Attachment A

HOME AGREEMENT

(FOR CONSTRUCTION ASSOCIATED WITH
THE REHABILITATION OF AFFORDABLE RENTAL HOUSING)

THIS AGREEMENT is entered into by and between the City of Council Bluffs and Pottawattamie County Development Corporation D/B/A The 172 Initiative located at 1228 South Main Street, Council Bluffs, Iowa 51503 (sometimes hereinafter referred to as the "Owner") based on terms, conditions and provisions as set forth below.

RECITALS:

WHEREAS, the City of Council Bluffs (hereinafter referred to as "the City") is a municipal corporation located in Pottawattamie County, Iowa, and is organized and existing under the laws of the State of Iowa, and is authorized and empowered to exercise all powers conferred by the State constitution, and Home Rule Charter of the City of Council Bluffs, as amended, and local ordinances, including but not limited to, the power to contract; and,

WHEREAS, the City of Council Bluffs has applied for and received HOME Investment Partnerships Program (hereinafter referred to as “HOME”) Funds under Title II of the National Affordable Housing Act of 1990, for the purpose of benefiting low-and-moderate income residents, eliminating slums and blight, and for other urgent community development needs, through the Omaha-Council Bluffs HOME Consortium; and,

WHEREAS, the City’s FY 2019-2023 Consolidated Submission for Community Planning and Development Programs (hereinafter referred to as “Consolidated Plan”), outlining priorities, programs and funding allocations for the 2020 and 2021 program years, was approved by the Omaha City Council on October 26, 2020 by Resolution No. 20-259; and,

WHEREAS, the Owner has submitted an application that provides for a Repayable Loan for financing construction of the following legally described property:

> Lots J, K, L and M, Auditor's Subdivision, of Block 6, Mynster's Addition, and Block 2, Bayliss 1st Addition, City of Council Bluffs, Pottawattamie County, Iowa.

WHEREAS, the acquisition of this property will result in the rehabilitation of an existing building to create 19 upper-story rental units generally located at 530 West Broadway (hereinafter referred to as the "Project"); and,

WHEREAS, of the 19 total units in this complex, three (3) units will be designated as assisted with HOME Program Funds and will float for the Period of Affordability; and,

WHEREAS, none of these three (3) units will be designated as transitional housing units; and,

WHEREAS, the Consolidated Plan identified that this Project provides or improves housing which is determined to benefit low-and-moderate income persons and therefore the Project is consistent with the Consolidated Plan and is eligible for funding; and,

WHEREAS, acquisition of property and construction is an eligible HOME activity and this activity provides an incentive for the provision of affordable rental housing; and,

WHEREAS, the City wishes to enter into an Agreement with the Owner to assist the City in utilizing such HOME funds; and,

WHEREAS, the Owner's Loan Fund was included in the FY 2020 and 2021 HOME Programs, and $250,000.00 was allocated to the Project; and,

WHEREAS, the Owner proposes to commence rehabilitation of a 19-unit apartment complex at 530 West Broadway comprised of 10 one bedroom units, 5 two bedroom units, and 4

efficiency units within two years from acquisition of Property with Project Completion finalized during the term of this Agreement; and,

WHEREAS, it is in the best interest of the City and the residents thereof that the City enter into an Agreement with the Owner to provide funding in the amount not to exceed $250,000.00 for the Project.

NOW, THEREFORE, IN CONSIDERATION OF THESE MUTUAL COVENANTS, the parties do hereby agree as follows:

SECTION 1. DEFINITIONS AND ABBREVIATIONS.

The following terms shall have the following meanings for all purposes in this Agreement:

1.01 "City" shall mean - the City of Council Bluffs, an Iowa Municipal Corporation.

1.02 "Director" shall mean - the Community Development Director of the City of Council Bluffs.

1.03 “Recipient” shall mean – the City of Omaha, Nebraska.

1.04 "Subrecipient" shall mean - a public or private non-profit agency, authority or organization receiving HOME funds to undertake eligible activities. In this Agreement, the Subrecipient is the City of Council Bluffs, Iowa.

1.05 “Owner” shall mean Pottawattamie County Development Corporation D/B/A The 712 Initiative; 1228 South Main Street, Council Bluffs, Iowa 51503 (see Exhibit “A”).

1.06 “HUD” shall mean – the U.S. Department of Housing and Urban Development.

1.07 "HOME Funds" shall mean - that portion of the HOME Investment Partnerships Program funds awarded to the City, subject to and conditioned upon actual receipt of same by the City of Council Bluffs, as may be available to loan during the FY 2020 and 2021 program years for the use specified herein in an amount not to exceed $250,000.00.

1.08 “Floating Units” shall mean – the designated HOME-assisted units may change over time as long as the total number of HOME-assisted units in the Project remains constant; however the units must be representative of the various models

available and are comparable in size, features and number of bedrooms to the non-HOME-assisted units and each of the designated HOME-assisted units is occupied by a qualified low- and moderate-income household whose annual household income is at or below 80% (2 units) or 60% (1 unit) of the Median Income by Family Size (MFI), as defined and periodically adjusted by HUD, at the time of initial occupancy. (Exhibit "B") All HOME-assisted units shall be occupied as the household's principal place of residence throughout the Affordability Period.

