

**COMMUNITY DEVELOPMENT BLOCK GRANT UPPER STORY RENTAL HOUSING  
CONVERSION PROGRAM DEVELOPMENT AGREEMENT**

THIS AGREEMENT (the "Agreement") is by and between the City of \_\_\_\_\_, Iowa (herein called the "City") and \_\_\_\_\_ . (herein called the "Developer").

WITNESSETH THAT:

WHEREAS, the effective date of this Agreement is \_\_\_\_\_, 20\_\_ ; and

WHEREAS, the City received Community Development Block Grant (CDBG) funds from the Iowa Economic Development Authority (IEDA) under the Title I of the Housing and Community Development Act of 1974 and 24 CFR 570.480 et. Seq. for the rehabilitation of un-occupiable residential units in existing buildings or conversion of existing space into new residential units in existing buildings in spaces that are currently unoccupied ("CDBG-Upper Story"); and

WHEREAS, the City is the applicant to IEDA for said funds; and

WHEREAS, Developer will own, develop and manage the Project; and

WHEREAS, these funds will be used to assist in the conversion of existing buildings into rental housing Units by either rehabilitating un-occupiable units or converting existing non-residential spaces into new rental housing Units, all in spaces that are currently vacant and un-occupiable at (address) as depicted in Exhibit A; and

WHEREAS, the City has been designated as the recipient of these funds by IEDA and will receive, administer, and disburse these funds; and

WHEREAS, the City has relied upon the representations of the proposed activities by the Developer who will undertake the community development activities in accordance with the original funding application submitted by the City to the IEDA; and

WHEREAS, this project shall be subject to all the terms and conditions specified in the contract by and between the IEDA and the City for the implementation of the CDBG-Upper Story funds, in the attached Exhibit A, and all governing regulations set by City ordinances and codes; and

NOW, THEREFORE, it is agreed between the parties hereto that:

I. SCOPE OF SERVICE

A. Activities

1. As a condition of receiving up to \$\_\_\_\_\_, the Developer will be responsible for developing, in a manner satisfactory to the City and IEDA and consistent with any standards required by this Agreement or federal or state laws and regulations, conversion of existing buildings into rental housing Units by either rehabilitating un-occupiable units or converting non-residential existing spaces into new rental housing Units, all in spaces that are currently vacant and un-occupiable at the project located at (address) containing \_\_\_\_\_ units (the

“Project”). Unoccupiable units are defined as existing space that is not currently able to be occupied or would not be occupiable with minimal minor improvements and have been unoccupied for at least 5 years and will require major improvements and possible code updates to allow someone to reside in the unit. Additionally, the number of units in the project that must be leased to a persons and/or households at or below 80% of the area median family income, as determined by the U.S. Department of Housing and Urban Development must be the greater of (1) at least 51% of the \_\_\_\_\_ rental UNITS (or \_\_\_\_ units) or (2) a percentage of units equal to the percentage of the total project cost paid by CDBG funds.

B. Funding

1. The City agrees to lend the project an amount not to exceed \$ \_\_\_\_\_ in CDBG-Upper Story funds, as more specifically set out in Exhibit B: Mortgage, Exhibit C: Promissory Note, Exhibit D: Assignment of Leases and Rents (as applicable), and Exhibit E: Agreement for Covenants and Restrictions (this Agreement, the Mortgage, the Promissory Note, the Assignment of Leases and Rents, and the Covenants and Restrictions shall collectively be known as the “Loan Documents”), which are attached hereto and by this reference made a part hereof as if set out in full in this section. The Mortgage and the Assignment of Leases and Rents securing the CDBG-Upper Story funds forgivable loan (non-receding) may be recorded in junior position to the principal conventional loan but must be recorded in senior position to any and all other funding in the project. The Agreement for Covenants and Restrictions should be filed prior to any mortgages being filed.
2. The Developer shall receive the CDBG-Upper Story Funds and use the proceeds thereof to pay eligible costs incurred by the Developer in connection with the construction and acquisition of the Project. The funding of the CDBG-Upper Story Funds and any portion thereof is expressly conditioned upon the Developer complying with all of the program requirements and the terms of this Contract. Proceeds of the CDBG-Upper Story Funds may only be applied to eligible uses. No costs incurred prior to the Effective Date of this Agreement may be included under this Agreement without prior written approval.
3. No CDBG-Upper Story funds or non-CDBG-Upper Story funds may be committed to the project until the City and the Developer have secured environmental approval from the IEDA, as provided in HUD regulation 24 CFR Part 58. In addition, pending environmental approval and pursuant to 24 CFR Part 58.22, no activities may be undertaken that may limit the choice of reasonable alternatives.
4. The award proceeds will be paid to Developer to be applied against the approved project expenses. Developer will have no authority to direct any of the funds elsewhere or to withdraw any of the funds without the express written permission of the City.
5. No CDBG-Upper Story funds may be used to support any Federal, state, or local

projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public purpose.

C. Closing

1. Prior to or at the time of closing on/filing the CDBG-Upper Story Loan, the Developer shall:
  - (i) Execute and deliver this Agreement and the Exhibits, including the note, mortgage, assignment of leases and rents, and covenants and restrictions, to the City.
  - (ii) Have submitted a firm written commitment from each source of funds to the Project identified in Exhibit A. Each commitment shall include the amount, terms, estimated time of contribution, and conditions of the financial commitment, as well as any schedules. These commitments must be in a form and amount acceptable to the City. The Developer shall report any changes in these contributions to the City immediately, whether the change is made by the Developer or any other party.
  - (iii) Provide an attorney's title opinion regarding the land.
  - (iv) Provide a budget for the Project acceptable to the City.
  - (v) Provide the City with the due diligence materials requested by the City, all in form and substance reasonably satisfactory to the City.
  - (vi) Provide a construction schedule.

