

HOME PROGRAM  
COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT  
BETWEEN THE  
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY  
AND  
[Insert name of CHDO]

This COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT (hereinafter “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **METROPOLITAN DEVELOPMENT AND HOUSING AGENCY** of Nashville, Tennessee, a Tennessee public body corporate and politic, organized under the Tennessee Housing Authorities Law, T.C.A. § 13-20-101, et seq. (hereinafter “**MDHA**”), and \_\_\_\_\_, a Tennessee non-profit corporation (hereinafter “**CHDO**”), having its principal office located \_\_\_\_\_ and meeting the criteria established by the Department of Housing and Urban Development of the United States of America for a Community Housing Development Organization.

**WITNESSETH:**

WHEREAS, MDHA administers the HOME Investment Partnerships Program (hereinafter “**HOME**” or “**HOME Program**”), with the goal of expanding the supply of decent, safe, and affordable housing for those of very low and low income; and

WHEREAS, the HOME Program provides that a minimum of fifteen (15%) percent of the HOME allocation is to be set aside annually for use by eligible Community Housing Development Organizations (“CHDOs”) for the development of affordable housing; and

WHEREAS, MDHA requested applications on \_\_\_\_\_ for projects to utilize funds to develop housing to be affordable to low income households and [nonprofit] responded by submitting an application for the project referenced in this Agreement, their application response is incorporated by reference herein; and

WHEREAS, [nonprofit] has met all HUD-established requirements pertaining to its legal status, organizational structure, and capacity and experience for CHDO designation and shall act as owner and developer of the Project described herein and will utilize HOME Funds as defined below to construct [number of buildings, number of units, and type of units] housing, all HOME-assisted [could be partially HOME-assisted], to be rented to and occupied by [target population for occupancy] on the following properties located in Nashville, Tennessee (hereinafter “**Project**”); and

[Site Address – Map and Parcel number]

WHEREAS, MDHA desires to award HOME Funds in an amount not to [dollar amount of HOME funds being awarded] (“**HOME Funds**”) to construct the Project on the previously

referenced properties to be conveyed to the CHDO by MDHA[if applicable], upon which the CHDO will undertake construction of the Project; and

WHEREAS, MDHA desires to convey properties at the following locations for use in this project; and

[Site Address – Map and Parcel number]

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereinafter set forth in detail, the parties do hereby mutually agree as follows:

## I. PROJECT DESCRIPTION

- A. Scope of Work. CHDO shall undertake the Project and perform all activities in accordance with HOME rules, other applicable Federal, state, and local laws and regulations, and the terms and conditions contained herein.
- B. Site Location, Total Units, and Bedroom Sizes. On the properties CHDO shall construct [number of buildings, number of units in each building, bedroom sizes of units, and total of units]units of HOME-assisted units of affordable rental housing at the following locations in Nashville, Tennessee (collectively, “**New Units**”):

[Site Address – Map and Parcel number]

For these New Units, CHDO shall lease [insert target population for occupancy].

- C. Eligible HOME Activities. CHDO shall utilize HOME Funds for the following eligible activities: new construction of [number of buildings, number of units in each building, bedroom sizes of units, and total of units] of affordable rental housing. Costs include hard and soft costs as permitted by the HOME program.
- D. Designated HOME Units; HOME Subsidy. [Insert number] shall be designated as HOME-Assisted Units (“**HOME-Assisted Units**”). The amount of subsidy for the new units at the locations described in I. B. shall not exceed a total of [amount of HOME award for total project] or [amount of per unit HOME award] which does not exceed the allowable maximum per-unit subsidy limit based on the Section 234 Condominium Housing, elevator-type, basic mortgage limits for Nashville, Tennessee multiplied by the 2015 high cost percentage of 223%. The maximum per-unit subsidy based on these limits is listed in the table below.

Unit Size	HOME Subsidy per unit	Maximum HOME Subsidy per unit 2015 234 subsidy limits for condominium housing, elevator-type

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E. Affordability. The Project must meet the Affordability Requirements as provided in Section II for the duration of the Affordability Period, as that term is defined below.

F. Site Control. CHDO was awarded [number of lots] from MDHA [if applicable] in conjunction with CHDO's application for this project. Title to these lots will be conveyed to CHDO simultaneously with the execution of funding agreements between MDHA and CHDO.

G. Project Budget, Sources and Uses Statement, Pro Forma.

1. Approved Documentation. CHDO has submitted the following documentation, upon which MDHA has relied in the execution of this Agreement:

- a) Project budget;
- b) a sources and uses statement, including the amount, form, use, and terms of the HOME subsidy;
- c) an operating pro forma incorporating income from HOME rents for the term of the Affordability Period as contained herein;
- d) initial rent schedule;
- e) a sample tenant lease;
- f) written tenant selection policies;
- g) tenant participation plan;
- h) final plans and specifications;
- i) an affirmative marketing plan which includes procedures for affirmatively marketing accessible units [5 or more units];
- j) waiting lists showing demand for units; and
- k) financial commitments for any other funding sources.

2. Cost Overruns. CHDO shall be solely responsible for ensuring completion of construction, within budget, as identified on the sources and uses statement, approved as a part of this Agreement. Any cost overruns will be the sole responsibility of the CHDO.

3. Construction Financing. CHDO shall close on CHDO's construction financing, if applicable, before requesting any draws under this Agreement.

H. Construction Schedule.

1. Begin Construction. CHDO shall commence visible construction no later than [insert date].

2. Substantial Completion. CHDO shall substantially complete construction of the New Units no later than [insert date]. Completion of construction shall in all

cases be subject to extensions for a period of time equal to the delay in completion caused as a result of an Excusable Delay. As used herein, the term “**Excusable Delay**” shall mean any delay in performance due to strikes, lockouts, or other labor or industrial disturbance, civil disturbance, future order of any government, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, moratorium or other unusual delay in obtaining necessary governmental permits or approvals (with CHDO using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of CHDO (excluding financial inability to perform) to the extent that in each case of Excusable Delay, CHDO has notified MDHA in writing within ten (10) days after the occurrence of each Excusable Delay event and has specified in detail the circumstances constituting the Excusable Delay and the anticipated number of days by which performance is delayed as a result thereof. MDHA, in its sole and reasonable discretion, shall determine whether the delay is an Excusable Delay.

I. Construction Methods and Techniques. CHDO shall be solely responsible for all construction, methods, techniques, and procedures and shall furnish all materials, equipment, machinery, tools and labor to perform the work required to complete construction. All materials shall be new and of good quality.

J. Initial Occupancy. New Units shall be initially, fully leased by [insert date].

## II. AFFORDABILITY REQUIREMENTS

A. Qualification as Affordable Housing: Rental Housing. HOME-Assisted Units must be occupied only by households that are eligible as low-income families or very-low income families, all as defined in 24 CFR §92.2, and must meet the requirements to qualify as affordable housing pursuant to 24 CFR §92.252, as provided herein (“**Affordability Requirements**”).

B. Affordability Period.

1. Twenty Years. The period of Affordability is twenty (20) years (“**Affordability Period**”).

2. Affordability Period Commencement. The Affordability Period shall commence upon Project completion. For the purpose of the Affordability Period, the Project completion date shall be as provided in 24 CFR §92.2, which is the date in which the Project completion information has been entered into the disbursement and information system established by HUD (“**Project Completion Date**”).

3. Deed Restriction. The Affordability Requirements shall be secured by a deed restriction and a Declaration of Restrictive Covenants (“**Declaration**”) on each

property in substantially the same form as the document attached as Exhibit 3 and shall be recorded with the Davidson County Register of Deeds.

C. HOME Assisted Units. The Project consists of [number of units]all units shall be designated as “fixed” [could also be floating]HOME-Assisted Units (“**HOME-Assisted Units**”).

D. HOME Income Limits.

1. During the Affordability Period, all of the new units must be rented by households whose annual income is at or below [income level of tenants that will lease units in accordance with the funded application, i.e. 30%, 50%, or 60% of the area median income (“**AMI**”) for Metropolitan Nashville and Davidson County as determined annually by HUD]. The 2016 Income Limits are listed in the table below. MDHA shall provide CHDO with updated income limits as published by HUD.

	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
Extremely Low (30%)	\$14,400.00	\$16,450.00	\$18,500.00	\$20,550.00	\$22,200.00	\$23,850.00	\$25,500.00	\$27,150.00
Very Low (50%)	\$24,000.00	\$27,400.00	\$30,850.00	\$34,250.00	\$37,000.00	\$37,750.00	\$42,500.00	\$45,250.00
60% Limits	\$28,800.00	\$32,880.00	\$37,020.00	\$41,100.00	\$44,400.00	\$47,700.00	\$51,000.00	\$54,300.00

2. Verifying Tenant Income. CHDO is responsible for determining tenant household income and shall use the Part 5 (“**Section 8**”) method found at 24 CFR §5.609. CHDO shall be responsible for re-examination of tenant income on an annual basis, either on the anniversary date of the original income evaluation certification or at lease renewal. The HUD Exchange web site provides an income eligibility calculator that can be used to determine income eligibility for the HOME program. The link below contains a guide for using this income eligibility calculator.

