indicates that the work in dispute was done in accordance with the City's HOME policies;
- vi. The Borrower dies, becomes legally incapacitated, dissolves, files for bankruptcy, or otherwise becomes legally unable to act prior to the completion of the Project;
  - vii. The Borrower abandons the Project;
  - viii. Any interest in the Project, including a beneficial interest (except tenant leases in non-HOME units, mortgaged interest, and easement), is sold or transferred prior to the completion of the Project, as evidenced by the City's execution of a Certificate of Final Inspection and Request for Final Payment, without the City's prior written consent, which consent may not be unreasonably withheld or delayed;
  - ix. The Borrower obtains a Balloon Note secured by the Project which is junior to the City's Mortgage or Restrictive Covenant, but will be due and payable prior to the scheduled completion of the Project.
  - x. Any event which is or may be declared a material breach of this Agreement or an Event of Default, as defined in the Mortgage or Restrictive Covenant, especially if the Project fails to comply with the affordability requirements during the Affordability Period; and/or
  - xi. Borrower's failure to comply with any or all terms set forth in this Agreement, the Mortgage or the Restrictive Covenant, and failure to cure such noncompliance within 30 calendar days of the date that notice is given thereof by the City.

b. The Borrower agrees that termination/cancellation will not affect the City's rights under the Promissory Note, Mortgage, or Restrictive Covenant, including, but not limited to:

- i. Declare that portion of the Loan, up to the entire principal amount of the Loan, which has been provided by City to the Borrower prior to termination, together with any accrued interest and late charges, and any other amounts secured by the Mortgage, immediately due and payable without any benefit of forgiveness or without any notice or demand to the Borrower;
- ii. Collect any Loan proceeds disbursed prior to termination/cancellation by whatever means are deemed necessary by the City and permitted by law;
- iii. Assess interest and late charges under the Mortgage;
- iv. Make advances under the applicable provisions of the Agreement and Loan to preserve and protect the City's security interest in the Property;
- v. Add any amounts so advanced to the principal amount due under the Loan, and to have the amounts advanced secured by the Mortgage;
- vi. Collect from the Borrower all amounts necessary to pay off any mechanics' or materialmen's liens which have been filed against the Property; and
- vii. Enforce the Note, Mortgage, or Restrictive Covenant against Borrower.

16. **Preservation of Security.** The Borrower agrees to preserve the security of the Loan by keeping the Property free from all unnecessary hazards during Project construction; by complying with all lawful requirements and directives of federal, state, and local governments pertaining thereto (including the payment of all applicable taxes, licenses, and fees); and by maintaining in effect always the hazard insurance on the Project and Property, including builder's risk insurance where applicable.



The Borrower further agrees that he/she/they will not sell or transfer the Property without repaying the entire amount due on the Loan, unless express written consent is received in advance of transfer from the City.

**17. Scope of Agreement; Liability.**

a. The City's only liability is to the Borrower under this Agreement and is limited to making the Loan proceeds available in the principal amount under the terms and conditions stated in this Agreement, Promissory Note, and Mortgage. The City assumes no obligations other than as stated in this Agreement. Specifically, the City has no authority under this Agreement to obligate the HOME Program beyond the principal amount of the Loan. The City will act in accordance with all local, state, and federal regulations, the City's HOME policies, and this Agreement. The City is not bound by any representations inconsistent with HUD regulations, the federal regulations, the City's policies, or this Agreement.

b. The Borrower understands and agrees that the selection of a contractor or subcontractors, and acceptance of materials used and work performed, is solely his/her/their responsibility, and the City assumes no responsibility for or guarantees of the work, materials, or quality of workmanship.

**18. Indemnification and Insurance.** The Borrower will indemnify, release, save and hold harmless the City, its elected and appointed officials, employees and volunteers, from all liability, claims, litigation, loss, damages, costs and expenses arising out of an act or omission of the Borrower, the Borrower's agent, employee, assigns or contractors, or in any way connected in the performance of the Project or the terms of this Agreement. The Borrower's obligation to indemnify, release, save, and hold harmless will include the obligation to pay all reasonable expenses incurred by the City in defending itself, or in enforcing the provisions of this Agreement as provided in attached Exhibit M Insurance.

The Borrower will obtain and maintain in continuous effect during the term of this contract with the City and while any of its obligation remain unsatisfied, the insurance coverages, limits and endorsements set forth in said Exhibit M. The City reserves the right to require and enforce future revisions to the insurance requirements in said Exhibit M, and Borrower agrees to abide by such future revisions upon notice thereof. The Borrower will require that any of its agents who perform work or services pursuant to this Agreement meet the same insurance requirements as are required of Borrower. A Certificate of Insurance citing such coverages, limits and endorsements will be provided to the City prior to payment of the funds set forth herein.

**19. Religious Organizations.** The Borrower agrees to comply with 24 CFR 92.257 governing the use of HOME funds for religious organizations where applicable.

**20. Community Housing Development Organization (CHDO) Provisions.** If the Borrower is a private nonprofit developer that has been approved by the City Council as a CHDO and has certified that it is and will maintain CHDO status in accordance with 24 CFR Part 92 for the term of the Project and the Loan Agreement, the Borrower agrees to provide such information as may be requested by the City to document its continued compliance with such requirements, including, but not limited to, an annual board roster and certification of continued compliance. The Borrower agrees to comply with provisions in 24 CFR 92.300 and 24 CFR 92.301.



- a. **CHDO Proceeds.** The City may allow the Borrower to retain proceeds ("CHDO Proceeds") from the disposition by sale of real property acquired, rehabilitated, or constructed with HOME set-aside funds. The CHDO will use the Proceeds for affordable housing activities, including both rental, owner-occupied, lease-purchase, and other housing activity to benefit households earning up to 120% of area median income based on household size. CHDO Proceeds are not program income.
- i. An affordable unit created with CHDO proceeds may continue as a lease-purchase unit for up to 60 months before it must be sold to an owner-occupant or retained as a rental unit. The CHDO will submit the rents to be charged under the lease agreement and a plan for working with the lessee to establish credit to purchase the house, which plan is subject to City approval.
  - ii. CHDO Proceeds are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). The Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply.
  - iii. CHDO Proceeds may be used for pre-development expenses including costs of project feasibility, consulting fees, costs of preliminary applications including city fees for zoning, variances and permits, payment of back taxes or fees related to acquisitions of tax sale deeds, legal fees, architectural and engineering fees, options to acquire property, and title clearance of property. CHDO Proceeds may also be used for development costs including acquisition of property, demolition of structures, environmental mediation, new construction and rehabilitation.
- b. **CHDO Accounting and Monitoring.**
- i. The CHDO will retain Proceeds in a separate account and provide an accounting of the use of Proceeds to City on a semi-annual basis. The CHDO will notify City prior to withdrawing funds from the Proceeds account and will include the project name, type of pre-development or development activity and the net amount of the disbursement. The City may ask for adequate information to conduct an underwriting review/feasibility analysis for any disbursement over \$20,000 on a single project. The accounting will designate the project(s) and show the flow of funds into and out of the Proceeds account until all funds in the account are expended in accordance with this Agreement.
  - ii. The auditor of the CHDO will, at each annual audit, review the CHDO Proceeds account and will include in the annual audit language stating whether or not CHDO has complied with terms of this agreement. The CHDO will annually provide City with a copy of the audit conducted by a certified public accountant.
  - iii. The City may request at any time, without prior notice, any file, financial record or document related to any project that received HOME funds or Proceeds. The CHDO agrees to comply with any request within ten business days of City request.
- c. **Time Frame.** All Proceeds must be used within five years of the closing on the sale of this Project, if applicable, to a homebuyer. Any funds not used during that period will be considered program income and returned by CHDO to the City. If the CHDO no longer satisfies the HOME Program definitions, any Proceeds not used must be immediately returned by CHDO to City as program income.





21. **Homebuyer Education.** For Projects involving homeownership, the Borrower will ensure the homebuyer receives housing counseling before transferring the Property into the homebuyer's name. Homebuyer counseling will be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 1701x. Effective August 1, 2020, a HUD-certified counselor providing training to a HOME homebuyer must be employed by a HUD-approved housing counseling agency.
22. **Enforcement of the Agreement.** This Agreement will be enforceable pursuant to the terms herein, the provisions of all exhibits hereto, and all legal and equitable remedies available to the parties pursuant to local state and federal law.
23. **Amendments.** Any additions, modifications, or amendments to this Agreement including the attachments, will be in writing and executed by the parties.
24. **Disclaimer.** It is mutually understood by the parties that nothing in this Agreement is intended or will be construed as in any way creating or establishing the relationship of co-partners between the parties hereto or as constituting the Borrower as an agent or representative of the City for any purpose whatsoever. It is further mutually understood by the parties that the Borrower and the Borrower's contractor are not to be considered employees of the City.
25. **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Iowa.
26. **Severability.** If one or more clauses, sections, or provisions of this Agreement, or the application thereof, will be held to be unlawful, invalid, or unenforceable, the remainder and application hereof of such provision will not be affected thereby.
27. **Notices.** All notices and demands relating to this Agreement will be served by certified letter, return receipt request on upon the following:
  - a. For the City: City of Des Moines Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
  - b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317



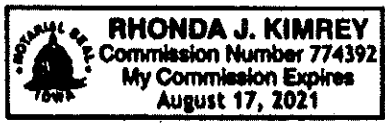
Borrower: Greater Des Moines Habitat for Humanity

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

By: [Signature]  
Lance Henning, Executive Director

STATE OF IOWA       )  
                                  ) §:  
COUNTY OF POLK    )


On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.




[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021

City of Des Moines, Iowa

By:   
Chris Johansen, Community Development Department Director


Approved as to form:

  
Judy K. Parks-Kruse, Assistant City Attorney

STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK     )

On this 14<sup>th</sup> day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



  
Notary Public in the State of Iowa

My Commission Expires: 9/18/2021



**City of Des Moines**  
**HOME Agreement with Owner, Developer, Sponsor, or Subrecipient**  
**1911 Franklin Avenue, Des Moines**

**Exhibits Attached**

- A. Legal Description
- B. Statement of Work or Project Description
- C. Project and Construction Schedule
- D. Project Budget
- E. Sources and Uses
- F. Declaration of Restrictive Covenants (separately recorded)
- G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy
- H. Recapture Agreement
- I. Mortgage (separately recorded)
- J. Promissory Note
- K. Loan Repayment Schedule (if applicable)
- L. Assurance of Compliance with Section 3 Requirements
- M. Insurance Requirements and Proof of Insurance



Exhibit A Legal Description

[Locally known as 1911 Franklin Avenue]

Lot 2 in FLORENCE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.



## Exhibit B Statement of Work or Project Description

Greater Des Moines Habitat for Humanity is planning to construct one single-family housing unit, or one HOME unit, at 1911 Franklin Avenue in the Mondamin Presidential Neighborhood. HOME funding totaling \$31,500 will go toward construction costs incurred by Habitat. Up to \$3,500 will be available to the home buyer who has low income, or earning 80% or less of the Area Median Income (AMI), to assist with acquisition costs. The house will have three bedrooms, one bath, and an unfinished basement. It will also have a detached garage.



Exhibit C Project and Construction Schedule

<b>1911 Franklin – Project Timeline</b>	
8/31/20	Environmental review completed
9/22/20	Building permit issued
9/22/20	Contractor selection
9/22/20	Contractor notice to proceed
9/28/20	Construction start (grading, excavation, etc.)
3/28/21	Draw of HOME funds
3/28/21	Certificate of Occupancy
3/28/21	Financial closing and disbursement

Exhibit D Project Budget

Greater Des Moines Habitat for Humanity, Inc.		
June 11, 2020		
<b>1911 Franklin- Sources &amp; Uses Budget</b>		<b>Budget</b>
Other Charges		
01.0-Land & General		\$ 9,800
02.0-Permits		900
04.0-Supplies & Small Tools		450
05.0-Sitework		3,000
05.5-Erosion Control		500
06.0-Excavation/Backfill		3,925
07.0-Sign		100
08.0-Foundation & Footings		12,400
08.1-Concrete Flatwork		7,800
08.2-Concrete Curbs		250
09.0-Framing lumber		6,500
09.1-Roof Trusses/I-joist		3,830
09.2-Panel build		4,000
10.0-Grading		1,200
11.0-Windows & Doors		2,000
12.0-Thermal & Moisture Prot		2,070
12.1-Siding		4,800
12.2-Insulation		3,100
13.0-Roofing		3,750
14.1-Taper		8,700
15.0-Gutters		1,000
16.0-Mechanical		11,000
17.0-Plmbg-Hkup to Mns & StWork		14,000
17.1-Plmb-Grd Wrk & Rough In		7,000
17.2-Plmb Finish & Fixt		3,500
18.0-Electrical		7,500



18.1-Elect. Fixtures	555
19.0-Utilities	700
20.0-Millwork & Interior Doors	2,300
21.0-Cabinets & Countertop	3,220
22.0-Flooring	2,640
23.0-Paint & Finishes	1,928
23.1-Painting Sub-contractor	3,050
24.0-Hardware	972
25.0-Miscellaneous	100
25.5 -Sidewalk Porch Drive	6,440
27.0-Appliances	1,345
28.0-Landscaping	1,600
28.1-Shed	825
29.0-Waste Removal	1,000
30.0 -Container	100
Construction direct labor	12,000
General requirements (contractor fee)	9,070
Developer fee	19,585
Contractor Construction Contingency	3,000
	<b>\$ 193,505</b>
Engineering Fees	3,000
Real Estate Attorney Fees	200
Construction Insurance	900
Title & Recording	1,100
Taxes during construction	250
Appraisal	200
Family Placement fees	1,800
Total Development Costs	<b>\$ 200,955</b>



Exhibit E Initial Sources and Uses

<b>Sources</b>		
	City of Des Moines - HOME funds	\$ 31,500
	Gift in Kind donations	5,000
	Unrestricted funds	164,455
	<b>Total Sources</b>	<b>\$ 200,955</b>

<b>Use of Funds</b>		<b>Amount</b>
	Land	\$ 9,800
	Building improvements	\$ 161,120
	Contingency	\$ 3,000
	Other hard costs	
	Professional fees	\$ 3,200
	Development/consultant	
	Developer fee	\$ 19,585
	Construction interim fees	\$ 250
	Soft costs	\$ 4,000
		<b>\$ 200,955</b>

27.00  
SM  
By



Doc ID: 035673020005 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 10/02/2020 at 08:58:38 AM  
Fee Amt: \$27.00 Page 1 of 5  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037392

BK 18102 PG 831-835

SPACE ABOVE THIS LINE FOR RECORDER

Prepared by: Judy K. Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533

Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Restrictive Covenant**

**City of Des Moines HOME Program**

The undersigned property owner(s) ("Grantor"), participating in the City of Des Moines, Iowa HOME Investment Partnerships (HOME) Program, in consideration of the receipt of \$35,000 as a loan (the "Loan") for the construction and enhancement upon the real property locally known as 1911 Franklin Avenue, Des Moines, Iowa ("Project Area") and legally described as:

Lot 2 in FLORENCE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

legal or equitable title to which is held by the undersigned, hereby agrees and consents to the creation and imposition of specific restrictive covenants which are hereby declared to be covenants running with the Project Area for the benefit of the City of Des Moines, Iowa ("City") as specifically set out herein:

1. **Affordability Period.**

- a. **Rental HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution, and shall continue as an encumbrance on the Project Area for a period of 240 months following issuance of the Certificate of Occupancy, completion of the improvements on the Project Area, sub-rental of the units, and provision of final demographic information and all construction reports required herein to the City (herein "Affordability Period"). City shall notify Grantor in writing of the date commencing the 240-month Affordability Period.
- b. **Homeownership HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution of this covenant, and shall continue as an encumbrance on the Project Area until the time of sale to an income-qualified homebuyer ("End Purchaser"), and recording of a restrictive covenant upon the property granted by said End Purchaser, which time of sale shall occur no later than four years from date of execution of this Agreement.

2. **HOME Assisted Units.** The undersigned Borrower agrees that a Project within the above described Project Area has HOME funds allocated to it, and one of the residential unit(s) in the Project will be a HOME Assisted Unit(s). HOME Assisted Units are defined by the United States Department of Housing and Urban Development (HUD) as specifically set forth in the HOME regulations found at Title 24 in the Code of Federal Regulations (CFR), Part 92, as amended, and includes all required income verification, resale and recapture provisions, and housing value requirements.

3. **Income Limits and Affordability.**

- a. **Rental HOME Units.** At all times, of the HOME Assisted Units, one unit must be a High HOME unit, affordable to households at 60% of area median income (AMI), and zero units must be Low HOME units, affordable to households at or below 50% AMI. The HOME Project Unit mix must be maintained by Grantor throughout the Affordability Period and compliance with the HOME Project Unit mix requirements must be restored if tenant income changes as required by 24 CFR, part 92.252 as amended.

Throughout the Affordability Period, the Grantor will maintain rent limitations affordable to the 50% and 60% income levels at the Project Area as specified in the HOME Agreement. These limits may be modified by the U.S. Department of Housing and Urban Development annually and may be forwarded to the Grantor by the City for modification. Per HUD requirement, these income and rent limits are enforceable by the City through this Restrictive Covenant. The Grantor specifically agrees that the Project will meet the affordability requirements of 24 CFR 92.252, "Qualifications of Affordable housing: Rental Housing."

- b. **Homeownership HOME Units.** A homeownership unit will be affordable to households whose annual income does not exceed 80% of the area median income, as determined by HUD, with adjustments for smaller and larger households and certain exceptions as provided in 24 CFR Part 92.

The purchase price of a home will not exceed the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. The parties specifically agree that the Project will meet the affordability requirements of 24 CFR 92.254(a)(5)(ii), and an Affordability Period will be determined at the time of sale to an income-qualified End Purchaser.

4. **Sale or Transfer of Property.** During the Affordability Period, the undersigned hereby covenants and agrees not to transfer title to or interest in, or otherwise dispose of the Project Area or any interest therein, or to materially change the occupancy of the Project Area, without obtaining the prior written consent of the City, which shall be conditioned solely upon receipt of evidence to the City that the purchaser or transferee has assumed in writing and in full the undersigned's duties and obligations under this Restrictive Covenant, and under the HOME Agreement and related documents, and has the financial and administrative capabilities to carry out such obligations. For homeownership HOME Project, written consent from the City shall be conditioned solely upon receipt of evidence to the City that the purchaser or transferee is an income qualified owner-occupant pursuant to the HOME Agreement between Grantor and City.

Grantor: Greater Des Moines Habitat for Humanity

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

By: [Signature]  
Lance Henning, Executive Director

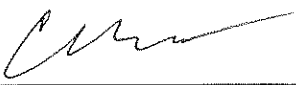
STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.




[Signature]  
Notary Public in the State of Iowa  
My Commission Expires: 8/17/2021

City of Des Moines, Iowa

By:   
Chris Johansen, Community Development Department Director

Approved as to form:

  
Judy K Parks-Kruse, Assistant City Attorney

STATE OF IOWA     )  
                                  ) §:  
COUNTY OF POLK    )

On this 14th day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



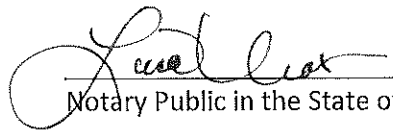
  
Notary Public in the State of Iowa  
My Commission Expires: 9/18/2021



Exhibit G Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy

HOME Rent Limits for Des Moines - West Des Moines, IA MSA (Effective 7/1/2020)							
	Efficiency	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom	6 bedroom
Low HOME Rent Limit	\$603	\$730	\$900	\$1160	\$1293	\$1428	\$1561
High HOME Rent Limit	\$603	\$730	\$900	\$1215	\$1323	\$1521	\$1720

2020 New Home Value Limits for 95% of Median Purchase Price for Polk Co./WDM-DSM (Effective 4/1/2020)	
1-unit	\$246,000
2-unit	\$315,000
3-unit	\$381,000
4-unit	\$472,000
Unadjusted Median Value	\$258,965

2020 Maximum Subsidy Amounts - Des Moines (Effective 6/4/2020)					
	0-bedroom	1 bedroom	2-bedroom	3-bedroom	4 bedroom
240% Level	\$153,314.40	\$175,752.00	\$213,717.60	\$276,482.40	\$303,489.60

2020 HUD Median Family Income for Des Moines MSA/Polk Co (AMFI Limits for 30, 50, 80% Effective 4/1/2020; HOME Income Limits Effective 7/1/2020)					
# Persons	Extremely Low 30%	Very Low 50%	HOME Funding Only 60%	Low 80%	100%
1	\$18,750	\$31,250	\$37,500	\$49,950	\$62,450
2	\$21,400	\$35,700	\$42,840	\$57,100	\$71,400
3	\$24,100	\$40,150	\$48,180	\$64,250	\$80,300
4	\$26,750	\$44,600	\$53,520	\$71,350	\$89,200
5	\$30,680	\$48,200	\$57,840	\$77,100	\$96,350
6	\$35,160	\$51,750	\$62,100	\$82,800	\$103,500
7	\$39,640	\$55,350	\$66,420	\$88,500	\$110,630
8	\$44,120	\$58,900	\$70,680	\$94,200	\$117,750



Exhibit H Recapture Agreement

**Recapture Home Buyer Program Agreement and Restrictive Covenant**

This Agreement is entered into by and between the City of Des Moines, Iowa, (hereinafter called "City") and \_\_\_\_\_ (hereinafter called "Home Buyer"), effective the day of execution of this Agreement and Covenant by the Home Buyer.

WHEREAS, the City is the recipient of HOME funding from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ the City of Des Moines entered into a HOME Agreement with \_\_\_\_\_ (hereinafter the Developer) to rehabilitate a home which is locally known as \_\_\_\_\_ Des Moines, Iowa ("Property"), and legally described as:

**Lot 2 in FLORENCE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

WHEREAS, the full amount of HOME assistance loaned to build and occupy this house is \_\_\_\_\_. Of that amount, \$\_\_\_\_\_ was provided to the Developer for construction (known as Developer Assistance) and \$\_\_\_\_\_ is provided to the Home Buyer for purchase (known as Home Buyer Assistance).

WHEREAS, the Home Buyer is requesting approval from the City of Des Moines to purchase the Property as an eligible purchaser; and

WHEREAS, the City's Neighborhood Services Department has reviewed all supporting documents submitted by the Home Buyer and Developer, completed a Home Buyer assistance underwriting form, and has determined that the Home Buyer meets all eligibility requirements for this program and the assistance provided; and

WHEREAS, the HOME Program Rule 24 CFR 92.254(a)(5)(ii)(A) defines "net proceeds" as the sales price of the Property paid by the Home Buyer, minus the Superior Non-Home Debt excluding closing costs.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City and the Home Buyer mutually agree as follows:

1. The City hereby approves the Home Buyer as an eligible purchaser of the Property at the subsidy listed below in 2(a).
2. The Home Buyer specifically agrees that:
  - a. The City of Des Moines has disbursed the sum of \$\_\_\_\_\_ to the Home Buyer for the purpose of purchasing the Property at an affordable cost.





- b. The Home Buyer will occupy the Property as his/her principal residence for the duration of the affordability period which is \_\_\_ months from the execution of this document by all parties.
  - c. As long as the Home Buyer occupies the Property as his/her principal residence, no payment is due on the Home Buyer HOME assistance.
  - d. The Home Buyer assistance will further be reduced at a rate of \_\_\_\_\_ or \_\_\_\_\_ percent annually beginning \_\_\_\_\_ after the execution of this agreement and continuing until the assistance is totally forgiven at the end of the affordability period. The City will release the lien created by this Agreement and Covenant at such time.
  - e. If the Property is sold, refinanced other than for rate or term, or transferred prior to the end of the affordability period, the Home Buyer must repay the total amount of the HOME subsidy stated above in paragraph 2(a), less the prorated HOME investment amount for the length of time the Home Buyer owned and occupied the unit limited to the "net proceeds" of the sale as defined in HOME Program Rule 92.254(a)(5)(ii)(A). The City will release the lien created by this Agreement and Covenant upon Home Buyer's payment in full of the amount owed, as determined by the City.
  - f. The Home Buyer will not lease, sub-lease or transfer any interest in the Property during the affordability period. If the Home Buyer does not sell the Property but fails to occupy the unit as his/her principal residence, the Home Buyer is in noncompliance with the HOME program (24 CFR 92.254(a)(3)). In that event, the City will take legal action against the Home Buyer to collect the full amount of HOME subsidy stated above in paragraph 2(a) in the property referenced in the preamble of this agreement.
3. The City will release this Agreement and Restrictive Covenant only upon the successful completion of the affordability period or repayment of the outstanding HOME funds disbursed to the Home Buyer limited to the net proceeds. Such release shall be in writing and filed of record with the County Recorder.
4. The Home Buyer agrees that the City will monitor this program annually and that the Home Buyer will submit, at the request of the City, documentation verifying his/her principal residency at this address, including but not limited to verification of mailing address by the U.S. Postal Service, current utility bills and other documents as requested.
5. The City is entitled to conduct an annual physical inspection of the Property by appointment and the Home Buyer will cooperate with the City in scheduling this appointment.
6. The Home Buyer specifically acknowledges that giving any false, misleading or incomplete information to the City concerning his/her eligibility for this program is a violation of the HOME Program regulations and will entitle the City to recapture the HOME Investment Partnership money (Home Buyer Assistance and Developer Assistance) invested in this project.
7. Any additions, modifications or amendments to this Agreement, including any attachment, shall be in writing executed by both parties and placed of record with the Polk County Recorder.



8. The terms set forth herein shall serve as a restrictive covenant running with the land for the affordability period of five (5) years beginning on the date of the recording with the County Recorder of this Agreement and Covenant.
9. In the event of foreclosure by the Senior Security, if applicable, of its Mortgage or similar agreement upon the Property or other transfer of the Property in lieu of such foreclosure, the Senior Security shall notify the City at the address set forth in Section 10 below of payment delinquency and any foreclosure action.
10. Correspondence required by this Agreement and Restrictive Covenant shall be provided by U.S. Mail as follows:
  - a. For the City, shall be directed to the Director of the Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, Iowa 50309;
  - b. For the Home Buyer, shall be directed to {{ INSERT ADDRESS }}.
11. The terms and obligations set forth in this Agreement and Restrictive Covenant are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Agreement and Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Home Buyer agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from any of the terms of this Agreement and Restrictive Covenant.
12. This Agreement and Restrictive Covenant, and the terms and obligations of Home Buyer set forth herein, shall supersede and take precedence over any and all other liens subsequently filed, obligations, or agreements made by Home Buyer in relation to the Project Area, unless otherwise explicitly stated therein or agreed to by written subordination agreement approved by resolution of the Des Moines City Council.



