

HOME PROGRAM  
DEVELOPER AGREEMENT  
BETWEEN THE  
METROPOLITAN DEVELOPMENT AND HOUSING AGENCY  
AND  
[FUNDED NONPROFIT]

This HOME PROGRAM DEVELOPER 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 **FUNDED NONPROFIT AGENCY**, a Tennessee non-profit corporation (hereinafter “**DEVELOPER**”), having its principal office located at \_\_\_\_\_.

**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, MDHA requested applications on July 8, 2016, for projects to utilize funds to develop housing to be affordable to low income households and Developer responded by submitting an application for the project referenced in this agreement, their application response is incorporated by reference herein; and

WHEREAS, Developer shall act as owner and Developer of the Project described herein and will utilize HOME Funds as defined below to construct [number and type of units] of affordable homeownership housing at the following locations in Nashville, Tennessee, all locations hereinafter (“**Project**”):

[Site addresses and map and parcel numbers of all locations]

The units once constructed are to be sold and conveyed via fee simple title to \_\_\_\_\_ households that qualify as low-income families in accordance with 24 CFR §92.2 and 24 CFR §92.217; and

WHEREAS, MDHA desires to award HOME Funds in an amount not to exceed [amount of home award](“**HOME Funds**”) for eligible Project expenses to construct the “Project” on the previously referenced properties to be conveyed to the Developer by MDHA, upon which the Developer will undertake construction of the Project; and

WHEREAS, MDHA desires to convey property [if applicable] located at [site addresses and map and parcel numbers for all locations for use in this project; and

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. Developer 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 Developer shall construct [number, bedroom sizes, and type of units], all HOME-assisted units [could be partially HOME-assisted] of affordable homeownership housing at the following locations in Nashville, Tennessee (collectively, “**New Units**”):

[Site addresses and map and parcel numbers of all locations]

C. Eligible HOME Activities and Costs. Developer shall utilize HOME Funds for the following eligible activities: new construction of [number and type of units] units of homeownership housing. Eligible costs include hard and soft costs as permitted by the HOME program.

D. Designated HOME Units; HOME Subsidy. [Number] new units shall be designated as HOME-Assisted Units (“**HOME-Assisted Units**”) [ could be partially HOME-Assisted]. The amount of subsidy for the new units at the locations described in I. B. shall not exceed a total of [ total dollar amount of HOME funds being provided for all units in the project] or [dollar amount for each unit in the project] per unit, 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

E. Site Control. Developer was awarded [number of lots if applicable] in conjunction with their response to the request for applications for this project. Title to these lots will be conveyed to Developer simultaneous with the execution of the funding agreements with MDHA.

F. Project Budget; Sources and Uses Statement; Pro Forma.

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

- a) Updated project budget; sources and uses statements to include the amount, source, use, and terms of all funding sources for construction and permanent financing;
- b) Independently prepared market study to show there is reasonable expectation that properties can be under contract within six (6) months of completion of construction and closed within three (3) months of going under contract;
- c) Sales prices;
- d) As-built appraisals;
- e) An affirmative marketing plan. The plan is to include policies for marketing accessible units;
- f) Firm written financial commitments for any other funding sources;
- g) Final plans, renderings, and specifications for each unit type; and
- h) Description of HOME eligible activities to be funded from sales proceeds.

2. Cost Overruns. Developer 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 Developer.

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

G. Construction Schedule.

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

2. Substantial Completion. Developer shall substantially complete construction of all 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 developer using commercially reasonable efforts to obtain the same) or any other cause whatsoever beyond the reasonable control of developer (excluding financial inability to perform) to the extent that in each case of Excusable Delay, developer 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.

- H. Construction Methods and Techniques. Developer 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.
- K. Sale of Units. All new units shall be sold and fee simple title conveyed to income eligible homebuyers as defined in Section II. A. within six (6) months of construction completion defined as the date the certificate of use and occupancy is received for each unit. All new units shall be sold and fee simple title conveyed to income eligible homebuyers by [insert date]. In accordance with the provisions at 24 CFR § 92.254 (a)(3), if there is no ratified sales contract with an eligible homebuyer(s) for the housing within nine (9) months of the date of completion of construction, the housing must be rented to an eligible tenant in accordance with 24 CFR §92.252.

## **II. AFFORDABILITY REQUIREMENTS**

- A. Qualification as Affordable Housing: Homeownership Housing. Each HOME-Assisted Unit must be sold to and occupied by households that are eligible as low-income families as defined in 24 CFR §92.2 and 24 CFR §92.217. Low-income families mean families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families and must meet the requirements to qualify as affordable homeownership housing pursuant to 24 CFR §92.254, as provided herein (“**Affordability Requirements**”).