[https://www.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculatorUser%20Manual\\_Version2.0.pdf](https://www.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculatorUser%20Manual_Version2.0.pdf)

E. HOME Rent Limits. Per section 2.9 of the application instructions, the rent and occupancy requirements for individuals units depend on the size of the project (number of units in the project) and there are special Rent Requirements for Projects containing Single Room Occupancy (SRO) and Group Home Housing which are covered in section 2.11 of the application instructions. The rent requirements for the specific project will be tailored in accordance with these requirements.

F. Utility Allowances and Fees. If the tenant pays for utilities or other mandatory fees, CHDO must deduct these costs from the published Rent limits applicable to each project. The cost of utilities is based upon the THDA utility allowance unless stated otherwise.

G. Initial Rent Schedule. CHDO has provided an initial rent schedule to MDHA for the HOME-Assisted Units in the Project in accordance with this Section. This schedule shows an *initial* rent of [insert dollar amount], which includes [does not include] the cost of all utilities.

H. Adjusting Rents. CHDO may adjust rents in accordance with annual HUD rent limits and updated utility allowances. In the event HUD-published rent limits decrease or if utility costs increase so that rent is effectively lower than the initial rent limit, CHDO shall not be required to set rents lower than the initial rent in effect at the time of execution of this Agreement. CHDO shall not increase rents above the HUD rent limits then in effect without the express, written approval of MDHA. Rent adjustments are subject to the tenant's lease provisions.

I. Guidance for When A Tenant Becomes Over-Income. CHDO shall refer to Chapter 3 of the *Compliance in HOME Rental Projects: A Guide for Property Owners 2009* for guidance on actions to be taken to maintain the unit mix in Fixed HOME units when a tenant becomes "over-income." This guide can be found at the following link:

[https://www.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects\\_GuideforPropertyOwners.pdf](https://www.hudexchange.info/resources/documents/ComplianceinHOMERentalProjects_GuideforPropertyOwners.pdf)

For purposes of maintaining the proper unit mix, [number of units] HOME assisted units in this project shall be considered as Low HOME rent units and [number of units] shall be considered as High HOME rent units. CHDO shall not terminate an over-income household's tenancy based on income.

#### IV. TENANT SELECTION AND LEASE REQUIREMENTS

A. Tenant Selection Procedures. CHDO must adopt written tenant selection policies and criteria (such as a waiting list) that:

- Are consistent with the purposes of providing affordable housing;
- Are reasonably related to program eligibility and the ability of the applicant to perform obligations of the lease;
- Provide for tenant selection from a written waiting list, in chronological order of application to the extent practicable; and
- Give prompt written notice to any rejected applicant of the grounds for rejection.

B. Lease Provisions.

1. Lease Length. The lease term shall be at least one year, unless CHDO and tenant mutually agree to a shorter period. However, a term may not be for a period less than thirty (30) days.



2. Termination of Tenancy. CHDO shall not terminate the tenancy or refuse to renew the lease of a tenant of a HOME-Assisted Unit, except for allowable reasons: serious or repeated violations of the terms and conditions of the lease; violating Federal, state, or local law; or other good cause, all as reasonably determined by CHDO. Tenants shall be served a written notice at least thirty (30) days prior to the termination of tenancy; said notice shall specify the grounds for the termination or refusal to renew the lease.
3. HOME Rents. CHDO shall specify allowable HOME rents in tenant leases and shall notify tenants that rents may be adjusted in accordance with tenant income changes and as a result of changes in rent limits issued by HUD or MDHA. CHDO shall provide at least thirty (30) days written notice to the tenant prior to increasing the rent.
4. Prohibited Clauses. CHDO shall not include Federally-prohibited lease clauses outlined at 24 CFR §92.253(b) in the lease with the tenant.
5. Compliance with Landlord-Tenant Laws. CHDO shall comply with applicable state and local landlord-tenant laws, or shall require the management agent to do so pursuant to a written agreement.
6. CHDO must comply with Tenant and Participant protections contained in CFR Subpart F §92.253.
- C. Tenant Participation Plan. CHDO has established and implemented a plan for tenant participation in management decisions and a fair lease and grievance procedure. Copies of these procedures were provided to MDHA for review prior to execution of this Agreement.

## **V. PROPERTY STANDARDS**

- A. Property Standards. The Project must meet all applicable state and local codes and ordinances in effect at the time of Project completion. The Project must remain in compliance with all applicable state and local codes and ordinances for the duration of the Affordability Period.
- B. New Units. CHDO shall comply with the applicable standards for new construction as specified in 24 CFR §92.251(a)(2) property standards.
- C. Sustainability. To the extent practicable, the Project should demonstrate responsible, quality construction with respect to energy efficiency and environmental impact. CHDO shall construct New Units to meet Energy Star and HUD Energy Efficiency building standards and receive the Energy Star label or a Green Building Permit.
- D. Accessibility. CHDO shall incorporate Vistability features outlined below in the two (2) buildings in the project.

•	A step-free entrance with a threshold of not more than one-half inch from driveway, sidewalk, or other firm route into the main floor
•	A minimum of 32 inches of clear passage space for every interior passage door (including bathrooms) and exterior doors that provide a step-free entrance
•	One full bathroom the seven (7) individual units in each building with clear floor space of at least 30” x 48”
•	L shaped kitchen in each building
•	Lever handles on doors and faucets
•	Light switches 38” above the floor
•	Electric outlets 18” above floor
•	Thermostat controls 44” above floor
•	Reinforced walls to accommodate grab bars and baths with seats in the baths in the seven (7) individual units in each building
•	Ample clear floor space for maneuvering at fixtures

CHDO shall construct [insert number of units] in each building to meet the accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (“**Accessible Unit**”) and [insert number of units] in each building shall be accessible to sensory impaired individuals (“**Sensory Unit**”). All the Accessible Units shall be made available to disabled residents who are able to live independently.

- E. Lead-Based Paint. CHDO shall comply with HUD’s Lead Safe Housing Rule at 24 CFR Part 35, Subparts A, B, J, and R.
- F. Property and Casualty Insurance. CHDO agrees to keep all buildings or other improvements now on, or to be hereafter erected on the Property insured with an insurance company or companies licensed to sell property and casualty insurance within the State of Tennessee with a current A.M. Best rating of no less than A, for maximum insurable value, naming MDHA as an additional insured, until CHDO’s obligations to MDHA are fully complete, and to have the loss, if any, made payable on the policy, or policies, to MDHA. MDHA shall have the right to use all such insurance proceeds to satisfy all of the CHDO’s obligations to MDHA.
- G. Commercial General Liability Insurance. CHDO agrees to maintain comprehensive commercial general liability insurance with an insurance company or companies licensed to sell public liability insurance within the state of Tennessee with a current A.M. Best rating of no less than A naming MDHA as additional insured covering claims for bodily injury, death and property damage, in the amount of at least three million dollars aggregate and at least one million dollars for any occurrence.
- H. Worker’s Compensation. CHDO shall maintain statutory worker’s compensation and employer’s liability coverage for all employees who will be engaged in the performance of the contract, including special coverage extensions where applicable.



- I. Notice of Cancellation. CHDO agrees that all insurance policies as above required shall provide for not less than thirty (30) days prior written notice to MDHA of cancellation, termination or material amendment of such policies. CHDO is responsible to notify MDHA within five (5) business days of any cancellation, non-renewal or material change that affects required insurance coverage. In the event CHDO fails to keep in effect at all times the specified insurance coverage, MDHA may, in addition to other remedies, terminate this Agreement upon the occurrence of such event.
- J. Proof of Insurance. CHDO shall at all times provide to MDHA current written confirmation from the appropriate insurance company of compliance with the provisions of the above paragraphs, which shall include a copy of the applicable policy or policies, including all insuring pages, riders or endorsements. It is CHDO's obligation to furnish all such information on a current basis; and, if MDHA is not in receipt of such, it is entitled to act on the presumption that such does not exist, and CHDO is not in compliance with this Agreement.
- K. Taxes and Assessments. CHDO further agrees to pay all taxes and assessments on the Property, general or special when due, or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, and, upon demand of MDHA, to pay, discharge, or remove or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, any and all liens which may be hereafter placed against said Property.
- L. Protection of Property. CHDO agrees that should MDHA be required, or deem it reasonably necessary, to expend any funds to protect or preserve the Property, CHDO shall immediately, and in any event within ten (10) days, reimburse MDHA in full for such amounts expended, and until reimbursed, such amounts, shall bear the highest rate of interest allowed by law.

## **VI. PROVISIONS RELATED TO OTHER FEDERAL REQUIREMENTS**

- A. Compliance with Federal and State Laws and Regulations. CHDO shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.
- B. Displacement, Relocation, and Acquisition. CHDO will take all necessary steps possible to minimize displacement in the Project. To the extent feasible, tenants displaced or relocated as a result of the development of the Project must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the complex upon completion of the Project. In the event that relocation is necessary, CHDO shall comply with HOME regulations at 24 CFR § 92.353. With regard to relocation assistance for displaced persons, CHDO shall

also comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”) (42 U.S.C. § 4201-4655) and 49 CFR Part 24.