IN WITNESS WHEREOF the parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

HOME BUYER(S)

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Name Date

STATE OF IOWA )  
 ) §:  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did state that they are the persons named in and who executed the foregoing instrument, and acknowledged the execution of the instrument to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public in the State of Iowa

**CITY OF DES MOINES, IOWA**

\_\_\_\_\_  
Chris Johansen, Neighborhood Services Director Date

STATE OF IOWA )  
 ) §:  
COUNTY OF POLK )

On this \_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared **Chris Johansen**, to me personally known, who, being by me duly sworn, did state that he is the **Neighborhood Services Director** for the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No \_\_\_\_\_ on \_\_\_\_\_ by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa

57  
Chg. SM



Doc ID: 035673010011 Type: GEN  
Kind: MORTGAGE  
Recorded: 10/02/2020 at 08:57:56 AM  
Fee Amt: \$57.00 Page 1 of 11  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037391

BK **18102** PG **820-830**

Prepared by: Judy K Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533

Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Mortgage**  
**City of Des Moines HOME Program**

This Mortgage made on this 14th day of September, 2020 between Greater Des Moines Habitat for Humanity (hereinafter called "Borrower" or "Mortgagor"), and the City of Des Moines, Iowa (hereinafter called "Lender" or "Mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the principal amount of \$35,000, which shall be payable in accordance with a certain note, bearing even date herewith, a true and correct copy of which, exclusive of the signature of the Mortgagor, and all other indebtedness which the Mortgagor is obliged to pay to the Mortgagee pursuant to the provisions of the Note and this Mortgage, the Mortgagor hereby grants, sells, conveys and mortgages to the Mortgagee, forever, the following described real estate situated in the County of Polk, State of Iowa, to wit:

Legally known as: Lot 2 in FLORENCE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Locally known as: 1911 Franklin Avenue, Des Moines, Iowa

TOGETHER, with all appurtenances thereto and all the estate and rights of the Mortgagor in and to such property or in anywise appertaining thereto; all buildings and other structures now or hereafter thereon erected or installed, and all fixtures and articles of personal property now or hereafter to, or used in, or in the operations of, any such land, buildings or structures which are necessary to the complete use and occupancy of such buildings or structures for the purpose for which they were or are to be erected or installed, including, but not limited to all heating, plumbing, bathroom, lighting, cooking, laundry, ventilating, refrigerating, incinerating, and air-conditioning equipment and fixtures and all replacements thereof and additions thereto; whether or not the same are or shall be attached to such land, buildings or structures in a manner.

TOGETHER, with any and all awards now or hereafter made for the taking of the property mortgaged hereby, or any part thereof (including any easement), by the exercise of the power of eminent domain,

including any award for change of the grade of any street or other roadway, which awards are hereby assigned to the Mortgagee and are deemed a part of the property mortgaged hereby, and the Mortgagee is hereby authorized to collect and receive the proceeds of such awards, to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness secured by this Mortgage, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning each such award to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and nothing herein shall be considered an assignment of Mortgagor's right to contest a claim of eminent domain, which Mortgagor shall reserve all rights to; and

TOGETHER, with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining the above described land (all the above described land, buildings, other structures, fixtures, articles of personal property, awards of taking by eminent domain, and other rights and interests as described herein being hereinafter collectively call the "mortgaged property").

TO HAVE AND TO HOLD the mortgaged property and every part thereof unto the Mortgagee, its successors and assigns forever for the purposes and uses herein set forth.

AND, the Mortgagor further covenants and agrees with the Mortgagee as follows;

1. **Obligations.** The Mortgagor will promptly pay the principal and interest on the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times in the manner provided in the Note and in this Mortgage.
2. **Taxes and Assessments.** The Mortgagor will pay when due, as hereinafter provided, all ground rents, if any, and all taxes and assessments, water rates and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the mortgaged property, or any part thereof, and will pay when due, every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.
3. **Improvements; Remedies.** This Mortgage and the Note were executed and delivered to secure moneys advanced in full or in part to the Mortgagor by the Mortgagee as or on account of a loan evidenced by the Note, for the purpose of making the improvements described or referred to in the HOME Agreement entered into by the Mortgagor and the Mortgagee in connection herewith to or on the Mortgaged property, and for such other purpose, if any, described or referred to therein, which improvements are hereafter collectively called "Improvements." The Mortgagor shall make or cause to be made all the Improvements. If the construction or installation of the Improvements shall not be carried out with reasonable diligence, or shall be discontinued at any time for any reason, other than strikes, lockouts, acts of God, fires, floods or other similar catastrophes, riots, war or insurrection, the Mortgagee after due notice to the Mortgagor is hereby authorized:

- a. to enter upon the mortgaged property and employ any watchmen to protect the Improvements from deprecation or injury and to preserve and protect such property,
  - b. to carry out any or all then existing contracts between the Mortgagor and other parties for the purpose of making any of the Improvements,
  - c. to make and enter into additional contracts and incur obligations for the purposes of completing the Improvements pursuant to the obligations of the Mortgagor hereunder, either in the name of the Mortgagee or the Mortgagor,
  - d. to pay and discharge all debts, obligations and liabilities incurred by reason of any action taken by the Mortgagee, as provided in this Paragraph, all of which amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate of amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate set forth in the Promissory Note signed concurrently herewith and included herein by this reference shall be payable by the Mortgagor on demand and shall be secured by this Mortgage.
4. **Alterations in Project Area.** No building or other structure or improvement, fixture or personal property mortgaged on the Project Area hereby shall be removed or intentionally demolished by Mortgagor without the prior written consent of the Mortgagee unless the same is replaced with like property, subject to the lien and security interest of this Mortgage, of at least equal value and utility. The Mortgagor will not make, permit or suffer any substantial alteration of or installed upon the mortgaged property, or any part thereof, except the Improvements required to be made pursuant to Paragraph 3 hereof, nor will the Mortgagor use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written constant of the Mortgagee. The Mortgagor will maintain the mortgaged property in good condition and state of repair and will not suffer or permit any waste to any part thereon, and will promptly comply with all the requirements of Federal, state and local governments, or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.
5. **Liens.** The Mortgagor will not voluntarily create, or permit or suffer to be created or to exist on or against the mortgaged property, or any part thereof, any lien superior to the lien of this mortgage, except if subordinated by the City, and will keep and maintain the same free from the claims of all parties supplying labor or materials which will enter into the construction or installation of the improvements.
6. **Insurance.**
- a. The Mortgagor will keep all buildings, other structures and improvements, including equipment, now existing or which may hereafter be erected or installed on the land mortgaged hereby, insured against loss by fire and other hazards, casualties and contingencies, in such amounts and manner, and for such periods, as deemed

commercially reasonable. Unless otherwise required by the Mortgagee, all such insurance shall be effected by Standard Fire and Extended Coverage insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached thereto loss payable clauses in favor of the mortgagee and any other parties as shall be satisfactory to the Mortgagee.

A certificate of insurance for all required insurance policies herein shall be delivered promptly to the Mortgagee upon execution of this Mortgage, unless they are required to be delivered to the holder of a lien or mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to the Mortgagee, shall be delivered promptly to the Mortgagee.

The Mortgagor will pay promptly when due, as hereinafter provided, any and all premiums on such insurance, and in every case in which payment thereof is not made from the deposits therefor required by this Mortgage, promptly submit to the Mortgagee for examination, receipts or other evidence of such payment as shall be satisfactory to the Mortgagee.

- b. In the event of loss or damage to the property the Mortgagor will give to the Mortgagee immediate notice thereof by mail, and the Mortgagee may make and file proof of loss if not made otherwise promptly by or on behalf of the Mortgagor. Each insurance company issuing any such policy is hereby authorized and directed to make payment hereunder for such loss directly to the Mortgagee, instead of to the Mortgagor and the Mortgagee jointly payable, unless the amount of loss is payable first to the holder of a lien under a mortgage or similar instrument to which this Mortgage is expressly subject; and the insurance proceeds or any part thereof received by the Mortgagee may be applied by the Mortgagee, at its option, either in reduction of the indebtedness of foreclosure of the Mortgage, or of the transfer of title to the mortgaged property in every such insurance policy then in force, subject to the rights in interest of the holder of any such prior lien, shall pass to the grantee acquiring title to the mortgaged property together with such policy and appropriate assignment of such right, title and interest which shall be made by the Mortgagor.

#### **7. Payment and Application of Payments.**

- a. In order to more fully protect the security of this Mortgage, the Mortgagor provide annually to the Mortgagee until the Note is paid in full, proof of payment of the following:
  - i. ground rents, if any, next becoming due,
  - ii. the premiums next becoming due on the policies of fire and all other hazard insurance required by this Mortgage with respect to the mortgaged property,

- iii. taxes, assessments, water rates and other governmental charges next becoming due on the mortgaged property (all the foregoing amounts as estimated by the Mortgagee as set forth in a written notice of such estimate by the Mortgagee to the Mortgagor from time to time),
- b. Following written notice from Mortgagee to Mortgagor, the Mortgagee may require that the Mortgagor deposit with the Mortgagee, together with and in addition to the payment of principal and interest in accordance with the Note secured hereby, until the Note is paid in full or forgiven as applicable, an amount of money equal to the total amount referred to in clauses (i) through (iii) above less all amounts that may already have been paid therefor, divided by the number of calendar months to elapse before one calendar month prior to the date when such ground rents, premiums, taxes, assessments, water rights and other governmental charges, respectively, will become due and payable. If any amount referred to in clauses (i) through (iii) hereof is required to be deposited by the Mortgagor under a mortgage or similar instrument having priority over the lien of this Mortgage, the Mortgagor shall make the deposits required by this Paragraph 7 only in the event of the termination of such obligation under the prior mortgage or similar instrument. The Mortgagor shall give prompt notice in writing to the Mortgagee of the occurrence of the last-mentioned event. All such amounts so deposited with the Mortgagee shall be held by the Mortgagee, or any agent designated by it, in trust to be used only for the payment of such ground rents, premiums, taxes, assessments, water rates and other governmental charges. No interest shall be payable by the Mortgagee on any sum so deposited.
- c. All amounts required to be deposited with the Mortgagee or Senior Security monthly in accordance with Paragraph 7(b) hereof, and the amount of principal and interest to be paid each month on account of the Note, shall be added together, and the aggregate amount thereof shall be paid by the Mortgagor to the Mortgagee in a single payment to be applied by the Mortgagee on account of the indebtedness of the mortgagor pursuant to the Note and this Mortgage (to the extent that monies are available from the amount so deposited), in the order, any provision of the Note to the contrary notwithstanding, as follows:

FIRST            to the amount of such ground rents, if any, taxes, assessments, water rights and other governmental charges required to be paid under the provisions of this Mortgage, in whatever sequence the Mortgagee may exclusively determine;

SECOND         to the interest due on the Note;

THIRD           to the principal due on the note; and

FOURTH        the remainder, to the late charges, if any, referred to in the Note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless paid by the Mortgagor prior to the due date of the next such deposit payable, constitute an event of default under this Mortgage.



- d. Any excess funds that may be accumulated by reason of the deposits required under Paragraph 7(a) hereof, remaining after payment of the amounts described in clauses (i), (ii), and (iii) thereof, shall be credited to subsequent respective monthly amounts of the same nature required to be paid thereunder. If any such amount shall exceed the estimate therefor, the Mortgagor shall forthwith pay to the Mortgagee the amount of such deficiency upon written notice by the Mortgagee of the amount thereof. Failure to do so before the due date of such amount shall be an event of default under this Mortgage. If the mortgaged property is sold under foreclosure or is otherwise acquired by the Mortgagee, after default by the Mortgagor, any remaining balance of accumulations under Paragraph 7(a) hereof, shall be credited to the principal amount owing on the Note as of the date of commencement of foreclosure proceedings for the mortgaged property, or as of the date the mortgaged property is otherwise so acquired.
8. **Compliance with Laws.** The improvements and all plans and specifications therefor shall comply with all applicable municipal ordinances, regulations, and rules made or promulgated by lawful authority, and upon their completion shall comply therewith.
9. **Protection of Mortgagee's Security.** Upon any failure by the Mortgagor to comply with or perform any of the terms, covenants or conditions of this Mortgage requiring the payment of any amount of money by the Mortgagor, other than the principal amount of the loan evidenced by the Note, interest and other charges, as provided in the Note, the Mortgagee may at its option make such payment. Every payment so made by the Mortgagee (including reasonable attorney's fees incurred thereby), with interest thereon from the date of such payment, at a rate not to exceed fifteen percent (15%) per annum, except any payment for which a different rate of interest is specified herein, shall be payable by the Mortgagor to the Mortgagee within thirty days and shall be secured by this Mortgage. This Mortgage with respect to any such amount and the interest thereon, shall constitute a lien on the mortgaged property prior to any other lien attaching or accruing subsequent to the lien of this Mortgage.
10. **Inspections.** The Mortgagee, by any of its agents or representatives, shall have the right to inspect the mortgaged property from time to time at any reasonable hour of the day. Should the mortgaged property, or any part thereof, at any time require inspection, repair, care or attention of any kind or nature not provided by this Mortgage as determined by the Mortgagee in its reasonable discretion, the Mortgagee may, after reasonable notice to the Mortgagor, enter or cause entry to be made upon, the mortgaged property, and inspect, repair, protect, care for or maintain such property, as the Mortgagee may in its sole discretion deem necessary, and may pay all amounts of money therefor, as the Mortgagee may in its sole discretion deem necessary.
11. **Acceleration of Payment.** The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing by the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, will immediately become due and payable without notice or demand upon the appointment of a court appointed receiver or liquidator, whether voluntary or involuntary, for

the mortgagor or any of the property of the Mortgagor, or upon the filing of a petition by or against the Mortgagor under the provisions of any State insolvency law, or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Mortgagor of an assignment for the benefit of the Mortgagor's creditors. The Mortgagee is authorized to declare, at its option, all or any part of such indebtedness immediately due and payable upon the happening of any of the following events:

- a. Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;
- b. Nonperformance by the Mortgagor of any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in subdivision (a) hereof), or the HOME Agreement or Restrictive Covenant related thereto, after the Mortgagor has been given thirty-day due notice and opportunity to cure by the Mortgagee of such nonperformance;
- c. After applicable notice and cure period, failure of the mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property, including but not limited to the HOME Agreement or Restrictive Covenant, or any part thereof, which shall have priority over the lien of this Mortgage;
- d. The Mortgagee's discovery of the Mortgagor's failure in any application of the Mortgagor to the Mortgagee to disclose any fact reasonably deemed by the Mortgagee to be material, or of the making therein or in any of the agreements entered into by the Mortgagor with the Mortgagee (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of, the Mortgagor;
- e. The sale, lease (except non-HOME unit tenant leases), or other transfer of any kind of nature of the mortgaged property (except mortgaged interest or easements), or any part thereof, without the prior written consent of the Mortgagee;

The Mortgagee's failure to exercise any of its rights hereunder shall not constitute a waiver thereof. All the events in this Paragraph enumerated upon the happening of any of which the Note shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "events of default".

12. **Cure of Default.** The Mortgagee may from time to time cure an event of default under any covenant or agreement in any instrument creating a lien upon the mortgaged property, or any part thereof, including but not limited to the HOME Agreement and Restrictive Covenant, which shall have priority over the lien of this Mortgage, to such extent as the Mortgagee may exclusively determine, and each amount paid (if any) by the Mortgagee to cure any such default

shall be paid by the Mortgagor to the Mortgagee; and the Mortgagee may also become subrogated to whatever rights the holder of the prior lien might have under such instrument.

**13. Event of Default.**

- a. After the happening of an event of default hereunder, the Mortgagor shall, upon demand of the Mortgagee, surrender possession of the mortgaged property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all the rents therefrom which are due to be become due, and apply the same, after payment of all charges and expenses, on account of the indebtedness hereby secured, and all such rents and all leases existing at the time of such default are hereby assigned to the Mortgagee as further security for the payment of the indebtedness secured hereby; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.
- b. In the event that the Mortgagor occupies the mortgaged property, or any part thereof, the Mortgagor agrees to surrender possession of such property to the Mortgagee immediately after any such default hereunder, and if the Mortgagor remains in possession after such default, such possession shall be as a tenant of the Mortgagee, and the Mortgagor shall pay in advance, upon demand by the Mortgagee, as a reasonable monthly rental for the premises occupied by the Mortgagor, an amount at least equivalent to one-twelfth (1/12) of the aggregate of the twelve monthly installments payable in the current calendar year, plus the actual amount of the annual ground rent, if any, taxes, assessments, water rates, other governmental charges and insurance premiums payable in connection with the mortgaged property during such year, and upon the failure of the Mortgagor to pay such monthly rental, the Mortgagor may also be dispossessed by the usual summary proceedings applicable to tenants. This covenant shall become effective immediately upon the happening of any such default, as determined in the sole discretion of the Mortgagee, who shall give notice of such determination to the Mortgagor; and in the case of foreclosure and the appointment of a receiver of the rents, the within covenant shall inure to the benefit of such receiver.

**14. Receivership.** The Mortgagee in any action to foreclose this Mortgage shall be entitled to the appointment of a receiver with notice as a matter of right without regard to the value of the mortgaged property, or the solvency or insolvency of the Mortgagor or other party liable for the payment of the Note and other indebtedness secured by this Mortgage.

**15. Redemption.** In addition to all other remedies afforded to Mortgagee by this Mortgage and under Iowa law, at Mortgagee's option in the event of default that remains uncured by Mortgagor, Mortgagee may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Chapter 654, Code of Iowa (2014). Thereafter this Mortgage may be foreclosed in equity and the court may appoint a receiver to take immediate possession of the mortgaged property and of the revenues and income accruing therefrom and to rent or cultivate the same as the receiver may deem best for the interest of all

parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure and upon the Note and Mortgage obligation.

It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provision of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after the sale such right of redemption shall be exclusive to the Debtor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) the real estate is less than 10 acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first 30 days after such sale, and the time provided for redemption by creditors as provided in Section 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code. In case of a foreclosure sale of the mortgaged property, it may be sold in one parcel.

16. **Statement of Indebtedness.** The Mortgagor, within 10 days upon request in person or within 20 days upon request by mail, will furnish promptly a written statement in form satisfactory to the Mortgagee, signed by the Mortgagor and duly acknowledged, of the amount then owing on the Note and other indebtedness secured by this Mortgage, and whether any offsets or defenses exist against such indebtedness or any part thereof.
17. **Notice of Damage or Destruction.** The Mortgagor will give prompt notice by registered or certified mail to the Mortgagee of any fire, damage or other casualty materially affecting the mortgaged property, or of any conveyance, transfer of change in ownership of such property, or any part thereof.
18. **Notices.** Notice and demand or request may be made in writing and may be served in person or by mail, as follows:

- a. For the City: Neighborhood Services Director, Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
- b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317

19. **Assignment of Rents.** The Mortgagor will not assign the rents, if any, in whole or in part, from the mortgaged property, or any part thereof, without the prior written consent of the Mortgagee.
20. **Authority.** The Mortgagor is lawfully seized of the mortgaged property and has good right, full power and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to the Mortgagee forever against the lawful claims and demands of any and all parties whatsoever.
21. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable, as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.
22. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the mortgaged property and waives all rights of exemption as to any of the mortgaged property.
23. **Successors and Assigns.** This Mortgage and all the covenants, agreements, terms and conditions herein contained shall be binding upon and inure to the benefit of the Mortgagor and the heirs, legal representatives and assigns of the Mortgagor, and, to the extent permitted by law, every subsequent owner of the mortgaged property; and shall be binding upon and inure to the benefit of the Mortgagee and its assigns. If the Mortgagor, as defined herein, consists of two or more parties, the Mortgage shall constitute a grant and mortgage by all of them jointly and severally, and they shall be obligated jointly and severally under all the provisions hereof and under the Note. The word "Mortgagee" shall include any person, corporation or other party who may from time to time be the holder of this Mortgage. Whenever used herein the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.
24. **Acknowledgement of Receipt of Copies of Debt Instrument.** Mortgagor hereby acknowledges the receipt of a copy of the Mortgage together with a copy of the Note secured hereby.

IN WITNESS WHEREOF this Mortgage has been duly signed and sealed by the Mortgagor on or as of the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

BORROWER: Greater Des Moines Habitat for Humanity

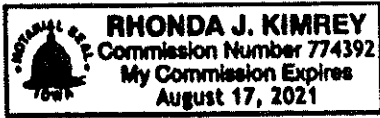
By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, and that the seal affixed to the forgoing instrument is the seal of the corporation (or no seal has been procured by the corporation); that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Rhonda J. Kimrey  
Notary Public in the State of Iowa



My Commission Expires: 8/17/2021



Exhibit J Promissory Note

**Promissory Note**  
**City of Des Moines HOME Program**

**Borrower/Promisor:** Greater Des Moines Habitat for Humanity, "Borrower"  
**Property Address:** 1911 Franklin Avenue, Des Moines, IA, "Property"  
**Loan Amount:** \$35,000  
**Legal Description:** Lot 2 in FLORENCE, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

1. **Borrower Promise to Pay.** For value received, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the City of Des Moines, Iowa (hereafter referred to as the City), or its successors and assigns (herein collectively called the "Lender"), the maximum principal sum of \$35,000 ("HOME Loan"), or such lesser amount as may be endorsed on this Note on behalf of Lender.
2. **Interest.** The Loan shall accrue interest on the principal balance at a 0% interest rate compounding annually for a term of 3 years.
3. **Loan Forgiveness.** The Borrower shall use the Loan amount in compliance with the HOME Agreement by and between City and Borrower relating to the above-listed property. If Borrower complies with the HOME Agreement by and between City and Borrower, as determined by City, then payment of the Loan amount shall be deferred for each year during which they are in compliance, and on the 14th day of September, 2023, the amount of the HOME Loan shall be forgiven and discharged by Lender.
4. **Non-Compliance.** If the Borrower fails to comply with the HOME Agreement, as determined by City, said non-compliance shall constitute a default of the terms of this Note and then and in that event the entire Loan amount due on this Note shall immediately be due and payable to Lender and no portion of the Loan amount shall be discharged or forgiven.
5. **Sale or Transfer.** The HOME Loan, or any remaining balance thereof, shall be due in full upon any voluntary sale of the Property or improvements thereon without the prior written consent of the Lender. If the HOME Loan is not timely paid when due upon such sale, it shall thereafter draw interest at the rate of 10% per annum, but not to exceed the maximum interest rate permitted by law. If the City consents to the sale or transfer of the Property or the improvements thereon, the HOME Loan and all of the obligations related thereto shall be assumed by the Borrower's successor or assign.
6. **Satisfaction of Repayment.** Unless there is a finding of ineligible use of HOME funding by the United States Department of Housing and Urban Development (HUD) or a HUD requirement of reimbursement of HOME funding, the Lender shall look solely to the Property for the satisfaction of the repayment obligations under this Note.



7. **Borrower's Right to Prepay.** Borrower may prepay at any time all or any part of the principal amount due on this Note without the payment of penalties or premiums, provided that Borrower is not in default under this Note and the payment is identifiable as a prepayment of principal. In the event of prepayment, Lender will notify Borrower of the new date and amount of final payment due under this Note.
  
8. **Borrower's Failure to Pay as Required.** If the Borrower shall default in the payment of any installment due under this Note, and such default is not made good prior to the due date of the next installment, the entire unpaid principal amount of this Note, together with accrued interest and late charges shall become immediately due and payable, at the option of the Lender, with two-day notice to the Borrower(s). Failure of the Lender to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal and interest, so long as the amount of optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower hereby agrees to pay Lender's costs and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on such judgment in the State of Iowa, or if there is no such maximum, at the rate of 15% per annum.

If any annual installment of interest or any part of such installment, remains unpaid for a period of 15 days from its due date, the Borrower hereby agrees to pay to Lender a Late Charge of 4% of the unpaid amount of such installment.

9. **Security.** This Note is secured by a Mortgage, duly filed for record in the office of the County Recorder/Register of Deeds of Polk County, Iowa.
  
10. **Waivers.** All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.





In witness whereof, this Note has been duly executed by the undersigned Borrower(s), as of the date shown above.

BORROWER: Greater Des Moines Habitat for Humanity

By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA            )  
  ) ss:  
COUNTY OF POLK        )

On this 14th day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021

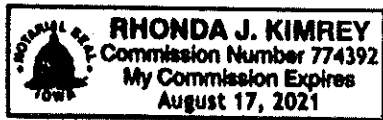




Exhibit K Loan Repayment Schedule (if applicable)

**REMOVED – Not Applicable**

**Repayment of loan due in full if project becomes noncompliant.**



Exhibit L Assurance of Compliance with Section 3 Requirements

**TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR  
BUSINESSES AND LOWER INCOME PERSONS**

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, will, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice will describe the section 3 preference, will set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled

(1) after the contractor is selected but before the contract is executed, and

(2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.



Exhibit M Insurance Requirements and Proof of Insurance

**CITY OF DES MOINES, IOWA  
HOME Grant  
INSURANCE & INDEMNIFICATION REQUIREMENTS**

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

**1. GENERAL**

The CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR and CITY throughout the duration of this Contract. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Contract execution or commencement of work and/or services.

**2. INSURANCE REQUIREMENTS**

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. **AUTOMOBILE LIABILITY INSURANCE:** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the CONTRACTOR'S business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- C. **UMBRELLA/EXCESS LIABILITY INSURANCE:** The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.



- D. **WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE:** As required by State of Iowa Workers' Compensation Law, the CONTRACTOR shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONTRACTOR is not required to purchase Workers' Compensation Insurance, the CONTRACTOR shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- E. **ADDITIONAL INSURED ENDORSEMENT:** The City shall NOT be named or included as an Additional Insured.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. Written notifications shall be sent to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.
- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONTRACTOR hereby releases the CITY from and against any and all liability or responsibility to the CONTRACTOR or anyone claiming through or under the CONTRACTOR by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Contract. The CONTRACTOR'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. **PROOF OF INSURANCE:** The CONTRACTOR shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify "HOME Grant" along with address(es) of property receiving funding from grant monies under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
  - A copy of the Cancellation and Nonrenewal Notification Endorsement or its equivalent as required in paragraph 2.F. above.