D. Disbursements

1. The City shall use the CDBG-Upper Story Funds it receives from IEDA and HUD with respect to the Project to reimburse the Developer for eligible costs incurred in connection with the development of the Project to the extent such costs are properly submitted to the City in accordance with the procedures set forth in this Agreement and all other terms and conditions of this Agreement. The Developer may not request a disbursement of CDBG-Upper Story Funds from the City until such funds are needed to pay eligible costs of the Project. Accordingly, the amount of each draw request must be limited to the amount of money needed to pay eligible costs actually incurred by the Developer at the time of the draw request, may not include amounts for prospective or future needs, and may not be placed into escrow accounts or advanced in lump sums to the Developer.
2. All claims for disbursement must be processed in accordance with IEDA's Policies and Procedures manual for this grant program. Before the Developer may request disbursement, the Developer shall submit to the City the following information:
  - (i) Signed Construction Contract(s) and contractor statements.
  - (ii) Building permits for the Project.
  - (iii) Required environmental clearance.
  - (iv) Remainder of CDBG-Upper Story loan documents properly signed or executed with due authority.
  - (v) Proper recordation with the applicable county recorder and/or

Iowa Secretary of State of the mortgage, UCC-1, assignment of leases and rents, covenants and restrictions, and any other documents required by the City.

- (vi) Contractor and subcontractor clearance eligibility requests.
3. The Developer shall provide a draw request for CDBG-Upper Story Funds to the City using the procedures and forms specified by the City in coordination with IEDA. All eligible costs to be reimbursed must have adequate and itemized supporting documentation, including copies of receipts. The eligibility of any cost shall be determined by the City, in its sole discretion. A draw request must show expenses in whole dollar amounts. The Developer shall round down for any expense not in a whole dollar amount. A draw request must be equal to or greater than five hundred dollars (\$500.00), except for a final draw request. Further, a final draw request shall not be paid by the City until at least one monitoring visit of the Project has been conducted and any required or requested project reports and documents have been reviewed and approved by the City. The Developer shall not charge or allow CDBG-Upper Story Funds to pay any flat rate or estimate for service, meaning that any expense must be the actual cost for providing such good or service.
  4. Ten percent of the CDBG-Upper Story Funds will be withheld until:
    - (i) the Project has been constructed or rehabilitated,
    - (ii) the CDBG-Upper Story Units have been rented to eligible tenants in compliance with program guidance.
    - (iii) a monitoring visit has been satisfactorily completed by the City and/or IEDA.
  5. The CDBG-Upper Story Funds must be used to pay eligible costs. The City shall determine the Developer's compliance with this requirement at the time each draw request of CDBG-Upper Story Funds is made based upon a review of the draw request. The City may request lien waivers as necessary and establish such additional limitations on the expenditure of CDBG-Upper Story Funds as it determines are appropriate to ensure compliance with program requirements.
  6. In the event that the City shall determine that the CDBG-Upper Story Funds Grant have been used to pay ineligible costs, whether such costs are ineligible costs because they are not approved as eligible costs in accordance with this Agreement or because they violate program requirements, the City shall provide the Developer with written notice thereof and the Developer shall pay to the City, in immediately available funds within ten Business Days from the date of said notice, an amount equal to that portion of the CDBG-Upper Story Funds used to pay ineligible costs.
  7. In the event that the City makes a determination that the Developer has failed to expend (or is unlikely to expend) sufficient CDBG-Upper Story Funds on eligible costs within the prescribed expenditure deadlines, the City shall have no obligation to disburse any funds to the Developer under this Agreement and may, at the election of the City, recover or offset any CDBG-Upper Story Funds

actually paid to the Developer with respect to the Project.

8. The City reserves the right to withhold funds until the City has received, reviewed, and approved all items, such as permits or licenses from other local, state or federal agencies, which may be required prior to Project commencement.
9. If the total amount of funding for a Project has not been requested by the Developer within 60 Days after its estimated construction completion date, then the City shall be under no obligation for further disbursement. Upon the submission and disbursement of a final Draw Request, any remaining CDBG-Upper Story Funds shall not be available.
10. Upon expiration of this Agreement, any remaining CDBG-Upper Story Funds will no longer be eligible for reimbursement to the Developer.
11. The Developer shall cooperate with the City in obtaining and providing any additional documentation that may be required by the City to approve the request for CDBG-Upper Story Funds.
12. The City will not make any payments to the Developer for costs that:
  - (i) are Ineligible Costs or otherwise prohibited under Program Requirements;
  - (ii) are not strictly in accordance with the terms of this Agreement;
  - (iii) were requested and/or incurred before the signing of this Agreement without prior City approval;
  - (iv) were requested and/or incurred after termination of this Agreement; or
  - (v) were requested during the occurrence and continuation of an uncured Event of Default.
13. The City is authorized to make modifications to the Draw Request procedure and to establish additional requirements for payment of the CDBG-Upper Story Funds to the Developer as may be necessary or advisable for compliance with all Program Requirements.

E. Repayments

There will be no repayments required on the \$\_\_\_\_\_ of CDBG-Upper Story funds if all affordability and long-term monitoring conditions are fulfilled. Terms and conditions are further set forth in the Loan Documents. If the assisted rental project is sold or transferred to an alternate use during the compliance period following completion and acceptance, the entire amount of the CDBG-Upper Story forgivable loan shall be repaid.

F. Default

1. Any of the following events shall constitute an “Event of Default” under this Agreement:
  - (i) a breach by the Developer of any of its representations,

covenants, or warranties contained in this Agreement or the Loan Documents or in the performance of any of its obligations under this Agreement, in either event that (a) has or might reasonably be expected to have a material adverse impact on the operation of the Project, and (b) is not cured within ten Business Days in the case of a monetary default or 20 Business Days in the case of a non-monetary default following notice of such breach or default from the City to the Developer, provided, however, that if a non-monetary default cannot reasonably be cured within 20 Business Days and the Developer commences a cure within 20 Business Days and proceeds in good faith to effect such cure thereafter, the cure period with respect to such breach or default shall be extended for up to an additional 30 Business Days;