C. Environmental Review. MDHA has performed the necessary obligations related to this section.

D. Fair Housing and Equal Opportunity. Housing shall be made available without discrimination based on race, color, national origin, age, sex, religion, familial or marital status, disability, sexual orientation, or gender identity. Further, CHDO shall not discriminate against applicants based on participation in a direct rental subsidy program, such as Section 8.

The following fair housing and nondiscrimination laws and regulations shall apply to the Agreement (each to the extent applicable):

- Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended and implementing regulations at 24 CFR part 100;
- Title VI of the Civil Rights Act of 1964;
- The Age Discrimination Act of 1975, as amended and implementing regulations at 24 CFR part 146;
- Executive Orders 11063 and 12259 – Equal Opportunity in Housing, and implementing regulations at 24 CFR part 107;
- Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- Title II of the American Disabilities Act; and
- Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule.

E. Violence Against Women Act (2013). CHDO shall comply with the provisions of the Violence Against Women Act (“VAWA”), as amended in March 2013. By way of example, but not by way of limitation, VAWA provides that “an applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.” 42 U.S.C. § 14043e(b)(1). Further, CHDO shall provide tenants with the notice of rights as provided in 42 U.S.C. § 14043e(d).

F. Nondiscrimination in Employment. CHDO shall not discriminate against any employee or applicant for employment because of race, color, national origin, sex, or religion, in accordance with Executive Order 11246, as amended and implementing regulations at 41 CFR part 60. In the event CHDO employs fifteen (15) or more employees, CHDO is prohibited from discriminating against any employee or applicant with a disability, in accordance with Title I of the Americans with

Disabilities Act of 1990. CHDO shall include nondiscrimination notices in all job postings and post in a visible place in the office.

G. Labor.

1. HUD Section 3 Requirements. To the greatest extent feasible, CHDO shall make an effort to provide opportunities for employment and training for lower income residents within the project area, and to award contracts for work in connection with the Project to business concerns which are located, or owned in substantial part, by persons residing in the area of the project, as described in 24 CFR § 135.
2. Davis Bacon and Related Acts. CHDO will be constructing [insert number of buildings and number of units in each building] so the provisions of Davis Bacon [will] [will not] apply.
3. Minority, Women and Small Business Enterprise Requirements. As stated in the Application instructions, MDHA has set a goal of 20% participation for the CHDO to utilize Minority, Woman and Small Business Enterprises, (Diversity Business Enterprises, DBE) for this project. The CHDO shall make efforts to meet this goal by ensuring that these business entities, labor surplus area businesses, and individuals or firms located in or owned in substantial part by persons residing in the area of a Public Housing Agency project are used when possible. Such efforts shall include, but shall not be limited to:
  - Placing qualified small, minority and women business enterprises on solicitation lists;
  - Ensuring that small, minority and women business enterprises are solicited whenever they are potential sources;
  - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority and women business enterprises;
  - Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small, minority and women business enterprises; and
  - Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

Once the construction bidding procurement process is complete, CHDO shall complete the 2004 Forms included in Exhibit 1 listing the Minority, Women, and Small Business Enterprises that they intend to utilize to perform work on the project. They are committed to using the subcontractors or suppliers for this project that they list on the 2004 forms. If the CHDO has to make any changes to the subcontractors or suppliers listed on the 2004 forms during the course of construction, they are to complete forms 2005 included in Exhibit 1 with the

noted changes. CHDO is to complete and turn in form 2006 included in Exhibit 1 with each pay request.

3. Other Federal Labor Requirements. CHDO shall comply with the following laws, or shall require such compliance from its partners pursuant to a construction contract or other written agreement:

- Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. § 327-333);
- Copeland Anti-Kickback Act (40 U.S.C. § 276c);
- Fair Labor Standards Act, as amended (29 U.S.C. § 201, et seq.).

H. Conflict of Interest. No owner, CHDO, or officer, employee, agent, or consultant thereof may occupy a HOME-Assisted Unit in the Project. This provision does not include an employee or agent of the owner or CHDO who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

I. Religious Activities.

1. CHDO is prohibited from using funds provided herein or personnel employed in relation to this Project for political activities and sectarian or religious activities.
2. If CHDO is, or may be deemed to be, a religious or denominational institution or organization, it agrees that:
  - a. It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
  - b. It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion; and
  - c. It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of shelter and other eligible activities.

## **VII. Financial Management**

A. Accounting Standards. CHDO agrees to maintain books, records, documents and other evidence directly pertinent to performance of work in accordance with comply with 24 CFR § 92.508(3), (4) and (7), as applicable and comply with 2 CFR § 200, Subpart D and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles. CHDO shall administer its program in conformance with 2 CFR § 200, Standards for Financial and Program Management, Cost Principles and Audit Requirements, as detailed in Subparts D, E, and F. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

C. Audits & Inspections. CHDO shall comply with audit requirements contained in 2 CFR, Subpart F which requires CHDO to have an annual audit conducted within nine (9) months of the end of their fiscal year, if CHDO has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. CHDO further agrees to submit a copy of this audit to MDHA within thirty (30) days of receipt from the auditor. Any deficiencies noted in audit reports must be fully cleared by the CHDO within thirty (30) days after receipt of same.

CHDOs that are not required to perform an audit per the 2 CFR, Subpart F requirements must have and maintain adequate internal financial/cash management principles and reporting policies.

## VIII. PAYMENT, TERMS AND CONDITIONS

A. MDHA shall provide HOME Funds not to exceed [insert dollar amount of HOME funds] for costs related to the Project. HOME Funds shall be secured by a Deed of Trust in the amount of [insert dollar amount of HOME funds allocated to each property] on each Property in substantially the same form as the document attached as Exhibit 2 (“**Deed of Trust**”). The Deed of Trust shall be subordinate to construction/permanent financing. The Deed of Trust shall be released when the terms of the loan, including but not limited to, compliance with the Affordability Requirements are satisfied.

1. HOME Funds. The HOME Funds shall not exceed [insert dollar amount of HOME funds] and shall be in the form of a zero percent (0%) interest forgivable loan, which shall be amortized over a twenty-year period. The loan shall be reduced pro rata by five percent (5%) annually as long as CHDO is in compliance with the terms of this Agreement. CHDO shall sign a Promissory Note for each property with the terms in substantially the same form as the document attached as Exhibit 4 (“**Note**”). The Deed of Trust remains in effect throughout the entire Affordability Period.

2. Developer Fees. CHDO shall receive “**Developer Fees**” from the Home Funds in an amount not to exceed [insert dollar amount]. Payment of Developer Fees shall be disbursed as follows:

- a. Ten percent (10%) of the Developer Fee shall be disbursed when construction of the Project is deemed twenty-five percent (25%) complete based on the approved construction contract draw schedule;

- b. Ten percent (10%) of the Developer Fee shall be disbursed when construction of the Project is deemed fifty percent (50%) complete based on the approved construction contract draw schedule;
  - c. Forty percent (40%) of the Developer Fee shall be disbursed when construction of the Project is deemed seventy-five percent (75%) complete based on the approved construction contract draw schedule;
  - d. Thirty-five percent (35%) of the Developer Fee shall be disbursed when CHDO receives a Certificate of Use and Occupancy from the Department of Codes and Building Safety; and
  - e. Five percent (5%) of the Developer Fee shall be disbursed upon MDHA's receipt of the items listed in paragraph F. below.
- B. CHDO shall submit a request for reimbursement for eligible expenses no more frequently than monthly. Requests for reimbursement may be submitted on a payment request form provided by MDHA, a standardized American Institute of Architects ("AIA") form, or other form approved by MDHA. All payment requests shall be submitted to: HOME Program, Community Development Department, 712 South Sixth Street, Nashville, TN 37206.
- C. CHDO shall provide documentation of direct costs, such as invoices or receipts.
- D. Approval of any request for reimbursement is conditional upon the submission of required documentation, inspection and approval of work performed, including but not limited to progress reports as required by MDHA.
- E. MDHA shall make careful review of all requests for reimbursement. So long as each request conforms to the terms and intent of this Agreement, MDHA shall reimburse funds in a timely manner, which shall be within fifteen (15) business days of CHDO's submission of a complete reimbursement request.
- F. Five percent (5%) of each invoice amount shall be withheld as retention and shall be released upon MDHA's receipt of all items listed below:
- 1. Certificate of Use & Occupancy;
  - 2. Submission of all reports and documentation described in Section IX(A)(1) and (2) below for the HOME-Assisted Units through the Project Completion Date;
  - 3. Submission of beneficiary data for all occupants of HOME-Assisted Units as described in Section IX(A)(2) below as of the Project Completion Date;
  - 4. Release of all construction liens, as evidenced by an updated title policy (if applicable);
  - 5. Recorded deed restriction for the Affordability Requirements on each property (unless provided sooner), a form of which is attached hereto as Exhibit 3;



6. Evidence that CHDO has complied with Sustainability and Accessibility Requirements, as described in Section V;
7. Documentation of the percentage of work performed by Disadvantage Business Enterprise and Section 3 Businesses; and
8. Submission of Project Cost Certification in the form of a project specific Profit and Loss Statement.