**Mail Certificates of Insurance to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.**



- I. AGENTS AND SUBCONTRACTORS: The CONTRACTOR shall require all its agents and subcontractors who perform work and/or services on behalf of the CONTRACTOR to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

### 3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act of the CITY.



Sample Proof of Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Insurance Agent; CONTACT NAME: PHONE; E-MAIL ADDRESS; INSURER(S) AFFORDING COVERAGE; NAIC #; INSURED Contractor; INSURER A; INSURER B; INSURER C; INSURER D; INSURER E; INSURER F

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Table with columns: INSR LTR, TYPE OF INSURANCE, ADDL SUBR (INSR WVD), POLICY NUMBER, POLICY EFF (MM/DD/YYYY), POLICY EXP (MM/DD/YYYY), LIMITS. Rows include General Liability, Automobile Liability, Umbrella Liab, and Workers Compensation.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

HOME Grant - Property XYZ

CERTIFICATE HOLDER

CANCELLATION

City of Des Moines Community Development 602 Robert D. Ray Drive Des Moines, IA 50309; SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE



**City of Des Moines  
HOME Agreement with Owner, Developer, Sponsor, or Subrecipient**

**Borrower Name and Address:** Greater Des Moines Habitat for Humanity  
2200 E. Euclid Avenue  
Des Moines, IA 50317

**Borrower Role:**  
 Owner                       Developer                       Sponsor                       Subrecipient

**Amount of HOME Assistance:** \$35,000

**Form of Assistance:**                       Repayable Loan                       Forgivable Loan

**Project Name and Address:** 1915 Franklin Avenue  
Des Moines, IA 50314

**Project Type (check all that apply):**  
 Acquisition (Homebuyer)                       New Construction                       Homeownership  
 Demolition                       Rehabilitation                       Rental

**Affordability Period:** 5 years after sale to eligible homebuyer

**Total Number of Units in Project:** 1

**Number of HOME-Assisted Units:** 1

**Contract or Loan Number:** 20-HM-800-00024

**Effective Date:** September 14, 2020

**Exhibits Attached**

- |   |  |
|---|--|
| A. Legal Description  | I. Mortgage (separately recorded)                      |
| B. Statement of Work or Project Description                             | J. Promissory Note                                     |
| C. Project and Construction Schedule                                    | K. Loan Repayment Schedule (if applicable)             |
| D. Project Budget   | L. Assurance of Compliance with Section 3 Requirements |
| E. Sources and Uses   | M. Insurance Requirements and Proof of Insurance       |
| F. Declaration of Restrictive Covenants (separately recorded)           |  |
| G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy |  |
| H. Recapture Agreement  |  |





### Recitals

This Home Investments Partnership Program (HOME) Agreement (hereinafter the "Agreement") is entered into by and between the City of Des Moines, Iowa (hereinafter the "City" or "Lender") and Greater Des Moines Habitat for Humanity, (hereinafter called "Borrower"), who is the Owner, Developer, Sponsor, or Subrecipient, effective the date on which the contract has been both approved by the City Council and signed by the Neighborhood Services Director; and

**WHEREAS**, the City has entered into an Agreement with United States Department of Housing and Urban Development ("HUD") for funding of its HOME Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act; and

**WHEREAS**, the City's HOME Program is designed to provide affordable rental and home ownership opportunities for low- and very-low income households through acquisition, rehabilitation, and new construction; and

**WHEREAS**, the construction of new affordable housing is consistent with the City's 2020-2024 Consolidated Plan, which was approved by City Council for submission to HUD on November 4, 2019 by Roll Call 19-1792; and

**WHEREAS**, the Borrower is a non-profit entity registered with the Iowa Secretary of State and experienced with owning and operating affordable housing; and

**WHEREAS**, the Borrower applied to the City for a HOME forgivable loan in the amount of \$35,000 (hereinafter referred to as the "Loan") for construction of one homeownership HOME unit for a low-income household (hereinafter referred to as the "Project") within the Borrower's overall development; and

**WHEREAS**, the property upon which the Project will be undertaken is locally known as 1915 Franklin Avenue, Des Moines, Iowa, and legally described on Exhibit A attached hereto; and

**WHEREAS**, the Borrower's development proposal—which includes the construction schedule, budget, site plans, construction drawings, and any other documentation used to review and underwrite the Project—have been reviewed by the City's Neighborhood Services Department, which administers the HOME Program, and it has been determined that the Borrower meets all the eligibility requirements; and

**WHEREAS**, City staff has determined that HOME funds are needed to fill a gap in the sources and uses of the development to serve the targeted income populations; and

**WHEREAS**, on September 14, 2020, by Roll Call 20-1450, the City Council approved this HOME Agreement and related documents; and

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



1. **Use of HOME Funds; Completion Date.** The Project is new construction of one residential unit, and that one unit in the Project will be a HOME Assisted Unit. The HOME Funds will be used for certain Project costs as eligible per 24 Code of Federal Regulations (CFR) Part 92.206 and in accordance with the attached Exhibit B Statement of Work, Exhibit C Project and Construction Schedule, Exhibit D Budget, and Exhibit E Sources and Uses. Construction of the Project shall be within three years of the effective date of this Agreement, to be completed by September 14, 2023 (“completion date”.)
2. **Affordability Requirements and Duration of Agreement.** The Borrower agrees to meet the affordability requirements of 24 CFR Part 92.252 (rental) or 254 (homeownership), as applicable, and outlined below and imposed by a Restrictive Covenant, attached hereto as Exhibit F and to be recorded separately by City as a lien against the Project property.

The Affordability Period will start after Project completion and closeout, which includes Certificate(s) of Occupancy, final demographic information, construction reports, final addresses or unit numbers submitted to City, and lease or sale of all HOME units to eligible HOME tenants or homebuyers. If the Project is completed sooner than completion date in Section 1, the City will notify the Borrower in writing as to the revised completion date and beginning of the Affordability Period.

a. **Rental Projects.** This agreement is in effect through the Affordability Period, or 20 years. The rents for the HOME Units will not exceed the annual HOME rents of the then-current calendar year as annually published by HUD. Initial rent guidelines are provided as attached in Exhibit G Rent Limits and Sales Limits. Rent increase requests from Borrower must be presented in writing to the City’s Neighborhood Services Department, Neighborhood Conservation Services (NCS) Division. NCS will provide written responses to rent increase requests within 30 days of receipt.

The Project will have a total of one HOME unit. HOME units will be affordable to households at or below 60% of area median income and will be considered High HOME units. In rental projects with five or more HOME-assisted rental units, at least 20% of the HOME-assisted units must be Low HOME units and affordable to households at or below 50% of area median income. Collectively this number and proportion of units constitutes the HOME Project Unit mix.

The HOME units will be floating. The Borrower must maintain the HOME Project Unit mix throughout the Affordability Period and restore compliance with the HOME Project Unit mix requirements if tenant income changes.

b. **Homeownership Projects.** This Agreement is in effect until the Project is transferred from developer to an eligible homebuyer. The purchase price of a home will not exceed the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing, provided on attached Exhibit G Rent Limits and Sales Limits. The purchase price will not exceed the final appraisal. HOME funds used for down payment assistance will not be greater than 10% of the amount of HOME funds for development of the housing.

A homeownership Project will be affordable to households whose annual income does not exceed 80% of the area median income, as determined by HUD, with adjustments for smaller and larger households and certain exceptions as provided in 24 CFR Part 92. The parties specifically agree that the Project will meet the affordability requirements of 24 CFR 92.254(a)(5)(ii), and an affordability period will be determined at the time of sale to a low-income homebuyer (“End Purchaser”). If the



property is sold, refinanced, other than for rate or term, or transferred prior to the end of the Affordability Period, the End Purchaser will be subject to recapture provisions in attached Exhibit H Homebuyer Recapture Agreement. Recaptured funds must be returned by the End Purchaser to the City.

The Borrower will market and sell the Property within nine months from the date of the City's final inspection to an eligible End Purchaser. If the Property is not sold within nine months after the City's final NCS inspection and certificate of occupancy issuance, the Project must be converted to a rental unit and is subject to subsection (a) of this Section 2, or all HOME funds must be repaid by the Borrower to the City. A ratified sales contract between the Borrower and the End Purchaser is sufficient to demonstrate a sale.

3. **Loan Repayment.** The Loan will be repaid according to attached Exhibit I Mortgage, Exhibit J Promissory Note, and Exhibit K Loan Repayment Schedule, including repayment if the housing does not meet the affordability requirements within the Affordability Period. Nothing in this section will be construed to diminish or impair City's rights, in its sole discretion, to require repayment under this Agreement, the Mortgage, Promissory Note, or Restrictive Covenant in the event of default or noncompliance by Borrower.
4. **Program Income.** Borrowers who are non-profit subrecipients, which excludes Community Housing Development Organizations (CHDOs), must remit any program income to the City of Des Moines. Upon expiration of this Agreement, the Borrower must transfer any HOME funds attributable to this Project in Borrower's accounts receivable to the City.
5. **Uniform Administrative Requirements.** The Borrower must comply with applicable uniform administrative requirements as described in 24 CFR 92.505 and 2 CFR 200.
6. **Project Requirements.** The Borrower specifically agrees to comply with each of the HOME Program Project requirements set forth at 24 CFR, Part 92, Subpart F, as applicable in accordance with the type of Project receiving HOME funds. The Borrower will not exceed the maximum per-unit subsidy as provided on Exhibit G hereto.
7. **Property Standards.** The Borrower hereby agrees to maintain the Project in compliance with local housing code requirements and HOME standards for the duration of the Affordability Period, as required by 24 CFR 92.251 and 92.504(c)(3)(iv). The Borrower will allow the City access to the Project's written cost estimates, construction contracts, and construction documents as necessary.
  - a. **Accessibility.** The Borrower and its contractors must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act, implemented at 28 CFR parts 35 and 36, as applicable.

Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act. A minimum of 5% of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments by Borrower.

- b. **Disaster Mitigation.** Where relevant, the Project must mitigate the impact of potential disasters in accordance with state and local building code.



c. **Broadband Infrastructure.** In rental projects with four or more units, construction must include installation of broadband infrastructure, subject to compliance with local, State and Federal laws and regulations.

d. **Rehabilitation Standards.** Housing rehabilitation must be performed in accordance with the NCS Rehabilitation Standards and in compliance with 24 CFR 92.251(b). A Rehabilitation Project must comply with the lead hazard control requirements in 24 CFR Part 35.

e. **Housing Quality Standards (HQS).** If the Project assisted with HOME funding is converted to rental property in accordance with Section 2(b) above, the Borrower hereby agrees to maintain the housing in compliance with applicable HQS standards, as included in the HUD Housing Choice Voucher Program, and local housing code requirements for the duration of this Agreement.

8. **Other Federal Program Requirements.** The Borrower agrees to comply with the federal requirements set out at 24 CFR, Part 92, Subpart H, as applicable, as well as with the following:

a. **Affirmative Marketing.** In soliciting tenants for a Project with five or more HOME units, the Borrower agrees to the following, which will also be incorporated into the Restrictive Covenant and Mortgage:

- i. The Borrower will submit an Affirmative Marketing Plan to the City prior to the final payout of funds. The Affirmative Marketing Plan may be amended and may be monitored annually for conformance.
- ii. The Borrower will use the Equal Opportunity Housing logo, slogan, or statement in all advertising, including Project signage.
- iii. The Borrower will advertise and use media, including minority outlets, likely to reach low-income persons. Copies of those marketing materials will be provided to the City.
- iv. The Borrower will display a Fair Housing poster in any rental office or common areas, if practicable.
- v. The Borrower's management will maintain a non-discriminatory hiring policy and comply with Equal Opportunity, Affirmative Marketing, and Minority & Women's Business enterprise requirements.
- vi. The Borrower will keep information on income, race, ethnic, gender characteristics, and other demographic statistics of applicants for the most recent five-year period following Project Closeout, with a copy of that information available to the City.
- vii. The Borrower will not discriminate against prospective tenants based on their receipt of, or eligibility for, housing assistance, and will not discriminate against tenants that have a minor child living with them (except for elderly housing projects which are legally exempt from this requirement).
- viii. The Borrower will provide existing and potential tenants or buyers with information relating to federal Fair Housing laws and will affirmatively market vacant units throughout the Affordability Period.

b. **Tenant Selection.** For rental housing, the Borrower must adopt and implement a Fair Housing Plan. The Fair Housing Plan must include a tenant selection plan with policies and criteria that:

- i. Are consistent with the purpose of providing affordable housing;
- ii. Provide for selection of tenants from a written waiting list in chronological order of application to the extent practical;
- iii. Give prompt written notification to any rejected applicant of the grounds for rejection;
- iv. Adhere to a grievance procedure approved by the City; and
- v. Will not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance Housing Choice Voucher Program (24 CFR part 982) or a participant in a HOME tenant-based rental assistance program.

c. **Environmental Review.** The Borrower agrees to notify the City if any major environmental concerns or hazards are discovered.

d. **Displacement, relocation, and acquisition.** The Borrower agrees that its Project will not displace or relocate any households. If such displacement or relocation will occur, the Borrower has provided a Relocation Plan outlining relocation assistance, notifications, and terms approved by the City and in compliance with 24 CFR 92.353.

e. **Labor.** The Borrower and its Contractors must comply with:

- i. Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.
- ii. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1711u), including but not limited to statements in attached Exhibit L, that requires, to the greatest extent feasible, opportunities for training and employment arising from HOME funds will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work to be performed relating to HOME funds will be awarded to businesses that are in or owned by persons residing in the HOME Program service area. The Borrower will complete a Section 3 form provided by the City.
- iii. Minority/Women's Business Enterprise, under Executive Orders 11625, 12432, and 12138, with City notification procedures of targeted businesses, to provide information, and to complete forms provided by the City on Minority and Women Contractors.
- iv. Davis-Bacon Act, under 40 U.S.C. 3141 and per 24 CFR 92.354, in a Project for the rehabilitation or new construction of housing that includes 12 or more HOME units.

f. **Conflict of Interest.** The Borrower may not occupy a HOME Unit. In addition, no officer, employee, agent, or consultant of the Borrower, owner, developer, or sponsor of the Project may occupy a HOME Unit without express written approval from the City.

g. **VAWA Requirements.** The Borrower will follow admission, occupancy, and termination of assistance policies regarding the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The Borrower of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit:



- i. at the time the applicant is admitted to a HOME-assisted unit,
- ii. denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria, and
- iii. with any notification of eviction or notification of termination of assistance.

9. **Records and Reports.**

a. **Retention Period.** For a period of five years after the Project Closeout date, the Borrower agrees to keep all contracts, invoices, materials, personnel and payroll records, conditions of employment, books of accounts, and any other documentation pertaining to the construction of the Project and the disposition of the Loan proceeds, where applicable, and any other records that might be required from time to time by the City relating to this Agreement and the Project.

b. **Rental Compliance.** For rental housing, the Borrower agrees to keep records related to the HOME Units through the Affordability Period. More specifically, the Borrower or its management agent must submit to the City reports of the following:

- i. **Tenant Income.** The income of each HOME Unit tenant must be determined initially by the Borrower in accordance with 24 CFR 92.203(a)(1)(i). In addition, for each calendar year during the Affordability Period, the Borrower must re-examine each tenant's annual income in accordance with the procedure chosen by the City from options listed in 24 CFR 92.203(a)(1) and submit the information to the City. A Borrower of a rental project, through a statement and certification in accordance with 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with 92.203(a)(1)(i) every sixth year of the affordability period.
- ii. **Rent Restrictions.** The Project is required to meet the affordability requirements of 24 CFR 92.252. The Borrower must annually provide information to the City on the rents that are charged to the HOME Unit tenants. The rents will not exceed the HOME Unit Rents as prescribed by HUD. The rents charged must support the debt against the Property and must not exceed the assumptions made under the original underwriting.
- iii. **Physical Inspections.** The Borrower must make the Property available for City staff to physically inspect the HOME Units annually to ensure the Units meet City HOME standards and are comparable to market rate units.
- iv. **Financial Inspections.** The City will also review the Borrower's annual audit and accounts of the Project to ensure that the Project is maintaining a revenue stream and is able to pay debt and provide funding for long term viability.
- v. **Floating HOME Units.** If the rental housing Project has floating HOME units, the owner must provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements.

c. **Access to Records.** The Borrower will, at all reasonable times, including normal business hours, permit the City, HUD officials, the Comptroller General of the United States, and their designees, to have full and free access to records with respect to the utilization of the Loan proceeds, supplemental financing, rental income and expenses, and affirmative marketing efforts. The Borrower will permit the City, HUD, and the Comptroller General and their designees to audit, examine, and make excerpts or transcripts from his/her/their records, and to review, inspect, and



make audits of all work financed in whole or in part by the Loan, including, but not limited to, all records described above.

**10. Representations by Borrower.**

a. The Borrower represents and warrants to the City that the Borrower has thoroughly reviewed and has freely and voluntarily executed the development proposal approved by the City and on file in the City's Neighborhood Services Department.

b. The Borrower agrees to develop the Project to the extent and in the manner specified in the proposal, to comply with the Borrower's obligations, and to enforce any contractor's or subcontractor's obligations. The Borrower assumes the risks of any non-completion of the Project. The City is not a party to any construction contracts, and the City accepts no legal responsibility to the Borrower for the quality or timeliness of the work performed or materials supplied.

Although the Borrower is responsible to the City for the performance of the Project and the selection of any contractor or subcontractor thereunder, the Borrower agrees as follows for the benefit of the City as lender, to provide additional assurance that the work will be completed in accordance with the development proposal used to underwrite the Project and the local standards required by the City:

- i. No material provision of the development proposal or Agreement, including its exhibits, will be modified, deleted, waived, or terminated without the prior written approval of the City's Neighborhood Services Department Director; and
- ii. Contractors and subcontractors represent that they are not listed on the City's or HUD's Debarred and Suspended Contractor's List and further agrees not to hire or utilize as a subcontractor any person or supplier that is so listed. The Borrower agrees for all persons or companies hired or purchased from to submit a completed Subcontractor Eligibility form to the City prior to entering into a contract with said persons or companies.

**11. Prior Encumbrances and Mechanic's Liens.** The Borrower will not create or suffer mechanic's or materialmen's liens on the Property. The Borrower agrees to defend and hold the City harmless from any such liens, whether or not caused by any action or inaction of the Borrower.

The City may require the Borrower to extend the title evidence obtained at Loan Settlement to the date of each such disbursement, showing no mechanic's or materialmen's liens against the Property. The City may require the Borrower to obtain payment acknowledgments and lien releases from the contractor and all subcontractors covering the period from the inspection of the work to the date of the disbursement, and for the entire job concurrently with the final disbursement. Such acknowledgment and releases will be in the form required by state and local lien laws and will cover all work done, labor performed, and materials, including equipment and fixtures furnished for the work. Notwithstanding any other provision of this Agreement, the City, for additional security relating to the Loan, may also withhold the final payment, under this Agreement until the expiration of any period which mechanics and materialmen may have for filing liens unless lien waivers are obtained simultaneously with payment.



12. **Disbursement of HOME Funds.** The City will disburse HOME funds to the Borrower as reimbursement for eligible costs. The disbursement will be limited to the amount of eligible costs expended by Borrower minus a retainage of 10%, which will be withheld until Project Closeout has been completed, and subject to the following:
- a. The Borrower must request at least a partial disbursement of the HOME Loan within ten months of the Agreement's effective date. The City will make disbursements at the times and in the amounts, minus the retainage mentioned previously, requested by the Borrower, and no later than 30 days from the most recent NCS inspection date, provided that:
    - i. The request meets the requirements of and follows the City's HOME policies and this Agreement;
    - ii. The City has not issued any notice of Loan termination and/or of default under this Agreement or related documents;
    - iii. NCS staff has completed an on-site inspection; and
    - iv. The City has received the necessary invoice and supporting documentation from Borrower, including the inspection report from NCS staff.
  - b. Prior to final payment disbursement and beginning the Affordability Period, the Borrower agrees to furnish to the City:
    - i. Final sources and uses of funds for the project showing the costs are reasonable;
    - ii. Borrower's Affirmative Marketing Plan and Tenant Selection Policies (if applicable);
    - iii. Initial tenant or homebuyer certifications of all HOME rental units in the Project;
    - iv. Demographic information, on a form to be provided by City;
    - v. Copy of lease or sales contract between Borrower and tenant or End Purchaser;
    - vi. Completed Section 3 Report, on form to be provided by City;
    - vii. Completed Minority/Women Contractor Report, on form to be provided by City;
    - viii. Location and number of Section 504 units in the Project; and  
Any other such statements, records, data and information pertaining to any matter as required by this Agreement upon the request of the City or HUD official monitoring the Project.
  - c. The City may suspend any disbursements if the Borrower fails to comply with the Agreement's terms. At any time should the Borrower fail to comply with each provision of this Agreement, including Exhibits hereto, the City will directly advise the Borrower of the reasons for the suspension and the deadline for compliance before the Loan and this Agreement are terminated. Such suspension is an additional remedy, and not a prerequisite to termination.
  - d. The Borrower understands and the City agrees that no disbursements will be made for materials stored on-site or off-site for the Project. Payments may only be made for completed work which has been inspected and approved by the Borrower and authorized by the City.
  - e. No provision of this section will limit, or prescribe procedures for the exercise of, the City's rights to complete the Project using the Loan proceeds and other advances secured by the Note and Mortgage, in the event the Borrower fails to complete the Project.





13. **Pre-Disbursement Inspection.** Prior to disbursement of Loan proceeds or for any other purpose relating to the completion of the Project, the City will have reasonable access and right of entry at any reasonable time of the day to inspect all or any portion of the Project. These inspections are for the benefit of the City as lender, to assure that the Loan proceeds are being expended in accordance with the Loan Application or development proposal used to underwrite the Project.

In the event of any such inspection, the City may inform the Borrower of any noncompliance, but the City will not issue direct orders or instructions to the Contractor or subcontractor performing the work, except as authorized by the Borrower. The Borrower will take all steps necessary to assure that the City is permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the Borrower.

14. **Fees to the Borrower.**

- a. **Application Fee.** The application fee charged to review the Project's Application or development proposal is non-refundable.
- b. **Late Fees.** The Borrower will provide annually certain information to the City as mentioned in Section 9 Records and Reports. The City may assess a late fee of \$500 for failure to submit any of the required and requested information as mentioned in 9(c) within two (2) months of the initial request from City staff.

15. **Termination and Other Remedies.** Termination of this Agreement may be accomplished by City by mailing via certified mail or by personally delivering written notice of termination to the Borrower at the address set forth for "Notices" herein below. Termination/cancellation will be effective on the date stated on the notice of termination.

- a. The Borrower agrees that the City will have the unilateral right to cancel or terminate this Agreement, and discontinue all funding of the Loan, if any one or more of the following events of default occur:
- i. For a period of 180 days from the date that the City executed the Agreement, the Borrower has failed or refused to cause the commencement of the Project, unless this period has been extended by the City in writing, which City consent may not be unreasonably withheld or delayed;
  - ii. The Borrower fails or refuses to complete the Project within the time frame as established in Exhibit C Project and Construction Schedule, unless this period has been extended by the City in writing;
  - iii. Notwithstanding any other provision of this Agreement, the Loan proceeds have not been fully disbursed by the City after completion of the work on or by the completion date as specified in this Agreement, unless such date has been extended by the City in writing and unless failure to fully advance is not caused by or any fault of the Borrower;
  - iv. The Borrower makes changes in or terminates the Project, without the prior written approval of the City, which consent may not be unreasonably withheld or delayed;
  - v. The Borrower will not submit a dispute between the Borrower and the Contractor or a subcontractor to the dispute resolution procedure provided under the City's

- HOME policies, if applicable, or to litigation, and the City's inspection indicates that the work in dispute was done in accordance with the City's HOME policies;
- vi. The Borrower dies, becomes legally incapacitated, dissolves, files for bankruptcy, or otherwise becomes legally unable to act prior to the completion of the Project;
  - vii. The Borrower abandons the Project;
  - viii. Any interest in the Project, including a beneficial interest (except tenant leases in non-HOME units, mortgaged interest, and easement), is sold or transferred prior to the completion of the Project, as evidenced by the City's execution of a Certificate of Final Inspection and Request for Final Payment, without the City's prior written consent, which consent may not be unreasonably withheld or delayed;
  - ix. The Borrower obtains a Balloon Note secured by the Project which is junior to the City's Mortgage or Restrictive Covenant, but will be due and payable prior to the scheduled completion of the Project.
  - x. Any event which is or may be declared a material breach of this Agreement or an Event of Default, as defined in the Mortgage or Restrictive Covenant, especially if the Project fails to comply with the affordability requirements during the Affordability Period; and/or
  - xi. Borrower's failure to comply with any or all terms set forth in this Agreement, the Mortgage or the Restrictive Covenant, and failure to cure such noncompliance within 30 calendar days of the date that notice is given thereof by the City.

b. The Borrower agrees that termination/cancellation will not affect the City's rights under the Promissory Note, Mortgage, or Restrictive Covenant, including, but not limited to:

- i. Declare that portion of the Loan, up to the entire principal amount of the Loan, which has been provided by City to the Borrower prior to termination, together with any accrued interest and late charges, and any other amounts secured by the Mortgage, immediately due and payable without any benefit of forgiveness or without any notice or demand to the Borrower;
- ii. Collect any Loan proceeds disbursed prior to termination/cancellation by whatever means are deemed necessary by the City and permitted by law;
- iii. Assess interest and late charges under the Mortgage;
- iv. Make advances under the applicable provisions of the Agreement and Loan to preserve and protect the City's security interest in the Property;
- v. Add any amounts so advanced to the principal amount due under the Loan, and to have the amounts advanced secured by the Mortgage;
- vi. Collect from the Borrower all amounts necessary to pay off any mechanics' or materialmen's liens which have been filed against the Property; and
- vii. Enforce the Note, Mortgage, or Restrictive Covenant against Borrower.

16. **Preservation of Security.** The Borrower agrees to preserve the security of the Loan by keeping the Property free from all unnecessary hazards during Project construction; by complying with all lawful requirements and directives of federal, state, and local governments pertaining thereto (including the payment of all applicable taxes, licenses, and fees); and by maintaining in effect always the hazard insurance on the Project and Property, including builder's risk insurance where applicable.



The Borrower further agrees that he/she/they will not sell or transfer the Property without repaying the entire amount due on the Loan, unless express written consent is received in advance of transfer from the City.

**17. Scope of Agreement; Liability.**

a. The City's only liability is to the Borrower under this Agreement and is limited to making the Loan proceeds available in the principal amount under the terms and conditions stated in this Agreement, Promissory Note, and Mortgage. The City assumes no obligations other than as stated in this Agreement. Specifically, the City has no authority under this Agreement to obligate the HOME Program beyond the principal amount of the Loan. The City will act in accordance with all local, state, and federal regulations, the City's HOME policies, and this Agreement. The City is not bound by any representations inconsistent with HUD regulations, the federal regulations, the City's policies, or this Agreement.

b. The Borrower understands and agrees that the selection of a contractor or subcontractors, and acceptance of materials used and work performed, is solely his/her/their responsibility, and the City assumes no responsibility for or guarantees of the work, materials, or quality of workmanship.

**18. Indemnification and Insurance.** The Borrower will indemnify, release, save and hold harmless the City, its elected and appointed officials, employees and volunteers, from all liability, claims, litigation, loss, damages, costs and expenses arising out of an act or omission of the Borrower, the Borrower's agent, employee, assigns or contractors, or in any way connected in the performance of the Project or the terms of this Agreement. The Borrower's obligation to indemnify, release, save, and hold harmless will include the obligation to pay all reasonable expenses incurred by the City in defending itself, or in enforcing the provisions of this Agreement as provided in attached Exhibit M Insurance.

The Borrower will obtain and maintain in continuous effect during the term of this contract with the City and while any of its obligation remain unsatisfied, the insurance coverages, limits and endorsements set forth in said Exhibit M. The City reserves the right to require and enforce future revisions to the insurance requirements in said Exhibit M, and Borrower agrees to abide by such future revisions upon notice thereof. The Borrower will require that any of its agents who perform work or services pursuant to this Agreement meet the same insurance requirements as are required of Borrower. A Certificate of Insurance citing such coverages, limits and endorsements will be provided to the City prior to payment of the funds set forth herein.

**19. Religious Organizations.** The Borrower agrees to comply with 24 CFR 92.257 governing the use of HOME funds for religious organizations where applicable.

