



**LOAN AND AFFORDABLE HOUSING
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, dated the _____ day of _____, 2015 by and between 2219 Lofts Limited Partnership, with its General Partner being MetroPlains Partners, 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);

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;

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, 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. The affordable income-level and bedroom units mix will be the following:

Type	# BRs	Net Sq.Ft.	Total # Units	CMI%
Apt	1	756	3	30
Apt	1	756	4	50
Apt	1	756	5	60
Apt	2	1011	2	30
Apt	2	1011	2	50
Apt	2	1011	3	60
Apt	3	1214	1	30
Apt	3	1214	3	50

2. **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.
3. **HOME AFFORDABILITY.** The Borrower agrees maintain ongoing HOME affordability requirements for five years from the initial date of occupancy. The HOME-assisted units shall be floating units. All remaining affordable units funded by CDBG shall be maintained at an affordability of not more than 33% of the annual income for the CDBG published income levels for the county median income that matches the designated bedroom unit and size. This will be verified by the City over a five-year period.

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 units.
 - a) The five-year HOME affordability shall be recorded as a Declaration of Restrictive Covenants (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. 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 produces, \$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.

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IN WITNESS WHEREOF, the City has caused this Agreement to be executed by Mayor Timothy Kabat and 2219 Lofts Limited Partnership.

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

By: Metro Plains Partners, LLC, a Minnesota limited liability company
Its: Manager
801 Washington Avenue North, Suite 108
Minneapolis, MN 55401

Robert G. McCready, Co-President, MetroPlains Partners, LLC

STATE OF WISCONSIN)
) ss.
COUNTY OF)

Personally came before me, this ____ day _____, 2014, the above named representatives of MetroPlains Partners, LLC, known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, _____ County, MINNESOTA

My commission expires _____

EXHIBIT A

Floating Unit Projects and HOME High and Low Rents

The project must maintain the total number of HOME-assisted units and maintain the correct number of High and Low HOME rent units (11) HOME-Assisted Units, of those 3 must maintain Low HOME Rent, during the 5 year Affordability Period.

High HOME Rents are based on the lesser of the Fair Market Rents for La Crosse County for existing comparable units published here <http://www.huduser.org/portal/datasets/fmr.html> or 30% of adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for the number of bedrooms in the unit. For the **Low HOME Rents**, the tenants must be at 30% or 50% of the AMI and the rents must meet the following requirements:

1. The rent must not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under 24 CFR 92.252(a), then the maximum rent for units under this paragraph is that calculated under 24 CFR 92.252(a).
2. The rent must not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

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 redesignated 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 until the tenant's income increases above 140 percent of the LIHTC's qualifying income limit.