

ANN ARBOR AFFORDABLE HOUSING FUND GRANT AGREEMENT

Ann Arbor Housing Commission -
West Arbor

This Ann Arbor Housing Affordable Housing Fund Grant Agreement ("Agreement"), is entered into this 19th of August, 2015, between the City of Ann Arbor, a Michigan municipal corporation, whose address is 301 E. Huron Street, Ann Arbor, Michigan 48107 ("City") and the Ann Arbor Housing Commission, a Michigan public body corporate, whose address is 727 Miller Avenue, Ann Arbor Michigan 48103 ("Grantee").

WHEREAS, on September 2, 2014, City Council approved the grant of \$729,879.00 in Ann Arbor Housing Trust Funds, now known as the Ann Arbor Affordable Housing Fund, to the Ann Arbor Housing Commission for the rehabilitation of 46 units of affordable housing at North Maple Estates (701-739 North Maple) and North Maple Duplexes (743-749 North Maple).

THE PARTIES AGREE AS FOLLOWS:

1. GRANT AMOUNT. City agrees to pay Grantee funds from the Ann Arbor Affordable Housing Fund in the amount of Seven Hundred Twenty-Nine Thousand Eight Hundred and Seventy-Nine Dollars (\$729,879.00) (the "Grant").
2. USE OF GRANT. Grantee shall use the Grant for rehabilitation of the affordable rental housing developments ("Developments") in the City of Ann Arbor, consistent with the Development budgets attached as Exhibit 1.

Exhibit 1 details the sources and uses of funds, including the Grant, for the following affordable housing developments: North Maple Estates (701-739 North Maple) and North Maple Duplexes (743-749 North Maple).

- (a) Grantee shall use the Grant only for the rehabilitation described in Exhibit 1.
- (b) Grantee shall rehabilitate the Developments in compliance with the Ann Arbor Affordable Housing Fund Guidelines as established by City Council. Grantee shall also complete all rehabilitation work and manage the units in compliance with Ann Arbor City Code.
- (c) Grantee shall operate the Developments in accordance with the United States Department of Housing and Urban Development (HUD) Rental Assistance Demonstration (RAD) Program rules and regulations, as amended. Grantee agrees that Grantee or an affiliated entity of Grantee shall enter into a Rental Assistance Demonstration Use Agreement and a Section 8 Housing Assistance Payments Contract (HAP) with HUD for each Transaction Group or Development to restrict the use of the Developments to affordable housing, and that Grantee shall comply with all terms of these contracts and agreements.
- (d) Grantee shall loan the Grant funds to an affiliated Limited Dividend Limited Housing Association Limited Partnership to rehabilitate the Developments using low-income housing tax credits consistent with Section 42 of the Internal Revenue Code of 1986, as amended, and as administered in Michigan by the Michigan State Housing Development Authority. Any such loan shall be a deferred payment loan, with a

maximum of 6% interest, and shall be repayable to the Limited Dividend Housing Association Limited Partnership with available cash flow.

3. **DISBURSEMENT.** Disbursement of the Grant shall be upon request of the Grantee. The Grant shall be paid directly to the Ann Arbor Housing Commission or to a title company designated by the Ann Arbor Housing Commission as the closing agent for the transactions contemplated by this Agreement.
4. **COMPLIANCE WITH LAWS.** Grantee agrees to comply with all federal, state and local laws applicable to services provided under this contract.

The Grantee warrants, represents and agrees that it and all of its agents, employees and Grantees are sufficiently and properly trained and licensed to competently and lawfully perform any activity any one of them may perform under this contract.

5. **CONTRACT AMENDMENTS/BUDGET TRANSFERS.** This Agreement may be amended only by a written agreement approved by the City and the Grantee.
6. **FINANCES, AUDITS, AND INSPECTIONS.** Grantee shall supply documentation of Grant expenditures to the City. Documentation shall include loan documents as well as HUD agreements and contracts required by Section 2 of this Agreement. All documents must be clearly identifiable.