1.09 "HOME Deferred Repayable Non-Recourse Loan" or "Loan" shall mean – a Non-Recourse Loan in the amount of $250,000.00 made subject to the terms, conditions and provisions of the loan agreement under which said Loan is made, which shall provide, inter-alia, that same shall be repayable in its entirety with one percent interest, thirty years from Project Completion, as defined in the HOME regulation, Section 92.2. The principal loan balance shall become due and payable upon sale or transfer of ownership of the property except for an Assignment as provided in Section 8.09 of this Agreement. This Loan shall be used only for the purposes described herein. If a sale occurs sooner than 30 years, the three (3) HOME assisted units must continue to meet HOME guidelines. A covenant is required throughout the Affordability Period to maintain the intended use of the three (3) floating units.

1.09.1 The City's Loan will be subordinate to a loan from MidStates Bank in the amount of $1,440,000 and shall be secured with no less than a second lien position. The Community Development Department Director can approve changes in the funding sources as long as any such changes are not changes to the federal funds amount.

1.09.2 This loan will not be sold, assigned, transferred or conveyed by the City of Council Bluffs to Fannie Mae, nor will it be included in a pool of loans to be sold, assigned, transferred or conveyed to Fannie Mae.

1.10 "Rehabilitation Financing" shall mean, but is not limited to - funds for land acquisition associated with the rehabilitation of the Project, billings for rehabilitation, closing costs, profit and overhead, predevelopment and public improvements costs, financing, legal, accounting, architectural or construction supervision costs, developer fees, costs for materials, labor, utility hookups and site preparation associated with the rehabilitation of the Project.

1.10.1 Profit and overhead of the Developer's general contractor shall not exceed 15% of hard construction costs.

1.11 "Construction Completion" shall mean – the date the Project has been certified by the City as meeting all state, federal and local laws, ordinances, regulations and codes, including but not limited to, Section 8 Housing Quality Standards for

Existing Homes (HQS) as established by HUD, and accessibility requirements, where applicable.

1.12 "Project Completion" shall mean – the date leveraged funds have been received by the Owner and allocated to the Project, Construction Completion has been certified and approved by the City, all HOME funds have been disbursed, and all units have been rented by low-and-moderate income households.

1.13 "Project Close Out" shall mean – the dates all project HOME funds have been disbursed and the Recipient has completed HUD close out procedures (24 C.F.R. 92.507 and 2 C.F.R. 200 as amended 11-12-2020) (Exhibit "B"). The distinction between Project Close Out and Project Completion is that tenant occupancy requirements are required to be satisfied for Project Completion. As a result, Project Close Out shall typically occur prior to Project Completion.

1.14 "Affordability Period" (24 C.F.R. 92.252(e)) shall mean – that time period, twenty years after Project Close Out in which Owner shall keep assisted units affordable. During the Affordability Period, the Owner must ensure that HOME-assisted units continue to meet rent restrictions, occupancy requirements and property standards as described in Section 4.09 herein. For this Agreement, the Affordability Period shall commence at Project Completion and continue for 30 years. In the event the term of the Agreement would be extended, the Affordability Period would be extended for the additional time. Alternately, in the event Project Completion would be accelerated, the term of the Agreement and Affordability Period may be moved forward correspondingly.

1.15 "Property" or "Project" shall mean – acquisition of land and rehabilitation of 19 rental units of which three (3) total floating units (one (1) one bedroom unit, one (1) two bedroom units and one (1) efficiency units) will be HOME assisted and occupied by eligible Low and Moderate Income Households; more specifically those units shall be constructed or scheduled for construction in the building located at 530 West Broadway, as surveyed, platted and recorded in Pottawattamie County, Iowa, together with improvements thereon. This apartment complex is to be known as The Cohen Building.

1.16 "Low-and-Moderate Income Household" shall mean - a household whose annual income does not exceed 80% (for 2 unit) and 60% (for 1 units) of the area Median Family Income for the Omaha NE-IA Metropolitan Statistical Area as determined by HUD (Exhibit "C").

1.16.1 A "Household" is composed of one or more persons.

1.16.2 "Rents" (24 C.F.R. 92.252) shall mean – The maximum rents (including utilities) for the Omaha, NE-IA Metropolitan Statistical Area as established by HUD as of the effective date of the lease or as issued by HUD. These rents shall be the lesser of fair market rent for existing

comparable housing units in the area as established by HUD or HOME rents as established by HUD ("Exhibit C"). In no event shall rents be required to be lower than the HOME rent limit in effect for Project at time of project commitment.

1.17 "HOME" shall mean - that portion of the HOME Investment Partnerships Program entitlement awarded to the City, subject to and conditioned upon actual receipt of same by the City of Council Bluffs, as may be available to loan during the FY 2020 and 2021 program years for the use specified herein in an amount not to exceed $250,000.00, subject to the terms, conditions and requirements of said Loan Fund Agreement.

1.18 "Client" shall mean - a qualified prospective tenant making application to the Developer to occupy a unit in this project.

