



**LOAN AND AFFORDABLE HOUSING  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, dated the 12 day of November, 2015 by and between 2219 Lofts Limited Partnership, with its sole general partner being 2219 Lofts GP, LLC, having its principal office at 801 Washington Ave N #108, Minneapolis, MN 55401 hereinafter referred to as "Borrower," and the City of La Crosse, Wisconsin, a municipal corporation of the State of Wisconsin, having its principal office at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601, hereinafter referred to as the "City."

WITNESSETH:

WHEREAS, the City has Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds available from the United States Department of Housing and Urban Development (HUD) for the development of a viable urban community and financing private entities to develop affordable housing pursuant to 24 CFR Part 570.202, part B(1); and 24 CFR, 92.212(a); and

WHEREAS, the Borrower desires to develop affordable housing and eliminate a blighting influence on a target neighborhood for revitalization; and

WHEREAS, the Borrower wishes to borrow from the City the sum of up to Five-Hundred Thousand Dollars (\$500,000); and

WHEREAS, the City is willing to loan the total sum of up to Five-Hundred Thousand Dollars (\$500,000) to the Borrower, pursuant to the following terms and conditions in this agreement and the promissory note; and

WHEREAS, prior to advancing funds to the Borrower, the US Department of Housing and Urban Development and the City of La Crosse desire certain assurances as more fully set forth herein; and

WHEREAS, loan funding is contingent upon a completed and accepted Environmental Assessment, remediation plan if needed, and the Borrower securing all other sources of financing for the project.

NOW, THEREFORE, in consideration of the mutual representations and agreements contained herein, and for other good and valuable consideration, the receipt of sufficiency whereof is hereby acknowledged, it is agreed as follows:

**A. PROJECT SCOPE OF WORK AND USE OF FUNDS**

1. SCOPE. Borrower will utilize \$401,585.65 in CDBG funds and \$98,414.35 in HOME funds to acquire real estate at 2219 South Avenue and to convert a historic Amory building into 23 units of affordable housing, and two market rate units. Eleven (11) units will be designated as HOME-assisted units. Of those units, eight (8) must not exceed HOME-published HIGH rents and three (3) must not exceed HOME Low Rents (Set forth in Exhibit A).
2. The affordable income-level and bedroom mix for the HOME-assisted units will be the following:

# BRs	Net Sq. Ft.	Total # Units	Income Limit*	Initial Rents**	Utilities	Rent and Utilities
1	756	3	30%	\$ 330	65	\$ 395
2	1011	2	30%	\$ 392	82	\$ 474
2	1011	2	50%	\$ 646	82	\$ 728
3	1214	1	30%	\$ 449	98	\$ 547
3	1214	3	50%	\$ 815	98	\$ 913
11						

\* Income Limit is the percentage of the median family income for the area (La Crosse County) as determined by HUD with adjustments for smaller and larger families.

\*\* These rents meet HUD High Rent and HUD Low Rent requirements for La Crosse County.

3. **USE OF FUNDS.** The Borrower shall exclusively use the CDBG/HOME funds for acquiring property, architectural fees, legal fees, developer fees, furnishings, equipment, marketing, title work, accounting, appraisals, and other related "soft" costs and shall not use funds for any other purpose or manner, to effectuate the completion of the project as stated herein.
4. **HOME AFFORDABILITY.** The Borrower agrees to maintain ongoing HOME affordability requirements for five years from the initial date of occupancy (Exhibit A). The HOME-assisted units shall be floating units. This will be verified by the City over a five-year period.
5. **ADDITIONAL AFFORDABILITY.** The 23 units of affordable housing (including the 11 HOME-assisted units) described above also will be subject to rent and income restrictions pursuant to the low-income housing tax credit program under Section 42 of the Internal Revenue Code and administration thereof by the Wisconsin Housing and Economic Development Authority in and for the State of Wisconsin ("WHEDA"). The City and Borrower agree to that such affordability restrictions will be set forth in a Land Use Restriction Agreement between Borrower and WHEDA, which will be recorded as a restriction against Borrower's property.