G. The Agreement, Deed of Trust, Note and Declaration shall be collectively referenced herein as “**Loan Documents.**”

## **IX. REPORTING AND RECORD-KEEPING REQUIREMENTS**

### **A. Reporting Requirements.**

1. Reporting During Development Process. CHDO shall provide a progress report with each reimbursement request.
2. Reporting Until Commencement of the Affordability Period. No later than the tenth (10<sup>th</sup>) of each month during the initial lease up of the Home-Assisted Units, CHDO shall provide the following information regarding any Home-Assisted Unit leased during that month.
  - Each HOME Assisted Unit (identified by address and unit number);
  - Whether the unit is a High HOME or Low HOME Rent unit;
  - Unit Size (bedrooms)
  - Household size;
  - Household income level;
  - Race, if known to CHDO;
  - Special needs (i.e. whether the household includes a person with a disability, etc.), if known to CHDO;
  - Amount of rent and tenant-paid utilities; and
  - Other governmental housing assistance provided to the tenant.
3. Reporting During the Affordability Period. During the Affordability Period, CHDO shall provide the following information no later than May 31<sup>st</sup> of each year for the period ending March 31<sup>st</sup> of each year:
  - a. Occupancy Report of HOME-Assisted Units, including the following:
    - All items listed in Section IX(A)(2) above; and
    - Date of last income recertification.
  - b. Financial Report for the Property, including the following:
    - Gross receivable rent for the Property as of a specific date;
    - Actual rent collections for the Property;
    - Tenant accounts receivable for the Property;

- Accounts payable for the Property;
- Number of and reasons for vacancies for the Property; and
- Units off-line.

c. Property Maintenance & Condition Report, including the following:

- List of findings from the Property's last physical inspection by CHDO or management agent or other governmental entities (if any) regarding the Property, including any outstanding code violations identified by such inspection, and a status update.
- A certification that each building and all HOME-assisted units in the project are suitable for occupancy, taking into account State and local health, safety, and other applicable codes, ordinances, and requirements, and the ongoing property standards established by MDHA to meet requirements of 24 CFR § 92.251 during the project's affordability period.

d. CHDO Status

Developer shall provide information to MDHA on an annual basis to document that it still qualifies as a CHDO.

3. Other Reports. MDHA retains the right to request additional information and the right to change reporting requirements regarding HOME-Assisted Units as reasonably necessary.

B. Record-Keeping Requirements

1. CHDO shall maintain the following records regarding HOME-Assisted Units ("**Project Records**"), or shall require the management agent to do so pursuant to a management agreement or other written agreement:

- Project audits;
- Waiting list procedures, waiting lists, and tenant preference requirements;
- Budget files (e.g., project finances, capital expenditures, and projections);
- Tenant files (e.g., applications, leases, income verifications, relevant notices);
- Unit records (e.g., rents, vacancies, accessibility);
- Property records (e.g., maintenance, property inspection reports);
- Affirmative marketing records; and
- Employment records with respect to CHDO and/or management agent.

2. Project records must be maintained until five (5) years after Project Completion Date, in accordance with 24 CFR § 92.508(c).

3. Tenant income, rent, and inspection records must be retained for the most recent five-year period, until five (5) years after the Affordability Period terminates, in accordance with 24 CFR § 92.508(c).
4. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required record retention period, applicable records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
5. MDHA, HUD, the Comptroller General of the United States, and any of their representatives, retain the right to access all reports and records relating to the Project and to conduct on-site inspections of records at any time during normal business hours.

## **X. ENFORCEMENT**

- A. Right to Inspect Properties and Units. MDHA retains the right to conduct on-site inspections of the Project during the development process and during the Affordability Period during normal business hours.
  1. Inspections During Development Process. MDHA retains the right to monitor the construction process with on-site inspections to verify sound and safe construction in accordance with approved plans.
  2. Inspections During the Affordability Period. MDHA retains the right to conduct inspections during the Affordability Period no less than annually to verify the accuracy of submitted reports and to conduct physical inspections of the Project to determine that the Property is being maintained in standard condition in accordance with applicable property standards.
- B. CHDO Default. The following shall constitute an event of default (“**Event of Default**” or “**Default**”) by CHDO under this Agreement, which Default shall be susceptible to cure as provided in Subsection C below:
  1. Failure to maintain the Project or New Units in accordance with applicable property standards.
  2. Failure to meet the Affordability Requirements during the Affordability Period.
  3. Failure to comply with HOME requirements as outlined in this Agreement.
  4. Failure to maintain CHDO status for the duration of the affordability period. If Developer fails to maintain CHDO status for this term, title to the project must be transferred to another active CHDO of all funds must be repaid.
  5. Use of funds for activities or uses that are not HOME-eligible costs as described in this Agreement.

6. Material breach of the terms and conditions of this Agreement by the CHDO or any of its Employees, Contractors, or Agents.
- C. Notice of Default. MDHA shall provide written notice of Default to CHDO and shall provide CHDO an opportunity to take corrective action within thirty (30) days after receipt of written notice from MDHA; provided, however, that such thirty (30) day period shall be extended for an additional thirty (30) days in the event CHDO has initiated and is diligently pursuing a cure to the satisfaction of MDHA; provided, however, in the event it will require more than thirty (30) days to cure default, then the cure period shall be extended so long as CHDO diligently prosecutes such cure to completion to the satisfaction of MDHA. Corrective action shall include, but is not limited to, submitting a Corrective Action Plan to MDHA for approval that provides a timetable for correcting the default and details the activities that are necessary to correct the circumstances that constitute the default.
- D. Remedies. If CHDO fails to cure the Default as provided above, MDHA shall have the following Remedies:
  1. MDHA may terminate this Agreement.
  2. MDHA may demand repayment for and CHDO shall pay to MDHA HOME Funds not used for the purposes provided in this Agreement.
  3. MDHA may demand repayment of and CHDO shall pay to MDHA HOME Funds if the HOME-Assisted Units do not meet the Affordability Requirements during the Affordability Period.
  4. MDHA may pursue other remedies as may be available at law or in equity.

## **XI. GENERAL PROVISIONS**

- A. Certification Regarding Federal Assistance. CHDO certifies that the federal financial assistance amounts contained in the approved Sources and Uses Budget are the only amounts of federal assistance that is being contributed to this project. CHDO further certifies that if other governmental assistance is sought in the future, CHDO will promptly notify MDHA.
- B. Certification Regarding Lobbying. CHDO certifies, to the best of its knowledge and belief, that:
  1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a

Federal loan, the entering into of a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- C. Duration of Agreement. This Agreement shall be effective upon the date of execution hereof and shall remain in effect for the duration of the Affordability Period and until the terms of the HOME loan are satisfied, whichever is later.
- D. Termination. If through any cause, CHDO shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if CHDO shall violate any of the covenants or stipulations of this Agreement, such that such an Event of Default exists and remains uncured, MDHA shall thereupon have the right to terminate this Agreement by giving written notice to CHDO of such termination and specifying the effective date thereof as provided herein.
- E. Entire Agreement and Modification. This instrument contains the entire agreement between MDHA and CHDO. Oral changes of it will have no effect. Any prior information, discussions or agreements are merged herein and barred hereby. This Agreement may not be amended or modified orally, by course of dealing, waiver or estoppel. This Agreement may not be modified or amended except in writing signed by all parties.
- F. Conflicts. Notwithstanding anything to the contrary herein, MDHA acknowledges that the HOME-Assisted Units may also be assisted with other government funds. To the extent that CHDO becomes aware of any conflict between the requirements of this Agreement and the requirements applicable to other governmental funds, CHDO shall propose a resolution of such conflict to MDHA for MDHA's approval, which approval shall not be unreasonably withheld.
- G. License and Insurance Requirements. CHDO shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. CHDO shall purchase and maintain worker's compensation insurance as required by state law.
- H. Employees, Contractors, and Agents. Pursuant to one or more written agreements, CHDO shall require CHDO's officers, managers, employees, contractors, subcontractors, agents, representatives, or any other person or entity hired, engaged, or otherwise used by CHDO to carry out the CHDO's obligations under this

Agreement (“**Employees, Contractors, and Agents**”) to comply with the applicable requirements in this Agreement in all respects, including but not limited to following all applicable laws and licensure requirements. Pursuant to one or more written agreements, CHDO shall require that the Employees, Contractors and Agents are aware of and abide by any applicable terms of this Agreement. CHDO shall be responsible for any failure of the Employees, Contractors, and Agents to adhere to the applicable terms of this Agreement. Without limiting the foregoing, such responsibility shall not be deemed to waive any indemnification rights or other rights that CHDO may have under other agreements with such Employees, Contractors, and Agents.

