

After recording return to:
City of Billings
Community Development Division
P.O. Box 1178
Billings, MT 59103

HOME Investment Partnerships Program
PRE-DEVELOPMENT CHDO LOAN AGREEMENT

between

City of Billings
A Montana Municipal Corporation
whose address is
P.O. Box 1178 Billings, Montana 59103
the "City"

and

homeWORD a Montana Non-Profit
whose address is
127 N. Higgins, Suite 307, Missoula, MT 59802
and is a certified Community Housing Development Organization (CHDO)
through the City of Billings,
the "Developer"

DATE: _____

WHEREAS, the Developer desires to work with the City of Billings to construct, reconstruction and rehabilitate affordable rental housing on developer-owned property in the City of Billings, Yellowstone County, Montana on a site to be determined.

WHEREAS, the City has concurrently entered into a HOME Contract with the United States Department of Housing and Urban Development (HUD) whereby the City will receive and administer HOME moneys to provide financing, in part, for an acquisition/construction/rehabilitation project to be undertaken by the Developer;

WHEREAS, the Developer is desirous of obtaining such financing on the Project and is willing to assume obligations to the City under the HOME Contract on the terms and conditions, as provided herein; AND

WHEREAS, the Developer desires to construct, reconstruct, or rehabilitate affordable rental housing, and the Developer desires to use HOME funds for new construction, rehabilitation, reconstruction and related development costs.

WITNESSETH THAT the City and the Developer mutually agree as follows:

A. PURPOSE

The purpose of this written Agreement is to ensure compliance with 24 CFR 92.301(b), which provides for the funding of approved project activities by the City through its HOME Investment Partnerships Program (HOME) written agreement with HUD; and to achieve the purposes of Title II of the Cranston-Gonzalez National Affordable Housing Act, Title II, Public Law 101-625, approved November 1990, 104 Stat. 4079, 42 U.S.C. 12701-12839), as amended.

B. DOCUMENTS INCORPORATED INTO THIS AGREEMENT BY REFERENCE BUT NOT ATTACHED HERETO

The Developer, a CHDO and recipient of HOME funds, agrees to comply with all appropriate federal, state, and local laws applicable to the HOME funds awarded to complete approved activities undertaken through this agreement, including: All program requirements which regulate and restrict the use of the funds under the HOME Investment Partnerships Program 24 CFR Part 92 and the regulations issued there under, now or hereafter, including but not limited to 24 CFR, and the regulations, policies, guidelines, and requirements as they relate to the application, acceptance, and use of federal funds for this program; Developer's project application statements; Uniform Relocation Act; and Section 104 (d) and all amendments to these laws which govern the use of HOME funds. Incorporated by reference is Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 3, Federal Labor Standards set forth in 24 CFR 570-605 and the Americans with Disabilities Act.

C. ROLES AND RESPONSIBILITIES

The Developer agrees to complete all predevelopment activities which will result in an affordable housing project to include obtaining financing, locating and purchasing the property, and hiring a construction contractor. The City agrees to review project plans, budget and HOME subsidy for approval. The City will also be responsible for payment inspections and disbursements. Both the Developer and City agree to enter into a HOME CHDO Development Agreement upon the Developer and City completing the required activities to secure a feasible HOME affordable housing project.

D. ACCEPTANCE OF HOME PROGRAM REQUIREMENTS

1. The Developer will comply with all applicable parts and requirements of the National Affordable Housing Act of 1990 (as amended), as now in effect or as they may be amended during the term of this Agreement; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.
2. The Developer agrees to the following:
 - a. **Project Schedule**

The Developer agrees to complete all work required by this agreement in accordance with the timetable set forth.

<i>Milestone</i>	<i>Start By:</i>	<i>Complete By:</i>
Project Development	July 1, 2010	March 31, 2011
Project Planning Completed	July 1, 2010	March 31, 2011
Financing Identified	July 1, 2010	March 31, 2011

The Developer must communicate any anticipated changes to this schedule to the City in writing as soon as they are known and the City must approve any proposed changes. In addition, this project is subject to ongoing HOME compliance requirements for 10 years from the date the project completion report is entered into HUD's Integrated Disbursement & Information System (IDIS) if the per-unit subsidy for the completed project is less than \$40,000. The compliance requirements would be extended to 15 years should the per-unit subsidy exceed \$40,000.