1.19 "Program Income" shall mean - the gross income received by the Subrecipient or Owner directly generated from the use of HOME Funds (24 C.F.R. 92.503). When such income is generated by an activity that is only partially assisted with HOME Funds, the income shall be prorated to reflect the percentage of HOME Funds used (see Exhibit "D" attached hereto and incorporated herein by this reference as though fully set forth). Any program income fund received during the term of this Agreement shall be returned to the City within thirty (30) days prior to any additional distribution of HOME Funds.

1.20 "Floating Units" shall mean - the three (3) units (one (1) one bedroom unit, one (1) two bedroom units and one (1) efficiency bedroom unit) assisted with HOME funds in which HOME rent, occupancy and property standard requirements apply throughout the Affordability Period.

SECTION 2. RESPONSIBILITIES OF OWNER.

2.01 Overall Project Performance

2.01.1 The Owner shall use the $250,000.00 HOME Funds for the Rehabilitation Financing that will result in the rehabilitation of 19 total rental units, of which three (3) HOME assisted units at 530 West Broadway will be for qualified low-and-moderate income households whose annual income is 80% or below the Median Family Income (MFI) for 2 units and 60% and below the MFI for 1 unit (Exhibit "C").

2.01.2

Total Project Units	Total HOME Assisted Units	Total Floating Units	Total HOME Assisted Low/Moderate Income Units
19	3	3	3

2.01.3 Number of HOME Assisted Maximum Percent of Area

Low/Moderate Households	Median Income Permitted
2	80%
1	60%

2.01.4

Number Above Low/Moderate Households	Maximum Percent of Area Median Income Permitted
0	80

2.01.5 Floating Unit Mix:

One Bedroom Units	1
Two Bedroom Units	1
Efficiency Units	1
TOTAL	3

2.02 Project Budget

The Owner asserts that the funding sources and amounts listed below are committed as of the date of loan closing or will be committed to the Project during the term of this Agreement.

FY 2020 and 2021 HOME	250,000.00
Bank Loan	1,440,000.00
Iowa West Foundation	1,582,781.00
SW Iowa Foundation	200,000.00
Peter Kiewit Foundation	300,000.00
Metro Foundations or 712 equity	315,097.00
Deferred Development	636,793.00
Brownfield Tax Credits	750,000.00
Private Donations	50,000.00
Sales Tax Rebate	25,000.00
Mid-American Rebate	20,000.00
TOTAL	**$5,569,671.00**

The Community Development Director can approve any changes in the funding sources as long as any changes are not changes to the federal fund amounts.

2.03 Term of the Agreement

This Agreement shall be in full force and effect and shall end 30 years from the Project Completion date. Services of the Owner will start effective the date of the proceed order issued by the City and Levels of Project Performance stated in Section 2.01 herein shall be completed as of December 31, 2022. In the event

Project Close Out would be accelerated, the term of the Agreement and Affordability Period may be moved forward correspondingly.

SECTION 3. CONDITIONS FOR RECEIPT OF CITY FINANCING.

3.01 In no event shall the City assume any obligation to make any or all of the above-referenced funding available, nor shall the City incur any liability hereunder, unless and until the Owner has submitted for and received the prior approval of the Director of all of the documents listed below.

3.01.1 Property Insurance. Upon fund disbursement, the Owner shall procure and maintain, at a minimum, fire and extended coverage insurance in an amount sufficient to protect the City's interest in the property during the term of the Agreement and financing security documents (OMB Circular 2 C.F.R. 200) (Exhibit "B"). The insurance policy shall include the City of Council Bluffs as an additional insured. Written evidence of such insurance shall be submitted to the City for approval. In the event of damage of the property, any insurance proceeds are to be applied, at the discretion of the Director, to the reconstruction of the property or repayment, in full, of the funding.

3.01.2 Contracts. The Owner shall submit duly executed contracts for all Construction of the Project to the Director for approval prior to the start of construction.

3.01.3 Performance and Labor Material Payment Bond and/or an Irrevocable Letter of Credit. Owner or its subcontractors shall acquire and maintain performance bond and/or letter of credit in force for one year following the completion of the Construction Work from the Owner/General Contractor and all subcontractors in an aggregate amount of the contract bid. The Bonds and/or Letters of Credit shall be in favor of the City and shall be submitted to the Director for review and approval. The Director reserves the right to reject the Letters of Credit and Choice of Surety of the Bonds. The Director may waive this bonding requirement upon written request by the Owner.

3.01.4 Plan Submissions. Owner shall submit all plans, working drawings and/or specifications necessary or incidental to this Project to the Director for review and approval.

3.01.5 Minority/Women Owned Business Enterprise Plan. Owner shall submit to the Director for his review and approval a minority and women business participation plan which discusses economic development and employment opportunities. These plans shall ensure that the Owner and its subcontractors will make their best efforts to ensure that construction

services, contracts and employment opportunities are affirmatively marketed to women and members of minority groups.