- I. Indemnification. CHDO agrees to indemnify and hold harmless MDHA and its agents, staff, employees, officers, directors, affiliates, successors and assigns, of and from any and all claims, demands, debts, contracts, expenses, causes of action, lawsuits, damages, and liabilities of every kind and nature, including any claims of owner or employee negligence, whether known or unknown, in law or equity, including any claims against and/or regarding the CHDO and its Employees, Contractors, and Agents, which they have, ever had or may have (“**Claims**”), arising from or in any way related to CHDO’s obligations under this Agreement with respect to the Project. This includes reasonable attorneys’ fees MDHA may incur in enforcing this paragraph. In addition, this indemnification and agreement to pay MDHA’s reasonable attorneys’ fees expressly includes any Claims that may arise from any act or failure to act by any Employees, Contractors, and Agents. However, this indemnification does not apply to any acts of gross negligence, or intentional, willful or wanton misconduct of MDHA.
- J. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the parties. CHDO may not assign its interests or obligations under this Agreement without the express, prior written consent of MDHA.
- K. Notices. All notices under this Agreement shall be in writing and sent by certified mail or hand-delivered to the addresses listed below for each party.

If to CHDO:

[Insert contact name, title, and address of CHDO]

If to MDHA:

Metropolitan Development and Housing Agency  
James E. Harbison, Executive Director  
701 South Sixth Street  
Nashville, Tennessee 37206



- L. Venue. In the event of a dispute or litigation arising out of this Agreement, it is understood and agreed that this Agreement was executed and performed in Davidson County, Tennessee, and as such, it is agreed by both parties that venue for said litigation, including an action for Declaratory Judgment, will be in Davidson County, Tennessee.
- M. Severability. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- N. Attorney Fees. If at any time it is necessary for MDHA to undertake any action, whether or not such action involves litigation, to enforce the terms of this Agreement or any documents or exhibits attached hereto or incorporated herein, CHDO agrees to pay all reasonable costs of such enforcement by MDHA including reasonable attorney's fees and court costs.
- O. Certification. The person executing this Agreement on behalf of CHDO hereby personally certifies that the representations and warranties made herein are true and correct as of the date hereof and that such person is a duly appointed officer of CHDO as indicated below, and that CHDO shall be lawfully bound hereby.
- P. Counterparts. This Agreement may be executed in counterparts.

*[Signature page follows]*

IN WITNESS WHEREOF, MDHA and the CHDO have caused this Agreement to be duly executed as of the date first above written.

MDHA:

METROPOLITAN DEVELOPMENT AND  
HOUSING AGENCY

By: \_\_\_\_\_  
James E. Harbison, Executive Director

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
MDHA Attorney

CHDO:

[Insert name of CHDO, Contact name, and Title]

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**

SAMPLE

**FORM 2004**

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY  
STATEMENT OF INTENT TO UTILIZE DIVERSITY BUSINESS ENTERPRISE FIRMS**

**THIS FORM MUST BE COMPLETED AND SUBMITTED TO CONTRACT COMPLIANCE OFFICER PRIOR TO CONTRACT AWARD**

COMPANY NAME:	COMPLETE ADDRESS/TELEPHONE:				
PROJECT NAME:	DATE FORM SUBMITTED:				
<p>_____ agrees to perform work on the above project as (check one):</p> <p>( Name of DBE Subcontractor or Supplier)</p> <p>_____ will enter into a formal agreement for the work with _____</p> <p>(Name of DBE Subcontractor or Supplier) A/E or Contractor</p> <p>conditioned upon the company executing a contract with the MDHA. _____ will submit to MDHA proof of</p> <p align="center">A/E or Contractor</p> <p>any purchase orders awarded and/or subcontract agreements entered into with the above named DBE Subcontractor/Supplier as documentation of utilization of DBE firms.</p>					
ITEM NUMBER	DESCRIPTION OF WORK	SUBCONTRACT/ PURCHASE ORDER PRICE	% OF TOTAL CONTRACT PRICE	START DATE	COMPLETION DATE
CONTRACTOR REPRESENTATIVE SIGNATURE, TITLE & DATE					
DIVERSITY BUSINESS ENTERPRISE FIRM REPRESENTATIVE SIGNATURE, TITLE & DATE					

Revision 1, November 1, 2002

SAMPLE

FORM 2005

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY CHANGES TO THE DIVERSITY BUSINESS ENTERPRISE UTILIZATION PLAN				
COMPANY NAME:		COMPLETE ADDRESS/TELEPHONE:		
PROJECT NAME:		DATE FORM SUBMITTED:		
SUBMIT THIS FORM WHEN A CHANGE ORDER WILL AFFECT DBE SUBCONTRACTS (ADDITIVE OR DEDUCTIVE)				
DBE NAME ADDRESS & PHONE	TYPE OF WORK	DBE DOLLARS	DBE %	REASON FOR CHANGE
MBE Dollars/Percentage:	\$	%		
WBE Dollars/Percentage:	\$	%		
SBE Dollars/Percentage:	\$	%		
TOTAL DBE DOLLARS & PERCENTAGE:				
			Contractor Signature/Title:	
			Date:	

Revision 1, November 1, 2002

SAMPLE

Revision 1, November 1, 2002



**Exhibit 2**  
**Deed of Trust**

SAMPLE

This instrument prepared by:  
Tremecca Doss, MDHA General Counsel  
701 South Sixth Street  
Nashville, TN 37206  
(615) 252-8418

**DEED OF TRUST WITH SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES**

THIS DEED OF TRUST IS EXEMPT FROM THE PRIVILEGE TAX ON RECORDING.

This instrument covers property which is or may become so affixed to real property as to become fixtures and also constitutes a fixture filing under Tennessee Code Annotated, Section 47-9-502.

FOR AND IN CONSIDERATION of good and valuable consideration, the receipt and legal sufficiency of which is consideration is hereby acknowledged by [CHDO name], a Tennessee non-profit corporation, with its principal office located at [CHDO address] (hereinafter referred to as “**GRANTOR**”), does hereby enter into this agreement and indenture and does agree to be bound as follows:

**ARTICLE I**  
**GRANT OF PROPERTY**

1.1. GRANTOR has this day bargained and sold, and does hereby transfer and convey to JAMES E. HARBISON, TRUSTEE, of Nashville, Davidson County, Tennessee (hereinafter referred to as “**TRUSTEE**”), and his successors in trust, certain real property and improvements owned by GRANTOR, in the State of Tennessee, Davidson County, as more particularly described in **Exhibit A** attached hereto and incorporated herein (the said real property and improvements are herein referred to as the “**Property**”).

1.2. TO HAVE AND TO HOLD said Property to the said TRUSTEE, and his successors in trust, forever, GRANTOR hereby covenants that GRANTOR is lawfully seized of the Property, has a good right to convey it, and that the same is unencumbered. The GRANTOR further covenants and binds GRANTOR, GRANTOR’s heirs and representatives, to warrant and defend the title to said Property to the TRUSTEE, and his successors in trust, and his assigns, forever, against the lawful claims of all persons.

1.3. The transfer under this instrument by GRANTOR to the TRUSTEE, shall include, but not be limited to, each and every one of the following:

(1)The land and all buildings, structures, fencing, paving, drainage, landscaping, accesses, and all other improvements now on or which may be hereafter placed on said land during the existence of this lien; and

(2)All the income, rents, issues and profits arising therefrom and for the use thereof; and

(3) All materials, equipment, furnishings or other property whatsoever installed or to be installed and used in and about the buildings or other improvements on said land, including but not being limited to, all heating, plumbing, lighting, water-heating, cooking, refrigerating, incinerating, ventilating and air-conditioning equipment, storm doors and windows, shades, rugs, carpeting, awnings, blinds, drapes and linoleums, and property of like nature, wiring, controls, communications equipment, cable and internet wiring and access, all of which property and things are hereby declared to be permanent accessions to the freehold and part of the realty conveyed herein as security for the Secured Indebtedness as herein defined; and

(4) All leasehold estate, right, title and interest of Grantor in and to all leases and subleases covering the mortgaged Property or any portion thereof now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals, guarantees and deposits of similar nature.

1.4. As further and additional security, Grantor hereby pledges, assigns and grants to Beneficiary, as defined below, a continuing security interest, to the full extent allowed by law, in any and all personal property of Grantor, now or hereafter on, or used in connection with, the Property, and this Instrument shall constitute a Security Agreement as contemplated by the Uniform Commercial Code as now or hereafter in effect.

1.5. But this conveyance is made IN TRUST for the following uses and trusts, and for no other purposes, to-wit:

To secure Grantor's obligations under the **Home Program Community Housing Development Organization Agreement between the Metropolitan Development and Housing Agency and [CHDO name]** dated \_\_\_\_\_, 20\_\_, (the "**Agreement**") and the Loan Documents as defined in the Agreement and to secure compliance with the agreements, warranties, terms and conditions of this Deed of Trust. The Agreement, any Notes, the Affordability Period required by the Agreement, the deed of trust, the restrictive covenants, and any other documents securing the indebtedness are sometimes herein collectively referred to as the "**Secured Indebtedness**". The Metropolitan Development and Housing Agency, and its successors and assigns, from time to time, are sometimes referred to herein, individually and collectively, as the "**BENEFICIARY**".

