

AGREEMENT BETWEEN THE CITY OF PEORIA, ILLINOIS
AND
PHOENIX COMMUNITY DEVELOPMENT SERVICES, AN ILLINOIS NON-PROFIT,
FOR
HOME PROGRAM FUNDS

CONSTRUCTION OF RENTAL HOUSING – MADISON APARTMENTS III
206 NE MADISON (1809227007)

PROJECT # 23M01

IDIS # 5170

Affordable Units to be Constructed: 4

Total Project Funding: \$600,000

Approved by the Peoria City Council on October 11, 2022
Council Agenda Item #- 22-345

This Agreement entered into by and between The City of Peoria ("City"), an Illinois municipal corporation and Phoenix Community Development Services ("PHOENIX CDS"), on this 27th day of February, 2023.

WHEREAS, the City is a recipient of funds from the United States Department of Housing and Urban Development ("HUD"), as administrator of the HOME Investment Partnerships Program ("HOME Program") with CFDA # 14.239 and grant numbers M-18-MC-17-0207, M-19-MC-17-0207, and M-20-MC-17-0207, and the funds (as hereinafter defined) of which are used to create and preserve affordable housing for low-income individuals in the community;

WHEREAS, PHOENIX CDS is the owner of the property at 206 NE Madison ("Madison Apartments III"), a four story building 16 unit project focusing on homeless youth;

WHEREAS, PHOENIX CDS with DUNS #60-460-7275 and FEIN # 37-1173520 made application to the City for HOME funds in connection with the construction of Madison Apartments III; and

WHEREAS, PHOENIX CDS, will serve as the Owner and Developer for the construction of four (4) HOME assisted units in the Madison Apartments III project;

NOW THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

- I. **RECITALS**. The foregoing recitals are made a part of this Agreement.
- II. **PURPOSE**. The purpose of this Agreement is to reimburse PHOENIX CDS for eligible project expenses it incurs in order to construct four (4) units in the PHOENIX CDS project. This Agreement and funds shall be subject to the terms and conditions of the HOME Investment Partnership Act [42 U.S.C. § 12701 *et seq*] and the Code of Federal Regulations Title 24, Volume 1 [24CFR92.1 *et seq*]; Code of Federal Domestic Assistance 14.239.

III. **TERMS AND SECURITY.**

- A. For the purposes of this Agreement, the "HOME Affordability Period" shall mean twenty (20) years from date of completion of Activity #2 described in Section IV.; the date the Project is identified as "completed" in HUD's Integrated Disbursement Information System.
- B. The term "units" shall mean the four (4) HOME assisted units located at Madison Apartments III with two studio units and two one-bedroom units. These units will be floating units. Please see section VI. Part A of this agreement for more on floating units.
- C. The term "tenants", as defined by HUD, is an individual whose household has a gross annual income, as adjusted for family size, that is less than or equal to eighty percent (80%) of the median income for the metropolitan statistical area or county.
- D. The term "funds" shall mean the Six Hundred Thousand Dollars (\$600,000.00) of HOME Program funds awarded to PHOENIX CDS.

IV. **SCOPE OF SERVICE.**

A. Activities

PHOENIX CDS shall construct four (4) units, in a manner satisfactory to the City and consistent with any standards required by HUD as a condition of providing these funds. Such funds will include reimbursement for the following eligible activities under the HOME Program:

- Activity #1: The construction of four (4) units for the purpose of providing affordable housing units for low-and moderate-income individuals and/or families. This should occur within eighteen (18) months from the execution of this Agreement. Please reference Exhibit A – "Madison Apartments III Construction Schedule".
- Activity #2: The occupancy of tenants of four (4) units to low- and moderate-income individuals/families according to all applicable HUD laws, regulations, and rules. This should occur within six (6) months from the completion of Activity #1 described above.
- Activity #3: The furnishing of information regarding the four (4) units upon City's request to ensure monitoring compliance with the applicable HUD laws, regulations, and rules concerning the HOME Affordability Period and guidelines.