3.01.6 Eligible Contractors. Owner shall obtain a certificate from each contractor or subcontractor to be used on this Project to the effect that each contractor or subcontractor has not been debarred or disqualified by HUD (24 C.F.R. Part 5). The Director shall approve all contractors and subcontractors prior to being hired by the Owner.

3.01.7 Security for Repayable Loan. Owner shall execute for the benefit of the City a mortgage and a repayable loan non-recourse promissory note in an amount not to exceed $250,000.00 secured by no less than a second lien position subordinate to aggregate amounts not to exceed $4,000,000.00 (Exhibit "E") during the construction phase and shall remain in third position after construction completion.

3.01.8 Section 504. Owner shall ensure, to the maximum extent feasible that five percent of the total dwelling units, or two units, shall be readily accessible to and usable by individuals with mobility impairments. An additional two percent, or one unit, shall be accessible for persons with sensory impairments. The total number of units in a HOME assisted project, regardless of whether they are all HOME assisted, is used as the basis for determining the minimum number of accessible units. Also, in a project where not all the units are HOME assisted, the accessible units may be either HOME assisted or non-HOME assisted.

3.01.9 Contractors' Insurance and Workers' Compensation. The Owner or its contractors and subcontractors shall submit Certificates of Insurance showing proof of insurance for review by the Director. The City understands and accepts that this insurance is in favor of the Owner.

3.01.9 Funding Compliance Deadline. In the event that all conditions of funding are not met on or before December 31, 2022, then this Agreement shall automatically become null and void and the City shall not be deemed to have assumed any obligation or liability hereunder. Upon the sole discretion of the Director, this date may be extended up to June 15, 2023.

3.02 The Owner shall implement the project consistent with section 15.28.060 of the Council Bluffs Municipal Code and Resolution _____ which approved a planned residential development plan for the Cohen Building. The Developer's building permit application will be reviewed by the City for consistency with said development plan. Any inconsistencies with said development plan will require the Developer to modify building plans and specifications or submit an amendment to the City modifying said development plan. The Developer shall

cause the construction of the project in compliance with all applicable Council Bluffs codes and ordinances.

SECTION 4. PROJECT RESPONSIBILITIES OF THE OWNER.

4.01 Eligible Use of Funds. The Owner does hereby certify, contract and agree that any and all funding obtained or made available hereunder shall be used solely and exclusively for the purposes described herein.

4.02 Terms and Conditions. The Owner shall abide by all terms and conditions of this Agreement and shall be responsible for the security and maintenance of the site described in Section 1.15 herein.

4.03 Breach of Agreement. If through breach of this Agreement the Owner fails to maintain the occupancy, affordability and use restrictions as described herein, all HOME funds previously provided to the Owner through fulfillment of this Agreement shall promptly be returned to the City.

4.04 Lien Waivers. If funds are to be used for construction, the Owner agrees to obtain the appropriate lien waivers prior to each construction payments. No funds will be disbursed if a lien has been filed against the property.

4.05 Ineligible Costs. The Owner shall be responsible for payment of any Project costs that exceed those specified in this Agreement.

4.05.1 Eligible Costs. The Owner shall not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs as described in Section 1.10 herein.

4.05.1.1 Luxury Items. Property amenities shall be those amenities reasonably anticipated in comparable properties. Any items determined by the City as luxury items shall not be considered an eligible cost for construction.

4.06 Lead-Based Paint Prohibition. Owner shall not use lead-based paint in the performance of this Agreement, including the performance of any subcontractor (42 USC 4821 et seg., 24 C.F.R. 92.355 and 24 C.F.R. Part 35). "Lead-based Paint" means any paint containing more than six one-hundredths of one (1) per centum of lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied. The Owner further agrees to abide by Federal requirements regarding lead-based paint poison prevention.

4.07 Ongoing Property Restrictions. During the period of the term of this Agreement and that of any grant, mortgage, covenant documents, the Owner shall:

4.07.1 Maintain the Property in a safe and sanitary condition at all times.

4.07.2 Ensure that all real estate taxes and special assessments are paid and kept current.

4.07.3 Maintain insurance against loss or damage to the Property in an aggregate amount sufficient to protect the City's interest in the Property. Such property insurance policy must be properly endorsed showing the City as an additional insured. In the event of loss or damage, the Owner shall provide immediate written notification to the City of any loss. Proceeds from any claim under this policy may, at the discretion of the Director, be either applied to restore or replace the improvements damaged or be paid to the City to satisfy the Owner's obligation to the City under the terms of this Agreement.

4.07.4 Ensure that, except for those described in Section 1.09.1 herein, the Property remains free and clear of superior liens.

4.08 Davis-Bacon Labor Standards (40 U.S.C. 76a-a-7). The City has determined that Davis-Bacon wage rates are not applicable to this Project as defined herein. See attached Exemption Checklist, Exhibit F.

4.09 Property Standards (24 C.F.R. 92.251). During the construction period, the Owner shall ensure that all work performed and the Construction of the Project meets all state, federal and local laws, ordinances, regulations and codes, including but not limited to, Section 8 Housing Quality Standards for Existing Homes (HQS) as established by HUD, and accessibility requirements, where applicable.