The Affordability Requirements as they pertain to the developer will be in the form of a deed of trust that will be recorded against the properties subjecting them to encumbrances totaling [total amount of HOME funds being provided for project]. The deed of trust shall be subordinate to construction financing, if applicable, and MDHA shall provide releases for individual properties when fee simple title is transferred to income-eligible homebuyers and developer has complied with all terms of this Agreement.

- B. Homebuyer Income Limits.

The new units must be sold to homebuyer(s) who qualify as low-income families in accordance with 24 CFR §92.2 and §92.217. The 2016 income limits for homebuyer projects adjusted according to family size are provided in the table below. These income limits are updated annually by HUD, and developers are to use the most recently published annual income limits when qualifying a buyer. MDHA will provide developer with updated income limits as they are published by HUD.

## 2016 INCOME LIMITS

Nashville-Davidson—Murfreesboro—Franklin, TN MSA

	1 person	2 person	3 person	4 person	5 person	6 person	7 person	8 person
80% Income Limit	\$38,400.00	\$43,850.00	\$49,350.00	\$54,800.00	\$59,200.00	\$63,600.00	\$68,000.00	\$72,350.00

1. Income must be determined using the Part 5 (“**Section 8**”) method found at 24 CFR §5.609. The sale to the homebuyer must occur within six (6) months of completion of the income determination. Developers will be required to provide MDHA with income information on the proposed homebuyers prior to finalizing purchase contracts in order for MDHA determine their income eligibility. Once the homebuyers are determined income eligible, MDHA will inform the developer that they can finalize purchase contracts. The HUD Exchange web site provides an income eligibility calculator that can be used by developer to perform an initial assessment 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/CPDIncomeEligibilityCalculator\\_User%20Manual\\_Version2.0.pdf](https://www.hudexchange.info/resources/documents/CPDIncomeEligibilityCalculator_User%20Manual_Version2.0.pdf)

### C. HOME Purchase Price Limits

The housing must be modest and affordable to income-eligible homebuyers. Therefore the purchase price limit for homes constructed in conjunction with this application cannot exceed \$228,000 which is the 2016 HOME Sales Price Value Limit based on 95% of the median purchase price for the area using Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing, with a minimum limit based on 95% of the U.S. Median purchase price for new construction for nonmetropolitan areas.

In accordance with 24 CFR §92.254 (a)(5)(ii)(A)(5) the final contract purchase price for each home will be based on the “Fair Market Value” (FMV) of the property; but in accordance with 24 CFR §92.254(a)(2)(i) under no circumstances will it exceed the purchase price limit set forth above.

For the purpose of HOME requirements, the FMV of the home shall ordinarily be determined by the appraisal ordered by the first mortgage lender. If, in MDHA’s discretion, the lender appraisal does not accurately reflect the FMV of the home, MDHA may consider values established by the following methods in order to determine the FMV: (1) a Comparative Market Analysis (CMA) prepared by a duly licensed real estate professional; (2) lender appraisals of previously sold properties in the project or general vicinity of the project; (3) current “tax card” appraisals; or (4) any other method that may reasonably be relied upon to establish the FMV of the property. Prior to listing homes for sale, the developer and its real estate sales agents will be required to meet with MDHA staff. MDHA will work with developer and

their real estate sales agents to ensure any purchase contracts contain language to fully disclose to homebuyers the terms of the affordability restrictions on the property and how adjustments, if any, in the initial contract sales prices will affect homebuyers. Developers and real estate sales agents will be required to present purchase contracts to MDHA for review and approval prior to their execution by homebuyers. Language for a sample contract addendum is attached as Exhibit 1.