**20. Community Housing Development Organization (CHDO) Provisions.** If the Borrower is a private nonprofit developer that has been approved by the City Council as a CHDO and has certified that it is and will maintain CHDO status in accordance with 24 CFR Part 92 for the term of the Project and the Loan Agreement, the Borrower agrees to provide such information as may be requested by the City to document its continued compliance with such requirements, including, but not limited to, an annual board roster and certification of continued compliance. The Borrower agrees to comply with provisions in 24 CFR 92.300 and 24 CFR 92.301.



a. **CHDO Proceeds.** The City may allow the Borrower to retain proceeds (“CHDO Proceeds”) from the disposition by sale of real property acquired, rehabilitated, or constructed with HOME set-aside funds. The CHDO will use the Proceeds for affordable housing activities, including both rental, owner-occupied, lease-purchase, and other housing activity to benefit households earning up to 120% of area median income based on household size. CHDO Proceeds are not program income.

- i. An affordable unit created with CHDO proceeds may continue as a lease-purchase unit for up to 60 months before it must be sold to an owner-occupant or retained as a rental unit. The CHDO will submit the rents to be charged under the lease agreement and a plan for working with the lessee to establish credit to purchase the house, which plan is subject to City approval.
- ii. CHDO Proceeds are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). The Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply.
- iii. CHDO Proceeds may be used for pre-development expenses including costs of project feasibility, consulting fees, costs of preliminary applications including city fees for zoning, variances and permits, payment of back taxes or fees related to acquisitions of tax sale deeds, legal fees, architectural and engineering fees, options to acquire property, and title clearance of property. CHDO Proceeds may also be used for development costs including acquisition of property, demolition of structures, environmental mediation, new construction and rehabilitation.

b. **CHDO Accounting and Monitoring.**

- i. The CHDO will retain Proceeds in a separate account and provide an accounting of the use of Proceeds to City on a semi-annual basis. The CHDO will notify City prior to withdrawing funds from the Proceeds account and will include the project name, type of pre-development or development activity and the net amount of the disbursement. The City may ask for adequate information to conduct an underwriting review/feasibility analysis for any disbursement over \$20,000 on a single project. The accounting will designate the project(s) and show the flow of funds into and out of the Proceeds account until all funds in the account are expended in accordance with this Agreement.
- ii. The auditor of the CHDO will, at each annual audit, review the CHDO Proceeds account and will include in the annual audit language stating whether or not CHDO has complied with terms of this agreement. The CHDO will annually provide City with a copy of the audit conducted by a certified public accountant.
- iii. The City may request at any time, without prior notice, any file, financial record or document related to any project that received HOME funds or Proceeds. The CHDO agrees to comply with any request within ten business days of City request.

c. **Time Frame.** All Proceeds must be used within five years of the closing on the sale of this Project, if applicable, to a homebuyer. Any funds not used during that period will be considered program income and returned by CHDO to the City. If the CHDO no longer satisfies the HOME Program definitions, any Proceeds not used must be immediately returned by CHDO to City as program income.



21. **Homebuyer Education.** For Projects involving homeownership, the Borrower will ensure the homebuyer receives housing counseling before transferring the Property into the homebuyer's name. Homebuyer counseling will be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 1701x. Effective August 1, 2020, a HUD-certified counselor providing training to a HOME homebuyer must be employed by a HUD-approved housing counseling agency.
22. **Enforcement of the Agreement.** This Agreement will be enforceable pursuant to the terms herein, the provisions of all exhibits hereto, and all legal and equitable remedies available to the parties pursuant to local state and federal law.
23. **Amendments.** Any additions, modifications, or amendments to this Agreement including the attachments, will be in writing and executed by the parties.
24. **Disclaimer.** It is mutually understood by the parties that nothing in this Agreement is intended or will be construed as in any way creating or establishing the relationship of co-partners between the parties hereto or as constituting the Borrower as an agent or representative of the City for any purpose whatsoever. It is further mutually understood by the parties that the Borrower and the Borrower's contractor are not to be considered employees of the City.
25. **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Iowa.
26. **Severability.** If one or more clauses, sections, or provisions of this Agreement, or the application thereof, will be held to be unlawful, invalid, or unenforceable, the remainder and application hereof of such provision will not be affected thereby.
27. **Notices.** All notices and demands relating to this Agreement will be served by certified letter, return receipt request on upon the following:
  - a. For the City: City of Des Moines Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
  - b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317



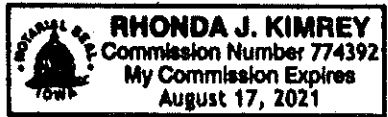
Borrower: Greater Des Moines Habitat for Humanity

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

By: [Signature]  
Lance Henning, Executive Director

STATE OF IOWA     )  
                                  ) §:  
COUNTY OF POLK    )

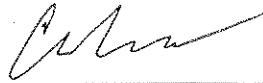
On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.




[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021

City of Des Moines, Iowa

By:   
Chris Johansen, Community Development Department Director


Approved as to form:

  
Judy K. Parks-Kruse, Assistant City Attorney

STATE OF IOWA     )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



  
Notary Public in the State of Iowa

My Commission Expires: 9/18/2021



**City of Des Moines**  
**HOME Agreement with Owner, Developer, Sponsor, or Subrecipient**  
**1915 Franklin Avenue, Des Moines**

**Exhibits Attached**

- A. Legal Description
- B. Statement of Work or Project Description
- C. Project and Construction Schedule
- D. Project Budget
- E. Sources and Uses
- F. Declaration of Restrictive Covenants (separately recorded)
- G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy
- H. Recapture Agreement
- I. Mortgage (separately recorded)
- J. Promissory Note
- K. Loan Repayment Schedule (if applicable)
- L. Assurance of Compliance with Section 3 Requirements
- M. Insurance Requirements and Proof of Insurance





Exhibit A Legal Description

[Locally known as 1915 Franklin Avenue]

South 155 1/5 feet Lot 4 in Florence, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.



## Exhibit B Statement of Work or Project Description

Greater Des Moines Habitat for Humanity is planning to construct one single-family housing unit, or one HOME unit, at 1915 Franklin Avenue in the Mondamin Presidential Neighborhood. HOME funding totaling \$31,500 will go toward construction costs incurred by Habitat. Up to \$3,500 will be available to the home buyer who has low income, or earning 80% or less of the Area Median Income (AMI), to assist with acquisition costs. The house will have three bedrooms, two baths, and an unfinished basement.



Exhibit C Project and Construction Schedule

<b>1915 Franklin – Project Timeline</b>	
8/31/20	Environmental review completed
8/7/20	Building permit issued
8/7/20	Contractor selection
8/7/20	Contractor notice to proceed
9/28/20	Construction start (grading, excavation, etc.)
4/4/21	Draw of HOME funds
4/4/21	Certificate of Occupancy
4/4/21	Financial closing and disbursement



Exhibit D Project Budget

Greater Des Moines Habitat for Humanity, Inc.		
Updated 9/8/2020		
<b>1915 Franklin - Sources &amp; Uses Budget</b>		<b>Budget</b>
Other Charges		
01.0-Land & General		\$ 12,900
02.0-Permits		900
04.0-Supplies & Small Tools		450
05.0-Sitework		3,000
05.5-Erosion Control		500
06.0-Excavation/Backfill		4,150
07.0-Sign		100
08.0-Foundation & Footings		12,400
08.1-Concrete Flatwork		4,300
08.2-Concrete Curbs		250
09.0-Framing lumber		5,800
09.1-Roof Trusses/I-joist		6,800
09.2-Panel build		3,185
09.3 Framing Sub-contractor		6,150
10.0-Grading		1,500
11.0-Windows & Doors		2,190
12.0-Thermal & Moisture Prot		2,070
12.1-Siding		3,800
12.2-Insulation		2,165
12.4 - Siding Sub-contractor		3,735
13.0-Roofing		3,450
14.1-Taper		7,600
15.0-Gutters		1,000
16.0-Mechanical		13,000
17.0-Plmbg-Hkup to Mns & StWork		14,050
17.1-Plmb-Grd Wrk & Rough In		6,815

17.2-Plmb Finish & Fixt	3,330
18.0-Electrical	7,100
18.1-Elect. Fixtures	750
19.0-Utilities	700
20.0-Millwork & Interior Doors	2,100
21.0-Cabinets & Countertop	4,420
22.0-Flooring	2,320
23.0-Paint & Finishes	125
23.1-Painting Sub-contractor	3,500
24.0-Hardware	1,500
25.0-Miscellaneous	100
25.5 -Sidewalk Porch Drive	7,090
26.0- Outside Stairs & Porch	680
27.0-Appliances	1,345
28.0-Landscaping	1,600
28.1-Shed	825
29.0-Waste Removal	1,000
30.0 -Container	100
31.0 -Garage costs	-
Construction direct labor	12,000
General requirements (contractor fee)	9,545
Developer fee	20,592
Contractor Construction Contingency	3,000
	\$ 205,982
Engineering Fees	3,000
Real Estate Attorney Fees	200
Construction Insurance	900
Title & Recording	1,100
Taxes during construction	250
Appraisal	200
Family Placement fees	1,800
Total Development Costs	\$ 213,432



Exhibit E Initial Sources and Uses

<b>Sources</b>		
	City of Des Moines - HOME funds	\$ 31,500
	Gift in Kind donations	5,000
	Unrestricted funds	176,932
	<b>Total Sources</b>	<b>\$ 213,432</b>

<b>Use of Funds</b>		<b>Amount</b>
	Land	\$ 12,900
	Building improvements	\$ 169,490
	Contingency	\$ 3,000
	Other hard costs	
	Professional fees	\$ 3,200
	Development/consultant	
	Developer fee	\$ 22,592
	Construction interim fees	\$ 250
	Soft costs	\$ 4,000
		<b>\$ 213,432</b>

17' 00"  
LNG SM



Doc ID: 035673000005 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 10/02/2020 at 08:56:12 AM  
Fee Amt: \$27.00 Page 1 of 5  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037390

BK 18102 PG 815-819

SPACE ABOVE THIS LINE FOR RECORDER

Prepared by: Judy K. Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533

Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Restrictive Covenant**

**City of Des Moines HOME Program**

The undersigned property owner(s) ("Grantor"), participating in the City of Des Moines, Iowa HOME Investment Partnerships (HOME) Program, in consideration of the receipt of \$35,000 as a loan (the "Loan") for the construction and enhancement upon the real property locally known as 1915 Franklin Avenue, Des Moines, Iowa ("Project Area") and legally described as:

South 155 1/5 feet Lot 4 in Florence, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

legal or equitable title to which is held by the undersigned, hereby agrees and consents to the creation and imposition of specific restrictive covenants which are hereby declared to be covenants running with the Project Area for the benefit of the City of Des Moines, Iowa ("City") as specifically set out herein:

1. **Affordability Period.**

- a. **Rental HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution, and shall continue as an encumbrance on the Project Area for a period of 240 months following issuance of the Certificate of Occupancy, completion of the improvements on the Project Area, sub-rental of the units, and provision of final demographic information and all construction reports required herein to the City (herein "Affordability Period"). City shall notify Grantor in writing of the date commencing the 240-month Affordability Period.
- b. **Homeownership HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution of this covenant, and shall continue as an encumbrance on the Project Area until the time of sale to an income-qualified homebuyer ("End Purchaser"), and recording of a restrictive covenant upon the property granted by said End Purchaser, which time of sale shall occur no later than four years from date of execution of this Agreement.

2. **HOME Assisted Units.** The undersigned Borrower agrees that a Project within the above described Project Area has HOME funds allocated to it, and one of the residential unit(s) in the Project will be a HOME Assisted Unit(s). HOME Assisted Units are defined by the United States Department of Housing and Urban Development (HUD) as specifically set forth in the HOME regulations found at Title 24 in the Code of Federal Regulations (CFR), Part 92, as amended, and includes all required income verification, resale and recapture provisions, and housing value requirements.

3. **Income Limits and Affordability.**

- a. **Rental HOME Units.** At all times, of the HOME Assisted Units, one unit must be a High HOME unit, affordable to households at 60% of area median income (AMI), and zero units must be Low HOME units, affordable to households at or below 50% AMI. The HOME Project Unit mix must be maintained by Grantor throughout the Affordability Period and compliance with the HOME Project Unit mix requirements must be restored if tenant income changes as required by 24 CFR, part 92.252 as amended.

Throughout the Affordability Period, the Grantor will maintain rent limitations affordable to the 50% and 60% income levels at the Project Area as specified in the HOME Agreement. These limits may be modified by the U.S. Department of Housing and Urban Development annually and may be forwarded to the Grantor by the City for modification. Per HUD requirement, these income and rent limits are enforceable by the City through this Restrictive Covenant. The Grantor specifically agrees that the Project will meet the affordability requirements of 24 CFR 92.252, "Qualifications of Affordable housing: Rental Housing."

- b. **Homeownership HOME Units.** A homeownership unit will be affordable to households whose annual income does not exceed 80% of the area median income, as determined by HUD, with adjustments for smaller and larger households and certain exceptions as provided in 24 CFR Part 92.

The purchase price of a home will not exceed the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing. The parties specifically agree that the Project will meet the affordability requirements of 24 CFR 92.254(a)(5)(ii), and an Affordability Period will be determined at the time of sale to an income-qualified End Purchaser.

4. **Sale or Transfer of Property.** During the Affordability Period, the undersigned hereby covenants and agrees not to transfer title to or interest in, or otherwise dispose of the Project Area or any interest therein, or to materially change the occupancy of the Project Area, without obtaining the prior written consent of the City, which shall be conditioned solely upon receipt of evidence to the City that the purchaser or transferee has assumed in writing and in full the undersigned's duties and obligations under this Restrictive Covenant, and under the HOME Agreement and related documents, and has the financial and administrative capabilities to carry out such obligations. For homeownership HOME Project, written consent from the City shall be conditioned solely upon receipt of evidence to the City that the purchaser or transferee is an income qualified owner-occupant pursuant to the HOME Agreement between Grantor and City.



5. **Lien Release.** Following Grantor's completion of the Affordability Period and upon request of the Grantor, release of this Restrictive Covenant shall be in writing and filed of record with the Polk County Recorder.
  
6. **Correspondence.** Correspondence required by this Restrictive Covenant shall be provided by U.S. Mail as follows:
  - a. For the City, shall be directed to the Director of the Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, Iowa 50309;
  
  - b. For the Grantor, shall be directed to Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317.
  
7. **Failure to Comply.** Failure by Grantor to comply with the terms and obligations set forth in this Restrictive Covenant or with the HOME Agreement and related documents for the entirety of the Affordability Period shall constitute default of this Covenant and of the HOME Agreement. After City has given Grantor due notice of such non-compliance, and if Grantor should fail to cure such noncompliance within 30 days of such notice, or such longer period of time as agreed to in writing by City, then City shall be entitled to require Grantor to repay the entirety of the HOME Loan within 30 calendar days of the City's request for such repayment, notwithstanding any term to the contrary in the HOME Agreement, Note, Mortgage, or any other related document, and in addition to remedies set forth therein.
  
8. **Enforceability.** The terms and obligations set forth in this Restrictive Covenant are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantor agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from any of the terms of this Restrictive Covenant.
  
9. **Precedence.** This Restrictive Covenant, and the terms and obligations of Grantor set forth herein, shall supersede and take precedence over any and all other liens, obligations, or agreements made by Grantor in relation to the Project Area, unless otherwise explicitly stated therein or agreed to by written subordination agreement approved by resolution of the Des Moines City Council.

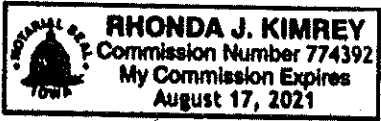
Grantor: Greater Des Moines Habitat for Humanity

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

By: [Signature]  
Lance Henning, Executive Director


STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

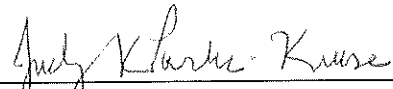


[Signature]  
Notary Public in the State of Iowa  
My Commission Expires: 8/17/2021

City of Des Moines, Iowa

By:   
Chris Johansen, Community Development Department Director

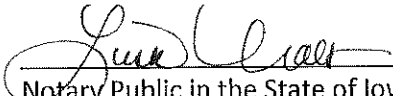
Approved as to form:

  
Judy K. Parks-Kruse, Assistant City Attorney

STATE OF IOWA       )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



  
Notary Public in the State of Iowa

My Commission Expires: 9/18/2021



Exhibit G Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy

HOME Rent Limits for Des Moines - West Des Moines, IA MSA (Effective 7/1/2020)							
	Efficiency	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom	6 bedroom
Low HOME Rent Limit	\$603	\$730	\$900	\$1160	\$1293	\$1428	\$1561
High HOME Rent Limit	\$603	\$730	\$900	\$1215	\$1323	\$1521	\$1720

2020 New Home Value Limits for 95% of Median Purchase Price for Polk Co./WDM-DSM (Effective 4/1/2020)	
1-unit	\$246,000
2-unit	\$315,000
3-unit	\$381,000
4-unit	\$472,000
Unadjusted Median Value	\$258,965

2020 Maximum Subsidy Amounts - Des Moines (Effective 6/4/2020)					
	0-bedroom	1 bedroom	2-bedroom	3-bedroom	4 bedroom
240% Level	\$153,314.40	\$175,752.00	\$213,717.60	\$276,482.40	\$303,489.60

2020 HUD Median Family Income for Des Moines MSA/Polk Co (AMFI Limits for 30, 50, 80% Effective 4/1/2020; HOME Income Limits Effective 7/1/2020)					
# Persons	Extremely Low 30%	Very Low 50%	HOME Funding Only 60%	Low 80%	100%
1	\$18,750	\$31,250	\$37,500	\$49,950	\$62,450
2	\$21,400	\$35,700	\$42,840	\$57,100	\$71,400
3	\$24,100	\$40,150	\$48,180	\$64,250	\$80,300
4	\$26,750	\$44,600	\$53,520	\$71,350	\$89,200
5	\$30,680	\$48,200	\$57,840	\$77,100	\$96,350
6	\$35,160	\$51,750	\$62,100	\$82,800	\$103,500
7	\$39,640	\$55,350	\$66,420	\$88,500	\$110,630
8	\$44,120	\$58,900	\$70,680	\$94,200	\$117,750



## Recapture Home Buyer Program Agreement and Restrictive Covenant

This Agreement is entered into by and between the City of Des Moines, Iowa, (hereinafter called "City") and \_\_\_\_\_ (hereinafter called "Home Buyer"), effective the day of execution of this Agreement and Covenant by the Home Buyer.

WHEREAS, the City is the recipient of HOME funding from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ the City of Des Moines entered into a HOME Agreement with \_\_\_\_\_ (hereinafter the Developer) to rehabilitate a home which is locally known as 1915 Franklin Avenue, Des Moines, Iowa ("Property"), and legally described as:

**South 155 1/5 feet Lot 4 in Florence, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

WHEREAS, the full amount of HOME assistance loaned to build and occupy this house is \_\_\_\_\_. Of that amount, \$\_\_\_\_\_ was provided to the Developer for construction (known as Developer Assistance) and \$\_\_\_\_\_ is provided to the Home Buyer for purchase (known as Home Buyer Assistance).

WHEREAS, the Home Buyer is requesting approval from the City of Des Moines to purchase the Property as an eligible purchaser; and

WHEREAS, the City's Neighborhood Services Department has reviewed all supporting documents submitted by the Home Buyer and Developer, completed a Home Buyer assistance underwriting form, and has determined that the Home Buyer meets all eligibility requirements for this program and the assistance provided; and

WHEREAS, the HOME Program Rule 24 CFR 92.254(a)(5)(ii)(A) defines "net proceeds" as the sales price of the Property paid by the Home Buyer, minus the Superior Non-Home Debt excluding closing costs.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City and the Home Buyer mutually agree as follows:

1. The City hereby approves the Home Buyer as an eligible purchaser of the Property at the subsidy listed below in 2(a).
2. The Home Buyer specifically agrees that:
  - a. The City of Des Moines has disbursed the sum of \$\_\_\_\_\_ to the Home Buyer for the purpose of purchasing the Property at an affordable cost.



- b. The Home Buyer will occupy the Property as his/her principal residence for the duration of the affordability period which is \_\_\_ months from the execution of this document by all parties.
  - c. As long as the Home Buyer occupies the Property as his/her principal residence, no payment is due on the Home Buyer HOME assistance.
  - d. The Home Buyer assistance will further be reduced at a rate of \_\_\_\_\_ or \_\_\_\_\_ percent annually beginning \_\_\_\_\_ after the execution of this agreement and continuing until the assistance is totally forgiven at the end of the affordability period. The City will release the lien created by this Agreement and Covenant at such time.
  - e. If the Property is sold, refinanced other than for rate or term, or transferred prior to the end of the affordability period, the Home Buyer must repay the total amount of the HOME subsidy stated above in paragraph 2(a), less the prorated HOME investment amount for the length of time the Home Buyer owned and occupied the unit limited to the "net proceeds" of the sale as defined in HOME Program Rule 92.254(a)(5)(ii)(A). The City will release the lien created by this Agreement and Covenant upon Home Buyer's payment in full of the amount owed, as determined by the City.
  - f. The Home Buyer will not lease, sub-lease or transfer any interest in the Property during the affordability period. If the Home Buyer does not sell the Property but fails to occupy the unit as his/her principal residence, the Home Buyer is in noncompliance with the HOME program (24 CFR 92.254(a)(3)). In that event, the City will take legal action against the Home Buyer to collect the full amount of HOME subsidy stated above in paragraph 2(a) in the property referenced in the preamble of this agreement.
3. The City will release this Agreement and Restrictive Covenant only upon the successful completion of the affordability period or repayment of the outstanding HOME funds disbursed to the Home Buyer limited to the net proceeds. Such release shall be in writing and filed of record with the County Recorder.
4. The Home Buyer agrees that the City will monitor this program annually and that the Home Buyer will submit, at the request of the City, documentation verifying his/her principal residency at this address, including but not limited to verification of mailing address by the U.S. Postal Service, current utility bills and other documents as requested.
5. The City is entitled to conduct an annual physical inspection of the Property by appointment and the Home Buyer will cooperate with the City in scheduling this appointment.
6. The Home Buyer specifically acknowledges that giving any false, misleading or incomplete information to the City concerning his/her eligibility for this program is a violation of the HOME Program regulations and will entitle the City to recapture the HOME Investment Partnership money (Home Buyer Assistance and Developer Assistance) invested in this project.
7. Any additions, modifications or amendments to this Agreement, including any attachment, shall be in writing executed by both parties and placed of record with the Polk County Recorder.



8. The terms set forth herein shall serve as a restrictive covenant running with the land for the affordability period of five (5) years beginning on the date of the recording with the County Recorder of this Agreement and Covenant.
9. In the event of foreclosure by the Senior Security, if applicable, of its Mortgage or similar agreement upon the Property or other transfer of the Property in lieu of such foreclosure, the Senior Security shall notify the City at the address set forth in Section 10 below of payment delinquency and any foreclosure action.
10. Correspondence required by this Agreement and Restrictive Covenant shall be provided by U.S. Mail as follows:
  - a. For the City, shall be directed to the Director of the Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, Iowa 50309;
  - b. For the Home Buyer, shall be directed to {{ INSERT ADDRESS }}.
11. The terms and obligations set forth in this Agreement and Restrictive Covenant are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Agreement and Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Home Buyer agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from any of the terms of this Agreement and Restrictive Covenant.
12. This Agreement and Restrictive Covenant, and the terms and obligations of Home Buyer set forth herein, shall supersede and take precedence over any and all other liens subsequently filed, obligations, or agreements made by Home Buyer in relation to the Project Area, unless otherwise explicitly stated therein or agreed to by written subordination agreement approved by resolution of the Des Moines City Council.



IN WITNESS WHEREOF the parties have executed this Agreement on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

HOME BUYER(S)

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Name Date

STATE OF IOWA )  
 ) §:  
COUNTY OF POLK )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did state that they are the persons named in and who executed the foregoing instrument, and acknowledged the execution of the instrument to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public in the State of Iowa

**CITY OF DES MOINES, IOWA**

\_\_\_\_\_  
Chris Johansen, Neighborhood Services Director Date

STATE OF IOWA )  
 ) §:  
COUNTY OF POLK )

On this \_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public, personally appeared **Chris Johansen**, to me personally known, who, being by me duly sworn, did state that he is the **Neighborhood Services Director** for the City of Des Moines, Iowa; that the seal affixed to the foregoing instrument is the seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No \_\_\_\_\_ on \_\_\_\_\_ by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in the State of Iowa



57.00  
Chg Jm



Doc ID: 035672990011 Type: GEN  
Kind: MORTGAGE  
Recorded: 10/02/2020 at 08:55:18 AM  
Fee Amt: \$57.00 Page 1 of 11  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037389

BK **18102** PG **804-814**

Prepared by: Judy K Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533  
Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Mortgage**  
**City of Des Moines HOME Program**

This Mortgage made on this 14th day of September, 2020 between Greater Des Moines Habitat for Humanity (hereinafter called "Borrower" or "Mortgagor"), and the City of Des Moines, Iowa (hereinafter called "Lender" or "Mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the principal amount of \$35,000, which shall be payable in accordance with a certain note, bearing even date herewith, a true and correct copy of which, exclusive of the signature of the Mortgagor, and all other indebtedness which the Mortgagor is obliged to pay to the Mortgagee pursuant to the provisions of the Note and this Mortgage, the Mortgagor hereby grants, sells, conveys and mortgages to the Mortgagee, forever, the following described real estate situated in the County of Polk, State of Iowa, to wit:

Legally known as: South 155 1/5 feet Lot 4 in Florence, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

Locally known as: 1915 Franklin Avenue, Des Moines, Iowa

TOGETHER, with all appurtenances thereto and all the estate and rights of the Mortgagor in and to such property or in anywise appertaining thereto; all buildings and other structures now or hereafter thereon erected or installed, and all fixtures and articles of personal property now or hereafter to, or used in, or in the operations of, any such land, buildings or structures which are necessary to the complete use and occupancy of such buildings or structures for the purpose for which they were or are to be erected or installed, including, but not limited to all heating, plumbing, bathroom, lighting, cooking, laundry, ventilating, refrigerating, incinerating, and air-conditioning equipment and fixtures and all replacements thereof and additions thereto; whether or not the same are or shall be attached to such land, buildings or structures in a manner.

TOGETHER, with any and all awards now or hereafter made for the taking of the property mortgaged hereby, or any part thereof (including any easement), by the exercise of the power of eminent domain,

including any award for change of the grade of any street or other roadway, which awards are hereby assigned to the Mortgagee and are deemed a part of the property mortgaged hereby, and the Mortgagee is hereby authorized to collect and receive the proceeds of such awards, to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness secured by this Mortgage, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning each such award to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and nothing herein shall be considered an assignment of Mortgagor's right to contest a claim of eminent domain, which Mortgagor shall reserve all rights to; and

TOGETHER, with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining the above described land (all the above described land, buildings, other structures, fixtures, articles of personal property, awards of taking by eminent domain, and other rights and interests as described herein being hereinafter collectively call the "mortgaged property").

TO HAVE AND TO HOLD the mortgaged property and every part thereof unto the Mortgagee, its successors and assigns forever for the purposes and uses herein set forth.