B. Performance Monitoring

The City will monitor the performance of PHOENIX CDS according to the goals and performance standards contained in this Agreement. During the HOME Affordability Period, the City will certify annual income of tenants to document eligibility and inspect units for property code compliance. Substandard performance as determined by the City will constitute non-compliance with this Agreement.

Participation in any prohibited activities as defined in 24 CFR 92.214 (a-b) shall constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by PHOENIX CDS within 60 days after being notified by the City, termination of the Agreement will be initiated and all funds must be returned to the City.

C. Construction Rehabilitation Monitoring

The City will monitor the performance of PHOENIX CDS regarding the rehabilitation of four (4) units. The City reserves the right to review and approve all general contractors and sub-contractors that shall participate. Funds cannot be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor, subrecipient or sub-contractors during any period of debarment, suspension or placement of ineligibility status on the Federal System for Award Management lists.

PHOENIX CDS will meet with City staff to review construction site plans. No construction can proceed without a prior review by the City Rehabilitation staff and written authorization from the Community Development Director or his/her designee.

PHOENIX CDS will secure all appropriate building permits, zoning permits, and all required approvals from the City. All plans must utilize new construction materials or equivalent grade materials as authorized by City Rehabilitation and/or Building Inspection staff.

During the construction phase of the project, PHOENIX CDS agrees to allow City staff access to the project at all reasonable times for the purpose of inspection. The primary purpose of the inspection will be to ensure that the rehabilitation meets all applicable City, State of Illinois, and HUD property standards, codes, regulations, and laws. Moreover, PHOENIX CDS agrees to allow City Building Inspectors or their designee access for required building inspections such as, but not limited to plumbing and electrical inspections.

D. Labor Provisions

- i. *Davis-Bacon Federal Labor Act (40 U.S.C. 276a-276a-5)*: The rehabilitation of the four (4) units in PHOENIX CDS does not trigger the requirements of the Davis-Bacon Act. However, in accordance with the other financing sources for the PHOENIX CDS project, PHOENIX CDS has agreed to comply with the State of Illinois Prevailing Wage Act (820 ILCS 130/0.01) (from Ch. 48, par. 39s-0.01). PHOENIX CDS agrees to include the provisions of the State of Illinois Prevailing Wage Act in all contracts for rehabilitation of PHOENIX CDS. Additionally, PHOENIX CDS agrees to provide records and reports of the prevailing wage compliance to the City upon request.
- ii. *Contract Work Hours and Safety Standards Act (CWHSSA), as amended (40 USC 327-333)*: The CWHSSA will apply to the construction of the four (4) units at Madison Apartments III, as the project is considered a "federally assisted construction contract over \$100,000". PHOENIX CDS agrees to require contractors and subcontractors to pay laborers and mechanics employed in performance of the rehabilitation of Madison Apartments III one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. In order to document compliance, the City will accept the State of Illinois Department of Labor Certified Transcript of Payroll (form IL452CM02). Additionally, in compliance with CWHSSA, PHOENIX CDS agrees to prohibit any unsanitary, hazardous, or dangerous working conditions at the Madison Apartments III project in accordance to the Federal Department of Labor's Occupational Safety and Health Administration (OSHA).
- iii. *Copeland (Anti-Kickback) Act (40 USC 276c)*: The Copeland Act will apply to the construction of the four (4) units in Madison Apartments III, as the project is considered a "federally assisted contract in excess of \$2,000". PHOENIX CDS agrees to prohibit contractors and

subcontractors from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment in performance of the rehabilitation of Madison Apartments III. In order to document compliance, the City will accept the State of Illinois Department of Labor Certified Transcript of Payroll (form IL452CM02).

iv. *Fair Labor Standards Act (FLSA) of 1938, as amended (29 USC 201, et.seq.)*: The FLSA will apply to the rehabilitation of the four (4) units in Madison Apartments III. PHOENIX CDS agrees to require contractors and subcontractors to pay Federal minimum wage for all workers and provide at least one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. Additionally, PHOENIX CDS agrees to prohibit contractors and subcontractors from employing youth under the age of 18 for performance of the rehabilitation of Madison Apartments III.