D. Affordability Period.

1. Five Years. The period of Affordability is five (5) years (“**Affordability Period**”). The developer is responsible for explaining the following HOME Affordability Requirements to the homebuyer(s):
  - a) The home must be the principal residence of the homebuyer for the duration of the five (5) year Affordability Period. Compliance with this requirement will be verified by MDHA annually. The method of verification will include letters sent to the homeowners asking them to sign that they continue to occupy the property as their principal residence and asking them to provide a copy of a utility bill showing the utilities to be in their name and verifying that taxes and insurance are paid.
  - b) If the home is sold to a subsequent homebuyer or if ownership is transferred via any method including but not limited to foreclosure before the Affordability Restriction expires, MDHA shall recapture the amount of HOME funds that enabled the homebuyer to purchase the home, limited to the net proceeds of the sale. Net proceeds are the sales price minus loan repayment (other than HOME funds) and any closing costs. The amount of HOME funds subject to recapture shall be reduced (forgiven) pro rata for each year of residency during the affordability period. The homebuyers are required to enter into a separate written homebuyer beneficiary agreement with MDHA that formalizes these HOME requirements and recapture provisions. The Affordability Restrictions as they pertain to the homebuyer(s) shall be in the form of a deed restriction and shall be recorded separate from the Deed of Trust.
  - c) If purchase contracts are prepared prior to receipt of appraisals, it will be the responsibility of the developer to instruct real estate and sales agents and homebuyers that all purchase agreements must provide for an adjustment of the initial contract purchase price to reflect that the final purchase price will be based on the Fair Market Value as determined by the chosen appraisal method. See Exhibit 1 for a sample contract addendum.
2. Determining the Amount of Direct Financial Assistance to the Homebuyer(s). All homebuyers must obtain first mortgages from a mortgage lender. To further increase the affordability of the home purchase, the developer will provide additional direct financial assistance to the homebuyers from the HOME funds awarded under this



Agreement. This direct financial assistance cannot exceed the lesser of \$1,000 or the greater of \$14,999 (“**Direct HOME Subsidy**”). These funds are included in the amount of funding provided in this Agreement and not an additional amount, and represent a transfer of some of the HOME funds used by the developer during construction to the eligible homebuyer. The amount of assistance provided will be the amount necessary to qualify the homebuyer(s) for permanent first mortgage financing with monthly payments for housing debt service including principle, interest, taxes, insurance, mortgage insurance and homeowner’s association fees (PITIA) of not less than 20% or more than 33% of the household’s gross income and total debt service of not more than 45% of the household’s gross income. All first mortgage financing must comply with MDHA underwriting guidelines provided in Exhibit 2. All direct financial assistance to the homebuyer(s) will be provided as a zero percent (0%) interest loan that will be forgiven pro rata over the five (5) year affordability period as long as occupancy conditions are met. Once homebuyers are determined income-eligible in accordance with Section II. B. of this Agreement; they will be required to enter into a separate written homebuyer beneficiary agreement with MDHA that details the HOME requirements and recapture provisions of the Direct HOME Subsidy.

3. Proceeds from Home Sales. Developer will required to return all proceeds from the sale of homebuyer units to MDHA after deductions for all expenses incurred and payment of developer fees.
4. Affordability Period Commencement. The affordability period begins on the date fee simple title is transferred to the income-eligible homebuyer(s). This will take place after all construction work is completed in accordance with the property standards under 24 CFR §92.251(a).
5. Deed of Trust, Declaration of Restrictive Covenants, and Promissory Note. The loans for funds provided as Direct HOME Subsidy to the homebuyer(s) will be secured by a Deeds of Trust (“**Security**”). The Affordability Requirements will be secured by Deed Restrictions and Declarations of Restrictive Covenants (“**Declaration**”). These documents shall be recorded with the Davidson County Register of Deeds. Additionally the homebuyer(s) will execute Promissory Notes (“**Promise to Pay**”). These documents will be provided by MDHA to the closing agent to be executed by the homebuyer(s) at closing and will be subordinate to first mortgage financing. Further subordination [beyond second position] must be approved by MDHA prior to closing.
6. Homebuyer Education Requirements. All purchasers of homeownership projects will be required to complete a pre-purchase, homebuyer education course through a THDA-approved provider or a HUD-approved Housing Counseling Agency.

#### IV. PROPERTY STANDARDS

- A. Property Standards. All projects must meet all applicable state and local codes, rehabilitation standards (if applicable), ordinances and zoning requirements and also mitigate disaster impact, as applicable, per state and local codes, ordinances, etc. in effect at the time of Project completion.
- B. New Units. Developer shall comply with the applicable standards for new construction as specified in 24 CFR §92.251(a)(2) property standards.
- C. Sustainability. All projects should “demonstrate responsible, quality construction with respect to energy efficiency, environmental impact, and reductions in the use of shared municipal resources”. Developer shall construct New Units to meet the International Energy Conservation Code, Energy Star (or equivalent) certified building standards and receive the Energy Star label or certification.
- D. Accessibility. Developer shall incorporate the following vistability features in all new units:

•	Zero-step entrance to central living area connected to public street, sidewalk, or driveway
•	36-inch entry door that provides clear opening of no less than 32 inches
•	All interior doors on main floor (including bathroom) will have 36-inch doors that provide clear openings of no less than 32 inches
•	36-inch wide path of travel through the main floor of the home
•	One (1) bathroom on the main floor of each home will include a clear floor space of at least 30” x 48”
•	The toilet, counter, and door swings of each home will not encroach into the clear floor space of each home

- E. Lead-Based Paint. Developer 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. Developer 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 developer’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 developer’s obligations to MDHA.
- G. Commercial General Liability Insurance. Developer 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 for any occurrence and at least one million dollars for any single claimant.