AND, the Mortgagor further covenants and agrees with the Mortgagee as follows;

1. **Obligations.** The Mortgagor will promptly pay the principal and interest on the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times in the manner provided in the Note and in this Mortgage.
2. **Taxes and Assessments.** The Mortgagor will pay when due, as hereinafter provided, all ground rents, if any, and all taxes and assessments, water rates and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the mortgaged property, or any part thereof, and will pay when due, every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.
3. **Improvements; Remedies.** This Mortgage and the Note were executed and delivered to secure moneys advanced in full or in part to the Mortgagor by the Mortgagee as or on account of a loan evidenced by the Note, for the purpose of making the improvements described or referred to in the HOME Agreement entered into by the Mortgagor and the Mortgagee in connection herewith to or on the Mortgaged property, and for such other purpose, if any, described or referred to therein, which improvements are hereafter collectively called "Improvements." The Mortgagor shall make or cause to be made all the Improvements. If the construction or installation of the Improvements shall not be carried out with reasonable diligence, or shall be discontinued at any time for any reason, other than strikes, lockouts, acts of God, fires, floods or other similar catastrophes, riots, war or insurrection, the Mortgagee after due notice to the Mortgagor is hereby authorized:

- a. to enter upon the mortgaged property and employ any watchmen to protect the Improvements from deprecation or injury and to preserve and protect such property,
  - b. to carry out any or all then existing contracts between the Mortgagor and other parties for the purpose of making any of the Improvements,
  - c. to make and enter into additional contracts and incur obligations for the purposes of completing the Improvements pursuant to the obligations of the Mortgagor hereunder, either in the name of the Mortgagee or the Mortgagor,
  - d. to pay and discharge all debts, obligations and liabilities incurred by reason of any action taken by the Mortgagee, as provided in this Paragraph, all of which amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate of amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate set forth in the Promissory Note signed concurrently herewith and included herein by this reference shall be payable by the Mortgagor on demand and shall be secured by this Mortgage.
4. **Alterations in Project Area.** No building or other structure or improvement, fixture or personal property mortgaged on the Project Area hereby shall be removed or intentionally demolished by Mortgagor without the prior written consent of the Mortgagee unless the same is replaced with like property, subject to the lien and security interest of this Mortgage, of at least equal value and utility. The Mortgagor will not make, permit or suffer any substantial alteration of or installed upon the mortgaged property, or any part thereof, except the Improvements required to be made pursuant to Paragraph 3 hereof, nor will the Mortgagor use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written constant of the Mortgagee. The Mortgagor will maintain the mortgaged property in good condition and state of repair and will not suffer or permit any waste to any part thereon, and will promptly comply with all the requirements of Federal, state and local governments, or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.
5. **Liens.** The Mortgagor will not voluntarily create, or permit or suffer to be created or to exist on or against the mortgaged property, or any part thereof, any lien superior to the lien of this mortgage, except if subordinated by the City, and will keep and maintain the same free from the claims of all parties supplying labor or materials which will enter into the construction or installation of the improvements.
6. **Insurance.**
- a. The Mortgagor will keep all buildings, other structures and improvements, including equipment, now existing or which may hereafter be erected or installed on the land mortgaged hereby, insured against loss by fire and other hazards, casualties and contingencies, in such amounts and manner, and for such periods, as deemed

commercially reasonable. Unless otherwise required by the Mortgagee, all such insurance shall be effected by Standard Fire and Extended Coverage insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached thereto loss payable clauses in favor of the mortgagee and any other parties as shall be satisfactory to the Mortgagee.

A certificate of insurance for all required insurance policies herein shall be delivered promptly to the Mortgagee upon execution of this Mortgage, unless they are required to be delivered to the holder of a lien or mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to the Mortgagee, shall be delivered promptly to the Mortgagee.

The Mortgagor will pay promptly when due, as hereinafter provided, any and all premiums on such insurance, and in every case in which payment thereof is not made from the deposits therefor required by this Mortgage, promptly submit to the Mortgagee for examination, receipts or other evidence of such payment as shall be satisfactory to the Mortgagee.

- b. In the event of loss or damage to the property the Mortgagor will give to the Mortgagee immediate notice thereof by mail, and the Mortgagee may make and file proof of loss if not made otherwise promptly by or on behalf of the Mortgagor. Each insurance company issuing any such policy is hereby authorized and directed to make payment hereunder for such loss directly to the Mortgagee, instead of to the Mortgagor and the Mortgagee jointly payable, unless the amount of loss is payable first to the holder of a lien under a mortgage or similar instrument to which this Mortgage is expressly subject; and the insurance proceeds or any part thereof received by the Mortgagee may be applied by the Mortgagee, at its option, either in reduction of the indebtedness of foreclosure of the Mortgage, or of the transfer of title to the mortgaged property in every such insurance policy then in force, subject to the rights in interest of the holder of any such prior lien, shall pass to the grantee acquiring title to the mortgaged property together with such policy and appropriate assignment of such right, title and interest which shall be made by the Mortgagor.

#### **7. Payment and Application of Payments.**

- a. In order to more fully protect the security of this Mortgage, the Mortgagor provide annually to the Mortgagee until the Note is paid in full, proof of payment of the following:
  - i. ground rents, if any, next becoming due,
  - ii. the premiums next becoming due on the policies of fire and all other hazard insurance required by this Mortgage with respect to the mortgaged property,

- iii. taxes, assessments, water rates and other governmental charges next becoming due on the mortgaged property (all the foregoing amounts as estimated by the Mortgagee as set forth in a written notice of such estimate by the Mortgagee to the Mortgagor from time to time),
- b. Following written notice from Mortgagee to Mortgagor, the Mortgagee may require that the Mortgagor deposit with the Mortgagee, together with and in addition to the payment of principal and interest in accordance with the Note secured hereby, until the Note is paid in full or forgiven as applicable, an amount of money equal to the total amount referred to in clauses (i) through (iii) above less all amounts that may already have been paid therefor, divided by the number of calendar months to elapse before one calendar month prior to the date when such ground rents, premiums, taxes, assessments, water rights and other governmental charges, respectively, will become due and payable. If any amount referred to in clauses (i) through (iii) hereof is required to be deposited by the Mortgagor under a mortgage or similar instrument having priority over the lien of this Mortgage, the Mortgagor shall make the deposits required by this Paragraph 7 only in the event of the termination of such obligation under the prior mortgage or similar instrument. The Mortgagor shall give prompt notice in writing to the Mortgagee of the occurrence of the last-mentioned event. All such amounts so deposited with the Mortgagee shall be held by the Mortgagee, or any agent designated by it, in trust to be used only for the payment of such ground rents, premiums, taxes, assessments, water rates and other governmental charges. No interest shall be payable by the Mortgagee on any sum so deposited.
- c. All amounts required to be deposited with the Mortgagee or Senior Security monthly in accordance with Paragraph 7(b) hereof, and the amount of principal and interest to be paid each month on account of the Note, shall be added together, and the aggregate amount thereof shall be paid by the Mortgagor to the Mortgagee in a single payment to be applied by the Mortgagee on account of the indebtedness of the mortgagor pursuant to the Note and this Mortgage (to the extent that monies are available from the amount so deposited), in the order, any provision of the Note to the contrary notwithstanding, as follows:

FIRST            to the amount of such ground rents, if any, taxes, assessments, water rights and other governmental charges required to be paid under the provisions of this Mortgage, in whatever sequence the Mortgagee may exclusively determine;

SECOND        to the interest due on the Note;

THIRD         to the principal due on the note; and

FOURTH       the remainder, to the late charges, if any, referred to in the Note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless paid by the Mortgagor prior to the due date of the next such deposit payable, constitute an event of default under this Mortgage.

- d. Any excess funds that may be accumulated by reason of the deposits required under Paragraph 7(a) hereof, remaining after payment of the amounts described in clauses (i), (ii), and (iii) thereof, shall be credited to subsequent respective monthly amounts of the same nature required to be paid thereunder. If any such amount shall exceed the estimate therefor, the Mortgagor shall forthwith pay to the Mortgagee the amount of such deficiency upon written notice by the Mortgagee of the amount thereof. Failure to do so before the due date of such amount shall be an event of default under this Mortgage. If the mortgaged property is sold under foreclosure or is otherwise acquired by the Mortgagee, after default by the Mortgagor, any remaining balance of accumulations under Paragraph 7(a) hereof, shall be credited to the principal amount owing on the Note as of the date of commencement of foreclosure proceedings for the mortgaged property, or as of the date the mortgaged property is otherwise so acquired.
8. **Compliance with Laws.** The improvements and all plans and specifications therefor shall comply with all applicable municipal ordinances, regulations, and rules made or promulgated by lawful authority, and upon their completion shall comply therewith.
9. **Protection of Mortgagee's Security.** Upon any failure by the Mortgagor to comply with or perform any of the terms, covenants or conditions of this Mortgage requiring the payment of any amount of money by the Mortgagor, other than the principal amount of the loan evidenced by the Note, interest and other charges, as provided in the Note, the Mortgagee may at its option make such payment. Every payment so made by the Mortgagee (including reasonable attorney's fees incurred thereby), with interest thereon from the date of such payment, at a rate not to exceed fifteen percent (15%) per annum, except any payment for which a different rate of interest is specified herein, shall be payable by the Mortgagor to the Mortgagee within thirty days and shall be secured by this Mortgage. This Mortgage with respect to any such amount and the interest thereon, shall constitute a lien on the mortgaged property prior to any other lien attaching or accruing subsequent to the lien of this Mortgage.
10. **Inspections.** The Mortgagee, by any of its agents or representatives, shall have the right to inspect the mortgaged property from time to time at any reasonable hour of the day. Should the mortgaged property, or any part thereof, at any time require inspection, repair, care or attention of any kind or nature not provided by this Mortgage as determined by the Mortgagee in its reasonable discretion, the Mortgagee may, after reasonable notice to the Mortgagor, enter or cause entry to be made upon, the mortgaged property, and inspect, repair, protect, care for or maintain such property, as the Mortgagee may in its sole discretion deem necessary, and may pay all amounts of money therefor, as the Mortgagee may in its sole discretion deem necessary.
11. **Acceleration of Payment.** The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing by the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, will immediately become due and payable without notice or demand upon the appointment of a court appointed receiver or liquidator, whether voluntary or involuntary, for

the mortgagor or any of the property of the Mortgagor, or upon the filing of a petition by or against the Mortgagor under the provisions of any State insolvency law, or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Mortgagor of an assignment for the benefit of the Mortgagor's creditors. The Mortgagee is authorized to declare, at its option, all or any part of such indebtedness immediately due and payable upon the happening of any of the following events:

- a. Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;
- b. Nonperformance by the Mortgagor of any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in subdivision (a) hereof), or the HOME Agreement or Restrictive Covenant related thereto, after the Mortgagor has been given thirty-day due notice and opportunity to cure by the Mortgagee of such nonperformance;
- c. After applicable notice and cure period, failure of the mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property, including but not limited to the HOME Agreement or Restrictive Covenant, or any part thereof, which shall have priority over the lien of this Mortgage;
- d. The Mortgagee's discovery of the Mortgagor's failure in any application of the Mortgagor to the Mortgagee to disclose any fact reasonably deemed by the Mortgagee to be material, or of the making therein or in any of the agreements entered into by the Mortgagor with the Mortgagee (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of, the Mortgagor;
- e. The sale, lease (except non-HOME unit tenant leases), or other transfer of any kind of nature of the mortgaged property (except mortgaged interest or easements), or any part thereof, without the prior written consent of the Mortgagee;

The Mortgagee's failure to exercise any of its rights hereunder shall not constitute a waiver thereof. All the events in this Paragraph enumerated upon the happening of any of which the Note shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "events of default".

12. **Cure of Default.** The Mortgagee may from time to time cure an event of default under any covenant or agreement in any instrument creating a lien upon the mortgaged property, or any part thereof, including but not limited to the HOME Agreement and Restrictive Covenant, which shall have priority over the lien of this Mortgage, to such extent as the Mortgagee may exclusively determine, and each amount paid (if any) by the Mortgagee to cure any such default

shall be paid by the Mortgagor to the Mortgagee; and the Mortgagee may also become subrogated to whatever rights the holder of the prior lien might have under such instrument.

13. **Event of Default.**

- a. After the happening of an event of default hereunder, the Mortgagor shall, upon demand of the Mortgagee, surrender possession of the mortgaged property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all the rents therefrom which are due to be become due, and apply the same, after payment of all charges and expenses, on account of the indebtedness hereby secured, and all such rents and all leases existing at the time of such default are hereby assigned to the Mortgagee as further security for the payment of the indebtedness secured hereby; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.
- b. In the event that the Mortgagor occupies the mortgaged property, or any part thereof, the Mortgagor agrees to surrender possession of such property to the Mortgagee immediately after any such default hereunder, and if the Mortgagor remains in possession after such default, such possession shall be as a tenant of the Mortgagee, and the Mortgagor shall pay in advance, upon demand by the Mortgagee, as a reasonable monthly rental for the premises occupied by the Mortgagor, an amount at least equivalent to one-twelfth (1/12) of the aggregate of the twelve monthly installments payable in the current calendar year, plus the actual amount of the annual ground rent, if any, taxes, assessments, water rates, other governmental charges and insurance premiums payable in connection with the mortgaged property during such year, and upon the failure of the Mortgagor to pay such monthly rental, the Mortgagor may also be dispossessed by the usual summary proceedings applicable to tenants. This covenant shall become effective immediately upon the happening of any such default, as determined in the sole discretion of the Mortgagee, who shall give notice of such determination to the Mortgagor; and in the case of foreclosure and the appointment of a receiver of the rents, the within covenant shall inure to the benefit of such receiver.

14. **Receivership.** The Mortgagee in any action to foreclose this Mortgage shall be entitled to the appointment of a receiver with notice as a matter of right without regard to the value of the mortgaged property, or the solvency or insolvency of the Mortgagor or other party liable for the payment of the Note and other indebtedness secured by this Mortgage.

15. **Redemption.** In addition to all other remedies afforded to Mortgagee by this Mortgage and under Iowa law, at Mortgagee's option in the event of default that remains uncured by Mortgagor, Mortgagee may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Chapter 654, Code of Iowa (2014). Thereafter this Mortgage may be foreclosed in equity and the court may appoint a receiver to take immediate possession of the mortgaged property and of the revenues and income accruing therefrom and to rent or cultivate the same as the receiver may deem best for the interest of all



parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure and upon the Note and Mortgage obligation.

It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provision of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after the sale such right of redemption shall be exclusive to the Debtor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) the real estate is less than 10 acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first 30 days after such sale, and the time provided for redemption by creditors as provided in Section 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code. In case of a foreclosure sale of the mortgaged property, it may be sold in one parcel.

16. **Statement of Indebtedness.** The Mortgagor, within 10 days upon request in person or within 20 days upon request by mail, will furnish promptly a written statement in form satisfactory to the Mortgagee, signed by the Mortgagor and duly acknowledged, of the amount then owing on the Note and other indebtedness secured by this Mortgage, and whether any offsets or defenses exist against such indebtedness or any part thereof.
17. **Notice of Damage or Destruction.** The Mortgagor will give prompt notice by registered or certified mail to the Mortgagee of any fire, damage or other casualty materially affecting the mortgaged property, or of any conveyance, transfer of change in ownership of such property, or any part thereof.
18. **Notices.** Notice and demand or request may be made in writing and may be served in person or by mail, as follows:

- a. For the City: Neighborhood Services Director, Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
- b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317

19. **Assignment of Rents.** The Mortgagor will not assign the rents, if any, in whole or in part, from the mortgaged property, or any part thereof, without the prior written consent of the Mortgagee.
20. **Authority.** The Mortgagor is lawfully seized of the mortgaged property and has good right, full power and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to the Mortgagee forever against the lawful claims and demands of any and all parties whatsoever.
21. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable, as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.
22. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the mortgaged property and waives all rights of exemption as to any of the mortgaged property.
23. **Successors and Assigns.** This Mortgage and all the covenants, agreements, terms and conditions herein contained shall be binding upon and inure to the benefit of the Mortgagor and the heirs, legal representatives and assigns of the Mortgagor, and, to the extent permitted by law, every subsequent owner of the mortgaged property; and shall be binding upon and inure to the benefit of the Mortgagee and its assigns. If the Mortgagor, as defined herein, consists of two or more parties, the Mortgage shall constitute a grant and mortgage by all of them jointly and severally, and they shall be obligated jointly and severally under all the provisions hereof and under the Note. The word "Mortgagee" shall include any person, corporation or other party who may from time to time be the holder of this Mortgage. Whenever used herein the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.
24. **Acknowledgement of Receipt of Copies of Debt Instrument.** Mortgagor hereby acknowledges the receipt of a copy of the Mortgage together with a copy of the Note secured hereby.

IN WITNESS WHEREOF this Mortgage has been duly signed and sealed by the Mortgagor on or as of the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

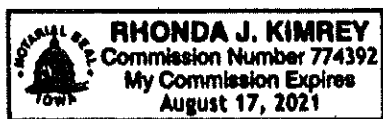
BORROWER: Greater Des Moines Habitat for Humanity

By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA        )  
                                  ) ss:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, and that the seal affixed to the forgoing instrument is the seal of the corporation (or no seal has been procured by the corporation); that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021



Exhibit J Promissory Note

**Promissory Note  
City of Des Moines HOME Program**

**Borrower/Promisor:** Greater Des Moines Habitat for Humanity, "Borrower"  
**Property Address:** 1915 Franklin Avenue, Des Moines, IA, "Property"  
**Loan Amount:** \$35,000  
**Legal Description:** South 155 1/5 feet Lot 4 in Florence, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

1. **Borrower Promise to Pay.** For value received, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the City of Des Moines, Iowa (hereafter referred to as the City), or its successors and assigns (herein collectively called the "Lender"), the maximum principal sum of \$35,000 ("HOME Loan"), or such lesser amount as may be endorsed on this Note on behalf of Lender.
2. **Interest.** The Loan shall accrue interest on the principal balance at a 0% interest rate compounding annually for a term of 3 years.
3. **Loan Forgiveness.** The Borrower shall use the Loan amount in compliance with the HOME Agreement by and between City and Borrower relating to the above-listed property. If Borrower complies with the HOME Agreement by and between City and Borrower, as determined by City, then payment of the Loan amount shall be deferred for each year during which they are in compliance, and on the 14th day of September, 2023, the amount of the HOME Loan shall be forgiven and discharged by Lender.
4. **Non-Compliance.** If the Borrower fails to comply with the HOME Agreement, as determined by City, said non-compliance shall constitute a default of the terms of this Note and then and in that event the entire Loan amount due on this Note shall immediately be due and payable to Lender and no portion of the Loan amount shall be discharged or forgiven.
5. **Sale or Transfer.** The HOME Loan, or any remaining balance thereof, shall be due in full upon any voluntary sale of the Property or improvements thereon without the prior written consent of the Lender. If the HOME Loan is not timely paid when due upon such sale, it shall thereafter draw interest at the rate of 10% per annum, but not to exceed the maximum interest rate permitted by law. If the City consents to the sale or transfer of the Property or the improvements thereon, the HOME Loan and all of the obligations related thereto shall be assumed by the Borrower's successor or assign.
6. **Satisfaction of Repayment.** Unless there is a finding of ineligible use of HOME funding by the United States Department of Housing and Urban Development (HUD) or a HUD requirement of reimbursement of HOME funding, the Lender shall look solely to the Property for the satisfaction of the repayment obligations under this Note.



7. **Borrower's Right to Prepay.** Borrower may prepay at any time all or any part of the principal amount due on this Note without the payment of penalties or premiums, provided that Borrower is not in default under this Note and the payment is identifiable as a prepayment of principal. In the event of prepayment, Lender will notify Borrower of the new date and amount of final payment due under this Note.
  
8. **Borrower's Failure to Pay as Required.** If the Borrower shall default in the payment of any installment due under this Note, and such default is not made good prior to the due date of the next installment, the entire unpaid principal amount of this Note, together with accrued interest and late charges shall become immediately due and payable, at the option of the Lender, with two-day notice to the Borrower(s). Failure of the Lender to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal and interest, so long as the amount of optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower hereby agrees to pay Lender's costs and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on such judgment in the State of Iowa, or if there is no such maximum, at the rate of 15% per annum.  
  
If any annual installment of interest or any part of such installment, remains unpaid for a period of 15 days from its due date, the Borrower hereby agrees to pay to Lender a Late Charge of 4% of the unpaid amount of such installment.
  
9. **Security.** This Note is secured by a Mortgage, duly filed for record in the office of the County Recorder/Register of Deeds of Polk County, Iowa.
  
10. **Waivers.** All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.



In witness whereof, this Note has been duly executed by the undersigned Borrower(s), as of the date shown above.

BORROWER: Greater Des Moines Habitat for Humanity

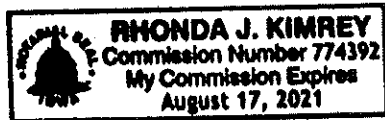
By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA            )  
  ) ss:  
COUNTY OF POLK        )

On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

Rhonda J. Kimrey  
Notary Public in the State of Iowa



My Commission Expires: 8/17/2021



Exhibit K Loan Repayment Schedule (if applicable)

**REMOVED – Not Applicable**

**Repayment of loan due in full if project becomes noncompliant.**



**TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR  
BUSINESSES AND LOWER INCOME PERSONS**

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, will, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice will describe the section 3 preference, will set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled

(1) after the contractor is selected but before the contract is executed, and

(2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.





Exhibit M Insurance Requirements and Proof of Insurance

**CITY OF DES MOINES, IOWA  
HOME Grant  
INSURANCE & INDEMNIFICATION REQUIREMENTS**

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR and CITY throughout the duration of this Contract. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Contract execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. **AUTOMOBILE LIABILITY INSURANCE:** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the CONTRACTOR'S business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- C. **UMBRELLA/EXCESS LIABILITY INSURANCE:** The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.



- D. **WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE:** As required by State of Iowa Workers' Compensation Law, the CONTRACTOR shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONTRACTOR is not required to purchase Workers' Compensation Insurance, the CONTRACTOR shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- E. **ADDITIONAL INSURED ENDORSEMENT:** The City shall NOT be named or included as an Additional Insured.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. Written notifications shall be sent to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.
- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONTRACTOR hereby releases the CITY from and against any and all liability or responsibility to the CONTRACTOR or anyone claiming through or under the CONTRACTOR by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Contract. The CONTRACTOR'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. **PROOF OF INSURANCE:** The CONTRACTOR shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify "HOME Grant" along with address(es) of property receiving funding from grant monies under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
  - A copy of the Cancellation and Nonrenewal Notification Endorsement or its equivalent as required in paragraph 2.F. above.

**Mail Certificates of Insurance to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.**



- I. AGENTS AND SUBCONTRACTORS: The CONTRACTOR shall require all its agents and subcontractors who perform work and/or services on behalf of the CONTRACTOR to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

### 3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act of the CITY.





**City of Des Moines  
HOME Agreement with Owner, Developer, Sponsor, or Subrecipient**

**Borrower Name and Address:** Greater Des Moines Habitat for Humanity  
2200 E. Euclid Avenue  
Des Moines, IA 50317

**Borrower Role:**  
 Owner                       Developer                       Sponsor                       Subrecipient

**Amount of HOME Assistance:** \$35,000

**Form of Assistance:**                       Repayable Loan                       Forgivable Loan

**Project Name and Address:** 1603 23rd Street  
Des Moines, IA 50311

**Project Type (check all that apply):**  
 Acquisition (Homebuyer)                       New Construction                       Homeownership  
 Demolition                       Rehabilitation                       Rental

**Affordability Period:** 5 years after sale to eligible homebuyer

**Total Number of Units in Project:** 1

**Number of HOME-Assisted Units:** 1

**Contract or Loan Number:** 20-HM-800-00022

**Effective Date:** September 14, 2020

**Exhibits Attached**

- |   |  |
|---|--|
| A. Legal Description  | I. Mortgage (separately recorded)                      |
| B. Statement of Work or Project Description                             | J. Promissory Note                                     |
| C. Project and Construction Schedule                                    | K. Loan Repayment Schedule (if applicable)             |
| D. Project Budget   | L. Assurance of Compliance with Section 3 Requirements |
| E. Sources and Uses   | M. Insurance Requirements and Proof of Insurance       |
| F. Declaration of Restrictive Covenants (separately recorded)           |  |
| G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy |  |
| H. Recapture Agreement  |  |



### Recitals

This Home Investments Partnership Program (HOME) Agreement (hereinafter the "Agreement") is entered into by and between the City of Des Moines, Iowa (hereinafter the "City" or "Lender") and Greater Des Moines Habitat for Humanity, (hereinafter called "Borrower"), who is the Owner, Developer, Sponsor, or Subrecipient, effective the date on which the contract has been both approved by the City Council and signed by the Neighborhood Services Director; and

**WHEREAS**, the City has entered into an Agreement with United States Department of Housing and Urban Development ("HUD") for funding of its HOME Program pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act; and

**WHEREAS**, the City's HOME Program is designed to provide affordable rental and home ownership opportunities for low- and very-low income households through acquisition, rehabilitation, and new construction; and

**WHEREAS**, the construction of new affordable housing is consistent with the City's 2020-2024 Consolidated Plan, which was approved by City Council for submission to HUD on November 4, 2019 by Roll Call 19-1792; and

**WHEREAS**, the Borrower is a non-profit entity registered with the Iowa Secretary of State and experienced with owning and operating affordable housing; and

**WHEREAS**, the Borrower applied to the City for a HOME forgivable loan in the amount of \$35,000 (hereinafter referred to as the "Loan") for construction of one homeownership HOME unit for a low-income household (hereinafter referred to as the "Project") within the Borrower's overall development; and

**WHEREAS**, the property upon which the Project will be undertaken is locally known as 1603 23rd Street, Des Moines, Iowa, and legally described on Exhibit A attached hereto; and

**WHEREAS**, the Borrower's development proposal—which includes the construction schedule, budget, site plans, construction drawings, and any other documentation used to review and underwrite the Project—have been reviewed by the City's Neighborhood Services Department, which administers the HOME Program, and it has been determined that the Borrower meets all the eligibility requirements; and

**WHEREAS**, City staff has determined that HOME funds are needed to fill a gap in the sources and uses of the development to serve the targeted income populations; and

**WHEREAS**, on September 14, 2020, by Roll Call 20-1450, the City Council approved this HOME Agreement and related documents; and

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



1. **Use of HOME Funds; Completion Date.** The Project is new construction of one residential unit, and that one unit in the Project will be a HOME Assisted Unit. The HOME Funds will be used for certain Project costs as eligible per 24 Code of Federal Regulations (CFR) Part 92.206 and in accordance with the attached Exhibit B Statement of Work, Exhibit C Project and Construction Schedule, Exhibit D Budget, and Exhibit E Sources and Uses. Construction of the Project shall be within three years of the effective date of this Agreement, to be completed by September 14, 2023 ("completion date".)
2. **Affordability Requirements and Duration of Agreement.** The Borrower agrees to meet the affordability requirements of 24 CFR Part 92.252 (rental) or 254 (homeownership), as applicable, and outlined below and imposed by a Restrictive Covenant, attached hereto as Exhibit F and to be recorded separately by City as a lien against the Project property.