Grantee agrees to securely maintain records regarding the expenditures for rehabilitation of the Developments for a period of five years after completion of the rehabilitation work described in Exhibits A and B. Grantee shall permit examination of these records by the City upon request. The City may, at a reasonable time after giving reasonable notice, cause an audit of the records of the Grantee.

Grantee agrees to complete and submit to the City annual audited financial statements and a management letter prepared by an independent auditing firm for the Grantee or the Limited Dividend Housing Association Limited Partners upon request.

7. **INSURANCE COVERAGE.** Grantee shall secure and maintain insurance policies, including those stated below, as will protect the Grantee, any of its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the actions are made by the Grantee or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:
 - (a) Worker's Compensation Insurance under the provisions of the Michigan Worker's Compensation Act and all applicable state and federal statutes.
 - (b) General Liability Insurance in an amount not less than \$1,000,000 for injuries, including accidental death to any one person. The City of Ann Arbor shall be named as an additional insured.
 - (c) Automobile Liability Insurance including all owned or non-owned vehicles used for service delivery. The City of Ann Arbor shall be named as an additional insured.

(d) Property Insurance for the Developments.

Insurance certificates shall be filed with the City upon request. The certificates shall be maintained through completion of the rehabilitation work described in Exhibits A and B. The insurance company must be acceptable to the City Attorney and shall also name the City as an additional insured.

The Grantee shall notify the City in writing within five business days of any cancellation or lapse of insurance coverage required by this Agreement. Failure to do so will be considered a material breach of the Agreement. Termination of this Agreement shall not relieve the Grantee of the obligation to maintain insurance with respect to the use of the Grant for the period the Agreement was in effect.

8. **INDEMNIFICATION.** To the fullest extent permitted by law, Grantee shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless and/or intentional wrongful or tortious acts or omissions by the Grantee or its employees and agents occurring in the performance of or in breach of this Agreement.
9. **REPORTS, MONITORING AND EVALUATION.** Grantee agrees to cooperate fully with the City to evaluate and monitor the requirements and performance of the Developments funded by the Grant. Grantee agrees to provide such information and reports, oral or written, as may reasonably be required or requested during the completion of rehabilitation work and for five additional years on matters relating to the use of the Grant, performance, contract compliance and evaluation of the use of the Grant.

Grantee is to report to the City Administrator, or designee, and will confer and cooperate with him as necessary to insure satisfactory work progress.

The City may review and inspect the Grantee's activities during the completion of the rehabilitation work.

After giving reasonable notice to the Grantee, the City may review any of the Grantee's internal records, reports or insurance policies pertaining to this Agreement.

10. **NONDISCRIMINATION.** Grantee agrees to comply, and to require any subcontractors to comply, with the nondiscrimination provisions of MCL 37.2209 as well as the provisions of the federal Immigration Reform and Control Act of 1986. Grantee further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and treated during employment in a manner which provides equal employment opportunity.
11. **LIVING WAGE.** If the Grantee is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, then the Grantee agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. Grantee agrees to pay those employees

providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

12. **POLITICAL ACTIVITIES.** None of the funds, materials, property, or services provided directly or indirectly under this Agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for office.
13. **CONFLICT OF INTEREST.** No employee, officer or elected or appointed official of the City and no immediate relative (spouse, parent, sibling, or child) of any such person, has or shall have any financial interest in this Agreement. Except for salaries and expenses which may be paid with funds provided under this Agreement, no employee, officer or director of the Grantee and no immediate relative (spouse, parent, sibling or child) of any such person has or shall have any financial interest in this Agreement.

Grantee promises that it has not employed or retained any company or person, other than bona fide employees working solely for the Grantee, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than bona fide employees working solely for the Grantee, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach of this promise, the City may cease any additional funding under this Agreement.