- H. Worker's Compensation. Developer 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. Developer 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. Developer 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 developer 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. Developer 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 developer's obligation to furnish all such information on a current basis until developer's obligations to MDHA are fully complete and to have the loss, if any, made payable on the policy, or policies, to MDHA. If MDHA is not in receipt of current insurance information, it is entitled to act on the presumption that such does not exist, and developer is not in compliance with this Agreement.
- K. Taxes and Assessments. Developer 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 until developer's obligations to MDHA are fully complete.
- L. Protection of Property. Developer agrees that should MDHA be required, or deem it reasonably necessary, to expend any funds to protect or preserve the Property, developer 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. Developer shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.
- B. Displacement, Relocation, and Acquisition. Developer 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, developer shall comply with HOME regulations at 24 CFR §92.353. With regard to relocation assistance for displaced persons, developer 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.

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. Nondiscrimination in Employment. Developer 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 developer employs fifteen (15) or more employees, developer 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. Developer shall include nondiscrimination notices in all job postings and post in a visible place in the office.

F. Labor.

1. HUD Section 3 Requirements. To the greatest extent feasible, developer 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 HUD Regulations 24 CFR 135.
2. Davis Bacon and Related Acts. Developer will be constructing [number of units in project] HOME-assisted units. Thus, the provisions of the Davis Bacon Act are not required. *Note if there were 12 or more HOME-assisted units in the project, Davis-Bacon would apply.*
3. Minority, Women and Small Business Enterprise Requirements. As stated in the Applications Instructions, MDHA has set a goal of 20% participation for the DEVELOPER to utilize Minority, Woman and Small Business Enterprises, (Diversity Business Enterprises, DBE) for this project. The developer 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, developer shall complete the 2004 Forms included in Exhibit 3 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 developer 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 3 with the noted changes. Developer is to complete and turn in form 2006 included in Exhibit 3 with each pay request.

4. Other Federal Labor Requirements. Developer 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.).
- G. Conflict of Interest. No owner, developer, or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor) whether private, for-profit or nonprofit (including a community housing development organization (developer) when acting as an owner, developer, or sponsor) may occupy a HOME-assisted affordable housing unit in a project during the five (5) year period of affordability provided for in Section II C. of this Agreement accordance 24 CFR §92.254(a)(4) .
- H. Religious Activities.
  1. Developer 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 developer 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 and Audit Requirements

A. Accounting Standards. Developer agrees to maintain books, records, documents and other evidence directly pertinent to performance of work in accordance 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. Developer 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. Developer shall comply with audit requirements contained in 2 CFR, Subpart F which requires developer to have an annual audit conducted within nine (9) months of the end of their fiscal year, if developer has an aggregate expenditure of more than \$750,000 in federal funds in a fiscal year. Developer 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 developer within thirty (30) days after receipt of same.

Developers 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 [dollar amount of HOME funds being provided for the project] for costs related to the Project. HOME Funds provided to the developer for construction purposes shall be secured by a Deed of Trust on all properties (“**Deed of Trust**”). The Deed of Trust shall be subordinate to other construction financing, as applicable. MDHA shall provide partial releases for individual properties as fee simple title is transferred to income-eligible homebuyers in accordance with the terms of this Agreement.

1. Developer Fees. Developer shall receive “**Developer Fees**” from the Home Funds in an amount not to exceed [dollar amount of developer fees being provide for the project]. 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 developer receives a Certificates 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. Developer 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. Developer shall provide documentation of direct costs, such as invoices or receipts. Approval of requests 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.
- D. 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 developer's submission of a complete reimbursement request.
- E. 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 for each new unit in the project;
  - 2. Submission of all reports and documentation described in Section IX. A. (1) and (2) for the HOME-Assisted Units.