- (ii) a representation, warranty or statement made or furnished to the City by, or on behalf of the Developer in connection with the Application or this Agreement to induce the City to make an award to the Developer shall be determined by the City to be incorrect, false, misleading or erroneous in any material respect when made or furnished and shall not have been remedied to the City's satisfaction within 30 Days after written notice by the City is given to the Developer; or
- (iii) the Developer fails to make a payment when due under the terms of this Agreement within ten days following written notice of such overdue payment is given to the Developer by the City; or
- (iv) the Developer demonstrates a lack of capacity to carry out the approved Project in a timely manner, in the sole discretion of the City; or
- (v) the commencement of foreclosure proceedings with respect to any mortgage, which have not been withdrawn or dismissed within 30 Days after the date of such commencement; or
- (vi) a violation of any law, regulation, or order applicable to the Developer or the Project that has or might reasonably be expected to have a material adverse impact on the operation of the Project and is not cured within the applicable cure period, if any, provided in such law, regulation, or order; or
- (vii) gross negligence, fraud, willful misconduct, misappropriation of funds, or criminal activity other than a simple misdemeanor by the Developer or any Affiliate of the Developer providing services to or in connection with the Developer or the Project; or
- (viii) the estimated construction completion date as set forth in the Construction Schedule has been delayed by more than 30 Days and (a) the Developer has failed to submit an acceptable Action Plan to the City or (b) the City determines such delay will prevent the Developer, the Project or the City from complying with the Program Requirements; or
- (ix) the Developer is debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD; or
- (x) repeated or prolonged failure to provide any required reports; or

- (xi) the Project fails to meet a National Objective or to maintain the Program Requirements for the Affordability Period(s) of the CDBG-Upper Story Units for the entire affordability period; or
  - (xii) Developer fails to satisfy or appeal any judgment against Developer.
2. In the event of a default, the City shall follow 2 CFR part 200 for suspension or termination of this Agreement. This includes temporarily withholding cash payments, disallowing all or part of the costs of the Project, wholly or partly suspending or terminating this Agreement, withholding further awards from CDBG-Upper Story, requiring the immediate repayment of the full amount of CDBG-Upper Story Funds disbursed, or taking any other remedies that may be legally available. Costs incurred by the Developer during a suspension or after termination of this Agreement are not allowable for reimbursement unless the City, in its sole discretion, expressly authorizes reimbursement.
3. The City shall have the right to exercise any of the following remedies upon an Event of Default:
- (i) temporarily suspend making disbursements of CDBG-Upper Story Funds under this Agreement pending correction of the deficiency or default by the Developer;
  - (ii) require the repayment of the CDBG-Upper Story Loan;
  - (iii) declare the Developer and its principals “not in good standing” with respect to the City;
  - (iv) cease making any further payments of CDBG-Upper Story Funds under this Agreement;
  - (v) terminate this Agreement;
  - (vi) require the immediate repayment of CDBG-Upper Story Funds advanced pursuant to this Agreement;
  - (vii) require that the Developer, the property manager, the Contractor or any other party providing services to the Developer to be replaced;
  - (viii) “Reserved”
  - (ix) draw upon and apply any escrows and/or reserve accounts in accordance with their terms;
  - (x) exercise any rights it may have under the CDBG-Upper Story Loan Documents, including, but not limited to, foreclosure of the Note and Mortgage thereunder, in order to assure for repayment of the CDBG-Upper Story Funds; and
  - (xi) exercise any other rights and remedies that may be available under law or in equity.
4. In addition to the remedies described, the Developer shall, upon demand by the City following an Event of Default, repay any amount of CDBG-Upper Story Funds previously disbursed to the Developer under the terms of this Agreement.
5. The City may defer the enforcement of remedies upon the occurrence of an

Event of Default for such period as it determines appropriate, if it determines that any Lender is taking appropriate measures to correct the circumstances giving rise to the Event of Default.

6. The City may consult with and advise any Lender as to its intention to exercise remedies hereunder.
7. Each right and remedy provided in this Agreement is distinct from all other rights or remedies under this Agreement, the Loan Documents, or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.
8. The City may provide a Lender with a copy of any written notice of default provided to the Developer pursuant to the terms of this Article. The City hereby agrees that any cure of any default made or tendered by any Lender shall be deemed to be a cure by the Developer and shall be accepted or rejected on the same basis as if such cure were made or tendered by the Developer.
9. The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Agreement is to assure compliance of the Project and the Developer with the Program Requirements, AND BY REASON THEREOF, THE DEVELOPER IN CONSIDERATION FOR RECEIVING THE CDBG-UPPER STORY LOAN FOR THIS PROJECT HEREBY AGREES AND CONSENTS THAT THE CITY, IEDA, HUD AND/OR THE RESIDENTS OF THE PROJECT SHALL BE ENTITLED, FOR ANY BREACH OF THE PROVISIONS HEREOF, AND IN ADDITION TO ALL OTHER REMEDIES PROVIDED ABOVE OR BY LAW OR IN EQUITY, TO ENFORCE SPECIFIC PERFORMANCE BY THE DEVELOPER AND ITS SUCCESSORS AND ASSIGNS OF ITS OBLIGATIONS UNDER THIS AGREEMENT IN ANY STATE COURT OF COMPETENT JURISDICTION FOR ANY AND ALL BREACH OF THE CONDITIONS AND RESTRICTIONS HEREOF. The Developer hereby further specifically acknowledges that the beneficiaries of the Developer's obligations hereunder cannot be adequately compensated by monetary damages in the event of any default hereunder.
10. If the City determines at any time that the Developer has expended funds for Ineligible Costs, the Developer will be notified of the questioned costs and given an opportunity to justify questioned costs prior to the City's final determination of the disallowance of costs. Refer to Section 7.4(B) for repayment. If it is the City's final determination that costs previously paid by the City are Ineligible Costs under the terms of this Agreement, the expenditures will be disallowed, and the Developer shall repay to the City all Ineligible Costs.

G. Affordability

1. The Developer agrees that maintain, throughout the affordability period, that the greater of (1) at least 51% of the rental units or (2) a percentage of units equal to the percentage of the total project cost paid by CDBG funds, whichever is

greater, will be leased to persons and/or households at or below 80% of the area median family income, as determined by the US Department of Housing and Urban Development. The maximum (gross) rent limits allowed on the CDBG-Upper Story Units shall not exceed the most current HOME Program 65% rent limits in accordance with 24 CFR 92.252(a), including the subtraction of essential tenant utilities from the rental amount. The remaining units can be rented without income and rent restrictions. Consideration must be given to keeping all units in the project, both assisted and non-assisted, consistent with each other in terms of bedroom sizes, square footage, similar design features and similar amenities.