V. **PAYMENT.**

A. **Budget**

Please reference Exhibit B – “Madison Apartments III Scope Line Item and Unit Costs”

TOTAL BUDGET	
Construction Materials and Labor, exclusive of general requirements and contractors profit (approx. \$150,000 per unit)*	\$600,000
TOTAL AWARD	\$600,000

**Total funds per unit shall not exceed the per unit subsidy limits based on the Section 221(d)(3) limits for elevator-type projects. The 2022 published Section 221(d)(3) limits will remain in effect until further notice is issued from HUD.*

B. **Reimbursement Procedures**

It is expressly agreed and understood that the total amount to be reimbursed by the City under this Agreement shall not exceed Six Hundred Thousand Dollars (\$600,000.00).

The City will reimburse PHOENIX CDS for eligible activity expenses as defined by 24 CFR Part 92.206, based upon program and budget information submitted by PHOENIX CDS, and consistent to City policy and procedures concerning reimbursement. The City will make reimbursements to PHOENIX CDS **after** satisfactory completion of the environmental assessment according to 24 CFR Part 92.352 (a-b).

PHOENIX CDS may not request the reimbursement of funds under this Agreement until funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. PHOENIX CDS shall also secure all lien waivers prior to reimbursement for all suppliers and all trades. Such lien waivers may be subject to City review prior to reimbursement.

All reimbursements must be accompanied by corresponding documentation that shows amounts, items, descriptions and any other necessary information to demonstrate eligibility. Appropriate

documentation includes, but is not limited to, a contractor's affidavit or bill and proof of payment by PHOENIX CDS if already paid.

Specific questions regarding reimbursement documentation may be directed to the Community Development Director or his/her designee.

VI. **HOME AFFORDABILITY PERIOD REQUIREMENTS.**

A. General Requirements

At time of project completion, the City and PHOENIX CDS will execute a "Notice of Restriction on Use of Property" to be recorded on the property to secure the HOME Affordability Period. The HOME Affordability Period shall mean twenty (20) years from the date PHOENIX CDS project is identified as "completed" in HUD's Integrated Disbursement Information System. For the purposes of the HOME Affordability Period, the four (4) units will be designated as "floating" in accordance with 24 CFR 92.252(j). A "floating" unit is a unit that is initially designated as a HOME assisted unit, but the designation may change at some point during the HOME Affordability Period. PHOENIX CDS agrees to maintain the total number of HOME assisted units (4) throughout the HOME Affordability Period and will ensure whatever unit carries the designation of "assisted" meets the affordability requirements. PHOENIX CDS agrees to repay the total amount of funds provided under this Agreement if the units do not meet the affordability requirements.

B. Rent and Occupancy

When first leased, PHOENIX CDS agrees that 8 units must be occupied by households at 60% or below area median income by household size as determined by HUD. After the first occupancy, the 8 units may be occupied by households who have annual incomes that do not exceed 80 percent of the area median income for the duration of the HOME Affordability Period.

Rent amounts for each unit at Madison Apartments III cannot exceed HUD's HOME Program Rent Limits. The 8 units may be charged up to the High HOME rent amounts. Utility allowances for tenant-paid utilities must be reduced from the applicable HOME rent limits. The City will provide utility allowances to PHOENIX CDS if tenants of Madison Apartments III are responsible for utility costs.

Both area median income limits and HOME program rent limits are published by HUD on an annual basis. PHOENIX CDS must decide on one method of calculating income for the project either the Part 5 definition of income or the IRS definition of adjusted gross income included on the IRS Form 1040 to determine income eligibility of a household. This choice must be consistent throughout the entire project, not just the HOME assisted units.