14. **SUSPENSION/TERMINATION.** If Grantee fails to comply with the terms of this Agreement the City may declare it suspended or terminated. Thereafter, the City shall have no obligation to provide further funds to the Grantee. The termination shall not relieve the Grantee of its obligations to prepare or preserve its records and to make them available for audit or inspection. The City shall provide reasonable notice to the Grantee indicating the reasons for its actions before suspension or termination.
15. **SEVERABILITY OF PROVISIONS.** Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or other circumstances.
16. **CHOICE OF LAW AND FORUM.** This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that

the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

17. **ASSIGNS AND SUCCESSORS.** This contract is binding on the City and Grantee, their successor and assigns. The City and Grantee agree they will not assign or transfer their interest in this contract without the written consent of the other party.
18. **EXTENT OF AGREEMENT.** This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Grantee with respect to the subject matter of the Agreement and it supersedes all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Grantee and City.

The undersigned have executed this Agreement as of the day and year first above written.

GRANTEE:
ANN ARBOR HOUSING COMMISSION

CITY:
CITY OF ANN ARBOR

By: Jennifer Hall
Jennifer Hall
Executive Director

By: Christopher Taylor
Christopher Taylor
Mayor

By: Jacqueline Beaudry
Jacqueline Beaudry
City Clerk

Approved as to substance:

By: Steven D. Powers
Steven D. Powers
City Administrator

Approved as to Form:

By: Stephen K. Postema
Stephen K. Postema
City Attorney

Exhibit 1 – Budget

SEE FOLLOWING PAGE

West Arbor Maple- 9% - 46 Units - 31 RAD - 15 60% TC

Updated Construction Cost Estimates, Perm Debt & Op Reserves

8.7.2015

USE OF FUNDS	Total	New Construct	Rehab (9% of total)	Total Basis	Non-Basis
1 Land	0	0		0	0
2 Structures	0	0		0	
2 TOTAL	0	0		0	0
4 Appraisal/Mkt. Study	15,000	13,650	1,350	15,000	
5 Contingency (Avaton, Resap, Eco Center)	135,000	122,850	12,150	135,000	
6 Survey / Subdivis of Energy (HERS, geotherm)	55,000	50,050	4,950	55,000	
7 Soil Borings	10,000	10,000	0	10,000	
8 Phase II Environ.	50,000	45,500	4,500	50,000	
9 Arch/Engineer	350,000	318,500	31,500	350,000	
10 Construction Loan Fees (0.75%)	67,500	61,425	6,075	67,500	
11 Legal (Dev. AAHC, Cap Fund, perm)	100,000	91,000	9,000	60,000	40,000
12 Perm Loan Fees (2.5%) (comm, under, forward lock)	95,250	86,676	8,573	0	95,250
13 Cost Cert. Audit	30,000	27,300	2,700	30,000	
14 Insurance	65,000	59,150	5,850	65,000	
15 Taxes	46	42	4	46	
16 Interest Income	445,500	405,405	40,095	267,300	179,200
17 Closing Costs (Bank, NEF -\$55k)	100,000	91,000	9,000	60,000	40,000
18 Title & Recording	35,000	31,250	3,750	35,000	
19 Other: Permits and Fees	154,469	140,567	13,902	154,469	
20 Bank Inspector/Section 3/Cost Review	25,000	22,750	2,250	25,000	
Other: LIHC Fee 6%, plus \$2,000 and \$450/Unit	90,250	86,780	3,500	0	90,250
21 TOTAL SOFT	1,823,025	1,664,476	158,549	1,379,315	443,710
22 Site Work	1,647,927	700,000	0	1,647,927	
23 Infrastructure	0			0	
24 Demolition	300,000	300,000			300,000
25 Site - other	0				0
26 Other / Environ. Cleanup	0				0
27 SUBTOTAL-SITE PREP	1,947,927		0	1,647,927	
28 Residential	5,939,879	5,939,879	0	5,939,879	
29 Community (included in residential)	0	0	0	0	
30 Rehab of duplexes	150,000	0	150,000	150,000	
31 General Requirements (6%)	482,268	473,268	9,000	482,268	0
33 Bond Premium	120,567	109,716	10,851	120,567	
34 Other: Security/Comm. Cert	63,250	57,558	5,693	63,250	
35 Other	0			0	
36 Subtotal Contractors Costs	8,703,891	6,580,421	175,544	8,403,891	
Builder's Overhead (2%)	160,756	157,756	3,000	160,756	0
37 Builder's Profit (max 6%)	462,268	473,268	9,000	482,268	0
38 TOTAL CONT. COSTS*	9,346,916	7,211,445	187,544	9,046,916	300,000
39 Const. Contingency (5%)	467,346	425,265	42,081	467,346	0
40 TOTAL DEV. COSTS	11,637,287			10,893,577	743,710
41 Developers Fee (10.5%)	1,050,000	955,500	94,500	1,050,000	0
AAHC Dev. Fee (4.5%)	450,000	409,500	40,500	450,000	0
42 Initial Operating Deficit	25,000	0	0	0	25,000
43 Supp. Mgmt. & Mktg. Fee	0	0	0	0	0
44 Purch. of Major Equip	25,000	0	0	25,000	0
45 Database	0	0	0	0	0
46 TOTAL WORKING CAP.	50,000		0	25,000	25,000
PROJECT RESERVES					
47 Operating Reserve (6 mos of expenses & debt service)	210,000	191,100	18,900	0	210,000
48 Replacement Reserve	40,000		40,000	0	40,000
48a ACC Subsidy Reserve	0			0	0
49 TOTAL RESERVES	250,000		22,500	0	250,000
ADMIN. COSTS					
50 Retention	130,000		0	130,000	
Water bills	0			0	0
51 OTFS	0			0	0
52 TOTAL ADMIN COSTS	130,000		11,700	130,000	
53 TOTAL PROJ. COSTS	13,567,287			12,548,577	1,018,710
54 Syndication Costs	0			0	
55 Partnership Expenses	0			0	0
TOTAL	13,567,287		515,292	12,548,577	1,018,710