The income of each CDBG-Upper Story tenant must be determined initially in accordance with "affordable housing" requirements as defined from time to time by the United States Department of Housing and Urban Development (HUD). Initially incomes must be determined by using third party verification per HUD requirements using the Part 5 (24 CFR 5.609) income definition of inclusions and exclusions. The income of each tenant in a unit assisted with CDBG-Upper Story funds should be renewed annually for the term of affordability (five years). In addition to tenant income data, the Developer must also provide documentation on their compliance efforts with their Affirmative Marketing Plan.

2. The CDBG-Upper Story units will remain affordable rental housing for a period of three years (the "affordability period") from the time of project completion, occupancy and the provision of final demographic information for tenants to the City and IEDA. Throughout this period of affordability, the Developer or their designees shall agree to periodic reporting requirements, compliance monitoring and inspections for tenant incomes, tenant rents on the affordable units, appropriate unit mix and property standards compliance.
3. The City, at the direction of IEDA, who has determined that the subject property has failed to comply with the affordability requirement during the period of affordability referred to above or the rental time-period requirement, will send a demand letter to the Developer to repay the loan within 60 days from receipt of said letter.

#### H. Inspections

1. The City or its agents may perform periodic inspections at any reasonable time to ensure compliance with this agreement and the Loan Documents. The City or its agents shall perform a final inspection to certify project completion prior to final disbursement of the loan proceeds. The Developer agrees to keep this project in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals and additions in a timely manner.
2. Prior to disbursement of loan proceeds or for any other purpose in connection with the completion of the improvements, the City or its agents shall have free access and right of entry at any reasonable time of the day to inspect all or any portion of the property and the improvements. These inspections are for the

benefit of the City as lender, to assure that the loan proceeds are being expended on the property in accordance with the approved loan application and the construction contract and for the benefit of the local government to assure that local law is being complied with in the project. In the event of any such inspection, the City may inform the Developer of any noncompliance with respect to the construction contract, but the City shall not issue direct orders or instructions to the contractor or subcontractor performing the work, except as authorized by the Developer. The Developer shall take all steps necessary to assure that the City or its agents are permitted to examine and inspect such work, and all contracts, materials, equipment, fixtures, payrolls and conditions of employment pertaining to the work, and all relevant data, books, and records of the Developer.

I. Timing

The Developer agrees to use their good faith efforts to obtain a building permit for the project and begin construction by \_\_\_\_\_. They also agree to use their good faith efforts to complete the project on or before the end date of the City's Contract with IEDA.

II. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER

The Developer hereby represents, warrants and covenants to the City that the following are true as of Execution and will be true on the due date of each disbursement of CDBG-Upper Story Funds, and as applicable, throughout the term of this Agreement:

- A. The Developer is a duly organized \_\_\_\_\_ validly existing under the laws of the state of its organization, is authorized to do business in the State of Iowa and has full power and authority to perform its obligations under this Agreement.
- B. No litigation, demand, investigation, claim or proceeding against the Developer or any other litigation or proceeding directly affecting the Project is pending or, to the best knowledge of the Developer, threatened, before any court, administrative agency or other Governmental Authority that would, if adversely determined, have a material adverse effect on the Developer or the construction, use and operation of the Project. The Developer and its Project Team shall promptly notify the City of the initiation of any claims, lawsuits or proceedings brought against the Developer.
- C. No default by the Developer or any Affiliate thereof having any relationship with the Project has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the financing documents for the Project or other documents or instruments governing the development, use, occupancy, and operation of the Project.
- D. The Developer has not entered into any verbal or written contracts, agreements or arrangements of any kind which are inconsistent with this Agreement.
- E. All material building, zoning, health, safety, business and other applicable certificates, permits and licenses necessary to permit the construction, use, occupancy and operation

of the Project have been or will, at the time required, be obtained and maintained (other than, prior to completion of construction of the Project or a specified portion thereof, such as are issuable only upon completion of construction or such specified portion thereof); and the Developer has not received any notice nor has any knowledge of any violation with respect to the Project of any law, rule, regulation, order or decree of any Governmental Authority having jurisdiction which would have a material adverse effect on the Project or the construction, use or occupancy thereof, except for violations which have been cured or can be cured within any applicable cure period, and are in the process of being cured, and notices or citations which have been withdrawn or set aside by the issuing agency or by an order of a court of competent jurisdiction.

- F. Before disbursement of CDBG-Upper Story Funds, the Developer will have a fee simple interest in the Project and good and marketable title thereto, free and clear of any liens, charges or encumbrances other than the encumbrances the Developer is permitted to create under the terms of this Agreement, matters of title as of the effective date of the City's title opinion, and mechanics' or other liens that have been bonded against (or as to which other cash equivalent security has been provided) in such a manner as to preclude the holder of such lien from having any recourse to the Project or the Developer for payment of any debt secured thereby.
- G. No Event of Default has occurred and is continuing.
- H. No Event of Bankruptcy has occurred as to the Developer.
- I. As of the date of Execution, all reserves and accounts required to be maintained by the Developer under the terms of this Agreement are currently funded (or will be funded at the time(s) required) up to the specified levels.
- J. The Developer will complete the Project.
- K. All utilities are, or will be, available to the Project, including sanitary and storm sewers, water, gas (if applicable) and electricity.
- L. The sources of funds available to the Developer are sufficient to enable the Developer to complete construction of the Project in accordance with the Plans and Specifications.
- M. All financial statements and related materials concerning the Project provided to the City are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.
- N. Unless the City consents to a transfer of the Project by Developer, the Project will continue to be owned and operated by the Developer through the expiration of this Agreement or, if later, the date, (if any), through which the Developer is required to own and operate the Project pursuant to any of the documents governing the use and operation of the Project.
- O. Tenants for the residential units in the Project will be screened and selected from a pool

of eligible tenants based on uniformly applied tenant selection criteria that are commonly employed by other property owners in determining tenant eligibility in similar projects to the Project throughout the Affordability Period(s), and:

- P. No preferences or discrimination will be employed in selecting tenants (i.e., no discrimination based on religion, race, color, creed, national origin, ancestry, legal residency, sex, sexual preference or orientation, gender identity, age, physical handicap, medical condition, blindness or other physical disability, acquired immune deficiency syndrome (AIDS), family status, marital status, pregnancy, childbirth or related medical condition, or membership in the sponsoring organization) as will be consistent with federal housing policy governing nondiscrimination as determined under HUD rules and regulations.
- Q. Each of the representations and disclosures made by the Developer to the City in any application for CDBG-Upper Story Funds is true and correct as of the date hereof. Each of the covenants, agreements and conditions contained in the such applications have been duly performed or satisfied by the Developer to the extent that performance or satisfaction is required on or prior to the date of Execution, and the Developer has no reason to believe that the covenants, agreements, and conditions required to be performed or satisfied after the date hereof will not be performed or satisfied in a timely manner.
- R. The Project is not located in a special flood hazard area identified by the Federal Emergency Management Agency (FEMA).
- S. The Developer shall not employ, award a contract to, or fund any person that has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.
- T. No federal appropriated funds have been paid or will be paid, by or on behalf of the Developer, to any Person for influencing or attempting to influence an officer or employee of any 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/or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- U. No funds have been paid for influencing or attempting to influence an officer or employee of a Member of Congress in connection with a federal contract, grant, loan and/or cooperative agreement benefiting the Developer. To the best knowledge of the Developer, the Developer has complied with all restrictions, certifications and disclosure requirements contained in the Byrd amendment to the fiscal 1990 appropriations measures for the United States Department of the Interior (P.L. 101-121) and with any guidelines and rules issued by any federal entity in connection therewith, if applicable.
- V. Neither the Developer nor any of its partners, members, managers, officers, directors, or employees, nor, to the best knowledge of the Developer, any of the Developer Parties

has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.

- W. To the best knowledge of the Developer, no Developer or Developer Parties, nor any of the Developer's property is or has ever been subject to or a party to or bound by any agreement or other arrangement with any person who has been debarred, suspended, proposed for debarment, or placed on ineligibility status by HUD.
- X. The Developer will prevent, and has instituted or will institute, (and will update from time to time to correspond to changes in circumstances and changes in applicable laws and regulations) policies and procedures to prevent, any circumstance or event described in subclauses T. and V. above.
- Y. The Developer and all other applicable Developer Parties have not engaged and shall not engage in any act or omission that would violate anti-money-laundering laws, including but not limited to 18 USC § 1956; have complied or will comply with requirements for instituting an anti-money laundering compliance program required under 31 USC § 5318(h) and applicable to all "financial institutions" as defined in 31 USC § 5312(a)(2); and have instituted or will institute policies and procedures and use commercially reasonable due diligence to identify and report Suspicious Transactions to relevant U.S. Government officials. "Suspicious Transactions" that may require reporting include, but are not limited to, (i) individual or related transactions in which a third-party provides payment in U.S. or foreign currency in excess of \$10,000 that may require reporting under 31 USC § 5331 and 26 USC § 6050I; (ii) any transaction where the Developer or any Developer Party knows, suspects, or has reason to know that the transaction (A) is for an illegal purpose, including but not limited to money laundering; (B) is otherwise an attempt to disguise funds derived from illegal activity or evade reporting requirements under U.S. law; or (C) is suspicious because the transaction appears to serve no business or lawful purpose.
- Z. "The Recipient certifies, to the best of his or her knowledge and belief, that:
  - i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any 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 any Federal contract, grant, loan, or cooperative agreement.
  - ii. 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 or employee, or an employee of a Member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.
  - iii. The Recipient shall require that the language of this certification 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.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

### III. NOTICES

Communication and details concerning this Agreement shall be directed to the City Clerk at (full address) and directed to the Developer at (full address).

### IV. SPECIAL CONDITIONS

#### A. Compliance

The Developer agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this agreement.

#### B. Governing Law

The Developer agrees to comply with the requirements of the Housing and Community Development Act of 1974, Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning the CDBG Program, all federal regulations and policies issued pursuant to these regulations, and all notices issued in the Federal Register pertaining to these CDBG-Upper Story funds. The Developer further agrees to utilize funds available under this agreement to supplement rather than supplant funds otherwise available.

#### C. IEDA

The project shall be subject to all the terms and conditions specified in the contract by and between the IEDA and the City for the implementation of the CDBG-Upper Story program, and all governing regulations set by City ordinances and codes.

### V. GENERAL CONDITIONS

#### A. 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 Developer shall at all times remain an independent contractor with respect to the services to be performed under this agreement. The City shall not be responsible for payment of Unemployment Compensation, FICA, retirement, life and/or medical insurance, and Workers Compensation Insurance for the employees of the Developer.

#### B. Hold Harmless

The Developer shall hold harmless, defend and indemnify the City, the State of Iowa

and the Iowa Economic Development Authority, and their respective Board members, employees, agents, elected and appointed officials, harmless against all obligations, claims, losses, costs, damages, expenses (including the costs of the investigation), deficiencies, demands, and liabilities of whatsoever nature or kind including, but not limited to, attorney fees, including the reasonable value of time of the Attorney General's office, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgment and, any loss from a judgment directly or indirectly resulting from, arising out of, or related to the subject matter of this agreement.

C. Workers' Compensation

The Developer shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this agreement.

D. Insurance and Bonding

The Developer shall carry sufficient insurance coverage to protect real estate and or personal property related to the Project from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the City. The Developer shall comply with the bonding and insurance requirements in Subpart C of OMB Circular A-110. The Developer shall have the City and the IEDA identified as additional insureds on any insurance policy it takes out related to the Project during construction and throughout the affordability period.

E. Grantor Recognition

The Developer shall insure recognition of the role of the grantor agency in providing services through this agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Developer will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement. Specifically, the Developer must comply with the grantor recognition requirements as determined by the IEDA.

F. Amendments

The City or the Developer may amend this agreement at any time provided that such amendments make specific reference to this agreement, and are executed in writing, and signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this agreement, nor relieve or release the City or Developer from their obligations under this agreement.