If tenants should receive additional subsidy through rental assistance programs, such as Section 8, HOME rents can be raised to the rental assistance program limit only if (i) the tenant pays no more than 30 percent of adjusted income for monthly rent, (ii) the subsidy is project-based, not tenant based, and (iii) the tenant's income is less than 50 percent of the area median income.

Before a tenant occupies a unit, tenant eligibility must be documented with source documents, including but not limited wage statements, interest statements, and/or unemployment compensation statements. PHOENIX CDS will retain such source document throughout the duration of the tenant's lease.

PHOENIX CDS agrees to contact the City when the income of a tenant occupying HOME assisted units increases over the allowable HOME limits.

C. Property Standards

Throughout the duration of the HOME Affordability Period, PHOENIX CDS will ensure that Madison Apartments III meets the City's Property Maintenance Code. Additionally, PHOENIX CDS will allow the City to conduct on-site property inspections every two years beginning on the date of project completion. PHOENIX CDS may also conduct and document regular property inspections in the interim to ensure compliance with property standards.

D. Lease Provisions

Throughout the duration of the HOME Affordability Period, PHOENIX CDS will agree to execute a written lease, occupancy agreement or other comparable legal document for each tenant occupying a HOME assisted unit. The lease will include, but should not be limited to, the following provisions:

- a. Lease Length – Lease should be executed for at least one year, unless PHOENIX CDS and the tenant mutually agree to a shorter period. However, the term may not be for a period less than 30 days.
- b. Termination of Tenancy – PHOENIX CDS agrees to not terminate the tenancy or refuse to renew the lease of a tenant, except for allowable reasons:
 - i. Serious or repeated violation of the terms and conditions of the lease;
 - ii. Violating Federal, State or local law; or
 - iii. Other good cause
- c. HOME Rents – PHOENIX CDS agrees to specify the allowable HOME rents and procedures for providing a 30 day written notice to tenants prior to alterations of rent amounts.
- d. Compliance with State and Local Tenant-Landlord Laws – PHOENIX CDS agrees to comply with applicable State and local tenant-landlord laws.
- e. Prohibited clauses - PHOENIX CDS agrees to not include the Federally-prohibited lease clauses listed in 24 CFR 92.253(b):
 - i. *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
 - ii. *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;
 - iii. *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
 - iv. *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;
 - v. *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in

which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

- vi. *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;
- vii. *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and
- viii. *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

E. Affirmative Marketing and Tenant Selection

PHOENIX CDS will have a written tenant selection plan for Madison Apartments III that states the procedures for taking applications, screening applications including determining household income and eligibility determinations, maintenance of waiting lists (if applicable) and the process for notifying applicants of eligibility or rejection.

PHOENIX CDS will also use equal opportunity language and fair housing logo in advertisements and literature regarding Madison Apartments III and ensure that literature is understandable to clients with key information available in other languages.

PHOENIX CDS must incorporate affirmative marketing strategies to inform persons not likely to apply for housing without special outreach, maintain records to document actions taken to market HOME assisted units and to assess the marketing effectiveness and identify corrective action procedures that will be taken if the marketing is deemed ineffective.

VII. NOTICES.

Communication and details concerning this Agreement shall be directed to the following representatives:

CITY
 Community Development Director
 (or his/her designee)
 City Hall
 419 Fulton Street, Suite 300
 Peoria, IL 61602
 309-494-8656

PHOENIX COMMUNITY DEVELOPMENT SERVICES
 Christine Kahl
 Chief Executive Officer and President
 202 NE Madison Ave
 Peoria, IL 61602
 (309) 222-2560

VIII. GENERAL CONDITIONS.

A. Hold Harmless

PHOENIX CDS shall hold harmless, defend, and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of PHOENIX CDS' performance or nonperformance of the services or subject matter called for in this Agreement.