The Affordability Period will start after Project completion and closeout, which includes Certificate(s) of Occupancy, final demographic information, construction reports, final addresses or unit numbers submitted to City, and lease or sale of all HOME units to eligible HOME tenants or homebuyers. If the Project is completed sooner than completion date in Section 1, the City will notify the Borrower in writing as to the revised completion date and beginning of the Affordability Period.

a. **Rental Projects.** This agreement is in effect through the Affordability Period, or 20 years. The rents for the HOME Units will not exceed the annual HOME rents of the then-current calendar year as annually published by HUD. Initial rent guidelines are provided as attached in Exhibit G Rent Limits and Sales Limits. Rent increase requests from Borrower must be presented in writing to the City's Neighborhood Services Department, Neighborhood Conservation Services (NCS) Division. NCS will provide written responses to rent increase requests within 30 days of receipt.

The Project will have a total of one HOME unit. HOME units will be affordable to households at or below 60% of area median income and will be considered High HOME units. In rental projects with five or more HOME-assisted rental units, at least 20% of the HOME-assisted units must be Low HOME units and affordable to households at or below 50% of area median income. Collectively this number and proportion of units constitutes the HOME Project Unit mix.

The HOME units will be floating. The Borrower must maintain the HOME Project Unit mix throughout the Affordability Period and restore compliance with the HOME Project Unit mix requirements if tenant income changes.

b. **Homeownership Projects.** This Agreement is in effect until the Project is transferred from developer to an eligible homebuyer. The purchase price of a home will not exceed the HOME affordable homeownership limits provided by HUD for newly constructed housing and for existing housing, provided on attached Exhibit G Rent Limits and Sales Limits. The purchase price will not exceed the final appraisal. HOME funds used for down payment assistance will not be greater than 10% of the amount of HOME funds for development of the housing.

A homeownership Project will be affordable to households whose annual income does not exceed 80% of the area median income, as determined by HUD, with adjustments for smaller and larger households and certain exceptions as provided in 24 CFR Part 92. The parties specifically agree that the Project will meet the affordability requirements of 24 CFR 92.254(a)(5)(ii), and an affordability period will be determined at the time of sale to a low-income homebuyer ("End Purchaser"). If the



property is sold, refinanced, other than for rate or term, or transferred prior to the end of the Affordability Period, the End Purchaser will be subject to recapture provisions in attached Exhibit H Homebuyer Recapture Agreement. Recaptured funds must be returned by the End Purchaser to the City.

The Borrower will market and sell the Property within nine months from the date of the City's final inspection to an eligible End Purchaser. If the Property is not sold within nine months after the City's final NCS inspection and certificate of occupancy issuance, the Project must be converted to a rental unit and is subject to subsection (a) of this Section 2, or all HOME funds must be repaid by the Borrower to the City. A ratified sales contract between the Borrower and the End Purchaser is sufficient to demonstrate a sale.

3. **Loan Repayment.** The Loan will be repaid according to attached Exhibit I Mortgage, Exhibit J Promissory Note, and Exhibit K Loan Repayment Schedule, including repayment if the housing does not meet the affordability requirements within the Affordability Period. Nothing in this section will be construed to diminish or impair City's rights, in its sole discretion, to require repayment under this Agreement, the Mortgage, Promissory Note, or Restrictive Covenant in the event of default or noncompliance by Borrower.
4. **Program Income.** Borrowers who are non-profit subrecipients, which excludes Community Housing Development Organizations (CHDOs), must remit any program income to the City of Des Moines. Upon expiration of this Agreement, the Borrower must transfer any HOME funds attributable to this Project in Borrower's accounts receivable to the City.
5. **Uniform Administrative Requirements.** The Borrower must comply with applicable uniform administrative requirements as described in 24 CFR 92.505 and 2 CFR 200.
6. **Project Requirements.** The Borrower specifically agrees to comply with each of the HOME Program Project requirements set forth at 24 CFR, Part 92, Subpart F, as applicable in accordance with the type of Project receiving HOME funds. The Borrower will not exceed the maximum per-unit subsidy as provided on Exhibit G hereto.
7. **Property Standards.** The Borrower hereby agrees to maintain the Project in compliance with local housing code requirements and HOME standards for the duration of the Affordability Period, as required by 24 CFR 92.251 and 92.504(c)(3)(iv). The Borrower will allow the City access to the Project's written cost estimates, construction contracts, and construction documents as necessary.
  - a. **Accessibility.** The Borrower and its contractors must meet the accessibility requirements of 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 and Titles II and III of the Americans with Disabilities Act, implemented at 28 CFR parts 35 and 36, as applicable.

Covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implements the Fair Housing Act. A minimum of 5% of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments by Borrower.

- b. **Disaster Mitigation.** Where relevant, the Project must mitigate the impact of potential disasters in accordance with state and local building code.





- c. **Broadband Infrastructure.** In rental projects with four or more units, construction must include installation of broadband infrastructure, subject to compliance with local, State and Federal laws and regulations.
- d. **Rehabilitation Standards.** Housing rehabilitation must be performed in accordance with the NCS Rehabilitation Standards and in compliance with 24 CFR 92.251(b). A Rehabilitation Project must comply with the lead hazard control requirements in 24 CFR Part 35.
- e. **Housing Quality Standards (HQS).** If the Project assisted with HOME funding is converted to rental property in accordance with Section 2(b) above, the Borrower hereby agrees to maintain the housing in compliance with applicable HQS standards, as included in the HUD Housing Choice Voucher Program, and local housing code requirements for the duration of this Agreement.
8. **Other Federal Program Requirements.** The Borrower agrees to comply with the federal requirements set out at 24 CFR, Part 92, Subpart H, as applicable, as well as with the following:
- a. **Affirmative Marketing.** In soliciting tenants for a Project with five or more HOME units, the Borrower agrees to the following, which will also be incorporated into the Restrictive Covenant and Mortgage:
- i. The Borrower will submit an Affirmative Marketing Plan to the City prior to the final payout of funds. The Affirmative Marketing Plan may be amended and may be monitored annually for conformance.
  - ii. The Borrower will use the Equal Opportunity Housing logo, slogan, or statement in all advertising, including Project signage.
  - iii. The Borrower will advertise and use media, including minority outlets, likely to reach low-income persons. Copies of those marketing materials will be provided to the City.
  - iv. The Borrower will display a Fair Housing poster in any rental office or common areas, if practicable.
  - v. The Borrower's management will maintain a non-discriminatory hiring policy and comply with Equal Opportunity, Affirmative Marketing, and Minority & Women's Business enterprise requirements.
  - vi. The Borrower will keep information on income, race, ethnic, gender characteristics, and other demographic statistics of applicants for the most recent five-year period following Project Closeout, with a copy of that information available to the City.
  - vii. The Borrower will not discriminate against prospective tenants based on their receipt of, or eligibility for, housing assistance, and will not discriminate against tenants that have a minor child living with them (except for elderly housing projects which are legally exempt from this requirement).
  - viii. The Borrower will provide existing and potential tenants or buyers with information relating to federal Fair Housing laws and will affirmatively market vacant units throughout the Affordability Period.
- b. **Tenant Selection.** For rental housing, the Borrower must adopt and implement a Fair Housing Plan. The Fair Housing Plan must include a tenant selection plan with policies and criteria that:



- i. Are consistent with the purpose of providing affordable housing;
  - ii. Provide for selection of tenants from a written waiting list in chronological order of application to the extent practical;
  - iii. Give prompt written notification to any rejected applicant of the grounds for rejection;
  - iv. Adhere to a grievance procedure approved by the City; and
  - v. Will not exclude an applicant with a certificate or voucher under the Section 8 Tenant-Based Assistance Housing Choice Voucher Program (24 CFR part 982) or a participant in a HOME tenant-based rental assistance program.
- c. **Environmental Review.** The Borrower agrees to notify the City if any major environmental concerns or hazards are discovered.
- d. **Displacement, relocation, and acquisition.** The Borrower agrees that its Project will not displace or relocate any households. If such displacement or relocation will occur, the Borrower has provided a Relocation Plan outlining relocation assistance, notifications, and terms approved by the City and in compliance with 24 CFR 92.353.
- e. **Labor.** The Borrower and its Contractors must comply with:
- i. Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin.
  - ii. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1711u), including but not limited to statements in attached Exhibit L, that requires, to the greatest extent feasible, opportunities for training and employment arising from HOME funds will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work to be performed relating to HOME funds will be awarded to businesses that are in or owned by persons residing in the HOME Program service area. The Borrower will complete a Section 3 form provided by the City.
  - iii. Minority/Women's Business Enterprise, under Executive Orders 11625, 12432, and 12138, with City notification procedures of targeted businesses, to provide information, and to complete forms provided by the City on Minority and Women Contractors.
  - iv. Davis-Bacon Act, under 40 U.S.C. 3141 and per 24 CFR 92.354, in a Project for the rehabilitation or new construction of housing that includes 12 or more HOME units.
- f. **Conflict of Interest.** The Borrower may not occupy a HOME Unit. In addition, no officer, employee, agent, or consultant of the Borrower, owner, developer, or sponsor of the Project may occupy a HOME Unit without express written approval from the City.
- g. **VAWA Requirements.** The Borrower will follow admission, occupancy, and termination of assistance policies regarding the prohibited bases for eviction and restrictions on construing lease terms under 24 CFR 5.2005(b) and (c). The Borrower of HOME-assisted rental housing must provide the notice and certification form described in 24 CFR 5.2005(a) to the applicant for a HOME-assisted unit:



- i. at the time the applicant is admitted to a HOME-assisted unit,
- ii. denied admission to a HOME-assisted unit based on the owner's tenant selection policies and criteria, and
- iii. with any notification of eviction or notification of termination of assistance.

9. **Records and Reports.**

a. **Retention Period.** For a period of five years after the Project Closeout date, the Borrower agrees to keep all contracts, invoices, materials, personnel and payroll records, conditions of employment, books of accounts, and any other documentation pertaining to the construction of the Project and the disposition of the Loan proceeds, where applicable, and any other records that might be required from time to time by the City relating to this Agreement and the Project.

b. **Rental Compliance.** For rental housing, the Borrower agrees to keep records related to the HOME Units through the Affordability Period. More specifically, the Borrower or its management agent must submit to the City reports of the following:

- i. **Tenant Income.** The income of each HOME Unit tenant must be determined initially by the Borrower in accordance with 24 CFR 92.203(a)(1)(i). In addition, for each calendar year during the Affordability Period, the Borrower must re-examine each tenant's annual income in accordance with the procedure chosen by the City from options listed in 24 CFR 92.203(a)(1) and submit the information to the City. A Borrower of a rental project, through a statement and certification in accordance with 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with 92.203(a)(1)(i) every sixth year of the affordability period.
- ii. **Rent Restrictions.** The Project is required to meet the affordability requirements of 24 CFR 92.252. The Borrower must annually provide information to the City on the rents that are charged to the HOME Unit tenants. The rents will not exceed the HOME Unit Rents as prescribed by HUD. The rents charged must support the debt against the Property and must not exceed the assumptions made under the original underwriting.
- iii. **Physical Inspections.** The Borrower must make the Property available for City staff to physically inspect the HOME Units annually to ensure the Units meet City HOME standards and are comparable to market rate units.
- iv. **Financial Inspections.** The City will also review the Borrower's annual audit and accounts of the Project to ensure that the Project is maintaining a revenue stream and is able to pay debt and provide funding for long term viability.
- v. **Floating HOME Units.** If the rental housing Project has floating HOME units, the owner must provide the City with information regarding unit substitution and filling vacancies so that the project remains in compliance with HOME rental occupancy requirements.

c. **Access to Records.** The Borrower will, at all reasonable times, including normal business hours, permit the City, HUD officials, the Comptroller General of the United States, and their designees, to have full and free access to records with respect to the utilization of the Loan proceeds, supplemental financing, rental income and expenses, and affirmative marketing efforts. The Borrower will permit the City, HUD, and the Comptroller General and their designees to audit, examine, and make excerpts or transcripts from his/her/their records, and to review, inspect, and



make audits of all work financed in whole or in part by the Loan, including, but not limited to, all records described above.

**10. Representations by Borrower.**

a. The Borrower represents and warrants to the City that the Borrower has thoroughly reviewed and has freely and voluntarily executed the development proposal approved by the City and on file in the City's Neighborhood Services Department.

b. The Borrower agrees to develop the Project to the extent and in the manner specified in the proposal, to comply with the Borrower's obligations, and to enforce any contractor's or subcontractor's obligations. The Borrower assumes the risks of any non-completion of the Project. The City is not a party to any construction contracts, and the City accepts no legal responsibility to the Borrower for the quality or timeliness of the work performed or materials supplied.

Although the Borrower is responsible to the City for the performance of the Project and the selection of any contractor or subcontractor thereunder, the Borrower agrees as follows for the benefit of the City as lender, to provide additional assurance that the work will be completed in accordance with the development proposal used to underwrite the Project and the local standards required by the City:

- i. No material provision of the development proposal or Agreement, including its exhibits, will be modified, deleted, waived, or terminated without the prior written approval of the City's Neighborhood Services Department Director; and
- ii. Contractors and subcontractors represent that they are not listed on the City's or HUD's Debarred and Suspended Contractor's List and further agrees not to hire or utilize as a subcontractor any person or supplier that is so listed. The Borrower agrees for all persons or companies hired or purchased from to submit a completed Subcontractor Eligibility form to the City prior to entering into a contract with said persons or companies.

**11. Prior Encumbrances and Mechanic's Liens.** The Borrower will not create or suffer mechanic's or materialmen's liens on the Property. The Borrower agrees to defend and hold the City harmless from any such liens, whether or not caused by any action or inaction of the Borrower.

The City may require the Borrower to extend the title evidence obtained at Loan Settlement to the date of each such disbursement, showing no mechanic's or materialmen's liens against the Property. The City may require the Borrower to obtain payment acknowledgments and lien releases from the contractor and all subcontractors covering the period from the inspection of the work to the date of the disbursement, and for the entire job concurrently with the final disbursement. Such acknowledgment and releases will be in the form required by state and local lien laws and will cover all work done, labor performed, and materials, including equipment and fixtures furnished for the work. Notwithstanding any other provision of this Agreement, the City, for additional security relating to the Loan, may also withhold the final payment, under this Agreement until the expiration of any period which mechanics and materialmen may have for filing liens unless lien waivers are obtained simultaneously with payment.



12. **Disbursement of HOME Funds.** The City will disburse HOME funds to the Borrower as reimbursement for eligible costs. The disbursement will be limited to the amount of eligible costs expended by Borrower minus a retainage of 10%, which will be withheld until Project Closeout has been completed, and subject to the following:
- a. The Borrower must request at least a partial disbursement of the HOME Loan within ten months of the Agreement's effective date. The City will make disbursements at the times and in the amounts, minus the retainage mentioned previously, requested by the Borrower, and no later than 30 days from the most recent NCS inspection date, provided that:
    - i. The request meets the requirements of and follows the City's HOME policies and this Agreement;
    - ii. The City has not issued any notice of Loan termination and/or of default under this Agreement or related documents;
    - iii. NCS staff has completed an on-site inspection; and
    - iv. The City has received the necessary invoice and supporting documentation from Borrower, including the inspection report from NCS staff.
  - b. Prior to final payment disbursement and beginning the Affordability Period, the Borrower agrees to furnish to the City:
    - i. Final sources and uses of funds for the project showing the costs are reasonable;
    - ii. Borrower's Affirmative Marketing Plan and Tenant Selection Policies (if applicable);
    - iii. Initial tenant or homebuyer certifications of all HOME rental units in the Project;
    - iv. Demographic information, on a form to be provided by City;
    - v. Copy of lease or sales contract between Borrower and tenant or End Purchaser;
    - vi. Completed Section 3 Report, on form to be provided by City;
    - vii. Completed Minority/Women Contractor Report, on form to be provided by City;
    - viii. Location and number of Section 504 units in the Project; andAny other such statements, records, data and information pertaining to any matter as required by this Agreement upon the request of the City or HUD official monitoring the Project.
  - c. The City may suspend any disbursements if the Borrower fails to comply with the Agreement's terms. At any time should the Borrower fail to comply with each provision of this Agreement, including Exhibits hereto, the City will directly advise the Borrower of the reasons for the suspension and the deadline for compliance before the Loan and this Agreement are terminated. Such suspension is an additional remedy, and not a prerequisite to termination.
  - d. The Borrower understands and the City agrees that no disbursements will be made for materials stored on-site or off-site for the Project. Payments may only be made for completed work which has been inspected and approved by the Borrower and authorized by the City.
  - e. No provision of this section will limit, or prescribe procedures for the exercise of, the City's rights to complete the Project using the Loan proceeds and other advances secured by the Note and Mortgage, in the event the Borrower fails to complete the Project.



13. **Pre-Disbursement Inspection.** Prior to disbursement of Loan proceeds or for any other purpose relating to the completion of the Project, the City will have reasonable access and right of entry at any reasonable time of the day to inspect all or any portion of the Project. These inspections are for the benefit of the City as lender, to assure that the Loan proceeds are being expended in accordance with the Loan Application or development proposal used to underwrite the Project.

In the event of any such inspection, the City may inform the Borrower of any noncompliance, but the City will not issue direct orders or instructions to the Contractor or subcontractor performing the work, except as authorized by the Borrower. The Borrower will take all steps necessary to assure that the City is permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the Borrower.

14. **Fees to the Borrower.**

- a. **Application Fee.** The application fee charged to review the Project's Application or development proposal is non-refundable.
- b. **Late Fees.** The Borrower will provide annually certain information to the City as mentioned in Section 9 Records and Reports. The City may assess a late fee of \$500 for failure to submit any of the required and requested information as mentioned in 9(c) within two (2) months of the initial request from City staff.

15. **Termination and Other Remedies.** Termination of this Agreement may be accomplished by City by mailing via certified mail or by personally delivering written notice of termination to the Borrower at the address set forth for "Notices" herein below. Termination/cancellation will be effective on the date stated on the notice of termination.

- a. The Borrower agrees that the City will have the unilateral right to cancel or terminate this Agreement, and discontinue all funding of the Loan, if any one or more of the following events of default occur:
- i. For a period of 180 days from the date that the City executed the Agreement, the Borrower has failed or refused to cause the commencement of the Project, unless this period has been extended by the City in writing, which City consent may not be unreasonably withheld or delayed;
  - ii. The Borrower fails or refuses to complete the Project within the time frame as established in Exhibit C Project and Construction Schedule, unless this period has been extended by the City in writing;
  - iii. Notwithstanding any other provision of this Agreement, the Loan proceeds have not been fully disbursed by the City after completion of the work on or by the completion date as specified in this Agreement, unless such date has been extended by the City in writing and unless failure to fully advance is not caused by or any fault of the Borrower;
  - iv. The Borrower makes changes in or terminates the Project, without the prior written approval of the City, which consent may not be unreasonably withheld or delayed;
  - v. The Borrower will not submit a dispute between the Borrower and the Contractor or a subcontractor to the dispute resolution procedure provided under the City's

HOME policies, if applicable, or to litigation, and the City's inspection indicates that the work in dispute was done in accordance with the City's HOME policies;

- vi. The Borrower dies, becomes legally incapacitated, dissolves, files for bankruptcy, or otherwise becomes legally unable to act prior to the completion of the Project;
- vii. The Borrower abandons the Project;
- viii. Any interest in the Project, including a beneficial interest (except tenant leases in non-HOME units, mortgaged interest, and easement), is sold or transferred prior to the completion of the Project, as evidenced by the City's execution of a Certificate of Final Inspection and Request for Final Payment, without the City's prior written consent, which consent may not be unreasonably withheld or delayed;
- ix. The Borrower obtains a Balloon Note secured by the Project which is junior to the City's Mortgage or Restrictive Covenant, but will be due and payable prior to the scheduled completion of the Project.
- x. Any event which is or may be declared a material breach of this Agreement or an Event of Default, as defined in the Mortgage or Restrictive Covenant, especially if the Project fails to comply with the affordability requirements during the Affordability Period; and/or
- xi. Borrower's failure to comply with any or all terms set forth in this Agreement, the Mortgage or the Restrictive Covenant, and failure to cure such noncompliance within 30 calendar days of the date that notice is given thereof by the City.

b. The Borrower agrees that termination/cancellation will not affect the City's rights under the Promissory Note, Mortgage, or Restrictive Covenant, including, but not limited to:

- i. Declare that portion of the Loan, up to the entire principal amount of the Loan, which has been provided by City to the Borrower prior to termination, together with any accrued interest and late charges, and any other amounts secured by the Mortgage, immediately due and payable without any benefit of forgiveness or without any notice or demand to the Borrower;
- ii. Collect any Loan proceeds disbursed prior to termination/cancellation by whatever means are deemed necessary by the City and permitted by law;
- iii. Assess interest and late charges under the Mortgage;
- iv. Make advances under the applicable provisions of the Agreement and Loan to preserve and protect the City's security interest in the Property;
- v. Add any amounts so advanced to the principal amount due under the Loan, and to have the amounts advanced secured by the Mortgage;
- vi. Collect from the Borrower all amounts necessary to pay off any mechanics' or materialmen's liens which have been filed against the Property; and
- vii. Enforce the Note, Mortgage, or Restrictive Covenant against Borrower.

16. **Preservation of Security.** The Borrower agrees to preserve the security of the Loan by keeping the Property free from all unnecessary hazards during Project construction; by complying with all lawful requirements and directives of federal, state, and local governments pertaining thereto (including the payment of all applicable taxes, licenses, and fees); and by maintaining in effect always the hazard insurance on the Project and Property, including builder's risk insurance where applicable.



The Borrower further agrees that he/she/they will not sell or transfer the Property without repaying the entire amount due on the Loan, unless express written consent is received in advance of transfer from the City.

**17. Scope of Agreement; Liability.**

a. The City's only liability is to the Borrower under this Agreement and is limited to making the Loan proceeds available in the principal amount under the terms and conditions stated in this Agreement, Promissory Note, and Mortgage. The City assumes no obligations other than as stated in this Agreement. Specifically, the City has no authority under this Agreement to obligate the HOME Program beyond the principal amount of the Loan. The City will act in accordance with all local, state, and federal regulations, the City's HOME policies, and this Agreement. The City is not bound by any representations inconsistent with HUD regulations, the federal regulations, the City's policies, or this Agreement.

b. The Borrower understands and agrees that the selection of a contractor or subcontractors, and acceptance of materials used and work performed, is solely his/her/their responsibility, and the City assumes no responsibility for or guarantees of the work, materials, or quality of workmanship.

**18. Indemnification and Insurance.** The Borrower will indemnify, release, save and hold harmless the City, its elected and appointed officials, employees and volunteers, from all liability, claims, litigation, loss, damages, costs and expenses arising out of an act or omission of the Borrower, the Borrower's agent, employee, assigns or contractors, or in any way connected in the performance of the Project or the terms of this Agreement. The Borrower's obligation to indemnify, release, save, and hold harmless will include the obligation to pay all reasonable expenses incurred by the City in defending itself, or in enforcing the provisions of this Agreement as provided in attached Exhibit M Insurance.

The Borrower will obtain and maintain in continuous effect during the term of this contract with the City and while any of its obligation remain unsatisfied, the insurance coverages, limits and endorsements set forth in said Exhibit M. The City reserves the right to require and enforce future revisions to the insurance requirements in said Exhibit M, and Borrower agrees to abide by such future revisions upon notice thereof. The Borrower will require that any of its agents who perform work or services pursuant to this Agreement meet the same insurance requirements as are required of Borrower. A Certificate of Insurance citing such coverages, limits and endorsements will be provided to the City prior to payment of the funds set forth herein.

**19. Religious Organizations.** The Borrower agrees to comply with 24 CFR 92.257 governing the use of HOME funds for religious organizations where applicable.

**20. Community Housing Development Organization (CHDO) Provisions.** If the Borrower is a private nonprofit developer that has been approved by the City Council as a CHDO and has certified that it is and will maintain CHDO status in accordance with 24 CFR Part 92 for the term of the Project and the Loan Agreement, the Borrower agrees to provide such information as may be requested by the City to document its continued compliance with such requirements, including, but not limited to, an annual board roster and certification of continued compliance. The Borrower agrees to comply with provisions in 24 CFR 92.300 and 24 CFR 92.301.





- a. **CHDO Proceeds.** The City may allow the Borrower to retain proceeds (“CHDO Proceeds”) from the disposition by sale of real property acquired, rehabilitated, or constructed with HOME set-aside funds. The CHDO will use the Proceeds for affordable housing activities, including both rental, owner-occupied, lease-purchase, and other housing activity to benefit households earning up to 120% of area median income based on household size. CHDO Proceeds are not program income.
- i. An affordable unit created with CHDO proceeds may continue as a lease-purchase unit for up to 60 months before it must be sold to an owner-occupant or retained as a rental unit. The CHDO will submit the rents to be charged under the lease agreement and a plan for working with the lessee to establish credit to purchase the house, which plan is subject to City approval.
  - ii. CHDO Proceeds are not subject to the requirements of the HOME regulations, except for 24 CFR 92.300(a)(2). The Davis-Bacon Act, National Environmental Policies Act and Uniform Relocation Assistance and Real Property Acquisition Policies Act do not apply.
  - iii. CHDO Proceeds may be used for pre-development expenses including costs of project feasibility, consulting fees, costs of preliminary applications including city fees for zoning, variances and permits, payment of back taxes or fees related to acquisitions of tax sale deeds, legal fees, architectural and engineering fees, options to acquire property, and title clearance of property. CHDO Proceeds may also be used for development costs including acquisition of property, demolition of structures, environmental mediation, new construction and rehabilitation.
- b. **CHDO Accounting and Monitoring.**
- i. The CHDO will retain Proceeds in a separate account and provide an accounting of the use of Proceeds to City on a semi-annual basis. The CHDO will notify City prior to withdrawing funds from the Proceeds account and will include the project name, type of pre-development or development activity and the net amount of the disbursement. The City may ask for adequate information to conduct an underwriting review/feasibility analysis for any disbursement over \$20,000 on a single project. The accounting will designate the project(s) and show the flow of funds into and out of the Proceeds account until all funds in the account are expended in accordance with this Agreement.
  - ii. The auditor of the CHDO will, at each annual audit, review the CHDO Proceeds account and will include in the annual audit language stating whether or not CHDO has complied with terms of this agreement. The CHDO will annually provide City with a copy of the audit conducted by a certified public accountant.
  - iii. The City may request at any time, without prior notice, any file, financial record or document related to any project that received HOME funds or Proceeds. The CHDO agrees to comply with any request within ten business days of City request.
- c. **Time Frame.** All Proceeds must be used within five years of the closing on the sale of this Project, if applicable, to a homebuyer. Any funds not used during that period will be considered program income and returned by CHDO to the City. If the CHDO no longer satisfies the HOME Program definitions, any Proceeds not used must be immediately returned by CHDO to City as program income.