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

G. Suspension or Termination

Either party may terminate this agreement at any time by giving written notice to the

other party of such termination and specifying the effective date thereof at least 30 days before the effective date of such termination. In the event of any termination for convenience, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Developer under this agreement shall, at the option of the City, become the property of the City, and the Developer shall be entitled to receive just and suitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

The City may also suspend or terminate this agreement, in whole or in part, if the Developer 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 the Developer ineligible for any further participation in city contracts, in addition to other remedies as provided by law. In the event there is probable cause to believe the Developer is in noncompliance with any applicable rules or regulations, the City may withhold up to fifteen (15) percent of said funds until such time as the Developer is found to be in compliance by the City or is otherwise adjudicated to be in compliance.

H. Retention

The Developer shall retain all records pertinent to expenditures incurred under this agreement for a period of three (3) years after the date the state CDBG contract has been closed by HUD. Records for non-expendable property acquired with funds under this agreement shall be retained for five (5) years after final disposition of such property. Additional information on retention is contained in Article 9 of the original IEDA agreement.

I. Disclosure

The Developer understands that client information collected under this agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City's or Developer's responsibilities with respect to services provided under this agreement, is prohibited unless written consent is obtained from such person receiving the service or, in the case of a minor, that of a responsible parent/guardian.

J. Property Records

The Developer shall maintain real property inventory records which clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(7) and 570.505.

K. National Objectives

The Developer agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this agreement meet one or more of the CDBG program's national objective, Housing Activities, as defined in 24 CFR Part 570.483.

L. Close-Outs

Developer obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to:

making final payments, disposing of program assets, and determining the custodianship of records.

M. Reversion of Assets

Upon the expiration of this agreement, the Developer shall transfer to the City any CDBG-Upper Story funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG-Upper Story funds, as well as ensure that any real property acquired or improved with CDBG-Upper Story funds in excess of \$25,000 meets all requirements specified in 24 CFR 570.503(b)(7).

N. Building Standards

The Developer shall meet all applicable local codes, ordinances, zoning, and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) at the time of completion and for the duration of the Affordability Period. The Developer agrees to follow the state building code if no local codes are in place. The Developer agrees to meet the industry-recognized green building standard as outlined in IEDA's baseline Green Streets Criteria if Green Streets funding was awarded to said project.

O. Audits and Inspections

All Developer records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, the Iowa Economic Development Authority, the Federal Government, or any of their designees at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Developer within 30 days after receipt by the Developer. Failure of the Developer to comply with the above audit requirements will constitute a violation of this agreement and may result in the withholding of future payments. The Developer hereby agrees to have agency audit(s) conducted in accordance with the Single Audit, formerly known as OMB Circular A-133.

P. Procurement

The Developer shall comply with 24 CFR 85.36 ("Common Rule") and the current IEDA policy concerning the purchase of equipment and shall maintain an inventory record of all non-expendable personal property as defined by such policy as may be procured with funds provided herein.

Q. Conflict of Interest

The Developer shall comply with the conflict-of-interest policy found at 24 CFR 570.489(h). Specifically, the employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of Developers who exercise or have exercised any functions or responsibilities with respect to CDBG-Upper Story activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-Upper Story-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

## VI. ADMINISTRATIVE REQUIREMENTS

### A. Applicable Laws

The Developer certifies and assures that the project will be conducted and administered in compliance with all applicable Federal and State laws, regulations and orders. Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. The Recipient certifies and assures compliance with the applicable orders, laws and implementing regulations, including but not limited to:

1. Financial Management guidelines issued by the U.S. Office of Management and Budget, OMB Circular A-133 (“Single Audit Act Amendment of 1996”), OMB Circular A-122 (“Cost Principles for Nonprofit Organizations”), OMB Circular A-87 (“Principles for Determining Cost Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments”).
2. Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.); and regulations which implement these laws,
3. Title VI of the Civil Rights Act of 1964 as amended (Public Law 88-352; 42 U.S.C. 2000d et seq.); Title VIII of the Civil Rights Act of 1968 as amended (Public Law 90-284; 42 U.S.C. 3601 et seq.); the Iowa Civil Rights Act of 1965; Iowa Code Section 19B.7, and Executive Order #34, dated July 22, 1988; Iowa Code Chapter 216, Presidential Executive Order 11063, as amended by Executive Order 12259; Presidential Executive Order 11246, as amended; Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); the Age Discrimination Act of 1975 as amended (42 U.S.C. 6101 et seq.); the Americans with Disabilities Act, as applicable, (P.L. 101-336, 42 U.S.C. 12101-12213); and related Civil Rights and Equal Opportunity statutes; and regulations which implement these laws.
4. Fair Housing Act, Public Law 90-284. The Fair Housing Act is part of Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C. 3601 et seq.); Section 109 of the Title I of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u) (24 CFR 75); and regulations which implement these laws.
5. Department of Housing and Urban Development regulations governing the CDBG program, 24 Code of Federal Regulations, Part 570. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235) and implementing regulations.
6. Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule (24 CFR Part 35, et al.), including the identification and evaluation of lead-based paint hazards and implementation of lead-based paint hazard control measures. To the extent that lead-based paint is

located in any existing building at the project, the Developer shall provide the City with a plan for handling such lead-based paint in a safe manner and in accordance with the foregoing regulations and comply with the plan during any construction at the project.

7. Davis-Bacon Act, as amended (40 U.S.C. 276a – 276a-5) under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); the Copeland Anti-Kickback Act (18 U.S.C. 874); the Department of Defense Reauthorization Act of 1986; and regulations which implement these laws. The Davis Bacon Act and the Contract Work Hours and Safety Standards Act only apply to residential projects if the project is for 8 or more units.
8. National Environmental Policy Act of 1969 and implementing regulations.
9. National Historic Preservation Act of 1966, as amended (16 USC 70) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the PROJECT.
10. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA)(42 U.S.C. 4601 – 4655) and implementing regulations; Section 104(d) of the Housing and Community Development Act of 1974, as amended, governing the residential anti-displacement and relocation assistance plan; and Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, governing optional relocation assistance.
11. Iowa CDBG Program Administrative rules adopted by the Iowa Department of Economic Development, 261 Iowa Administrative Code, Chapter 23, to the extent applicable to the Program and not in conflict with the Program rules.
12. Financial and Program Management guidelines issued by the Iowa Department of Economic Development, the Iowa Housing Fund Management Guide and the IEDA Audit Guide, as applicable.
13. Government-wide Restriction on Lobbying Certification [Section 319 of Public Law 101-121] and implementing regulations.
14. Fair Labor Standards Act and implementing regulations
15. Hatch Act (regarding political partisan activity and federally funded activities) and implementing regulations.
16. Citizen participation, hearing and access to information requirements found under sections 104(a)(2) and 104(a)(3) of Title I of the Housing and Community Development Act of 1974, as amended and as modified by the waivers and alternative requirements published in the Federal Register on September 11, 2008.