B. Worker's Compensation

PHOENIX CDS shall provide Worker's Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

C. Insurance**1. General Coverage**

PHOENIX CDS shall carry sufficient insurance coverage to protect contract assets, including but not limited to the property and the structure, from loss due to theft, fraud, and/or undue physical damage. PHOENIX CDS will ensure its contractors and other sub-contractors carry appropriate insurance. Minimum amounts of contractor's insurance are as follow:

COVERAGE	BODILY INJURY	PROPERTY DAMAGE
General Liability	\$300,000	\$100,000
Contractor's Liability	\$300,000	\$100,000
Automobile Liability	\$100,000/\$300,000	\$50,000
Workman's Compensation	Statutory Limits	-

All insurance policies must remain in full coverage until City Rehabilitation Staff sign off that the project is completed. Upon request by the City, PHOENIX CDS will provide the City with all required certificates and/or proof of insurance.

D. Amendments

The City or PHOENIX CDS may amend this Agreement at any time and are executed in writing, signed by a duly authorized representative of both parties. Such amendments shall not invalidate this Agreement, nor relieve or release the City or PHOENIX CDS from its obligations under this Agreement.

The City may, in its discretion, amend this Agreement to conform with Federal, state, and local governmental guidelines, policies, and available funding amounts, or for other similar reasons. If such amendments result in a change in funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by the City and PHOENIX CDS.

The Agreement cannot be assumed by or assigned to another entity without written authorization and approval from the City.

E. Suspension or Termination

The City may suspend or terminate this Agreement, in whole or in part, if PHOENIX CDS materially fails to comply with any term of this Agreement, or with any of the rules, regulations, or provisions referred to herein; and the City may declare PHOENIX CDS ineligible for any further participation in the City's programs, in addition to other remedies as provided by law. In the event there is reason to believe PHOENIX CDS is in noncompliance with any applicable rules or regulations, the City will suspend ALL reimbursement of the said Agreement funds until such time as PHOENIX CDS is found to be in compliance by the City, or is otherwise adjudicated to be in compliance.

IX. **ADMINISTRATIVE REQUIREMENTS.**A. **Financial Management**

PHOENIX CDS serving as the Owner and Developer agrees to have financial management systems that meet the standards of 2 CFR 200

1. **Internal Controls**

PHOENIX CDS shall have the following internal controls within its financial management system:

- An organizational chart setting forth the actual lines of responsibility of personnel involved in financial transactions;
- Written definition and delineation of duties among key personnel involved in financial transactions;
- An accounting policy and procedures manual that includes specific approval authority for financial transactions and guidelines for controlling expenditures, a set of written procedures for recording of transactions, and utilizes a chart of accounts;
- Separation of duties is adequate so that no one individual has authority over a financial transaction from beginning to end. In other words, one person should not have responsibility for more than one of the following functions:
 - Authorization to execute a transaction;
 - Recording of the transaction;
 - Custody of the assets involved in the transaction
- Hiring policies ensuring that staff qualifications are commensurate with job responsibilities
- Control over assets, blank forms and confidential documents so that these types of documents are limited to authorized personnel only.
- Periodic reconciliation of financial records to actual assets and liabilities.

2. **Budget Controls**

PHOENIX CDS shall have the following budget control within its financial management system:

- Maintain accounting records (as defined in subsection 3 below) for the amounts budgeted for eligible activities;
- Periodically compare actual obligations and expenditures to date against planned obligations and expenditures, and against projected accomplishments for such outlays;
- Report deviations from budget and program plans, and request approval for budget and program plan revisions.

3. **Accounting Records**

PHOENIX CDS shall have the following accounting records within its financial management system:

- Chart of accounts- a list of account names and the numbers assigned to each of the account names;
- Cash receipts journal- documents, in chronological order, when funds were received, in what amounts and from what sources;
- Payroll journals
- General Ledger- summarizing, in chronological order, the activity and financial status of all the accounts.