21. **Homebuyer Education.** For Projects involving homeownership, the Borrower will ensure the homebuyer receives housing counseling before transferring the Property into the homebuyer's name. Homebuyer counseling will be provided only by organizations and counselors certified by the Secretary under 24 CFR part 214 to provide housing counseling, consistent with 12 U.S.C. 1701x. Effective August 1, 2020, a HUD-certified counselor providing training to a HOME homebuyer must be employed by a HUD-approved housing counseling agency.
22. **Enforcement of the Agreement.** This Agreement will be enforceable pursuant to the terms herein, the provisions of all exhibits hereto, and all legal and equitable remedies available to the parties pursuant to local state and federal law.
23. **Amendments.** Any additions, modifications, or amendments to this Agreement including the attachments, will be in writing and executed by the parties.
24. **Disclaimer.** It is mutually understood by the parties that nothing in this Agreement is intended or will be construed as in any way creating or establishing the relationship of co-partners between the parties hereto or as constituting the Borrower as an agent or representative of the City for any purpose whatsoever. It is further mutually understood by the parties that the Borrower and the Borrower's contractor are not to be considered employees of the City.
25. **Governing Law.** This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Iowa.
26. **Severability.** If one or more clauses, sections, or provisions of this Agreement, or the application thereof, will be held to be unlawful, invalid, or unenforceable, the remainder and application hereof of such provision will not be affected thereby.
27. **Notices.** All notices and demands relating to this Agreement will be served by certified letter, return receipt request on upon the following:
  - a. For the City: City of Des Moines Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
  - b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317



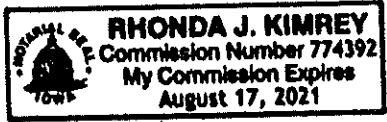
Borrower: Greater Des Moines Habitat for Humanity

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

By: [Signature]  
Lance Henning, Executive Director

STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021



City of Des Moines, Iowa

By: [Signature]  
Chris Johansen, Community Development Department Director

Approved as to form:

[Signature]  
Judy K. Parks-Kruse, Assistant City Attorney

STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 9/18/2021



**City of Des Moines**  
**HOME Agreement with Owner, Developer, Sponsor, or Subrecipient**  
**1603 23<sup>rd</sup> Street, Des Moines**

**Exhibits Attached**

- A. Legal Description
- B. Statement of Work or Project Description
- C. Project and Construction Schedule
- D. Project Budget
- E. Sources and Uses
- F. Declaration of Restrictive Covenants (separately recorded)
- G. Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy
- H. Recapture Agreement
- I. Mortgage (separately recorded)
- J. Promissory Note
- K. Loan Repayment Schedule (if applicable)
- L. Assurance of Compliance with Section 3 Requirements
- M. Insurance Requirements and Proof of Insurance



Exhibit A Legal Description

[Locally known as 1603 23rd Street]

Lot 1 Williamson Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.



## Exhibit B Statement of Work or Project Description

Greater Des Moines Habitat for Humanity is planning to construct one single-family housing unit, or one HOME unit, at 1603 23rd Street in the Drake Neighborhood. HOME funding totaling \$31,500 will go toward construction costs incurred by Habitat. Up to \$3,500 will be available to the home buyer who has low income, or earning 80% or less of the Area Median Income (AMI), to assist with acquisition costs. The house will have three bedrooms, two baths, and an unfinished basement.



Exhibit C Project and Construction Schedule

<b>1603 23rd – Project Timeline</b>	
8/31/20	Environmental review completed
9/14/20	Building permit issued
9/14/20	Contractor selection
9/14/20	Contractor notice to proceed
10/1/20	Construction start (grading, excavation, etc.)
4/25/21	Draw of HOME funds
4/25/21	Certificate of Occupancy
4/25/21	Financial closing and disbursement





Exhibit D Project Budget

Greater Des Moines Habitat for Humanity, Inc.

September 10, 2020

1603 23rd - Sources & Uses Budget

**Budget**

Other Charges

01.0-Land & General	\$ 15,000
02.0-Permits	900
04.0-Supplies & Small Tools	450
05.0-Sitework	3,000
05.5-Erosion Control	500
06.0-Excavation/Backfill	4,150
07.0-Sign	100
08.0-Foundation & Footings	12,400
08.1-Concrete Flatwork	4,300
08.2-Concrete Curbs	250
09.0-Framing lumber	6,000
09.1-Roof Trusses/I-Joist	6,800
09.2-Panel build	3,185
09.3-Framing Sub-contractor	6,150
10.0-Grading	1,500
11.0-Windows & Doors	2,190
12.0-Thermal & Moisture Prot	2,070
12.1-Siding	3,800
12.2-Insulation	2,165
12.4-Siding Sub-contractor	3,735
13.0-Roofing	3,450
14.1-Taper	7,800
15.0-Gutters	1,000
16.0-Mechanical	13,000
17.0-Plmbg-Hkup to Mns & StWork	14,050
17.1-Plmb-Grd Wrk & Rough In	6,815
17.2-Plmb Finish & Fixt	3,330
18.0-Electrical	7,100
18.1-Elect. Fixtures	800
19.0-Utilities	700
20.0-Millwork & Interior Doors	2,200
21.0-Cabinets & Countertop	4,420
22.0-Flooring	2,520
23.0-Paint & Finishes	125
23.1-Painting Sub-contractor	3,500
24.0-Hardware	1,525
25.0-Miscellaneous	100
25.5 -Sidewalk Porch Drive	7,090
26.0-Outside Stairs & Porch	680
27.0-Appliances	1,345
28.0-Landscaping	1,600



28.1-Shed	825
29.0-Waste Removal	1,000
30.0 -Container	100
31.0 -Garage costs	-
Construction direct labor	12,000
General requirements (contractor fee)	9,590
Developer fee	20,692
Contractor Construction Contingency	3,000
	<hr/>
	\$ 209,002
Engineering Fees	3,000
Real Estate Attorney Fees	200
Construction Insurance	900
Title & Recording	1,100
Taxes during construction	250
Appraisal	200
Family Placement fees	1,800
Total Development Costs	<hr/>
	\$ 216,452



Exhibit E Initial Sources and Uses

<b>Sources</b>		
	City of Des Moines - HOME funds	\$ 31,500
	Gift in Kind donations	5,000
	Unrestricted funds	179,952
	<b>Total Sources</b>	<b>\$ 216,452</b>

<b>Use of Funds</b>		<b>Amount</b>
	Land	\$ 15,000
	Building improvements	\$ 170,310
	Contingency	\$ 3,000
	Other hard costs	
	Professional fees	\$ 3,200
	Development/consultant	
	Developer fee	\$ 20,692
	Construction interim fees	\$ 250
	Soft costs	\$ 4,000
		<b>\$ 216,452</b>

77-00  
Cng JM



Doc ID: 035673040005 Type: GEN  
Kind: RESTRICTIVE COVENANT  
Recorded: 10/02/2020 at 09:00:19 AM  
Fee Amt: \$27.00 Page 1 of 5  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037394

BK 18102 PG 847-851

SPACE ABOVE THIS LINE FOR RECORDER

Prepared by: Judy K. Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533

Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Restrictive Covenant**

**City of Des Moines HOME Program**

The undersigned property owner(s) ("Grantor"), participating in the City of Des Moines, Iowa HOME Investment Partnerships (HOME) Program, in consideration of the receipt of \$35,000 as a loan (the "Loan") for the construction and enhancement upon the real property locally known as 1603 23rd Street, Des Moines, Iowa ("Project Area") and legally described as:

Lot 1 Williamson Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

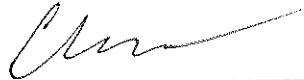
legal or equitable title to which is held by the undersigned, hereby agrees and consents to the creation and imposition of specific restrictive covenants which are hereby declared to be covenants running with the Project Area for the benefit of the City of Des Moines, Iowa ("City") as specifically set out herein:

**1. Affordability Period.**


- a. **Rental HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution, and shall continue as an encumbrance on the Project Area for a period of 240 months following issuance of the Certificate of Occupancy, completion of the improvements on the Project Area, sub-rental of the units, and provision of final demographic information and all construction reports required herein to the City (herein "Affordability Period"). City shall notify Grantor in writing of the date commencing the 240-month Affordability Period.
- b. **Homeownership HOME Units.** Grantor agrees that this Restrictive Covenant shall run continuously with the land beginning on the date of execution of this covenant, and shall continue as an encumbrance on the Project Area until the time of sale to an income-qualified homebuyer ("End Purchaser"), and recording of a restrictive covenant upon the property granted by said End Purchaser, which time of sale shall occur no later than four years from date of execution of this Agreement.

5. **Lien Release.** Following Grantor's completion of the Affordability Period and upon request of the Grantor, release of this Restrictive Covenant shall be in writing and filed of record with the Polk County Recorder.
6. **Correspondence.** Correspondence required by this Restrictive Covenant shall be provided by U.S. Mail as follows:
  - a. For the City, shall be directed to the Director of the Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, Iowa 50309;
  - b. For the Grantor, shall be directed to Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317.
7. **Failure to Comply.** Failure by Grantor to comply with the terms and obligations set forth in this Restrictive Covenant or with the HOME Agreement and related documents for the entirety of the Affordability Period shall constitute default of this Covenant and of the HOME Agreement. After City has given Grantor due notice of such non-compliance, and if Grantor should fail to cure such noncompliance within 30 days of such notice, or such longer period of time as agreed to in writing by City, then City shall be entitled to require Grantor to repay the entirety of the HOME Loan within 30 calendar days of the City's request for such repayment, notwithstanding any term to the contrary in the HOME Agreement, Note, Mortgage, or any other related document, and in addition to remedies set forth therein.
8. **Enforceability.** The terms and obligations set forth in this Restrictive Covenant are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Grantor agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from any of the terms of this Restrictive Covenant.
9. **Precedence.** This Restrictive Covenant, and the terms and obligations of Grantor set forth herein, shall supersede and take precedence over any and all other liens, obligations, or agreements made by Grantor in relation to the Project Area, unless otherwise explicitly stated therein or agreed to by written subordination agreement approved by resolution of the Des Moines City Council.

City of Des Moines, Iowa

By:   
Chris Johansen, Community Development Department Director

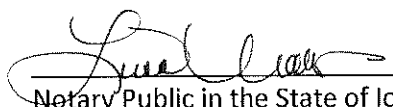
Approved as to form:

  
Judy K. Parks-Kruse, Assistant City Attorney

STATE OF IOWA        )  
                                  ) §:  
COUNTY OF POLK     )

On this 14<sup>th</sup> day of September, 2020, before me, the undersigned, a Notary Public, personally appeared Chris Johansen, to me personally known, who, being by me duly sworn, did state that he is the Community Development Director for the City of Des Moines, Iowa; and that the instrument was signed on behalf of the corporation, by authority of its City Council, as contained in the Roll Call No. 20-1450 on September 14, 2020 by the City Council, and that he acknowledged the execution of the instrument to be the voluntary act and deed of the municipal corporation, by it voluntarily executed.



  
Notary Public in the State of Iowa

My Commission Expires: 9/18/2021



Exhibit G Current HOME Rent Limits, Sales Limits, and Maximum Per-Unit Subsidy

HOME Rent Limits for Des Moines - West Des Moines, IA MSA (Effective 7/1/2020)							
	Efficiency	1 bedroom	2 bedroom	3 bedroom	4 bedroom	5 bedroom	6 bedroom
Low HOME Rent Limit	\$603	\$730	\$900	\$1160	\$1293	\$1428	\$1561
High HOME Rent Limit	\$603	\$730	\$900	\$1215	\$1323	\$1521	\$1720

2020 New Home Value Limits for 95% of Median Purchase Price for Polk Co./WDM-DSM (Effective 4/1/2020)	
1-unit	\$246,000
2-unit	\$315,000
3-unit	\$381,000
4-unit	\$472,000
Unadjusted Median Value	\$258,965

2020 Maximum Subsidy Amounts - Des Moines (Effective 6/4/2020)					
	0-bedroom	1 bedroom	2-bedroom	3-bedroom	4 bedroom
240% Level	\$153,314.40	\$175,752.00	\$213,717.60	\$276,482.40	\$303,489.60

2020 HUD Median Family Income for Des Moines MSA/Polk Co (AMFI Limits for 30, 50, 80% Effective 4/1/2020; HOME Income Limits Effective 7/1/2020)					
# Persons	Extremely Low 30%	Very Low 50%	HOME Funding Only 60%	Low 80%	100%
1	\$18,750	\$31,250	\$37,500	\$49,950	\$62,450
2	\$21,400	\$35,700	\$42,840	\$57,100	\$71,400
3	\$24,100	\$40,150	\$48,180	\$64,250	\$80,300
4	\$26,750	\$44,600	\$53,520	\$71,350	\$89,200
5	\$30,680	\$48,200	\$57,840	\$77,100	\$96,350
6	\$35,160	\$51,750	\$62,100	\$82,800	\$103,500
7	\$39,640	\$55,350	\$66,420	\$88,500	\$110,630
8	\$44,120	\$58,900	\$70,680	\$94,200	\$117,750



Exhibit H Recapture Agreement

**Recapture Home Buyer Program Agreement and Restrictive Covenant**

This Agreement is entered into by and between the City of Des Moines, Iowa, (hereinafter called "City") and \_\_\_\_\_ (hereinafter called "Home Buyer"), effective the day of execution of this Agreement and Covenant by the Home Buyer.

WHEREAS, the City is the recipient of HOME funding from the U.S. Department of Housing and Urban Development ("HUD"); and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ the City of Des Moines entered into a HOME Agreement with \_\_\_\_\_ (hereinafter the Developer) to rehabilitate a home which is locally known as \_\_\_\_\_, Des Moines, Iowa ("Property"), and legally described as:

**Lot 1 Williamson Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

WHEREAS, the full amount of HOME assistance loaned to build and occupy this house is \_\_\_\_\_. Of that amount, \$\_\_\_\_\_ was provided to the Developer for construction (known as Developer Assistance) and \$\_\_\_\_\_ is provided to the Home Buyer for purchase (known as Home Buyer Assistance).

WHEREAS, the Home Buyer is requesting approval from the City of Des Moines to purchase the Property as an eligible purchaser; and

WHEREAS, the City's Neighborhood Services Department has reviewed all supporting documents submitted by the Home Buyer and Developer, completed a Home Buyer assistance underwriting form, and has determined that the Home Buyer meets all eligibility requirements for this program and the assistance provided; and

WHEREAS, the HOME Program Rule 24 CFR 92.254(a)(5)(ii)(A) defines "net proceeds" as the sales price of the Property paid by the Home Buyer, minus the Superior Non-Home Debt excluding closing costs.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the City and the Home Buyer mutually agree as follows:

1. The City hereby approves the Home Buyer as an eligible purchaser of the Property at the subsidy listed below in 2(a).
2. The Home Buyer specifically agrees that:
  - a. The City of Des Moines has disbursed the sum of \$\_\_\_\_\_ to the Home Buyer for the purpose of purchasing the Property at an affordable cost.





- b. The Home Buyer will occupy the Property as his/her principal residence for the duration of the affordability period which is \_\_\_ months from the execution of this document by all parties.
  - c. As long as the Home Buyer occupies the Property as his/her principal residence, no payment is due on the Home Buyer HOME assistance.
  - d. The Home Buyer assistance will further be reduced at a rate of \_\_\_\_\_ or \_\_\_\_\_ percent annually beginning \_\_\_\_\_ after the execution of this agreement and continuing until the assistance is totally forgiven at the end of the affordability period. The City will release the lien created by this Agreement and Covenant at such time.
  - e. If the Property is sold, refinanced other than for rate or term, or transferred prior to the end of the affordability period, the Home Buyer must repay the total amount of the HOME subsidy stated above in paragraph 2(a), less the prorated HOME investment amount for the length of time the Home Buyer owned and occupied the unit limited to the "net proceeds" of the sale as defined in HOME Program Rule 92.254(a)(5)(ii)(A). The City will release the lien created by this Agreement and Covenant upon Home Buyer's payment in full of the amount owed, as determined by the City.
  - f. The Home Buyer will not lease, sub-lease or transfer any interest in the Property during the affordability period. If the Home Buyer does not sell the Property but fails to occupy the unit as his/her principal residence, the Home Buyer is in noncompliance with the HOME program (24 CFR 92.254(a)(3)). In that event, the City will take legal action against the Home Buyer to collect the full amount of HOME subsidy stated above in paragraph 2(a) in the property referenced in the preamble of this agreement.
3. The City will release this Agreement and Restrictive Covenant only upon the successful completion of the affordability period or repayment of the outstanding HOME funds disbursed to the Home Buyer limited to the net proceeds. Such release shall be in writing and filed of record with the County Recorder.
4. The Home Buyer agrees that the City will monitor this program annually and that the Home Buyer will submit, at the request of the City, documentation verifying his/her principal residency at this address, including but not limited to verification of mailing address by the U.S. Postal Service, current utility bills and other documents as requested.
5. The City is entitled to conduct an annual physical inspection of the Property by appointment and the Home Buyer will cooperate with the City in scheduling this appointment.
6. The Home Buyer specifically acknowledges that giving any false, misleading or incomplete information to the City concerning his/her eligibility for this program is a violation of the HOME Program regulations and will entitle the City to recapture the HOME Investment Partnership money (Home Buyer Assistance and Developer Assistance) invested in this project.
7. Any additions, modifications or amendments to this Agreement, including any attachment, shall be in writing executed by both parties and placed of record with the Polk County Recorder.



8. The terms set forth herein shall serve as a restrictive covenant running with the land for the affordability period of five (5) years beginning on the date of the recording with the County Recorder of this Agreement and Covenant.
9. In the event of foreclosure by the Senior Security, if applicable, of its Mortgage or similar agreement upon the Property or other transfer of the Property in lieu of such foreclosure, the Senior Security shall notify the City at the address set forth in Section 10 below of payment delinquency and any foreclosure action.
10. Correspondence required by this Agreement and Restrictive Covenant shall be provided by U.S. Mail as follows:
  - a. For the City, shall be directed to the Director of the Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, Iowa 50309;
  - b. For the Home Buyer, shall be directed to {{ INSERT ADDRESS }}.
11. The terms and obligations set forth in this Agreement and Restrictive Covenant are enforceable by the City by any and all legally available options, including but not limited to specific performance, injunctive relief, and assessment of costs. This Agreement and Restrictive Covenant shall be governed by, construed and enforced in accordance with the laws of the State of Iowa, and Home Buyer agrees to pay and discharge all reasonable costs and fees, including fees for services rendered by the City Legal Department, attorneys, officers, employees, or agents, or any expense that shall arise from any of the terms of this Agreement and Restrictive Covenant.
12. This Agreement and Restrictive Covenant, and the terms and obligations of Home Buyer set forth herein, shall supersede and take precedence over any and all other liens subsequently filed, obligations, or agreements made by Home Buyer in relation to the Project Area, unless otherwise explicitly stated therein or agreed to by written subordination agreement approved by resolution of the Des Moines City Council.



57.00  
Chg JM



Doc ID: 035673030011 Type: GEN  
Kind: MORTGAGE  
Recorded: 10/02/2020 at 08:59:52 AM  
Fee Amt: \$57.00 Page 1 of 11  
Polk County Iowa  
JULIE M. HAGGERTY RECORDER  
File# 2020-00037393  
BK **18102** PG **836-846**

Prepared by: Judy K Parks-Kruse, 400 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4533  
Return to: Lisa Crabbs, Neighborhood Services Dept., 602 Robert D Ray Dr., Des Moines, IA 50309; (515) 283-4753

RETURN TO:

**Mortgage  
City of Des Moines HOME Program**

This Mortgage made on this 14th day of September, 2020 between Greater Des Moines Habitat for Humanity (hereinafter called "Borrower" or "Mortgagor"), and the City of Des Moines, Iowa (hereinafter called "Lender" or "Mortgagee").

WITNESSETH, that to secure the payment of an indebtedness in the principal amount of \$35,000, which shall be payable in accordance with a certain note, bearing even date herewith, a true and correct copy of which, exclusive of the signature of the Mortgagor, and all other indebtedness which the Mortgagor is obliged to pay to the Mortgagee pursuant to the provisions of the Note and this Mortgage, the Mortgagor hereby grants, sells, conveys and mortgages to the Mortgagee, forever, the following described real estate situated in the County of Polk, State of Iowa, to wit:

Legally known as: Lot 1 Williamson Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

Locally known as: 1603 23rd Street, Des Moines, Iowa

TOGETHER, with all appurtenances thereto and all the estate and rights of the Mortgagor in and to such property or in anywise appertaining thereto; all buildings and other structures now or hereafter thereon erected or installed, and all fixtures and articles of personal property now or hereafter to, or used in, or in the operations of, any such land, buildings or structures which are necessary to the complete use and occupancy of such buildings or structures for the purpose for which they were or are to be erected or installed, including, but not limited to all heating, plumbing, bathroom, lighting, cooking, laundry, ventilating, refrigerating, incinerating, and air-conditioning equipment and fixtures and all replacements thereof and additions thereto; whether or not the same are or shall be attached to such land, buildings or structures in a manner.

TOGETHER, with any and all awards now or hereafter made for the taking of the property mortgaged hereby, or any part thereof (including any easement), by the exercise of the power of eminent domain,

including any award for change of the grade of any street or other roadway, which awards are hereby assigned to the Mortgagee and are deemed a part of the property mortgaged hereby, and the Mortgagee is hereby authorized to collect and receive the proceeds of such awards, to give proper receipts and acquittances therefor, and to apply the same toward the payment of the indebtedness secured by this Mortgage, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning each such award to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and nothing herein shall be considered an assignment of Mortgagor's right to contest a claim of eminent domain, which Mortgagor shall reserve all rights to; and

TOGETHER, with all right, title and interest of the Mortgagor in and to the land lying in the streets and roads in front of and adjoining the above described land (all the above described land, buildings, other structures, fixtures, articles of personal property, awards of taking by eminent domain, and other rights and interests as described herein being hereinafter collectively call the "mortgaged property").

TO HAVE AND TO HOLD the mortgaged property and every part thereof unto the Mortgagee, its successors and assigns forever for the purposes and uses herein set forth.

AND, the Mortgagor further covenants and agrees with the Mortgagee as follows;

1. **Obligations.** The Mortgagor will promptly pay the principal and interest on the indebtedness evidenced by the Note, and all other charges and indebtedness provided therein and in this Mortgage, at the times in the manner provided in the Note and in this Mortgage.
2. **Taxes and Assessments.** The Mortgagor will pay when due, as hereinafter provided, all ground rents, if any, and all taxes and assessments, water rates and other governmental charges, fines and impositions, of every kind and nature whatsoever, now or hereafter imposed on the mortgaged property, or any part thereof, and will pay when due, every amount of indebtedness secured by any lien to which the lien of this Mortgage is expressly subject.
3. **Improvements; Remedies.** This Mortgage and the Note were executed and delivered to secure moneys advanced in full or in part to the Mortgagor by the Mortgagee as or on account of a loan evidenced by the Note, for the purpose of making the improvements described or referred to in the HOME Agreement entered into by the Mortgagor and the Mortgagee in connection herewith to or on the Mortgaged property, and for such other purpose, if any, described or referred to therein, which improvements are hereafter collectively called "Improvements." The Mortgagor shall make or cause to be made all the Improvements. If the construction or installation of the Improvements shall not be carried out with reasonable diligence, or shall be discontinued at any time for any reason, other than strikes, lockouts, acts of God, fires, floods or other similar catastrophes, riots, war or insurrection, the Mortgagee after due notice to the Mortgagor is hereby authorized:

- a. to enter upon the mortgaged property and employ any watchmen to protect the Improvements from deprecation or injury and to preserve and protect such property,
  - b. to carry out any or all then existing contracts between the Mortgagor and other parties for the purpose of making any of the Improvements,
  - c. to make and enter into additional contracts and incur obligations for the purposes of completing the Improvements pursuant to the obligations of the Mortgagor hereunder, either in the name of the Mortgagee or the Mortgagor,
  - d. to pay and discharge all debts, obligations and liabilities incurred by reason of any action taken by the Mortgagee, as provided in this Paragraph, all of which amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate of amounts so paid by the Mortgagee, with interest thereon from the date of each payment at the rate set forth in the Promissory Note signed concurrently herewith and included herein by this reference shall be payable by the Mortgagor on demand and shall be secured by this Mortgage.
4. **Alterations in Project Area.** No building or other structure or improvement, fixture or personal property mortgaged on the Project Area hereby shall be removed or intentionally demolished by Mortgagor without the prior written consent of the Mortgagee unless the same is replaced with like property, subject to the lien and security interest of this Mortgage, of at least equal value and utility. The Mortgagor will not make, permit or suffer any substantial alteration of or installed upon the mortgaged property, or any part thereof, except the Improvements required to be made pursuant to Paragraph 3 hereof, nor will the Mortgagor use, or permit or suffer the use of, any of the mortgaged property for any purpose other than the purpose or purposes for which the same is now intended to be used, without the prior written constant of the Mortgagee. The Mortgagor will maintain the mortgaged property in good condition and state of repair and will not suffer or permit any waste to any part thereon, and will promptly comply with all the requirements of Federal, state and local governments, or of any departments, divisions or bureaus thereof, pertaining to such property or any part thereof.
5. **Liens.** The Mortgagor will not voluntarily create, or permit or suffer to be created or to exist on or against the mortgaged property, or any part thereof, any lien superior to the lien of this mortgage, except if subordinated by the City, and will keep and maintain the same free from the claims of all parties supplying labor or materials which will enter into the construction or installation of the improvements.
6. **Insurance.**
- a. The Mortgagor will keep all buildings, other structures and improvements, including equipment, now existing or which may hereafter be erected or installed on the land mortgaged hereby, insured against loss by fire and other hazards, casualties and contingencies, in such amounts and manner, and for such periods, as deemed

commercially reasonable. Unless otherwise required by the Mortgagee, all such insurance shall be effected by Standard Fire and Extended Coverage insurance policies, in amounts not less than necessary to comply with the coinsurance clause percentage of the value applicable to the location and character of the property to be covered. All such insurance shall be carried in companies approved by the Mortgagee and all policies therefore shall be in such form and shall have attached thereto loss payable clauses in favor of the mortgagee and any other parties as shall be satisfactory to the Mortgagee.

A certificate of insurance for all required insurance policies herein shall be delivered promptly to the Mortgagee upon execution of this Mortgage, unless they are required to be delivered to the holder of a lien or mortgage or similar instrument to which this Mortgage is expressly subject, in which latter event certificates thereof, satisfactory to the Mortgagee, shall be delivered promptly to the Mortgagee.

The Mortgagor will pay promptly when due, as hereinafter provided, any and all premiums on such insurance, and in every case in which payment thereof is not made from the deposits therefor required by this Mortgage, promptly submit to the Mortgagee for examination, receipts or other evidence of such payment as shall be satisfactory to the Mortgagee.

- b. In the event of loss or damage to the property the Mortgagor will give to the Mortgagee immediate notice thereof by mail, and the Mortgagee may make and file proof of loss if not made otherwise promptly by or on behalf of the Mortgagor. Each insurance company issuing any such policy is hereby authorized and directed to make payment hereunder for such loss directly to the Mortgagee, instead of to the Mortgagor and the Mortgagee jointly payable, unless the amount of loss is payable first to the holder of a lien under a mortgage or similar instrument to which this Mortgage is expressly subject; and the insurance proceeds or any part thereof received by the Mortgagee may be applied by the Mortgagee, at its option, either in reduction of the indebtedness of foreclosure of the Mortgage, or of the transfer of title to the mortgaged property in every such insurance policy then in force, subject to the rights in interest of the holder of any such prior lien, shall pass to the grantee acquiring title to the mortgaged property together with such policy and appropriate assignment of such right, title and interest which shall be made by the Mortgagor.