Without limitation, this conveyance does particularly secure the performance of the Affordability Requirements on the Property which shall continue to be in effect throughout the duration of the **twenty (20) year Affordability Period** upon the Project Completion Date as more particularly defined and described in the Agreement. The Property is also subject to a [dollar amount of lien] encumbrance, all as more fully described and defined in the Agreement.

**ARTICLE II**  
**COVENANTS AND AGREEMENTS AS TO PROPERTY**

As part of the consideration for the execution of this instrument, and of the Secured Indebtedness hereunder, GRANTOR does hereby covenant, warrant and represent to, and agree with, TRUSTEE and any BENEFICIARY as follows:

2.1. GRANTOR shall timely make all required payments, and perform all other obligations arising under the Secured Indebtedness.

2.2. The GRANTOR agrees to keep all buildings or other improvements now on, or to be hereafter erected on, said Property, insured with an insurance company or companies licensed to sell property and casualty insurance within the state of Tennessee, for maximum insurable value, until the Secured Indebtedness is fully paid, and to have the loss, if any, made payable on the policy, or policies, to said TRUSTEE for the benefit of the BENEFICIARY as his interest may appear. The TRUSTEE and the BENEFICIARY shall have the right to use all such insurance proceeds to satisfy the Secured Indebtedness.

2.3. The GRANTOR agrees to maintain comprehensive public liability insurance with an insurance company or companies licensed to sell property and casualty insurance within the state of Tennessee naming the TRUSTEE and the BENEFICIARY as additional insureds covering claims for bodily injury, death and property damage, in the amount of at least three million dollars for any occurrence and at least one million dollars for any single claimant.

2.4. The GRANTOR agrees that all insurance policies as above required shall provide for not less than thirty (30) days prior written notice to the TRUSTEE or the BENEFICIARY of cancellation, termination or material amendment of such policies.

2.5. The GRANTOR shall at all times while this Deed of Trust remains outstanding provide to the BENEFICIARY or TRUSTEE current written confirmation from the appropriate insurance company of compliance with the provisions of the above paragraphs, which shall include a copy of the applicable policy or policies, including all insuring pages, riders or endorsements. It is the GRANTOR'S obligation to furnish all such information on a current basis; and, if TRUSTEE and the BENEFICIARY are not in receipt of such, they are entitled to act on the presumption that such does not exist, and the GRANTOR is not in compliance with this Deed of Trust.

2.6. The GRANTOR further agrees to pay all taxes and assessments on the Property, general or special when due, or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, and, upon demand of said TRUSTEE or the BENEFICIARY, to pay, discharge, or remove or to reasonably contest the same and prevail or pay such tax or assessment pursuant to the same, any and all liens which may be hereafter placed against said Property whether or not superior to the lien of this instrument or enforcement of the terms and provisions hereof.

2.7. The TRUSTEE and any BENEFICIARY have not, do not, and will not consent to any contract, to any work or to the furnishing of any materials which might be deemed to create a

lien or liens superior to the lien of this instrument [other than the Permitted Encumbrances].

2.8. The GRANTOR shall comply, or require the same pursuant to a written agreement, with all laws, ordinances, regulations, and governmental orders applicable to the Property or any use made thereof or thereupon by GRANTOR or its agents.

2.9. In case the TRUSTEE or the BENEFICIARY shall hereafter be required, or deem it reasonably necessary, to appear in any court or tribunal to enforce the Secured Indebtedness, or any part thereof, to enforce this Deed of Trust or the terms thereof, or to defend the title to, or possession of, said Property, or the lien of this instrument, or appear in any court to prove the Secured Indebtedness, or any part thereof, then all the costs and expenses of such appearance or proceedings, together with a reasonable attorney's fee, shall be paid by GRANTOR and are secured hereby, and if paid by the TRUSTEE or the BENEFICIARY, shall be reimbursed by the GRANTOR and shall bear interest at the highest lawful rate from the date of payment and shall be and become a part of the indebtedness secured hereby.

2.10. The GRANTOR agrees that GRANTOR will take all actions necessary, at GRANTOR'S expense, to ensure that all improvements (including, but not limited to all roof, structure, glass, walls, electrical, water, plumbing, sewer, gas and HVAC) on the Property are in a good condition. The GRANTOR agrees that it will use only licensed contractors to perform work on the improvements, or any portions thereof, including without limitation, those listed in the prior sentence. GRANTOR agrees to allow any BENEFICIARY, or the TRUSTEE, or their appropriate representatives to examine the Property during regular business hours to determine compliance with this paragraph, but any BENEFICIARY or TRUSTEE shall not be required to conduct any examination to preserve any rights hereunder, and the BENEFICIARY and TRUSTEE assume no responsibility for any such inspection.

2.11. The GRANTOR agrees that it shall not remove or modify any improvement, or add any improvement, to the Property, other than a single family home and related improvements, without the express written permission of the BENEFICIARY, which may be withheld, in such BENEFICIARY'S discretion.

2.12 The GRANTOR agrees that it shall not add, remove, or modify any improvement in a manner inconsistent with GRANTOR's obligations under the Agreement.

2.13. The GRANTOR agrees that should the TRUSTEE or the BENEFICIARY be required, or deem it reasonably necessary, to expend any funds, to protect or preserve the Property, the GRANTOR shall immediately, and in any event within ten (10) days, reimburse the TRUSTEE and the BENEFICIARY in full for such amounts expended, and until reimbursed, such amounts, along with the highest rate of interest thereon allowed by law, shall be included within the Secured Indebtedness.

2.14. The GRANTOR agrees that GRANTOR shall allow no Hazardous Substances to be brought on, used on, or stored on the Property while this Deed of Trust shall remain in effect. "Hazardous Substances" shall mean and include all hazardous and toxic substances, waste or materials, any pollutants or contaminants, including, without limitation, asbestos, and raw

materials which include hazardous constituents, or any other similar substances, or materials, which are included under or required by any local, state, or federal law, rules or regulations, pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA," "RCRA," "State Lien or State Super Lien" or Environmental Clean-Up Statutes or other similar or related statutes or regulations now or hereinafter in effect.

2.15. The GRANTOR acknowledges that the amounts owed pursuant to the Secured Indebtedness shall accelerate and become fully due and payable, upon the sale or other transfer of the Property herein transferred, or any portion thereof (other than as a part of an additional financing to which this Deed of Trust may hereafter be expressly subordinated by a writing executed by BENEFICIARY).

2.16. The GRANTOR agrees that if at any time any or all of the Property, or rights therein, shall be taken under condemnation or eminent domain, then the GRANTOR hereby transfers, sets over and assigns to TRUSTEE and the BENEFICIARY any and all judgments, awards or settlements made as a result of taking or damage or other compensable event related to such condemnation or eminent domain or any project related thereto.

2.17. The GRANTOR agrees that any lease or rental related to the Property, or any part thereof, shall be a part of the security granted hereunder and that upon default, the TRUSTEE and the BENEFICIARY shall have the right, but not the obligation, to elect to assume such lease and to allow it to be sold as a part of the sale at foreclosure. The GRANTOR further agrees that GRANTOR shall take no action, make no transfer or assignment and grant no lien or security interests in any lease upon the Property which would interfere with the right of the TRUSTEE or BENEFICIARY, upon default, to so assume and sell any such lease.

2.18. The GRANTOR agrees that should it collect any taxes, security deposits or other deposits or amounts which it might in the future be obligated to return or to pay to any third party then such amounts shall be held by GRANTOR in trust only, and GRANTOR shall treat such as trust property, and maintain such in a separate account or accounts and in no event use any of such amounts to pay its other obligations. GRANTOR agrees to promptly furnish the BENEFICIARY a up to date written accounting as to any such amounts upon request by the BENEFICIARY.

2.19. The Grantor hereby grants to the Secured Party the right to file any and all forms or statements, including UCC-1 forms, as deemed reasonably appropriate by the Secured Party to evidence, secure or perfect the security in the Note or this Security Agreement. Grantor shall not file any amendments, correction statements or termination statements concerning the Collateral without the prior written consent of the Secured Party.

### **ARTICLE III** **PERFORMANCE OR DEFAULT**

3.1. Now, if the GRANTOR shall: (i) perform said Secured Indebtedness, and all parts thereof, when due, according to the terms hereof; and, (ii) shall pay taxes, keep up repairs, and keep the Property properly insured; and, (iii) perform the other and foregoing obligations and agreements contained in the Secured Indebtedness, including, but not limited to, the Agreement and this



Deed of Trust, then this trust conveyance shall be of no further force or effect.