## **B. PAYMENTS**

The City of La Crosse shall reimburse the Borrower the costs for the expenses identified in the statement of work, upon presentation of properly executed reimbursement requests. When submitting a drawdown request on the loan, a cover sheet that totals all the various aspects of the drawdown must accompany the request, a statement of progress to date, and evidence of progress to date.

The drawdown requests shall include evidence of the nature and propriety of the charges, such as closing statements, invoices, vouchers or other official documentation, and financial management systems shall be in accordance with 24 CFR 84.21.

## **C. HOME INVESTMENT PARTNERSHIP TERMS AND CONDITIONS**

1. **TIMELINE.** The Borrower agrees to complete the construction of the project and begin lease-up by December 31, 2016. If there are unexpected delays, Borrower must receive a written extension in writing. It shall be the responsibility of the Borrower to notify the City promptly in writing of any delays whether anticipated or experienced. Projects not completed within four years from the date of project commitment would be considered terminated and

the Borrower must repay HOME funds invested in the project.

2. **MARKETING.** A Marketing Plan is required to be submitted if units are not leased within 6 months. The repayment of HOME funds is required for any HOME unit that is not rented to eligible tenants within 18 months of project completion.
3. **SITE ACCESS.** The Borrower further agrees to allow the City or its representatives' access to the project site at reasonable times for the purpose of observing project progress. The Borrower shall provide, upon request, all information and data necessary to determine that time schedules are being met and proposed work is being achieved.
4. **AFFORDABILITY PERIOD.** There will be a five-year period of HOME affordability on the HOME-assisted units.
  - a) Borrower shall enforce the five-year HOME affordability through recording a restrictive covenant running with the property or deed restriction..
  - b) During the affordability period, the City of La Crosse will be required to conduct on-site inspections annually on the financial condition of the project, compliance with applicable property standards, information maintained by property owners concerning leases, tenant incomes, rents, assess the financial health, management capacity, long-term viability.
  - c) HOME Rents shall be established by 24 CFR 92.252. For the period of affordability, the City shall inform the Borrower of the HOME rents and shall review and approve of Borrower's rents in the period of affordability. See Exhibit A for more information.
  - d) Borrower will continue to maintain property according to State and local codes, ordinances, and requirement and ensure that the property is maintained in good repair, is free of health and safety defects.
  - e) Borrower shall income-qualify tenants based on the Part 5 (Section 8) Definition of Income or the IRS definition of adjusted gross income as defined for reporting on the IRS form in accordance with the income limits and bedroom size listed above and in the Low-Income Housing Tax Credit Application. The Borrower cannot change the unit mix and income limits listed without written permission of the City during the period of affordability.
  - f) Borrowers shall annually re-certify the income of the tenants. Tenant's incomes are likely to change over time. If changes occur during the affordability period, the Borrower must take steps to restore compliance with the unit mix requirements, as further described in the applicable HOME regulations and Exhibit A attached hereto. Temporary non-compliance is permissible, provided these steps are taken as soon as practicable.
  - g) Borrower shall undertake affirmative marketing as to market the units to persons of color, persons with disabilities, persons of different faiths, and other minorities. City shall review their affirmative marketing plan during on-site reviews. Borrower shall provide for the selection of tenants form a written waiting list in chronological order of their application, insofar is practicable,

5. **SITE AND NEIGHBORHOOD STANDARDS.** The City certifies that this property meets site and neighborhood standards found at 24 CFR 983.57 e(2) and e(3), as there is an overriding housing need in this area.
6. **SOURCES AND USES BUDGET.** The Borrower shall carry out the project according to the provided sources and uses budget in its application which meets HOME's Maximum Per Unit Subsidy Amount and Maximum Property Value (24 CFR 92.254)
7. **BUILDING STANDARDS.** The properties must meet City of La Crosse Building Code, Wisconsin Uniform Dwelling Code, comply with zoning and multi-family design reviews, Accessibility Requirements of Section 504, (24 CFR 92.251 and 92.35), Lead Safe Housing Rules (24 CFR Part 35), and Uniform Physical Condition Standards. The City of La Crosse shall verify these standards are met through an initial inspection and final inspection of the property.
8. **LEASES.**
  - a) There must be written leases for the units and the lease must be at least for one year.
  - b) Owners and property managers must follow state and local tenant landlord law.
  - c) The lease can not contain any of the following provisions: agreement by the tenant to be sued, agreement by the tenant that the owner may seize or sell personal property of the household members, agreement by the tenant not to hold the owner or owner's agents legally responsible for any action or failure to act, waiver of notice, waiver of legal proceedings, waiver of a jury trial, tenant chargeable with cost of legal actions regardless of outcome, mandatory supportive services (with an exception for tenants in transitional housing).
  - d) An increase in the tenant's income is not cause for termination or refusal to renew lease.
9. **QUARTERLY FINANCIAL REPORTING.**