3. Recorded Deeds transferring properties from developer to homeowner(s); Recorded Deeds of Trust to securitize the HOME direct financial assistance provided to homeowner(s);  
Recorded Declarations of Restrictive Covenants for individual properties transferred to homeowner(s);  
Original Promissory Note for HOME direct financial assistance signed by each homeowner;  
Proof of insurance naming MDHA as certificate holder and additional insured for individual properties transferred to homeowners;  
Proof of completion of homebuyer education for all homeowners; and  
Other closing documents for each property transfer.
  4. Release of all construction liens, as evidenced by an updated title policy (if applicable);
  5. Evidence that developer has complied with Sustainability and Accessibility Requirements, as described in Section IV. C. and D;
  6. Documentation of the percentage of work performed by Disadvantage Business Enterprise and Section 3 Businesses; and
  7. Submission of Project Cost Certification in the form of a project specific Profit and Loss Statement and other documents that are required by MDHA.
- G. The Agreement and Deed of Trust shall be collectively referenced herein as “**Loan Documents.**”

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

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

1. Reporting During Development Phase. The developer shall provide the following reports while the project is under construction:
  - A progress report with each reimbursement request.
  - Information on potential homebuyers identified and qualified.
  - Information on any issues or problems.
2. Reporting at Occupancy. The developer shall provide the following data for the occupants of all Home-assisted units.
  - Household size;
  - Race, Ethnicity, if known;
  - Special needs (i.e. whether the household includes a person with a disability, senior, etc.), if known; and
  - Whether or not the household previously resided in subsidized housing.

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. Records must be maintained for the time periods specified in the record retention requirements contained in of 24 CFR §92.508(c)(2), which is five (5) years after project completion except for documents imposing recapture/resale restrictions which must be retained for five (5) years after the Affordability Period terminates. Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of 24 CFR Part 92 (including property standards under 24 CFR § 92.251); the final drawdown of HOME funds has been disbursed for the project; and the project completion information has been entered into the HUD's Integrated Disbursement and Information System (IDIS) by MDHA.
2. The developer Agreement, itself must be retained for five (5) years after the Agreement terminates [See §92.508(c) (4)].
3. 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.
4. 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. Inspections During the Development Process. MDHA retains the right to monitor the construction with on-site inspections to verify sound and safe construction in accordance with approved plans.
- B. Developer Default. The following shall constitute an event of default (“**Event of Default**” or “**Default**”) by developer under this Agreement, which Default shall be susceptible to cure as provided in Subsection C below:
  1. Failure to construct the Project or New Units in accordance with applicable property standards.
  2. Failure to transfer the New Units to income eligible homebuyers within the time frames outlined in Section I. J.

3. Failure to comply with HOME requirements as outlined in this Agreement.
  4. Use of funds for activities or uses that are not HOME-eligible costs as described in this Agreement.
  5. Material breach of the terms and conditions of this Agreement by the developer or any of its Employees, Contractors, or Agents.
- C. Notice of Default. MDHA shall provide written notice of Default to developer and shall provide developer 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 developer 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 developer 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 developer fails to cure the Default as provided above, MDHA shall have the following Remedies:
- a. MDHA may terminate this Agreement.
  - b. MDHA may demand repayment for and developer shall pay to MDHA HOME Funds not used for the purposes provided in this Agreement.
  - c. MDHA may pursue other remedies as may be available at law or in equity.

## **XI. GENERAL PROVISIONS**

- A. Certification Regarding Federal Assistance. Developer 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. Developer further certifies that if other governmental assistance is sought in the future, developer will promptly notify MDHA.
- B. Certification Regarding Lobbying. Developer 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 until completion and fee simple sale of all units in the project to income-eligible homebuyers in accordance with Section II. of this Agreement; the developer provides the documentation necessary to receive final payment as outlined in Section VIII. E. of this Agreement; until developer uses HOME sales proceeds to complete one of the HOME-eligible activities outlined in Section II. D. 3. and provides the reporting information for this activity outlined in Section IX. A. 3.
- D. Termination. If through any cause, developer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if developer 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 developer 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 developer. 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 developer becomes aware of any conflict between the requirements of this Agreement and the requirements applicable to other governmental funds, developer 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. Developer shall comply with all applicable licensing requirements and associated business regulations, whether federal, state, or local. DEVELOPER 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, developer shall require developer's officers, managers, employees, contractors, subcontractors, agents, representatives, or any other person or entity hired, engaged, or otherwise used by developer to carry out the developer'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, developer shall require that the Employees, Contractors and Agents are aware of and abide by any applicable terms of this Agreement. developer 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 developer may have under other agreements with such Employees, Contractors, and Agents.