3.2. But if the GRANTOR defaults under the Secured Indebtedness, or fails to timely perform any obligation under 3.1 above; or, if GRANTOR fails to reimburse the TRUSTEE or any BENEFICIARY of said indebtedness, within ten (10) days from date of any payment made to cure a default of GRANTOR hereunder, or for legal fees and expenses as above provided, then this trust conveyance shall remain in full force and effect, and at the option of any BENEFICIARY of said Secured Indebtedness, or the BENEFICIARY, all remaining unpaid Secured Indebtedness shall become due and payable at once, without notice, and the said TRUSTEE, his designee or his successor in trust is hereby authorized and empowered, upon giving twenty days' notice by three publications in any newspaper, daily or weekly, published in Davidson County, Tennessee, to sell said Property at the front door of the Court House, or other lawful place as provided in the Notice Of Sale, in said county to the highest bidder for cash, at public outcry, free from the equity of redemption, homestead, dower and all other exemptions of every kind, which are expressly waived below; and the said TRUSTEE, his designee or his successor in trust, is authorized and empowered to execute and deliver a deed to the purchaser.

3.3. Any BENEFICIARY of any obligation contained within the Secured Indebtedness may bid at any sale under this trust conveyance, crediting the amount of the Secured Indebtedness against such bid.

3.4. The GRANTOR agrees that the TRUSTEE may, at any time after default in the payment of any part of said Secured Indebtedness, or other default hereunder, enter and take possession of said Property, and shall only account for the net rents actually received by him. GRANTOR further agrees that, in the event the TRUSTEE fails, before selling said Property as herein provided, to enter and take possession thereof, then GRANTOR and all persons holding under him, immediately upon the execution by the TRUSTEE of a deed for said Property, shall deliver possession to the purchaser at the sale and shall be unlawful trespassers upon the Property.

3.5. Each person or entity signing as a GRANTOR hereby expressly waives any right pertaining to the marshaling of assets or marshaling of liens, the equity of redemption, any statutory or common law right of redemption, homestead, dower, marital share, and all other exemptions, or any matter which might defeat, reduce or affect the right to sell the Property for the collection of the obligation secured hereby, or the right of the holder or other secured party to receive the payment of the obligations secured hereby out of the proceeds of sale of the Property.

3.6. No waiver by the TRUSTEE or any BENEFICIARY shall be construed as a waiver of a subsequent similar default or any other default by the GRANTOR. No delay by the Trustee, or any BENEFICIARY, in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof. Acceptance of partial payments shall not constitute a waiver of any default arising by the fact of failure to make a full payment.

3.7. In the event of the death, absence, inability or refusal to act of the said TRUSTEE at any time when action under the foregoing powers and trust may be required, any BENEFICIARY of the debt herein secured is hereby authorized to name and appoint a successor to execute this

trust, and the title herein conveyed to the above named trustee shall be vested in said successor.

3.8. Upon any sale under this Deed of Trust, the proceeds will be applied by the TRUSTEE:

First: To pay all the costs and charges of executing this trust, including attorney's fees and the expenses of any litigation which may arise on account of the execution and enforcement of this trust, or in connection therewith.

Second: To pay the Secured Indebtedness, or any balance thereof then remaining unpaid.

Third: The residue, if any, is to be paid to GRANTOR.

WITNESS our hands this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR: [CHDO name]

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Grantor's Address: \_\_\_\_\_

STATE OF TENNESSEE    )  
COUNTY OF DAVIDSON   )

Before me, Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be president (or other officer authorized to execute the instrument) of \_\_\_\_\_, a Tennessee non-profit corporation, the within named bargainor, and that such president or officer as such \_\_\_\_\_, executed the foregoing Deed of Trust for the purposes therein contained, by personally signing the name of the corporation as \_\_\_\_\_.

Witness my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

## **EXHIBIT A**

This is Exhibit A to the Deed of Trust with Security Agreement and Assignment of Rents entered into by [CHDO name].

A certain tract or parcel of land located in Davidson County, Tennessee described as follows to wit:

SAMPLE

**Exhibit 2  
Declaration**

SAMPLE

This Instrument Prepared By:  
Tremecca Doss, MDHA General Counsel  
701 South Sixth Street  
Nashville, TN 37206

RESTRICTIVE COVENANT  
**AFFORDABILITY PERIOD**  
**NOT LESS THAN**  
**TWENTY (20) YEARS**

## DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “**Declaration**”) is dated and made effective as of \_\_\_\_\_ by [CHDO name], a Tennessee non-profit corporation, with its principal office located at [CHDO address] (“**Recipient**”), in favor and for the benefit of the Metropolitan Development and Housing Agency of Nashville, Tennessee, a Tennessee public body corporate and politic, organized under the Tennessee Housing Authorities Law, T.C.A. § 13-20-101, et seq., whose address is 701 South 6th Street, Nashville, Tennessee 37206 (“**MDHA**”), pursuant to that certain \_\_\_\_\_ **AGREEMENT BETWEEN THE METROPOLITAN DEVELOPMENT AND HOUSING AGENCY AND [CHDO name]**, dated \_\_\_\_\_ (the “**Agreement**”).

### WITNESS

WHEREAS, The Metropolitan Government of Nashville and Davidson County acting by and through MDHA adopted a Consolidated Plan for Housing & Community Development for the period April 1, 2013 through March 31, 2018, which included, among other things, participation in the HOME Investment Partnerships Program as provided for pursuant Title II of the Cranston-Gonzalez National Affordable Housing Act, Public Law No. 101-625 and 24 Code of Federal Regulations Part 92 (the “**HOME Program**”); and

WHEREAS, MDHA is responsible for administration of the HOME Program for the Metropolitan Government of Nashville and Davidson County, Tennessee and the HOME Program; and

WHEREAS, Recipient has been approved to receive funds under the HOME Program (“**HOME Funds**”) as described in the Agreement, which funds were to be used to [rehabilitate/construct] the (“**HOME-Assisted Units**”) as defined in the Agreement (collectively, the “**Project**”), which shall be subject to the HOME Program requirements; and

WHEREAS, the Recipient owns in fee simple the property located \_\_\_\_\_, Nashville, Tennessee \_\_\_\_\_ and is more particularly described in Exhibit A hereto (the “**Property**”), which is hereby made a part of this Declaration; and

WHEREAS, Recipient recognizes that the Affordability Requirements contained within the Agreement as to the HOME-Assisted Units must be imposed as covenants that run with the land in order to comply with the HOME regulations at 24 C.F.R. Part 92.

NOW THEREFORE, in consideration of the Recipient's participation in the HOME Program, the Recipient's receipt of the HOME Funds from MDHA, and of the premises and agreements contained in this Declaration and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Recipient does hereby impose the following restrictions on the Property and confirms that the following is a correct statement of information with respect to the Agreement and the Affordability Requirements contained and defined within the Agreement:

1. Affordability Requirements. Pursuant to the requirements of the HOME Program and the Agreement, the Recipient agrees that the HOME-Assisted Units on Property as more particularly described in the Agreement shall remain affordable for and be used solely by low income persons or families as described in the Program Requirements, as such requirements are defined below, for their principal residence and for no other purpose throughout the Affordability Period as defined below.

2. Affordability Period. The Affordability Requirements apply to the Property immediately, and the Recipient shall comply with the restrictive covenants herein upon the issuance of a Certificate of Occupancy. The Affordability Requirements on the Property shall continue to be in effect for a period of **twenty (20) years** after the Project Completion Date as defined by the Agreement (the "**Affordability Period**"). In any event, and notwithstanding anything in the Agreement to the contrary, the Project Completion Date shall be the date at which the project completion information has been entered in the disbursement and information system established by HUD or as may otherwise be required by HUD. Pursuant to 24 C.F.R. § 92.252, the Affordability Requirements shall remain in effect for not less than the Affordability Period without regard to the term of any mortgage or other underlying encumbrance upon the Property and without regard to any transfer of ownership. In accordance with 24 C.F.R. §92.252(e)(ii)(3) in the event of a sale by foreclosure or transfer in lieu of foreclosure under a deed of trust encumbering the Property that has a priority over this Declaration (a "Termination Event") MDHA may terminate the Affordability Restrictions. The Affordability Period and the Affordability Restrictions shall be revived according to their original terms if, during the original Affordability Period, the owner of record at the time of the Termination Event obtains an ownership interest in the Property.

3. Prohibition on Transfer of Property. Recipient shall permit no sale, transfer, lien, security interest, or conveyance, whether voluntary or involuntary, of the Property or any portion thereof without the prior written consent of MDHA.

4. Default and Remedies If Recipient fails to observe or perform any provision of this Declaration then (a) MDHA may demand immediate repayment of the HOME Funds or portion or proceeds thereof, and (b) MDHA may pursue any or all remedies otherwise available at law or in equity, without the requirement of election of remedies, and shall as one, but not the sole, remedy obtain a temporary and/or permanent order enjoining any acts which violate the Declaration and the exercise of any other legal or equitable right of remedy with respect to this Declaration. No bond shall be required of MDHA for the issuance of any such injunction.