4.09.1 After completion of Construction, the Property must comply with all appropriate City codes and ordinances, Federal Section 8 Housing Quality Standards and with fire safety codes (24 C.F.R. 570.02), and accessibility requirements, if applicable.

4.10 Affirmative Marketing Policy (24 C.F.R. 92.351). The Owner agrees to provide a copy of their Affirmative Fair Housing Marketing Plan to the City for review, which is attached hereto as Exhibit "G" and incorporated herein by this reference as though fully set forth. These affirmative marketing procedures must be employed in the advertising and marketing of this Project for the Affordability Period. In marketing, the Owner shall also conform to the nondiscrimination provisions hereinafter set forth in Section 5.06.1.2.

4.11 Maintenance of Property. The Owner shall maintain the Property in a safe and sanitary condition to the extent possible during the construction phase of the Project and throughout the Affordability Period.

SECTION 5. GENERAL ADMINISTRATIVE REQUIREMENTS OF OWNER.

Owner agrees to comply with the following requirements:

5.01 Financial Management.

5.01.1 Accounting Standards. The Owner agrees to comply with OMB Circular 2 C.F.R. 200 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. (Exhibit "B", attached hereto and incorporated herein as though fully set forth).

5.01.2 Cost Principals. The Owner shall comply with the requirements and the standards of OMB Circular 2 C.F.R. 200 (Exhibit "B").

5.01.3 Audits. The Owner shall comply with all provisions and regulations of the Program and follow the IRS 8609 Audit requirements as utilized by the Iowa Finance Authority. A copy of the audit and all supporting documentation shall be provided to the Director.

5.01.3.1 Any deficiencies noted in audit reports must be fully cleared by the Owner within 30 days after receipt of audit by the Owner. Failure of the Owner to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments and may constitute a default subject to default remedies referenced herein in Section 9.

5.02 Documentation and Record-Keeping (24 C.F.R. 92.508). All Owner records with respect to any matters covered in this Agreement shall be made available to the City, its designees or the Federal Government, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any contract entered into by the Owner with any contractor or subcontractors shall include this Section to ensure said access.

5.03 Reports. The Owner shall submit to the City the following reports in accordance with 24 C.F.R. 92.505 with the submission timelines as specified.

5.03.1 Construction Progress Reports. The Owner shall provide reports to the Director (AIA G702 Form) describing the progress of construction, and any significant problems and/or delays in construction on this project. Reports will be submitted at the time of each pay request, or by the 15th day of each month if no pay request is made before the 15th day of the month (or upon written request from the Director, but no more frequently than monthly). The progress reports are required until such time as all Construction of the Project is completed and the City issues the final payment of construction to the Owner.

5.03.2 Occupancy Report. The Owner shall provide to the Director an initial tenant survey, utility allowance, asset income computation forms at the time of initial lease execution for each tenant, and annual reports on lease anniversary date and thereafter for the Affordability Period, identifying the occupants/occupancy of the property, annual household income of occupants, and respective rents and utilities charged for the five (5) floating units in the property. Annual reports shall be due at lease renewal and shall be submitted to the City by January 31 and shall include all information up to and including the end of the previous calendar year. Attached as Exhibit "J", and incorporated herein by this reference as though fully set forth, is a copy of requisite forms. The forms shall contain the following information:

5.03.2.1 name(s) of tenant(s)
5.03.2.2 address of unit
5.03.2.3 household income as a percent of Median Family Income (MFI) as determined by HUD, income verification forms used in determining MFI including the City's Asset Form (Exhibit "C")
5.03.2.4 household size
5.03.2.5 gender of head of household member
5.03.2.6 name and age of each household member
5.03.2.7 race/ethnicity of head of household
5.03.2.8 disability status of any household member
5.03.2.9 copy of annual lease
5.03.3.0 evidence of affirmative marketing efforts
5.03.3.1 copy of definition of income affidavit signed by tenant

5.04 Financial Status Reports. The Owner shall submit financial status reports (2 C.F.R. 200) along with pay requests. In the event pay requests are not submitted for ninety (90) days, financial status reports shall be due, at a minimum, 15 calendar days from the end of the calendar year quarter. Attached as Exhibit "K", and incorporated herein by this reference as though fully set forth, is a sample financial status report. The Owner will be required to provide documentation as to show the distribution of funds and the leveraging of the HOME dollars.

5.05 Record Retention. The Owner, its contractors and subcontractors shall maintain such records and accounts, including property, tenant reporting, personnel and financial records, as are deemed necessary by the City to assure a proper accounting for all expenses. The Comptroller General of the United States, or any of their duly authorized representatives, or any duly authorized representatives of the City, as approved by the Director, shall have access to any books, documents, papers, records and accounts of the Owner, Contractor, or subcontractors which are directly pertinent to this Project for the purpose of making audit, examination, excerpts and transcriptions. Such records and accounts shall be retained for five (5) years after expiration of the Affordability Period, (2 C.F.R. 200) (Exhibit

"B"). In the event the Term of the Agreement would be extended, the time frame for record keeping would be extended correspondingly.