I. Indemnification. Developer 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 developer and its Employees, Contractors, and Agents, which they have, ever had or may have ("**Claims**"), arising from or in any way related to developer'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. Developer 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 developer:

[Insert Developer Contact and Mailing Address]

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, developer 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 developer 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 developer as indicated below, and that developer shall be lawfully bound hereby.
- P. Counterparts. This Agreement may be executed in counterparts.

*[Signature page follows]*



IN WITNESS WHEREOF, MDHA and the DEVELOPER 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

DEVELOPER:

[Insert Developer Contact and Title]

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

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

## **EXHIBIT 1**

SAMPLE

**SAMPLE PURCHASE CONTRACT ADDENDUM  
LANGUAGE**

**Address**\_\_\_\_\_

**Legal Description**\_\_\_\_\_

Purchaser acknowledges that they will be receiving assistance from the HOME Investment Partnership Program in order to acquire this property. HOME rules require developer to sell the property at fair market value. Based on the recent lender appraisal, the fair market value of the Property is \$\_\_\_\_\_, which is an increase of \$\_\_\_\_\_, which requires developer to increase the Purchase Price of the Property to \$\_\_\_\_\_. MDHA agrees to provide and Buyer agrees to accept this increase in value as additional Direct HOME subsidy. This increase in sales price and value should not affect Buyer's bank loan to purchase the Property.

With this increase in sales prices the total amount of direct HOME subsidy provided to the Buyer is \$\_\_\_\_\_, which requires a five (5) year Affordability Period ("Affordability Period").

Since Buyer is eligible to receive a HOME subsidy, Buyer will sign prior to closing a Homebuyer Beneficiary Agreement and Acknowledgment of Affordability Requirements, which contains a Declaration of Restrictive Covenant, a Promissory Note and a Deed of Trust, as exhibits, all of which sets out Buyer's obligations in order to receive the HOME subsidy. Buyer will execute said exhibits at closing. Should the Property be transferred by the Buyer prior to the termination of the Affordability Period, Buyer will owe MDHA a prorata amount as set forth in these documents.

## **EXHIBIT 2**

SAMPLE

## MDHA UNDERWRITING GUIDELINES FOR HOMEOWNERSHIP PROJECTS

- Discount and Origination points cannot exceed 2% when combined.
- Closing costs should not exceed 4% (including the 2% combined Discount and Origination points) of sales price of the home, **excluding PMI, prepaids and title insurance.**
- First mortgage interest rate must be within 1% of the current FHA rate
- Loan-to-value of first mortgage does not exceed 100%.
- First mortgage is an FHA, THDA (*Great Choice*), VA or conforming conventional fixed rate loan offered by an FHA TN-approved lender and broker.
- There may be no 60 or 90 day delinquencies, judgments, collections or charge-offs within the past 12 months; and, no more than two 30-day delinquencies in the past 12 months.
- All non-medical collections, charge offs, and judgments must be paid in full.
- Medical collections must have a repayment history established for 6 months or must be paid in full.
- A Chapter 7 bankruptcy cannot have been filed in the past 3 years. Any prior bankruptcy must be discharged.
- If Chapter 13 has been filed in the past five years, the bankruptcy plan has been paid as agreed for at least two years or ½ the repayment period, whichever is shorter.
- Applicant has been on present job 120 days or more and outside of any probationary period. Periods of unemployment exceeding 30 days are explained in writing.
- Minimum front end ratio of 20% - maximum front end ratio does not exceed 33%.
- Back end ratio does not exceed 45%.
- Borrower must contribute 1% of the purchase price from their own funds. The Borrower's contribution can go towards down payment or closing costs or prepaid expense.
- Borrower and spouse if not a co-borrower must attend and Home Buyer Pre-Purchase Education course through a THDA approved provider or HUD-Approved Housing Counseling Agency.
- MDHA considers residual income in our underwriting process. There must be positive income when all borrowers' debts plus a standard amount of living expenses is subtracted from the gross income.

### **EXHIBIT 3**

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 style="margin-left: 40px;">( Name of DBE Subcontractor or Supplier)</p> <p>_____ will enter into a formal agreement for the work with _____</p> <p style="margin-left: 40px;">(Name of DBE Subcontractor or Supplier) <span style="float: right;">A/E or Contractor</span></p> <p>conditioned upon the company executing a contract with the MDHA. _____ will submit to MDHA proof of</p> <p style="margin-left: 40px;">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