B. Documentation and Record Keeping

1. Records to be Maintained

PHOENIX CDS shall maintain all records required by Federal regulations, specified in 24 CFR Part 92.508, that are pertinent to Madison Apartments III and the eligible costs to be funded under this Agreement. Such records shall include, but not be limited to:

- a. Records providing a full description of the project;
- b. Records required to document the eligibility of costs;
- c. Records required to document the eligibility of activities, specifically:
 - i. Records demonstrating that each individual/family is income eligible in accordance with 24 CFR Part 92.203;
 - ii. Records demonstrating that each project meets the property standards of 24 CFR Part 92.251 and the lead-based paint requirements of 24 CFR Part 92.355;
- e. Records documenting compliance with Fair Housing and Equal Opportunity components of the HOME Program;
- f. Financial records as required by 2 CFR 200, including but not limited to 2 CFR 200.302 and 2 CFR 200.403.

2. Retention

PHOENIX CDS shall retain all records pertinent to expenditures incurred under this Agreement for a period of five (5) years after the expiration of the HOME Affordability Period. If there is litigation, claims, audits, negotiations, or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until the completion of the action and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Audits and Inspections

PHOENIX CDS records with respect to any matters covered by this Agreement shall be made available to the City and its designees, or HUD and its designees, at any time during normal business hours, as often as the City deems necessary, to audit, examine, and make copies of all relevant data. Any deficiencies noted in audit reports must be fully corrected by PHOENIX CDS within 30 days. Failure of PHOENIX CDS to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

In addition, PHOENIX CDS understands that all aspects of the sponsored activity(ies) or program will be open to inspection by employees or agents of the City, State and/or Federal governments.

4. Quarterly Reports

PHOENIX CDS shall submit a quarterly budget and report regarding the budget and expenditures of the Madison Apartments III project. PHOENIX CDS will also submit a quarterly program report regarding the accomplishments of project. The City will provide PHOENIX CDS with reporting forms or with the approval of the City, PHOENIX CDS may substitute an alternative report/format that contains the requested information. The reports shall be

submitted to the Community Development Director (or his/her designee) no later than the 10th day following the end of each quarter as long as funds remain to be expended.

X. **OTHER PROGRAM REQUIREMENTS.**

A. Property Standards

The HOME assisted units must meet the property standards of 24 CFR 92.251, including compliance with all City of Peoria housing, budget and zoning codes. The units must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR 100.201, must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 U.S.C. 3601-3619).

B. Conflict of Interest

PHOENIX CDS understands and agrees that no person, who is an employee, agent, consultant, or officer of PHOENIX CDS may obtain an interest, financial or otherwise, or benefit from a HOME assisted activity or have any interest in any contract, subcontract, or agreement with respect to any HOME assisted activity pursuant to 24 CFR 92.356. This prohibition applies to employees, agents, consultants, or officers of PHOENIX CDS or those with whom they have family or business ties during their entire employment/business relationship with PHOENIX CDS and for one (1) year after the expiration of their employment/business relationship with PHOENIX CDS.

C. Nondiscrimination

PHOENIX CDS will not discriminate against anyone because of race, color, creed, religion, sexual orientation, ancestry, national origin, sex, disability, or other handicap, age, marital or familial status, or status with regard to public assistance. PHOENIX CDS will take affirmative action to insure that all practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. PHOENIX CDS agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

Specifically, PHOENIX CDS must show proof of valid City Equal Employment Opportunity Certification prior to any request for the reimbursement of funds.

D. Religious Organization

PHOENIX CDS agrees that funds provided under this contract will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR Part 92.257.