17. Subsection 104(I) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the prohibition of the use of excessive force in nonviolent civil rights demonstrations and the enforcement of state and local laws on barring entrance to or exit from facilities subject to such demonstrations.
18. Drug-Free Workplace Act.
19. All Federal law and regulations described in 24 CFR subpart K.
20. BUILD AMERICA, BUY AMERICA (BABA). The Grantee/Recipient and Owner/Developer must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grantee's infrastructure project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

## VII. PERSONNEL AND PARTICIPANT CONDITIONS

### A. Reporting and Monitoring: Hiring Practices during Construction

1. The Developer and their contractors must comply with the Equal Employment Opportunity, Executive Order 11246, as amended (41 CFR Part 60) prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex familial status or national origin and Section 3 of the Housing and Urban Development Act of 1968 as amended (12 USC 1701u) that requires to the greatest extent feasible, opportunities for training and employment arising from the funding provided to be offered low-income persons residing in the program service area. Also to the greatest extent feasible, contracts for work to be performed will be awarded to Certified Section 3 business concerns.
2. The Developer agrees to comply with the Section 3 requirements as applicable. Section 3 requirements provide that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the areas of the project. The Developer or their contractors will be required to provide information related to labor hours worked on the project, and the income certification of labors in order to establish a percentage of Section 3 labor hours worked on the project. Additionally, the developer may need to report on marketing to Section 3 certified business concerns and residents. The Developer agrees that they will use their best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this context, the terms "small business" means a business that meets the

criteria set forth in Section 3(a) of the Small Business Act, as amended (15 USC 632) and “minority and women’s business enterprise” means a business at least fifty-one (51) percent owned and controlled by minority group members or women. The Developer may rely on written representations by businesses regarding their status as minority and women-owned business enterprises in lieu of an independent investigation. The Developer or their contractor will be required to complete forms on Minority and Women Contractors and Section 3 hiring during the construction period on forms provided by the City before City releases final payments. The City will review these reports in conjunction with the Minority and Women Owned Business Plan submitted by the Developer.

3. Federal Davis-Bacon wage requirements are applicable to this Agreement if the number of units in the Project is 8 or more. The Developer agrees to comply with 24 CFR Section 570.603 and the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act (40 USC 276(a) to (1-7) as it applies to any construction work financed in whole or in part with CDBG funds. All contracts and subcontracts for construction shall include a provision for compliance with the Davis-Bacon Act and supporting Department of Labor regulations. The Developer shall maintain documentation and records which demonstrate compliance with wage and hour requirements, including contract provisions and payroll records.
4. The Developer also agrees to comply with the Contract Work Hours and Safety Standards Act (40 USC 327-333), as supplemented by the Department of Labor regulations contained in 29 CFR Part 5 if the Project is 8 units or more.
5. The Developer agrees to comply with the Copeland “Anti-Kickback” Act (18 USC 874) as supplemented by the Department of Labor regulations contained in 24 CFR Part 3.
6. Contractor and Subcontractor Review. The requirements of 2 CFR Part 2424 are applicable to CDBG-Upper Story Funds. The Developer shall obtain information on each contractor and subcontractor to prior to start of construction to determine if any contractor has been debarred or disqualified by HUD (24 CFR Part 5 and 24 CFR Part 24). The Developer shall not enter into a contract with any person, agency, or entity that is debarred, disqualified, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689. In the event that the Developer has entered into a contract or subcontract with a debarred or suspended party, no CDBG funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor.

B. Civil Rights

1. Nondiscrimination

The Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Developer will take affirmative action to insure that all employment 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. The Developer agrees to post or otherwise make available equal opportunity and nondiscrimination information for employees and applicants for employment.

2. Section 504

The Developer agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. The City shall provide the Developer with any guidelines necessary for compliance with that portion of the regulations in force during the term of this agreement.

The Developer shall ensure, to the maximum extent feasible that five percent of the total dwelling units, or \_\_\_\_\_ units, shall be readily accessible to and usable by individuals with mobility impairments. An additional two percent, or \_\_\_\_\_ unit, shall be accessible for persons with sensory impairments. The total number of units in this assisted project, regardless of whether they are all CDBG assisted, is used as the basis for determining the minimum number of accessible units.

C. Affirmative Action

1. Approved Plan

The Developer agrees that it shall comply with the City's Affirmative Action Program, in keeping with the principles as provided in Executive Order 11246.

2. WBE/MBE

The Developer will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women.

3. Access to Records

The Developer shall furnish and cause each of its sub-Developers to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, IEDA, HUD and/or their agents, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. EEO/AA Statement

The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that it is an equal opportunity or affirmative action employer.

5. Subcontract Provisions

The Developer will include the Civil Rights and Affirmative Action provisions of this Agreement in every subcontract or purchase order, specifically or by reference, so that

such provisions will be binding upon each sub-Developer or vendor.

D. Conduct

1. Assignability

The Developer shall not assign or transfer any interest in this agreement without the prior written consent of the City thereto; provided, however, that claims for money due or to become due to the Developer from the City under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

2. Subcontracts

(i) Approvals

The Developer shall not enter into any subcontracts with any agency or individual in the performance of this agreement without the written consent of the City prior to the execution of such agreement.

(ii) Monitoring

The Developer will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

(iii) Content

The Developer shall cause all of the provisions of this agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this agreement.

(iv) Selection Process

The Developer shall undertake to ensure that all subcontracts let in the performance of this agreement shall be awarded on a fair and open competition basis. Executed copies of all subcontracts shall be forwarded to the City along with documentation concerning the selection process.

3. Copyright

If this Agreement results in any copyrightable material, the City and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work for government purposes.