**7. Payment and Application of Payments.**

- a. In order to more fully protect the security of this Mortgage, the Mortgagor provide annually to the Mortgagee until the Note is paid in full, proof of payment of the following:
  - i. ground rents, if any, next becoming due,
  - ii. the premiums next becoming due on the policies of fire and all other hazard insurance required by this Mortgage with respect to the mortgaged property,

- iii. taxes, assessments, water rates and other governmental charges next becoming due on the mortgaged property (all the foregoing amounts as estimated by the Mortgagee as set forth in a written notice of such estimate by the Mortgagee to the Mortgagor from time to time),
- b. Following written notice from Mortgagee to Mortgagor, the Mortgagee may require that the Mortgagor deposit with the Mortgagee, together with and in addition to the payment of principal and interest in accordance with the Note secured hereby, until the Note is paid in full or forgiven as applicable, an amount of money equal to the total amount referred to in clauses (i) through (iii) above less all amounts that may already have been paid therefor, divided by the number of calendar months to elapse before one calendar month prior to the date when such ground rents, premiums, taxes, assessments, water rights and other governmental charges, respectively, will become due and payable. If any amount referred to in clauses (i) through (iii) hereof is required to be deposited by the Mortgagor under a mortgage or similar instrument having priority over the lien of this Mortgage, the Mortgagor shall make the deposits required by this Paragraph 7 only in the event of the termination of such obligation under the prior mortgage or similar instrument. The Mortgagor shall give prompt notice in writing to the Mortgagee of the occurrence of the last-mentioned event. All such amounts so deposited with the Mortgagee shall be held by the Mortgagee, or any agent designated by it, in trust to be used only for the payment of such ground rents, premiums, taxes, assessments, water rates and other governmental charges. No interest shall be payable by the Mortgagee on any sum so deposited.
- c. All amounts required to be deposited with the Mortgagee or Senior Security monthly in accordance with Paragraph 7(b) hereof, and the amount of principal and interest to be paid each month on account of the Note, shall be added together, and the aggregate amount thereof shall be paid by the Mortgagor to the Mortgagee in a single payment to be applied by the Mortgagee on account of the indebtedness of the mortgagor pursuant to the Note and this Mortgage (to the extent that monies are available from the amount so deposited), in the order, any provision of the Note to the contrary notwithstanding, as follows:

FIRST            to the amount of such ground rents, if any, taxes, assessments, water rights and other governmental charges required to be paid under the provisions of this Mortgage, in whatever sequence the Mortgagee may exclusively determine;  
SECOND         to the interest due on the Note;  
THIRD          to the principal due on the note; and  
FOURTH        the remainder, to the late charges, if any, referred to in the Note.

Any deficiency in the amount of any such aggregate monthly payment shall, unless paid by the Mortgagor prior to the due date of the next such deposit payable, constitute an event of default under this Mortgage.



- d. Any excess funds that may be accumulated by reason of the deposits required under Paragraph 7(a) hereof, remaining after payment of the amounts described in clauses (i), (ii), and (iii) thereof, shall be credited to subsequent respective monthly amounts of the same nature required to be paid thereunder. If any such amount shall exceed the estimate therefor, the Mortgagor shall forthwith pay to the Mortgagee the amount of such deficiency upon written notice by the Mortgagee of the amount thereof. Failure to do so before the due date of such amount shall be an event of default under this Mortgage. If the mortgaged property is sold under foreclosure or is otherwise acquired by the Mortgagee, after default by the Mortgagor, any remaining balance of accumulations under Paragraph 7(a) hereof, shall be credited to the principal amount owing on the Note as of the date of commencement of foreclosure proceedings for the mortgaged property, or as of the date the mortgaged property is otherwise so acquired.
8. **Compliance with Laws.** The improvements and all plans and specifications therefor shall comply with all applicable municipal ordinances, regulations, and rules made or promulgated by lawful authority, and upon their completion shall comply therewith.
9. **Protection of Mortgagee's Security.** Upon any failure by the Mortgagor to comply with or perform any of the terms, covenants or conditions of this Mortgage requiring the payment of any amount of money by the Mortgagor, other than the principal amount of the loan evidenced by the Note, interest and other charges, as provided in the Note, the Mortgagee may at its option make such payment. Every payment so made by the Mortgagee (including reasonable attorney's fees incurred thereby), with interest thereon from the date of such payment, at a rate not to exceed fifteen percent (15%) per annum, except any payment for which a different rate of interest is specified herein, shall be payable by the Mortgagor to the Mortgagee within thirty days and shall be secured by this Mortgage. This Mortgage with respect to any such amount and the interest thereon, shall constitute a lien on the mortgaged property prior to any other lien attaching or accruing subsequent to the lien of this Mortgage.
10. **Inspections.** The Mortgagee, by any of its agents or representatives, shall have the right to inspect the mortgaged property from time to time at any reasonable hour of the day. Should the mortgaged property, or any part thereof, at any time require inspection, repair, care or attention of any kind or nature not provided by this Mortgage as determined by the Mortgagee in its reasonable discretion, the Mortgagee may, after reasonable notice to the Mortgagor, enter or cause entry to be made upon, the mortgaged property, and inspect, repair, protect, care for or maintain such property, as the Mortgagee may in its sole discretion deem necessary, and may pay all amounts of money therefor, as the Mortgagee may in its sole discretion deem necessary.
11. **Acceleration of Payment.** The principal amount owing on the Note together with interest thereon and all other charges, as therein provided, and all other amounts of money owing by the Mortgagor to the Mortgagee pursuant to and secured or intended to be secured by this Mortgage, will immediately become due and payable without notice or demand upon the appointment of a court appointed receiver or liquidator, whether voluntary or involuntary, for

the mortgagor or any of the property of the Mortgagor, or upon the filing of a petition by or against the Mortgagor under the provisions of any State insolvency law, or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Mortgagor of an assignment for the benefit of the Mortgagor's creditors. The Mortgagee is authorized to declare, at its option, all or any part of such indebtedness immediately due and payable upon the happening of any of the following events:

- a. Failure to pay the amount of any installment of principal and interest, or other charges payable on the Note, which shall have become due, prior to the due date of the next such installment;
- b. Nonperformance by the Mortgagor of any covenant, agreement, term or condition of this Mortgage, or of the Note (except as otherwise provided in subdivision (a) hereof), or the HOME Agreement or Restrictive Covenant related thereto, after the Mortgagor has been given thirty-day due notice and opportunity to cure by the Mortgagee of such nonperformance;
- c. After applicable notice and cure period, failure of the mortgagor to perform any covenant, agreement, term or condition in any instrument creating a lien upon the mortgaged property, including but not limited to the HOME Agreement or Restrictive Covenant, or any part thereof, which shall have priority over the lien of this Mortgage;
- d. The Mortgagee's discovery of the Mortgagor's failure in any application of the Mortgagor to the Mortgagee to disclose any fact reasonably deemed by the Mortgagee to be material, or of the making therein or in any of the agreements entered into by the Mortgagor with the Mortgagee (including, but not limited to, the Note and this Mortgage) of any misrepresentation by, on behalf of, or for the benefit of, the Mortgagor;
- e. The sale, lease (except non-HOME unit tenant leases), or other transfer of any kind of nature of the mortgaged property (except mortgaged interest or easements), or any part thereof, without the prior written consent of the Mortgagee;

The Mortgagee's failure to exercise any of its rights hereunder shall not constitute a waiver thereof. All the events in this Paragraph enumerated upon the happening of any of which the Note shall become, or may be declared to be, immediately due and payable, are in this Mortgage called "events of default".

12. **Cure of Default.** The Mortgagee may from time to time cure an event of default under any covenant or agreement in any instrument creating a lien upon the mortgaged property, or any part thereof, including but not limited to the HOME Agreement and Restrictive Covenant, which shall have priority over the lien of this Mortgage, to such extent as the Mortgagee may exclusively determine, and each amount paid (if any) by the Mortgagee to cure any such default

shall be paid by the Mortgagor to the Mortgagee; and the Mortgagee may also become subrogated to whatever rights the holder of the prior lien might have under such instrument.

13. **Event of Default.**

- a. After the happening of an event of default hereunder, the Mortgagor shall, upon demand of the Mortgagee, surrender possession of the mortgaged property to the Mortgagee, and the Mortgagee may enter such property, and let the same and collect all the rents therefrom which are due to be become due, and apply the same, after payment of all charges and expenses, on account of the indebtedness hereby secured, and all such rents and all leases existing at the time of such default are hereby assigned to the Mortgagee as further security for the payment of the indebtedness secured hereby; and the Mortgagee may also dispossess, by the usual summary proceedings, any tenant defaulting in the payment of any rent to the Mortgagee.
- b. In the event that the Mortgagor occupies the mortgaged property, or any part thereof, the Mortgagor agrees to surrender possession of such property to the Mortgagee immediately after any such default hereunder, and if the Mortgagor remains in possession after such default, such possession shall be as a tenant of the Mortgagee, and the Mortgagor shall pay in advance, upon demand by the Mortgagee, as a reasonable monthly rental for the premises occupied by the Mortgagor, an amount at least equivalent to one-twelfth (1/12) of the aggregate of the twelve monthly installments payable in the current calendar year, plus the actual amount of the annual ground rent, if any, taxes, assessments, water rates, other governmental charges and insurance premiums payable in connection with the mortgaged property during such year, and upon the failure of the Mortgagor to pay such monthly rental, the Mortgagor may also be dispossessed by the usual summary proceedings applicable to tenants. This covenant shall become effective immediately upon the happening of any such default, as determined in the sole discretion of the Mortgagee, who shall give notice of such determination to the Mortgagor; and in the case of foreclosure and the appointment of a receiver of the rents, the within covenant shall inure to the benefit of such receiver.

14. **Receivership.** The Mortgagee in any action to foreclose this Mortgage shall be entitled to the appointment of a receiver with notice as a matter of right without regard to the value of the mortgaged property, or the solvency or insolvency of the Mortgagor or other party liable for the payment of the Note and other indebtedness secured by this Mortgage.

15. **Redemption.** In addition to all other remedies afforded to Mortgagee by this Mortgage and under Iowa law, at Mortgagee's option in the event of default that remains uncured by Mortgagor, Mortgagee may elect to declare the entire balance immediately due and payable after such notice, if any, as may be required by Chapter 654, Code of Iowa (2014). Thereafter this Mortgage may be foreclosed in equity and the court may appoint a receiver to take immediate possession of the mortgaged property and of the revenues and income accruing therefrom and to rent or cultivate the same as the receiver may deem best for the interest of all

parties concerned, and such receiver shall be liable to account to Mortgagor only for the net profits, after application of rents, issues and profits from the costs and expenses of the receivership and foreclosure and upon the Note and Mortgage obligation.

It is agreed that if this Mortgage covers less than ten (10) acres of land, and in the event of the foreclosure of this Mortgage and sale of the property by sheriff's sale in such foreclosure proceedings, the time of one year for redemption from said sale provided by the statutes of the State of Iowa shall be reduced to six (6) months provided the Mortgagee, in such action files an election to waive any deficiency judgment against the Mortgagors which may arise out of the foreclosure proceedings; all to be consistent with the provision of Chapter 628 of the Iowa Code. If the redemption period is so reduced, for the first three (3) months after the sale such right of redemption shall be exclusive to the Debtor, and the time periods in Sections 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to four (4) months.

It is further agreed that the period of redemption after a foreclosure of this Mortgage shall be reduced to 60 days if all of the three following contingencies develop: (1) the real estate is less than 10 acres in size; (2) the court finds affirmatively that the said real estate has been abandoned by the owners and those persons personally liable under this Mortgage at the time of such foreclosure; and (3) Mortgagee in such action files an election to waive any deficiency judgment against Mortgagors or their successor in interest in such action. If the redemption period is so reduced, Mortgagors or their successors in interest or the owner shall have the exclusive right to redeem for the first 30 days after such sale, and the time provided for redemption by creditors as provided in Section 628.5, 628.15 and 628.16 of the Iowa Code shall be reduced to 40 days. Entry of appearance by pleading or docket entry by or on behalf of Mortgagors shall be presumption that the property is not abandoned. Any such redemption period shall be consistent with all of the provisions of Chapter 628 of the Iowa Code. This paragraph shall not be construed to limit or otherwise affect any other redemption provisions contained in Chapter 628 of the Iowa Code. In case of a foreclosure sale of the mortgaged property, it may be sold in one parcel.

16. **Statement of Indebtedness.** The Mortgagor, within 10 days upon request in person or within 20 days upon request by mail, will furnish promptly a written statement in form satisfactory to the Mortgagee, signed by the Mortgagor and duly acknowledged, of the amount then owing on the Note and other indebtedness secured by this Mortgage, and whether any offsets or defenses exist against such indebtedness or any part thereof.
17. **Notice of Damage or Destruction.** The Mortgagor will give prompt notice by registered or certified mail to the Mortgagee of any fire, damage or other casualty materially affecting the mortgaged property, or of any conveyance, transfer of change in ownership of such property, or any part thereof.
18. **Notices.** Notice and demand or request may be made in writing and may be served in person or by mail, as follows:

- a. For the City: Neighborhood Services Director, Neighborhood Services Department, 602 Robert D. Ray Drive, Des Moines, IA 50309
- b. For the Borrower: Greater Des Moines Habitat for Humanity, 2200 E. Euclid Avenue, Des Moines, IA 50317

19. **Assignment of Rents.** The Mortgagor will not assign the rents, if any, in whole or in part, from the mortgaged property, or any part thereof, without the prior written consent of the Mortgagee.
20. **Authority.** The Mortgagor is lawfully seized of the mortgaged property and has good right, full power and lawful authority to sell and convey the same in the manner above provided, and will warrant and defend the same to the Mortgagee forever against the lawful claims and demands of any and all parties whatsoever.
21. **Severability.** In the event any portion of this Mortgage shall, for any reason, be held to be invalid, illegal, or unenforceable in whole or in part, the remaining provisions shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Mortgage is invalid, illegal, or unenforceable, as written, but that by limiting such provision it would become valid, legal and enforceable then such provision shall be deemed to be written, construed and enforced as so limited.
22. **Release of Rights of Dower, Homestead and Distributive Share.** Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the mortgaged property and waives all rights of exemption as to any of the mortgaged property.
23. **Successors and Assigns.** This Mortgage and all the covenants, agreements, terms and conditions herein contained shall be binding upon and inure to the benefit of the Mortgagor and the heirs, legal representatives and assigns of the Mortgagor, and, to the extent permitted by law, every subsequent owner of the mortgaged property; and shall be binding upon and inure to the benefit of the Mortgagee and its assigns. If the Mortgagor, as defined herein, consists of two or more parties, the Mortgage shall constitute a grant and mortgage by all of them jointly and severally, and they shall be obligated jointly and severally under all the provisions hereof and under the Note. The word "Mortgagee" shall include any person, corporation or other party who may from time to time be the holder of this Mortgage. Whenever used herein the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall be applicable to all genders wherever the sense requires.
24. **Acknowledgement of Receipt of Copies of Debt Instrument.** Mortgagor hereby acknowledges the receipt of a copy of the Mortgage together with a copy of the Note secured hereby.

IN WITNESS WHEREOF this Mortgage has been duly signed and sealed by the Mortgagor on or as of the day and year first above written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 14<sup>th</sup> day of September, 2020.

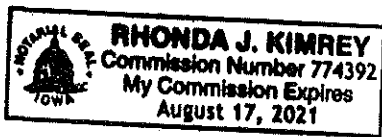
BORROWER: Greater Des Moines Habitat for Humanity

By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA     )  
                                  ) ss:  
COUNTY OF POLK    )

On this 14<sup>th</sup> day of September, 2020, before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, and that the seal affixed to the forgoing instrument is the seal of the corporation (or no seal has been procured by the corporation); that the instrument was signed (and sealed) on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Rhonda J. Kimrey  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021



Exhibit J Promissory Note

**Promissory Note**  
**City of Des Moines HOME Program**

**Borrower/Promisor:** Greater Des Moines Habitat for Humanity, "Borrower"  
**Property Address:** 1603 23rd Street, Des Moines, IA, "Property"  
**Loan Amount:** \$35,000  
**Legal Description:** Lot 1 Williamson Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

1. **Borrower Promise to Pay.** For value received, the undersigned Borrower(s) jointly and severally promise(s) to pay to the order of the City of Des Moines, Iowa (hereafter referred to as the City), or its successors and assigns (herein collectively called the "Lender"), the maximum principal sum of \$35,000 ("HOME Loan"), or such lesser amount as may be endorsed on this Note on behalf of Lender.
2. **Interest.** The Loan shall accrue interest on the principal balance at a 0% interest rate compounding annually for a term of 3 years.
3. **Loan Forgiveness.** The Borrower shall use the Loan amount in compliance with the HOME Agreement by and between City and Borrower relating to the above-listed property. If Borrower complies with the HOME Agreement by and between City and Borrower, as determined by City, then payment of the Loan amount shall be deferred for each year during which they are in compliance, and on the 14th day of September, 2023, the amount of the HOME Loan shall be forgiven and discharged by Lender.
4. **Non-Compliance.** If the Borrower fails to comply with the HOME Agreement, as determined by City, said non-compliance shall constitute a default of the terms of this Note and then and in that event the entire Loan amount due on this Note shall immediately be due and payable to Lender and no portion of the Loan amount shall be discharged or forgiven.
5. **Sale or Transfer.** The HOME Loan, or any remaining balance thereof, shall be due in full upon any voluntary sale of the Property or improvements thereon without the prior written consent of the Lender. If the HOME Loan is not timely paid when due upon such sale, it shall thereafter draw interest at the rate of 10% per annum, but not to exceed the maximum interest rate permitted by law. If the City consents to the sale or transfer of the Property or the improvements thereon, the HOME Loan and all of the obligations related thereto shall be assumed by the Borrower's successor or assign.
6. **Satisfaction of Repayment.** Unless there is a finding of ineligible use of HOME funding by the United States Department of Housing and Urban Development (HUD) or a HUD requirement of reimbursement of HOME funding, the Lender shall look solely to the Property for the satisfaction of the repayment obligations under this Note.



7. **Borrower's Right to Prepay.** Borrower may prepay at any time all or any part of the principal amount due on this Note without the payment of penalties or premiums, provided that Borrower is not in default under this Note and the payment is identifiable as a prepayment of principal. In the event of prepayment, Lender will notify Borrower of the new date and amount of final payment due under this Note.
  
8. **Borrower's Failure to Pay as Required.** If the Borrower shall default in the payment of any installment due under this Note, and such default is not made good prior to the due date of the next installment, the entire unpaid principal amount of this Note, together with accrued interest and late charges shall become immediately due and payable, at the option of the Lender, with two-day notice to the Borrower(s). Failure of the Lender to exercise such option shall not constitute a waiver of such default. No default shall exist by reason of nonpayment of any required installment of principal and interest, so long as the amount of optional prepayments already made pursuant hereto equals or exceeds the amount of the required installments. If Lender exercises its option to declare the entire amount of Borrower's loan immediately due and payable as provided above, Borrower hereby agrees to pay Lender's costs and expenses of collection, including reasonable attorney's fees and court costs. If this Note is reduced to judgment, the judgment shall bear interest at the maximum rate permissible on such judgment in the State of Iowa, or if there is no such maximum, at the rate of 15% per annum.

If any annual installment of interest or any part of such installment, remains unpaid for a period of 15 days from its due date, the Borrower hereby agrees to pay to Lender a Late Charge of 4% of the unpaid amount of such installment.

9. **Security.** This Note is secured by a Mortgage, duly filed for record in the office of the County Recorder/Register of Deeds of Polk County, Iowa.
  
10. **Waivers.** All parties to this Note hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. The Borrower hereby waives, to the extent permitted by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.





In witness whereof, this Note has been duly executed by the undersigned Borrower(s), as of the date shown above.

BORROWER: Greater Des Moines Habitat for Humanity

By: [Signature]  
Lance Henning, Executive Director

9/14/2020  
Date

STATE OF IOWA            )  
  ) ss:  
COUNTY OF POLK        )

On this 14<sup>th</sup> day of September, 2020 before me the undersigned, a Notary Public in and for the State of Iowa, personally appeared Lance Henning, to me personally known, who being by me duly sworn, did say that he is the Executive Director of Greater Des Moines Habitat for Humanity, that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that they acknowledged the execution of the instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.

[Signature]  
Notary Public in the State of Iowa

My Commission Expires: 8/17/2021

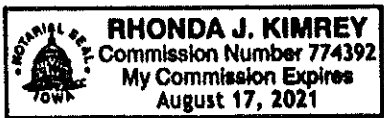




Exhibit K Loan Repayment Schedule (if applicable)

**REMOVED – Not Applicable**

**Repayment of loan due in full if project becomes noncompliant.**



Exhibit L Assurance of Compliance with Section 3 Requirements

**TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR  
BUSINESSES AND LOWER INCOME PERSONS**

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, will, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining Agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice will describe the section 3 preference, will set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled

(1) after the contractor is selected but before the contract is executed, and

(2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.



Exhibit M Insurance Requirements and Proof of Insurance

**CITY OF DES MOINES, IOWA**  
**HOME Grant**  
**INSURANCE & INDEMNIFICATION REQUIREMENTS**

For the purposes of this Attachment and all provisions included herein, the term "CITY" shall mean the City of Des Moines, Iowa, including its elected and appointed officials, employees, agents, volunteers, boards, commissions and others working on its behalf.

1. GENERAL

The CONTRACTOR shall purchase and maintain insurance to protect the CONTRACTOR and CITY throughout the duration of this Contract. Said insurance shall be provided by insurance companies "admitted" or "non-admitted" to do business in the State of Iowa having no less than an A. M. Best Rating of "B+." All policies shall be written on an occurrence basis and in form and amounts satisfactory to the CITY. Certificates of Insurance confirming adequate insurance coverage shall be submitted to the CITY prior to Contract execution or commencement of work and/or services.

2. INSURANCE REQUIREMENTS

- A. **COMMERCIAL GENERAL LIABILITY INSURANCE:** Commercial General Liability insurance on an occurrence basis with limits of liability not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined single limit covering Personal Injury, Bodily Injury and Property Damage. Coverage shall include: (a) Contractual Liability, (b) Premises and Operations, (c) Products and Completed Operations, (d) Independent Contractors Coverage, (e) Personal and Advertising Injury and (f) Explosion, Collapse and Underground- XCU (when applicable). Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.

Coverage shall be no less comprehensive and no more restrictive than the coverage provided by ISO standard Commercial General Liability Policy form ISO CG 0001 including standard exclusions or a non-ISO equivalent form.

- B. **AUTOMOBILE LIABILITY INSURANCE:** Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit covering Bodily Injury and Property Damage. Coverage shall include all owned, non-owned, and hired vehicles. If the CONTRACTOR'S business does not own any vehicles, coverage is required on non-owned and hired vehicles. Policy shall include Contractual Liability coverage. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- C. **UMBRELLA/EXCESS LIABILITY INSURANCE:** The General Liability and Automobile Liability Insurance requirements above may be satisfied with a combination of primary and Umbrella or Excess Liability Insurance. If the Umbrella or Excess Insurance policy does not follow the form of the primary policies, it shall include the same endorsements as required of the primary policies including a Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.



- D. **WORKER'S COMPENSATION & EMPLOYER'S LIABILITY INSURANCE:** As required by State of Iowa Workers' Compensation Law, the CONTRACTOR shall procure and maintain Worker's Compensation Insurance, including Employer's Liability Coverage. The Workers' Compensation Insurance shall be written with State of Iowa statutory limits. If, by Iowa Code Section 85.1A, the CONTRACTOR is not required to purchase Workers' Compensation Insurance, the CONTRACTOR shall have a copy of the State's Nonelection of Workers' Compensation or Employers' Liability Coverage form on file with the Iowa Workers' Compensation Insurance Commissioner, as required by Iowa Code Section 87.22. Waiver of Subrogation in favor of the CITY is required as per paragraph 2.G. below.
- E. **ADDITIONAL INSURED ENDORSEMENT:** The City shall NOT be named or included as an Additional Insured.
- F. **CANCELLATION & NONRENEWAL NOTIFICATION ENDORSEMENT:** The General Liability Insurance policy shall include a policy endorsement providing the CITY with no less than thirty (30) days Advance Written Notice of Cancellation, forty-five (45) days Advance Written Notification for Nonrenewal and ten (10) days Written Notification of Cancellation due to non-payment of premium. Written notifications shall be sent to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.
- G. **WAIVER OF SUBROGATION:** To the fullest extent permitted by law, CONTRACTOR hereby releases the CITY from and against any and all liability or responsibility to the CONTRACTOR or anyone claiming through or under the CONTRACTOR by way of subrogation or otherwise for any loss without regard to the fault of the CITY or the type of loss involved including loss due to occupational injury. This provision shall be applicable and in full force and effect only with respect to loss or damage occurring during the time of this Contract. The CONTRACTOR'S policies of insurance shall contain either a policy provision or endorsement affirming the above stated release in favor of the CITY including its elected and appointed officials, agents, employees and volunteers, and others working on its behalf.
- H. **PROOF OF INSURANCE:** The CONTRACTOR shall provide the following proof of insurance to the CITY:
- Certificates of Insurance evidencing all insurance coverage as required in paragraphs A through G above utilizing the latest version of the ACORD form. The Certificate(s) of Insurance shall specify "HOME Grant" along with address(es) of property receiving funding from grant monies under "Description of Operations/Locations/Vehicle/Special Items" and indicate Waiver of Subrogation by marking the corresponding boxes on COI and/or including a statement of compliance under Description of Operations.
  - A copy of the Cancellation and Nonrenewal Notification Endorsement or its equivalent as required in paragraph 2.F. above.

**Mail Certificates of Insurance to: Neighborhood Services, Attn: HOME Grant Admin, 602 Robert D. Ray Drive, Des Moines, Iowa 50309.**



- I. AGENTS AND SUBCONTRACTORS: The CONTRACTOR shall require all its agents and subcontractors who perform work and/or services on behalf of the CONTRACTOR to purchase and maintain the types of insurance customary to the industry or trade related to the services being provided.

### 3. INDEMNIFICATION REQUIREMENTS

To the fullest extent permitted by law, CONTRACTOR agrees to defend, pay on behalf of, indemnify, and hold harmless the CITY against any and all claims, demands, suits, damages or losses, together with any and all outlay and expense connected therewith including, but not limited to, attorneys' fees and court costs that may be asserted or claimed against, recovered from or suffered by the CITY by reason of any injury or loss including, but not limited to, personal injury, bodily injury including death, property damage including loss of use thereof, and economic damages that arise out of or are in any way connected or associated with CONTRACTOR'S work or services under this Agreement, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR.

CONTRACTOR'S obligation to indemnify the CITY contained in this Agreement is not limited by the amount or type of damages, compensation or benefits payable under any workers' compensation acts, disability benefit acts, or other employee benefits acts.

The CITY shall not be liable or in any way responsible for any injury, damage, liability, claim, loss or expense incurred by CONTRACTOR arising out of or in any way connected or associated with CONTRACTOR'S work, including that of its officers, agents, employees, subcontractors and others under the control of CONTRACTOR, except to the extent caused by or resulting from the negligent act of the CITY.