E. Prohibition Against hiring City Employees

PHOENIX CDS agrees, as a condition of accepting this Agreement with the City, that for a period of one year following completion of this Agreement, that it shall be prohibited from hiring, directly or indirectly, any City employee or official who was involved, directly or indirectly in: (1) the selection and/or recommendation to select the PHOENIX CDS for performance of this Agreement; (2) coordinating the efforts of the PHOENIX CDS in the consummation or completion of this Agreement; or (3) monitoring or determining the performance of the PHOENIX CDS. PHOENIX CDS

further acknowledges and agrees that upon the City's determination that a violation of this provision has occurred, the penalty imposed, at the sole discretion of the City, may include one or more of the following; (1) cancellation of any other contract(s) between the City and the PHOENIX CDS; (2) disqualification of the PHOENIX CDS from bidding or being awarded future contracts with the City for a period of 2 years; and/or (3) payment of liquidated damages to the City in the amount of \$25,000.

XI. **ENVIRONMENTAL REQUIREMENTS.**

A. **Environmental Assessment**

The City shall conduct an environmental assessment pursuant to 24 CFR, Part 58 prior to approving any requests for the release of funds by PHOENIX CDS. PHOENIX CDS understands and agrees that it may not receive any funds until the City has conducted an Environmental Assessment pursuant to 24 CFR Part 58 and approved accordingly.

B. **Lead-Based Paint Requirements**

PHOENIX CDS agrees to comply with the lead-based paint provision of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821, et seq. and the lead-based paint requirements in 24 CFR Part 92.355 and 24 CFR Part 35.

XII. **SEVERABILITY.**

If any provision of the Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XIII. **ENFORCEMENT OF THIS AGREEMENT.**

If PHOENIX CDS fails to comply with the requirements and covenants contained herein, the same shall constitute a breach of this Agreement and the City shall be entitled to all remedies under Illinois law at the time of the breach.

XIV. **SURVIVAL OF OBLIGATIONS.**

The PHOENIX CDS obligations as set forth in this Agreement shall survive the disbursement of the HOME funds and shall expire upon the expiration of the HOME Affordability Period, and PHOENIX CDS shall continue to cooperate with the City and furnish any documents, exhibits or showings as required.

XV. **WAIVER OF JURY TRIAL.**

THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROJECT OR THIS AGREEMENT.

XVI. **LIABILITY OF CITY.**

In no event shall the City be liable to PHOENIX CDS for consequential or incidental damages, including, without limitation, lost profits, whatever the nature of the breach by the City of its obligations under this Agreement or in connection with the Project, and PHOENIX CDS waives all claims for consequential and incidental damages and for all damages described in Paragraph XVII below.

XVII. **FUNDING.**

The parties acknowledge that the HOME funds are monies provided by HUD, and that the City is under no obligation to request such funds for any disbursement unless and until all necessary preconditions to disbursement have been satisfied to the City's satisfaction, and that significant time delays might result from the funding of such monies by HUD. Without limiting the generality of Paragraph XVI above, in no event shall the City be liable to PHOENIX CDS for any damages whatsoever which might result in whole or in part from any delays in funding.

[Signatures on Next Pages]

APPROVED AND EXECUTED AS OF THIS 21st DAY OF February 2023.

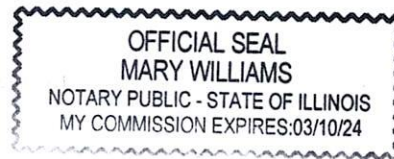
PHOENIX COMMUNITY DEVELOPMENT SERVICES,
an Illinois not for profit

By: *Christine E. Kahl*
Christine Kahl, Chief Executive Officer and President

STATE OF ILLINOIS, COUNTY OF PEORIA, SS:

The foregoing instrument was acknowledged before me, a Notary Public, in and for said county and state, this February 21, 2023 by Christine Kahl, the Chief Executive Officer and President of Phoenix Community Development Services, an Illinois non-profit, on behalf of said non-profit.