5.06 Personnel and Participant Conditions.

5.06.1 Contract Compliance Clause.

5.06.1.1 Equal Employment Opportunity - The Owner and its contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, national origin, familial or handicap status. As used herein, the word "treated" shall mean and include, without limitation, the following: recruited, whether by advertising or by other means; compensated; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. The Owner and its contractor agree to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of this nondiscrimination clause.

5.06.1.2 The Owner and its contractors or subcontractors shall, in all solicitations or advertisements for employees placed by or on behalf of the Owner, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, national origin, familial or handicap status.

5.06.1.3 The Owner and its contractors or subcontractors shall send to each representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Owner's commitments under the equal employment opportunity clause of the city and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5.06.1.4 The Owner and its contractors or subcontractors shall furnish to the Director all federal forms containing the information and reports required by the federal government for federal contracts under federal rules and regulations, and shall permit reasonable access to his records. The purpose of this provision is to provide for investigation to ascertain compliance with the program provided herein.

5.06.1.5 The Owner and its contractors or subcontractors shall take such actions with respect to any subcontractor as the City may direct as a means of enforcing the provisions of paragraphs 5.06.1.1 through 5.06.1.7 herein, including penalties and sanctions for noncompliance; however, in the event the contractor becomes involved in or is threatened with litigation as the result of such directions by the City, the City will enter into such litigation as is necessary to protect the interests of the City and to effectuate the provisions of this division, and, in the case of contracts receiving federal assistance, the contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.

5.06.1.6 The Owner and its contractors shall file and shall cause his subcontractors, if any, to file compliance reports with the Owner's contractor in the same form and to the extent as required by the federal government for federal contracts under federal rules and regulations. Such compliance reports shall be filed with the Director. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the Owner, contractor and his subcontractors.

5.06.1.7 The Owner and its contractors or subcontractors shall include the provisions of paragraphs 5.06.1.1 through 5.06.1.7 of this section, "Equal Employment Opportunity Clause," and Section 10-193 in every contract, subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

5.06.2 Workers' Compensation. The Owner shall provide Workers' Compensation Insurance coverage for all employees involved in the performance in this Agreement.

5.06.3 Employment Insurance and Bonding. If applicable, the Owner shall purchase a blanket fidelity bond covering all employees, at a minimum, in an amount equal to cash advances from the City. The Owner shall also comply with bonding and insurance requirements of 2 C.F.R. 200, Bonding and Insurance and attached as Exhibit B. CBIA has no employees.

5.06.4 Section 3 – Employment of Low-Income Persons (Section 3 of HUD Act of 68, as amended, 1 U.S.C. 1701u). The Owner shall make its best efforts to comply with Section 3. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD

assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

5.06.5 Conflict of Interest. The Owner agrees to abide by the provisions of 24 C.F.R. 92.356 with respect to conflicts of interest, and covenants that it presently has financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Owner further covenants that in the performance of this Agreement no person having such a financial interest shall be employed or retained by the Owner hereunder. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer or elected official or appointed official of the City or any designated public agencies or subrecipients which are receiving funds under the entitlement program.

SECTION 6. OWNER'S COMPLIANCE WITH OTHER FEDERAL REGULATIONS.

6.01. Environmental Review. The Owner agrees to comply with the following regulations insofar as they apply to the performance of this Agreement:

6.01.1 Clean Air Act, 42, U.S.C., 1857, et seq.

6.01.2 Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq., as amended 1318 relating to inspection, monitoring entry, reports and information as well as other requirements specified in Section 114 and Section 308, and all regulations and guidelines issued thereunder.

6.01.3 Environmental Protection Agency (EPA) regulations pursuant to 40 C.F.R. Part 50, as amended.

6.01.4 National Environmental Policy Act of 1969.

6.01.5 HUD Environmental Review Procedures (24 C.F.R. Part 58).

6.01.6 Flood Disaster Protection Act of 1973 (24 U.S.C. 4106 and P.L. 2234) in regard to the sale, lease or other transfer of land acquired, cleared or improved under the terms of the Agreement as it may apply to provisions of this Agreement.

6.01.7 Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 C.F.R., Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Office for

all rehabilitation and demolition of historic properties that are 45 years old or older or that are included on a Federal, State or local historic property list.

6.01.8 Lead-Based Paint Prohibition - Owner shall not use lead-based paint in the performance of this Agreement, including the performance of any subcontractor (42 USC 4821 et seg., 24 C.F.R. 92.355 and 24 C.F.R. Part 35). "Lead-based Paint" means any paint containing more than six one-hundredths of one (1) per centum of lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied. The Owner further agrees to abide by Federal requirements regarding lead-based paint poison prevention.

6.02 Uniform Relocation Act. The Owner shall comply with the applicable regulations of the Uniform Relocation Act of 1970, as amended (URA) (42 U.S.C. 4601-4655), or Section 104 (d) of the Housing and Community Development Act of 1974, as amended (Section 104 (d)), which require relocation assistance be provided to resident owners, tenants, businesses and other occupants that are displaced as a result of a federally-assisted project. In the event that the Owner or its agent displaces any tenant-occupant of the property, it shall immediately notify the City in writing of the circumstances surrounding said displacement and comply with 24 C.F.R. 92.353.