5. Prohibition on Discrimination. No person shall, on the grounds of race, color, sex or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject

to discrimination with regard to the sale, lease, rental, use or occupancy of the Property. In the event of breach of any of the above mentioned non-discrimination conditions, MDHA and the United States of America shall have a right to enter the Property and enforce the provisions of these Restrictive Covenants.

6. Covenants Running with the Land. This Declaration shall run with the land and shall be binding upon the Property, Recipient, and Recipient's successors, successors in title and permitted assigns and shall inure to the benefit of MDHA, and MDHA's successors, successors in interest, successors in title and permitted assigns. Recipient agrees to include a specific reference to this Declaration in any deed or instrument regarding the sale or transfer of all or any part of the Property which occurs during the Affordability Period.

7. Capitalized Terms. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

8. Severability. The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions hereof.

9. Notices. Unless otherwise set forth herein, all notices given pursuant to this Declaration shall be deemed given to Recipient when mailed and to MDHA when received. All notices hereunder shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the parties at the addresses set forth in the Agreement or to such different address or addresses as either party may notify the other from time to time in writing.

10. Further Assurances. Recipient shall take all actions deemed necessary by MDHA to amend this Declaration to comply with the HOME Program, and any and all applicable rules, regulations, policies, procedures, and rulings or other official statements pertaining to the HOME Program, as now or hereafter in effect (collectively, the "**Program Requirements**").

11. Compliance with Applicable Laws. Recipient shall comply with all Program Requirements and all other applicable federal, state or local laws, statutes, ordinances, codes, rules or regulations, as the same may be amended from time to time.

12. Governing Law. This Declaration shall be governed by the laws of the State of Tennessee, and where applicable, laws of the United States of America.

13. Lien for Recovery of Attorney's Fees. In the event MDHA incurs legal fees or other expenses in enforcing this Declaration, Recipient shall reimburse MDHA for all such reasonable fees and expenses within ten (10) days of receipt of written demand therefore. All such fees and expenses not timely paid shall become a lien upon the Property.

14. Certification. Each person executing this Declaration on behalf of an entity personally certifies and warrants to all other parties that this transaction has been duly authorized and approved by such entity, that such person is authorized to sign on behalf of such entity, that no other signature is required to bind such entity, and that such entity shall be legally bound as set forth herein by such signatures.

**15. Miscellaneous.** Unless otherwise provided herein, all capitalized terms shall have the same meaning as set forth in the Agreement. Only selected provisions of the Agreement are contained herein. Reference is hereby made to the Agreement for all the terms and conditions, which shall control in the event of a conflict. The terms of the Agreement are not, in any way, amended or superseded by this instrument.

IN WITNESS WHEREOF, Recipient has duly executed, or caused to be duly executed, this Agreement as of the date first written below.

**RECIPIENT:**

[CHDO name]

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

Before me, Notary Public of the state and county mentioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be president (or other officer authorized to execute the instrument) of \_\_\_\_\_, a Tennessee non-profit corporation, the within named bargainor, and that such president or officer as such \_\_\_\_\_, executed the foregoing Declaration of Restrictive Covenants for the purposes therein contained, by personally signing the name of the corporation as \_\_\_\_\_.

Witness my hand and seal, at office in \_\_\_\_\_, this \_\_\_\_\_ day \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**  
**Description of the Property**

This is Exhibit A to the Declaration of Restrictive Covenants entered into by [CHDO name].

A certain tract or parcel of land located in Davidson County, Tennessee described as follows to wit:

SAMPLE

**Exhibit 4**  
**Promissory Note**

SAMPLE

## PROMISSORY NOTE

**[Dollar amount]**

Nashville, Tennessee  
\_\_\_\_\_, 2016

FOR VALUE RECEIVED, the undersigned, [CHDO name], (hereinafter called "**Debtor**"), enters into this Promissory Note (hereinafter the "**Note**") evidencing its promise to pay to the order of the METROPOLITAN DEVELOPMENT AND HOUSING AGENCY ("**MDHA**") a public body corporate organized under the Tennessee Housing Authorities Law, T.C.A. § 13-20-101, et seq., whose address is 701 South Sixth Street, Nashville, Tennessee 37206, (hereinafter called "**HOLDER**", which term shall always refer to the lawful owner and holder of the indebtedness evidenced hereby), in lawful money of the United States of America, the principal amount of [Dollar amount] as set forth herein, which amount shall be due twenty (20) years from the Project Complete Date.

It is the intent of the HOLDER (and the Debtor hereby agrees) that the proceeds of the loan evidenced by this Note shall be used only in accordance with the rules and regulations of the Home Investment Partnership Programs ("**HOME**"), which is a federally funded program of the United States Department of Housing and Urban Development administered locally by MDHA.

The Note shall be forgiven, and the outstanding principal balance thus reduced thereby, in accordance with the terms of that certain HOME PROGRAM COMMUNITY HOUSING DEVELOPMENT ORGANIZATION AGREEMENT dated \_\_\_\_\_ by and between Debtor and MDHA (the "**Agreement**"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. So long as there is no breach of the Agreement by the Debtor, the principal balance of this Note shall be forgiven, pro rata, for each month after the Project Completion Date that Debtor is in compliance with the Loan Documents and Affordability Requirements throughout the full twenty-year term, then the entire balance of this Note shall be forgiven on the maturity date.

This Note is secured by, among other things, that certain Deed of Trust and Security Agreement and Assignment of Rents and Leases dated \_\_\_\_\_, executed by Debtor for the benefit of the HOLDER, of record in the Register's Office for Davidson County, Tennessee (the "**Deed of Trust**"), encumbering property in Davidson County, Tennessee sometimes known as \_\_\_\_\_, Nashville, Tennessee \_\_\_\_\_, more particularly described in the Deed of Trust (the "**Property**"). Debtor has also executed in connection with this Note, a Declaration of Restrictive Covenants dated the date of this Note in favor of the HOLDER, of record in said Register's Office (the "**Declaration**"). The Agreement, the Note, the Deed of Trust, and the Declaration shall be collectively referenced herein as the "**Loan Documents**".

In order to induce HOLDER to enter into the Agreement and allow the Debtor to enter into this Note, Debtor has provided certain information to MDHA in order to secure eligibility for the Agreement. If MDHA discovers any information that, in its sole discretion, would have had a material impact on MDHA's decision to approve Debtor for the Agreement or the Project

described therein, such constitutes and Event of Default under the Note. Further the Debtor's failure to use the proceeds of this Note for the purposes as described in the Agreement or failure in any way to comply with the terms and conditions of the Agreement shall constitute and Event of Default. In the Event of Default as defined under the Loan Documents, the entire outstanding principal balance of the Note, together with all unpaid costs and expenses of HOLDER under the Loan Documents, shall be immediately due and payable in full, and the total sum owed by Debtor shall bear interest at the highest rate allowed by law.

No interest shall be due and payable on this Note, provided, however, that in the event the undersigned shall fail to pay principal when due or there is any other Event of Default, then interest shall accrue at the rate of 10% per annum (the "**Default Interest**"). Further, upon any such Event of Default, the unpaid principal amount of this Note, together with the Default Interest, shall become due and payable at the option of the HOLDER, without notice to the undersigned. Failure of the HOLDER to exercise such option shall not constitute a waiver of such Event of Default. If this Note be reduced to judgment it will bear the statutory rate on judgments. The HOLDER shall also have such rights on Event of Default as are set forth in the Agreement.

All amounts received for payment under this Note shall at the option of the HOLDER be applied first to any unpaid expenses due the HOLDER under this Note or under any of the Closing Documents, then to the unpaid Default Interest, and finally to the reduction of outstanding principal due under this Note.

Forbearance on the part of MDHA to act with respect to any Event of Default or other failure or breach of the Debtor of the terms of the Loan Documents shall not constitute a waiver of the right to act as to any subsequent of Default, failure or breach. HOLDER may waive any Event of Default before or after the same has been declared and restore this Note to full force and effect without impairing any rights hereunder, such right of waiver being a continuing one, but one waiver shall not imply any additional or subsequent waiver.

Time is of the essence under this Note, and in case the indebtedness evidenced by this Note is collected by law or through an attorney-at-law, or under advice therefrom, whether or not suit is brought, Debtor agrees to pay all costs of collection, including reasonable attorney's fees.

This Note may not be amended, modified or supplemented without the prior written approval of MDHA and Debtor. No waiver or any term or provision hereof shall be valid against MDHA unless such waiver is in writing executed by MDHA.

This Note has been executed and delivered in, and shall be governed by and construed and enforced according to the laws of the State of Tennessee, except to the extent pre-empted by applicable laws and regulations of the United States of America.

Debtor waives presentment for payment, protest, notice of protest, notice of nonpayment of the indebtedness evidenced by this Note, demand and all legal diligence in enforcing collection.

If more than one party shall execute this Note, the term "**Debtor**", as used herein, shall mean all parties signing this Note and each of them and each accommodation maker (as regards the other accommodation makers) shall be jointly and severally obligated hereunder.

IN WITNESS WHEREOF, the undersigned executed this Note as of the date first above written.

[CHDO name]

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_