Borrower shall submit quarterly financial reports during the period of affordability and at the option of the City, reports thereafter for the length of the loan.

#### **D. FEDERAL AWARD TERMS AND CONDITIONS**

1. **COMPETITIVE BIDDING:** Projects must comply with federal bidding procedures for CDBG and HOME Funds the selection of a general contractor and/or the selection of sub-contractors. Developers are encouraged but not required to use open and competitive processes for the selection of consultants such as architects and engineers.
2. **CDBG:** Eligible activities include: acquisition of property, relocation, moderate or substantial rehabilitation of units, and other reasonable and necessary expense related to the development of affordable, non-luxury rental housing.
3. **ACCESSIBILITY REQUIREMENTS SECTION 504 (24 CFR PART 8):** New construction projects with five or more units or rehabilitation projects with 15 or more units and rehab costs of more than 75% of the replacement cost of the completed facility must have a minimum of 5% of the units (but at least one unit) be accessible to mobility-impaired and an additional 2% (but at least one unit) be accessible to sensory-impaired. Units in compliance with the Uniform Federal Accessibility Standards (UFAS) are deemed in compliance with Section 504.

#### **4. FAIR CONTRACTING, WMBE UTILIZATION, AND SECTION 3**

Borrowers and their general contractors shall be encouraged to take actions which would increase opportunities for women and minority business enterprises (WMBEs).

In addition, projects that are awarded federal funds must comply with Section 3 of the Housing and Urban Development Act of 1968, which requires that all economic opportunities generated by HUD funding be directed, to the greatest extent feasible, to low-income persons residing in the community where the project is located. Borrowers and their contractors must complete a Section 3 plan stating numerical goals for contracting and hiring that meet federal targets and a description of the efforts they will make to achieve goals. Once construction begins, Borrowers will be required to report regularly on progress toward meeting WMBE and Section 3 goals, if applicable.

#### **5. USE OF DEBARRED, SUSPENDED, OR INELIGIBLE CONTRACTORS**

HUD maintains a list on their web site of contractors who have been barred from competing for HUD contracts. Borrowers seeking to procure goods and services, including professional services, in an amount of \$3,000 or greater must check EPLS prior to awarding a contract to expend federal dollars. For any contractor on the excluded parties list, the use of CDBG and HOME funds is prohibited.

#### **6. OTHER HUD STANDARD CONTRACT TERMS AND CONDITIONS**

- a) Title VI and Title IX of the Civil Rights Act of 1964 (Public Law 88-352)(42 U.S.C. 2008d et seq.); and implementing regulations issued at 24 CFR Part 1; as amended by Executive Order 11375 and 12086, and implementing regulations at 41 CFR Chapter 60, which prohibits discrimination in any activity receiving federal financial assistance.
- b) Title VIII of the Civil Rights Act of 1968, (Public Law 90-284)(42 U.S.C. 3601 et seq.); as amended, which prohibits discrimination in housing on the grounds of race, color, religion, national origin, sex, disability, or familial status.
- c) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 et seq.) which requires that no person will on the grounds of race, color, national origin or sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity funded in whole or in part with Community Development Block Grant funds.
- d) Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- e) Section 504 of the Rehabilitation Act of 1973, (Public Law 93-112) as amended and implementing regulations when published for effect. Said regulation provides for nondiscrimination based on disability in federally-assisted programs and activities.