PERM. SOURCE OF FUNDS

AAHC (AAHTF, Community Challenge Planning Grant, CIP & City Sewer Funds, AAHC approved)	1,839,668
Taxable Perm Loan (5.0% 30 yrs.)	2,350,000
FHEB-AHP	0
Other	0
Food Tax Credit Equity	9,104,511
Developer Fee	273,107
TOTAL	13,567,287

CONSTRUCTION SOURCE OF FUNDS

AAHC (eligible sources)	1,839,668
Other	0
Construction Loan	9,000,000
FHEB-AHP	0
Equity	0.149376498
TOTAL	12,199,668

* Total annual cost per sq. foot continuously borne through LIHC \$171.41

	Total	New Construct	Rehab
Subtotal	60,860	52,780	8,480
		54,380	

Tax credit basis	\$12,548,577	% FC Expense	100.00%	130% Basis	\$16,313,150
Applicable % Aug 2014	7.57%	Expense Allow	\$1,234,805	Value at	\$1,028
		Requested	\$886,000	Total	9,104,511

TDC per SF	\$240.01	** AAHC Sources of Funds Breakout	
SAFE HARBOR MAX for 2015-16 (New Construction)	\$170.50		
TDC per SF Rehab	\$79.52		
SAFE HARBOR MAX for 2015-16 (Rehab)	\$120.00		
CREDIT USE at request of \$885,000 (new construct)	20,357	Private Housing CIP Funds	388,178
SAFE HARBOR MAX for 2015-16 (new Construction)	20,383	Community Challenge Planning Grant Funds	343,000
		City of Ann Arbor Trust Funds	729,879
		City Sewer Funds	153,611
		AAHC Development Fee (1/2 of AAHC cost)	225,000
			9,271,730