6.03 Fair Housing. Subrecipient shall provide fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601-20) by making all persons, without regard to race, color, religion, sex, national origin, familial or handicap status, aware of the range of housing opportunities available to them and provide fair housing enforcement, education and outreach activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of low and moderate income persons.

SECTION 7. RESPONSIBILITIES OF THE CITY.

7.01 Performance Monitoring. The City will monitor the performance standards of the Owner as stated herein. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Owner within a reasonable period of time after being notified by the City, contract suspension or termination procedures may be initiated.

7.02 Payments. It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed $132,877.00 in HOME funds. The payment of these funds is subject to and conditioned upon actual receipt by the City of the same. Should adequate funding not be available to the City, the

City shall notify the Owner as soon as reasonably possible and the Agreement will be terminated.

7.02.1 Funds Allocated to the Owner. Funds allocated to the Owner shall be in the form of a Repayable Loan for the purposes set forth in this Agreement. Payments will be contingent on Duties and Conditions specified herein. Drawdowns for the payment of eligible expenses shall not be made until the funds are needed based upon the value of the construction, administration, or professional services work completed at the time the payment request is made.

7.02.2 Obligation for Payment. In no event shall the City become obligated to make any payments for any work performed, materials furnished, expense incurred, or any other expenditure of any kind whatsoever, unless same is expressly included in this Agreement, nor shall the City incur any liability hereunder, unless and until the Owner has timely and fully complied with its duties and obligations hereunder. No payments shall be made for any work, labor, material or expenses incurred the Director deems to be:

7.02.2.1 Not in conformance with applicable state, federal and/or local laws, including but not limited to, the building, plumbing and/or electrical codes; or,

7.02.2.2 Not in conformance with all plans, working drawings and/or specifications as approved; or,

7.02.2.3 Unacceptable or substandard; or,

7.02.2.4 Not in accordance with this Agreement or related contracts as approved for this Project.

7.03 Progress Payments. If applicable, progress payments and final payment, as may be authorized by the Director or his designated representative, are subject to:

7.03.1 Receipt, verification and approval of an AIA Document G702 "Application and Certificate for Payment," such document being prepared by the Owner's architect or authorized person and approved by the Owner and the City's Community Development Director before being approved for payment.

7.03.2 Receipt of requisite financial status reports.

7.03.3 A 10% retainage of City HOME funds will be withheld by the City until all punch list items have been corrected to the satisfaction of the Owner and the City rehabilitation specialist assigned to this project.

7.04 Inspections. The City may perform periodic inspections at any reasonable time to ensure compliance with this Agreement. The City shall perform final inspection to certify Project completion prior to final disbursement of HOME proceeds. In addition, the City shall perform on site inspections of Property every year from Project Completion to ensure compliance with property standards (24 C.F.R. 92.504 (c)(4)(d)).

7.05 Technical Assistance. The Director shall assist the Owner in the same manner the Director provides technical assistance to other owners/developers during the construction phase to ensure compliance with such housing quality standards and property standards as defined herein in Section 4.09.

SECTION 8. MUTUAL AGREEMENTS BETWEEN CITY AND OWNER.

8.01 Release of Information Laws. The Owner specifically hereby states, agrees and certifies that it is familiar with the limited purpose set forth in the Federal Laws, Rules and Regulations, and in the laws of the State of Iowa, for which personal information requested may be used and that the information received will be used solely for those limited purposes and not to harass, degrade or humiliate any person. The information released shall be used for the limited purposes stated, and the Owner further agrees to indemnify and hold harmless the City of Council Bluffs for any liability arising out the improper use by the Owner of information provided.

8.02 Applicable Laws. Parties to this Agreement shall conform with all existing and applicable City ordinances, resolutions, state laws, federal laws, and all existing and applicable rules and regulations. Iowa law will govern the term and the performance under this Agreement.

8.03 Interest of the City. No elected official or any officer or employee of the City shall have a financial interest, direct or indirect, in any City agreement. Any violation of this section with the knowledge of the person or corporation contracting with the City shall render the Agreement voidable by the Mayor or Council.

8.04 Independent Contractor. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Owner shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Worker's Compensation Insurance as the Owner is an Independent Contractor.

8.05. Project Roles. The Owner shall ensure that the Project meets the objectives stated herein. The City has selected the Owner to assist in the Project since it is

consistent with the Consolidated Plan. With respect to this Project, the City is not acting as the Owner's architect or engineer. The City makes no warranties, express or implied, as to the Construction Work. The City owes no duty to the Owner or any other persons that shall arise because of any inspection of the premises by the City's agents or employees.

8.06 Captions. Captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

8.07 Merger. This Agreement shall not be merged into any other oral or written agreement, lease or deed of any type.

8.08 Modification. This Agreement and any related documents securing the financing contain the entire agreement of the parties. No representations were made or relied upon by either party other than those that are expressly set forth herein. No agent, employee, or other representative of either party is empowered to alter any of the terms herein unless done in writing and signed by an authorized officer of the respective parties.