4. Religious Organization

The Developer agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with regulations specified in 24 CFR 570.200(j).

F. Eligibility Restrictions for Certain Resident Aliens (570.613)

1. Restriction

The Developer agrees to comply with 24 CFR 570.613, which states that certain newly legalized aliens, as described in 24 CFR Part 5 Subpart E are not eligible to apply for benefits under covered activities funded by CDBG programs. "Benefits" under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities funded through CDBG programs. "Benefits" do not include relocation services and payments to which displacees are entitled by law.

2. Covered Activities

"Covered activities" under this section means activities meeting the requirements of Section 570.208(a)(3).

3. Limitation on Coverage

The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this agreement.

4. Compliance

Compliance can be accomplished by the Developer obtaining certification as provided in 24 CFR Part 5 Subpart E, Section 5.508 evidencing citizenship or Section 5.510 eligible immigration status.

VIII. Final Disbursement

After completion of the improvements, the Developer will furnish the City a Disposition of Funds Statement, showing in detail how the loan proceeds have been disbursed. The City shall then provide a statement on the amount of retainage being held until the City approves the beginning date of affordability. By executing such statement, the Developer agrees that the improvements have been completed in accordance with the construction contract, except for any warranty items (which the Developer are responsible to have the warrantor correct). By such execution, the Developer further agree to assess no claim against the City, or any defense against collection of the loan, with respect to any defect or inadequacy in the construction, whether or not the Developer is aware of such defect or inadequacy. The following documents shall be provided upon construction completion:

- A. A certificate of occupancy;
- B. A certificate from the Developer stating the total construction cost;
- C. A certificate from a third party professional (architect or engineering firm) stating that the project has been completed in accordance with the plans and specifications, in a good and workmanlike manner and in accordance with all laws, ordinances, rules and regulations or all governmental authorities having or purporting to have jurisdiction over the project. This certification shall also include compliance with the Architectural Barriers Act of 1968 (42 USC 4151-4157); the Uniform Federal Accessibility Standards, as set forth in 24 CFR Section 570.614; the Americans with Disabilities Act of 1990; the Lead Based Paint Poisoning Prevention Act (42 USC 4831(b) and the

Residential Lead Based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856) and implementing regulations at 24 CFR Part 35; and Section 504 of the Rehabilitation Act of 1973; and the regulations that implement these laws; and

- D. Evidence that the project has been completed lien-free (which evidence shall include without limitation, final lien waivers from the general contractor and all major subcontractors and expiration of the lien periods provided by applicable State law) in form and substance reasonably satisfactory to the City.

## VIII. Miscellaneous

### A. Rules of Construction

Unless the context clearly indicates to the contrary, the following rules apply to the construction of this Agreement:

1. Words importing the singular number include the plural number and words importing the plural number include the singular number;
  2. Words of the masculine gender include correlative words of the feminine and neuter genders, and vice-versa;
  3. The table of contents and the headings or captions used in this Agreement are for convenience of reference and do not constitute a part of this Agreement, nor affect its meaning, construction, or effect;
  4. Words importing persons include any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization, or government or agency or political subdivision thereof;
  5. Any reference in this Agreement to a particular "Article," "Section," or other subdivision shall be to such Article, Section, or subdivision of this Agreement unless the context shall otherwise require;
  6. Each reference in this Agreement to an agreement or contract shall include all amendments, modifications, and supplements to such agreement or contract unless the context shall otherwise require; and
  7. When any reference is made in this document or any of the schedules or exhibits attached hereto to the Agreement, it shall mean this Agreement, together with all other schedules and exhibits attached hereto, as though one document.
- B. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assignees of the respective parties hereto, except in each case as expressly provided to the contrary in this Agreement.

- C. No waiver by the City of any Event of Default hereunder shall operate as a waiver of any other Event of Default or of the same Event of Default on any future occasion. No delay on the part of the City in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the City shall preclude future exercise thereof or the exercise of any other right or remedy.
- D. No provision of this Agreement shall be construed in any manner so as to create any rights in Persons or Entities that are not a party to this Agreement, except where specific rights in the IEDA are created herein.
- E. This Agreement shall be interpreted in accordance with the laws of the State of Iowa, and any action relating to this Agreement shall only be commenced in the Iowa District Court for Polk County or in the United States District for the Southern District of Iowa. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity in state or federal court, which may be available to the City or the State. By signing this Agreement, the Developer waives the right to jury trial in the event of any legal proceedings.
- F. The Developer shall pay upon demand any and all reasonable fees and expenses of the City, including the fees and expenses of their attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the City under this Agreement.
- G. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto. Any counterpart of this Agreement, which has attached to it separate signature pages which together contain the signatures of all the parties hereto or is executed by an attorney in fact on behalf of some or all of the parties, shall for all purposes be deemed a fully executed instrument.
- H. All representations, warranties, and indemnifications contained herein shall survive the termination of this Agreement.
- I. Separability of Provisions; Rights and Remedies; Arbitration; Consistency with Program Requirements
  - 1. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid.
  - 2. Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any

party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

3. The provisions of this Agreement are intended to implement CDBG-Upper Story in accordance with Program Requirements and shall be interpreted consistently therewith. In the event of any conflict between the provisions of this Agreement and the Program Requirements, the Program Requirements shall govern and, to the extent necessary, the inconsistent provisions of this Agreement shall be without effect.

J. This Agreement contains the entire understanding between the Developer and the City and any representations that may have been made before or after the signing of this Agreement, which are not contained therein, are nonbinding, void and of no effect. None of the parties have relied on any such prior representation in entering into this Agreement.

K. Time is of the essence with respect to the performance of the terms of this Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK  
SIGNATURES APPEAR ON THE FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement.

City:

By: \_\_\_\_\_  
Name of City Elected Official  
City of \_\_\_\_\_

Developer – Developer Name/Company

By: \_\_\_\_\_  
Developer Representative Name  
Developer Name/Company

**Exhibits:**

Exhibit A – Project Application (printed from iowagrants.gov)

Exhibit B - Mortgage

Exhibit C - Promissory Note

Exhibit D – Assignment of Leases and Rents

Exhibit E – Agreement for Covenants and Restrictions