- f) Fair Labor Standards Provisions, which govern responsibilities for workers employed in connection with federally-assisted construction projects. Statutory provisions include: Davis-Bacon Act (40 U.S.C. 276a-276a-5) which contains minimum wages (basic rate of pay), fringe benefits, and wage withholding. As no funds will be used towards construction-costs in this project, David-Bacon Wages will not apply.
  - g) Federal Executive Order 11246, as amended by Executive Order 12086 and regulations at 41 CFR Chapter 60, which require nondiscrimination in employment for federally-assisted contracts and assures that contractors are fully informed of affirmative action requirements.
7. CONFLICT OF INTEREST. No person who is an employee, agent, consultant, officer, elected official or appointed official of the City, who exercises or has exercised any functions or responsibility with respect to such funds being provided by the City or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, will obtain a personal or financial interest or benefit from the project, or have any interest in a contract, subcontract, or agreement with respect thereto, or the proceeds thereof, either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter, except for approved eligible administration or personnel costs.

### **C. OTHER PROGRAM REQUIREMENTS**

1. SUSPENSION AND TERMINATION. The Borrower agrees that this Agreement may be terminated or suspended in the event the Borrower fails to comply with the project activity time frame or in the event of default, inability, or failure to perform as required by this or any accompanying agreements the City may take appropriate and corrective action in order to ensure compliance with this agreement. Upon termination, the Borrower shall transfer to the City any Community Development Block Grant funds loaned under this Agreement. If the Borrower ceases to use any asset acquired with Community Development Block Grant funds for the purpose described in this Agreement, the Borrower shall either pay to the City the unpaid balance of the loan or transfer to the City's control of the asset (with an unencumbered title), except for the City's lien and the liens ahead of the City's lien. Otherwise, the City shall have any other remedy available to it by law.
2. INDEPENDENT STATUS. Nothing contained herein, nor any act of the City, the Borrower, or any other party, shall be deemed or construed by any party, or by any other third person, to create any relationship with third party beneficiary, principal, or agent, limited or general partnership, or joint venture, or of any association or relationship involving the City. The Borrower is at all times considered an independent agency and not an agency or branch of the City.
3. ANTI-LOBBYING. The Borrower certifies that to the best of their knowledge and belief: No federal-appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of an 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 any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a federal contract, grant,

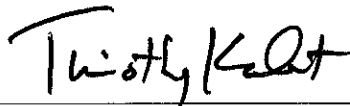
loan, or cooperative agreement.

4. INDEMNIFICATION. The Borrower, its officers and directors, agree to indemnify, defend, and hold harmless the City, its agents, officers, and employees from any and all damages to property or to persons or death of any person or persons, including employees and volunteers of the Borrower, and will defend, indemnify, save harmless the City from any and all claims, demands, suits, actions, or proceedings of any kind or nature, including worker's compensation claims, of or by anyone whomsoever, resulting or arising out of the operations of the Subrecipient, including operations of subcontractors, and acts or omissions of employees or agents of the Borrower or its subcontractors.
5. INSURANCE. Borrower will procure and maintain, at its cost and expense, amounts of insurance that may be necessary for property protection in connection with the operations of the Borrower's activity. Said insurance will provide for Commercial General Liability for \$1,000,000 for each occurrence, \$50,000 damage to rented premises, \$1,000,000 for personal injury, \$2,000,000 in the general aggregate, and \$2,000,000 for products (completed operations aggregate), \$5,000,000 for umbrella liability, as well as property (builder's risk) insurance to cover building, improvements, and betterments, and soft costs. The Property Management Company that will maintain property upon completion will carry Workmen's Compensation and Auto Liability, as required by state law. Borrower will name the City of La Crosse as additionally insured. Said insurance will be maintained and in full force and effect during the term of the project.

INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by Mayor Timothy Kabat and Metro Plains, LLC, Managing Members

ATTEST:  
CITY OF LA CROSSE, WISCONSIN



Mayor Timothy Kabat

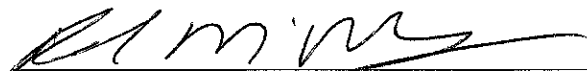


Teri Lehrke, Clerk

BORROWER:

2219 Lofts Limited Partnership, a Wisconsin limited partnership

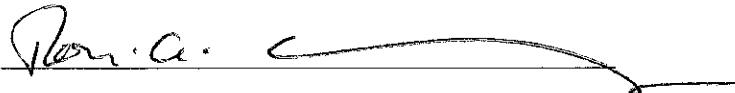
By: 2219 Lofts GP, LLC, a Minnesota limited liability company  
Its: General Partner



Robert G. McCready, its Co-President

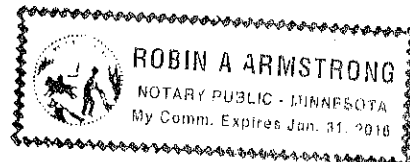
STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF                )

Personally came before me, this 16 day NOVEMBER, 2015, the above named representative of 2219 Lofts GP, LLC, the general partner of 2219 Lofts Limited Partnership, known to be the person who executed the foregoing instrument and acknowledge the same.



Notary Public, Carver County, MINNESOTA

My commission expires 1-31-16





## EXHIBIT A

### 1. HOME High and Low Rents

During the 5-year period of affordability, the project must maintain affordability for the 11 HOME Units. At least 20% of the HOME Units in each Project must be described in (a), (b) or (c) of this Section. The rents, including utility allowances, for the HOME Units must not exceed the following, which are to be determined by reference to the rent levels published by the U.S. Department of Housing and Urban Development (“HUD”) from time to time and described at this internet address, or at such other location as may be determined by the City of La Crosse: <https://www.hudexchange.info/manage-a-program/home-rent-limits/>:

- a. 30% Units. For all HOME Units set aside for occupancy by families whose incomes do not exceed 30% of the median family income for the area (usually the county), as determined by HUD with adjustments for smaller and larger families (“CMI”):
  - i. SRO HOME Rent Units. If the unit is a single room occupancy unit (*i.e.*, single room unit without private full kitchen and bathroom facilities), three-quarters of the applicable fair market rent of an efficiency unit; or
  - ii. Sub HOME Rent Units. For all other types of units, one-half of the applicable 65% rent limit;
- b. 40% Units. For all HOME Units set aside for occupancy by families whose incomes do not exceed 40% of the CMI, the lower of the applicable low HOME rent limit or the maximum rent allowable under the low-income housing tax credit program;
- c. Low HOME Rent Units. For all HOME Units set aside for occupancy by families whose incomes do not exceed 50% of the CMI, the applicable low HOME rent limit as defined by HUD.
- d. High HOME Rent Units. For all other HOME Units, the applicable high HOME rent limit.

### 2. Floating Units

The tenant's income is likely to change, if it changes during the affordability period, the Borrower must take steps to restore compliance with the unit mix requirements. Temporary noncompliance is possible, provided these steps are taken as soon as practicable. As the units in the Borrower's project are comparable in terms of size, features, and amenities, the Borrower can draw on all the units in the property to designate High and Low HOME rent units.

When the income of a tenant occupying a Low HOME rent unit increases over 50 percent of the area median income but does not exceed 80 percent of the area median income, the unit that is occupied by the over-income tenant is considered Low HOME Rent until comparable units can be substituted.

The rent of the tenant whose income has gone above 50 percent of the AMI must not exceed the Low HOME rent limit, while the unit has a Low HOME rent unit designation. To restore compliance, the Borrower must rent the next available High HOME rent unit to a very low-income tenant. The unit is re-designated as a Low HOME rent unit. Once this unit has been re-designated as the Low HOME rent unit, the unit with the over-income tenant may be re-designated as a High HOME rent unit and the tenants rent may be increase. This should not increase the number of assisted units. As this is a LIHTC project, in an assisted unit with the tenants' income exceeded 80 percent of the area median income, the tenant's rent is not adjusted and the unit does not need to be replaced by another comparable unit until the tenant's income increases above 140 percent of the LIHTC's qualifying income limit.