8.09 Assignment. The Owner may not assign its rights or obligations under this Agreement without the express prior written consent of the Subrecipient; except that the Community Development Department Director may, without City Council approval, approve, in writing, the assignment to a general partner, as long as Harvester Artist Lofts, L.P. is the Owner.

8.10 Strict Compliance. All provisions of this Agreement and each and every document that shall be attached shall be strictly complied with as written, and no substitution or change shall be made upon written direction from authorized representatives of the parties.

8.11 Termination. This Agreement may be suspended or terminated in accordance with 24 C.F.R. 85.43, Enforcement or 24 C.F.R. 85.44, Termination for Convenience (Exhibit "L", attached hereto and incorporated herein by this reference as though fully set forth). Upon termination of this Agreement, all funds and interest in any account hereunder shall become the property of the City and shall be returned to the City.

8.12 Reversion of Assets. Upon the expiration of this Agreement, the Owner shall transfer to the City of Council Bluffs any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use HOME funds (24 C.F.R. 92.504(c)(2)(vii)).

8.13 Indemnification. The Owner shall indemnify and hold the City harmless from and against: (1) any and all claims arising from contracts between the Owner and third parties made to effectuate the purposes of this Agreement; and, (2) any and

all claims, liabilities or damages arising from the preparation or presentation of any of the work covered by this Agreement.

8.14 Unenforceable Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be in effect to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

8.15 Disclosure of Lobbying. The Owner shall certify and disclose, to the best of its knowledge and belief, that:

8.15.1 No Federal appropriated funds have been paid or will be paid, by or on behalf of the Owner, to any person for influencing or attempting to influence 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 any Federal contract, grant, loan, or cooperative agreement.

8.15.2 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 of employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Owner shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

8.15.3 The language of this certification shall be included in the award documents for all subawards at all tiers, (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

8.16 Notices. The City and the Owner hereby expressly agree that for purposes of notice, including legal service or process, during the term of this Agreement, and for the period of any applicable statute of limitations thereafter, the following named individuals shall be authorized representatives of the parties:

1) City:
City of Council Bluffs
Director, Community Development Department
209 Pearl Street
Council Bluffs, IA 51503

2) Owner:
Pottawattamie County Development Corporation

D/B/A The 712 Initiative
Attn: Sheryl Garst, Director
1228 South Main Street
Council Bluffs, Iowa 51503

In the event the authorized representative changes during the term of this Agreement, prior written notice will be given to the respective party at the address noted above.

8.17 Applicability. This Agreement shall be binding upon the parties hereto and shall run with the Property.

SECTION 9. DEFAULT PROVISIONS.

9.01 Remedies. If, through any cause, the Owner shall fail to fulfill in a timely and proper manner any obligations under this Agreement, or violate any of the covenants, representations or agreements hereof, the City may upon written notice terminate this Agreement or such parts thereof as to this Agreement, and may initiate foreclosure proceedings for any damages caused to the City by reasons of such default and termination.

9.02 Non-Recourse Repayable Loan. The Repayable Loan is a non-recourse loan; therefore, in the event of a default, the City shall rely solely upon the Property which is secured by the mortgage which is the security for the non-recourse promissory note and will not initiate or participate in any claim or proceedings against the maker of the non-recourse promissory note or its partners (or the partners, officers, directors, or shareholders of any partner) for payment of any sum due under the non-recourse promissory note or any other sum due under the mortgage.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below:

CITY OF COUNCIL BLUFFS:

By: _____ _____
Matthew J. Walsh, Mayor DATE

By: POTTAWATTAMIE COUNTY DEVELOPMENT CORPORATION
D/B/A THE 712 INITIATIVE

By: _____ _____
Sheryl Garst, CEO DATE

SCHEDULE OF EXHIBITS

Exhibit	Agreement Location	Description
A	1.02	Pottawattamie County Development Corporation, DBA, The 712 Initiative. Articles of Incorporation, Bylaws, Corporate Resolution, Board Members
B	1.13, 3.02.1, 5.01.1, 5.01.2, 5.04, and 5.05	OMB Circular A-110
C	1.15, 1.15.1 and 2.01.1	Median Family Income Chart, HOME Program Rents, and Utility Allowances
D	1.18	Definition – Program Income
E	3.01.7	Repayable Loan Non-Recourse Promissory Note and Mortgage
F	4.08	Davis-Bacon Exemption Checklist
G	4.11	Affirmative Marketing Policy
H	5.01.2	OMB Circular A-122
I	5.01.3	IRS 8609 Audit requirements (per the Iowa Finance Authority)
J	5.03.2	Occupancy Report (Tenant Survey, Utility Allowance and Asset Forms)
K	5.06.3	Financial Status Reports
L	8.11	Termination – 24 C.F.R. 85.43 – 85.44

ATTACHMENTS:

1	City of Council Bluffs Definition of Income
2	Equal Opportunity
3	Section 3 Clause
4	Minority and Women Business Plan
5	Subsidy Layering Policy
6	Project Cost Certification
7	Agreement for Covenants & Restrictions (Rental Property)
8	The Cohn Building Tenant Selection Policy