Mary Williams
Notary Public

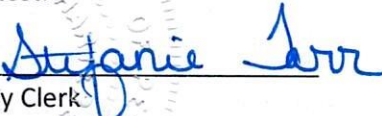


My Commission Expires: 03-10-24

CITY OF PEORIA, ILLINOIS,
an Illinois Municipal Corporation

By: 
Its City Manager

2/21/23
Date

Attest: 
City Clerk

2/22/23
Date

Approved as to Content:

Legal Department

2/22/23
Date

Approved as to Form:

Community Development Department

2/22/23
Date

THIS DOCUMENT PREPARED BY:

Patrick Hayest, Corporation Counsel

RETURN DOCUMENT TO:

*City of Peoria
Community Development Division
419 Fulton St., Suite 203
Peoria, Illinois 61602*

For Recorder Use only

**Notice of Restriction on Use of Property Pursuant to Agreement for
HOME Investment Partnership Program Funds**

Notice is hereby given that the property commonly described as:

Commonly Known As:

206 NE Madison – Madison Apartments III

Legal Description:

ORIGINAL TOWN OF PEORIA NE 1/4 SEC 9-8-8E SW 1/2 LOT 3 BLK 15 (95-16071)

Tax I.D. Number:

1809227007

Is subject to the requirements of a Sub Recipient Agreement (PROJECT: 23M01/ IDIS: 5170) between **PHOENIX COMMUNITY DEVELOPMENT SERVICES**. (“Sub Recipient”), an Illinois non-profit and the **CITY OF PEORIA** (“City”), Peoria, Illinois, a municipal corporation organized and existing under the laws of the United States of America, of the City of Peoria, in the County of Peoria, and State of Illinois, for the total investment of **Six Hundred Thousand Dollars (\$600,000.00)** of HOME Program funds provided for the construction of four (4) units.

In accordance with Section 92.252 and 92.254, Title 24 of the Code of Federal Regulations HOME Investment Partnerships Program Final Rule, the following provisions apply:

The HOME-assisted units (four (4) total floating units) in the rental housing project must be occupied only by households that are eligible as low-income families. Low-income households are defined as household who have an annual income that does not exceed 80 percent of the area median income. HOME units must also meet additional requirements as outlined in Section 92.252, including but not limited to, property conditions, site inspections and annual income certifications, in order to qualify as affordable housing.

The HOME-assisted units must meet the affordability requirements of twenty (20) years, as defined below.

HOME Affordability Period. Shall mean twenty (20) years from February 27th, 2023 ; the date the Project is identified as “completed” in HUD’s Integrated Disbursement Information System.

[Signatures on Next Page]

APPROVED AND EXECUTED AS OF THIS 21st DAY OF February 2023.

PHOENIX COMMUNITY DEVELOPMENT SERVICES,
an Illinois not for profit

By: Christine Kahl
Christine Kahl, Chief Executive Officer and President

STATE OF ILLINOIS, EXECUTED AS OF THIS _____ DAY OF _____ 20____
COUNTY OF PEORIA, SS:

~~PHOENIX COMMUNITY DEVELOPMENT SERVICES,~~
The foregoing instrument was acknowledged before me, a Notary Public, in and for said county and state, this February 21, 2023 by Christine Kahl, the Chief Executive Officer and President of Phoenix Community Development Services, an Illinois non-profit, on behalf of said non-profit.

By: Mary Williams
Notary Public for Christine Kahl, Chief Executive Officer and President



My Commission Expires: 3/10/24

~~STATE OF ILLINOIS, EXECUTED AS OF THIS _____ DAY OF _____ 20____
COUNTY OF PEORIA, SS:~~

~~The foregoing instrument was acknowledged before me, a Notary Public, in and for said county and state, this _____, 20____ by Christine Kahl, the Chief Executive Officer and President of Phoenix Community Development Services, an Illinois non-profit, on behalf of said non-profit.~~

~~By: _____
Notary Public for _____~~

~~My Commission Expires: _____~~

~~STATE OF ILLINOIS, EXECUTED AS OF THIS _____ DAY OF _____ 20____
COUNTY OF PEORIA, SS:~~

CITY OF PEORIA, an Illinois municipal corporation,

By: 
Its City Manager

2/21/23
Date

Attest:


City Clerk

2.22.23
Date

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