- b. **Project Budget**

The total HOME predevelopment loan for the project is **\$25,000.00**. An additional \$434,000.00 has been set aside as CHDO reserve funding for the project. \$191,000.00 of the funding is allocated in the City's Fiscal Year 2009-2010 budget and the remaining \$243,000.00 is allocated in the City's Fiscal Year 2010-2011 budget.

Current and complete Sources and Uses are on file with the City and the Developer. The Developer represents that the HOME funds invested are no more than necessary to provide affordable housing. The developer will disclose to the City any changes in sources of funds within (10) of days from notice of such changes, and the City will reserve the right to revise the project's HOME award

based on a revised Sources and Uses statement and subsequent subsidy layering analysis. The Developer may not modify this budget without having requested and received the City's written approval of the adjustment. Modifications to the budget without City approval will be considered a violation of the contract and are grounds for termination at any point without consideration for performance or compensation. The Developer agrees to adhere to Maximum 221(d)(3) HOME per-unit subsidy requirements.

The Developer understands that the HOME funds being provided are subject to the requirements of 24 CFR 92.301(b) (Project – Specific Assistance to CHDOs). The full loan in the amount of \$25,000.00 is to be used solely for predevelopment activities and site control. The Developer must begin construction within 24 months of this agreement. The Developer will repay the \$25,000.00 loan in full should construction on a project not begin within 24 months. Should both the Developer and the City determine a project is not feasible by March 31, 2011 the loan will be forgiven in full. Any proceeds from this project received by the Developer are to be used for additional HOME-eligible or other housing activities that benefit low-income families.

c. **Project Scope**

The project includes a market study to determine type of housing needed. Obtaining financing will be required for development of the project that will be determined by market study. A construction contractor is to be hired upon site control. Housing constructed to be constructed will meet local building codes and the plans approved by the City no later than March 31, 2011 and will meet housing property standards as required in 24CFR 92.251 for the duration of the affordability period. The developer will perform all professional services necessary to complete the development and occupancy of the project.

All units will be rehabilitated/constructed (as applicable) to ensure compliance with 24 CFR 92.251 as it relates to Property Standards and Housing Quality Standards (HQS) including the use of local building codes. All units will be rehabilitated/constructed to ensure compliance with the Accessibility Standards under 24 CFR 92.251(a)(3) including the use of universal design concepts to meet the needs of those with disabilities. All existing units built prior to 1978 will be rehabilitated to ensure compliance with the Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.

New construction must meet the current edition of the International Energy Conservation Code published by the Council of American Building Officials.

3. The Developer agrees that all subcontracts entered into by the Developer for the completion of the Project described in Section c. (Project Scope) of this Agreement will contain provisions requiring compliance with all applicable HOME requirements. These contract provisions are to be included in all subcontracts.
4. The Developer expressly agrees to repay to the City any funds paid on behalf of the Developer or its subcontractors that are expended in violation of the terms of this Agreement or the federal statutes and regulations governing the HOME program, or if for some reason the project is unable to move forward in within the time frame set forth in Section J (TIME OF PERFORMANCE) of this Agreement.

E. SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and attachments hereto which may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable by City as provided herein in the event of such failure to perform or comply by the Developer or its subcontractors.

F. COMPENSATION

The City of Billings shall **reimburse** the Developer for all eligible project costs in the total amount of **\$25,000.00**. The City's obligation to make periodic or final payment to the Developer shall be conditioned upon the City's receipt of grant funds sufficient to make such payment. Final compensation will be made only when the Developer is in full compliance with this Agreement. These funds will be provided as a loan with the following terms:

1. For this loan only the following predevelopment activities will be considered eligible project costs based on approval by the City:
 - Market Study
 - Engineering Fees
 - Legal Fees
 - Title Clearance Expenses
 - Site Control Expenses
 - Consultant Fees
 - Architectural Fees
 - Physical Needs Assessment
 - Property Survey
 - Soils Report
 - Engineer's Report
 - Environmental Reports
 - Consulting Fees
 - Property Appraisals
 - Staffing
2. The loan will become due in full should the Developer not have a project in construction within 24 months of entering into agreement.
3. Should the Developer and the City both agree that a project is not feasible, the loan will be forgiven in full.
4. The Developer will make annual payments to the City in the amount of \$2,500.00 beginning one (1) year after initial occupancy, based on the date of issuance of the Certificate of Occupancy.

G. PAYMENT METHOD

Payment is made on a reimbursement basis of actual and proper expenditures and shall be made in accordance with this Agreement between City and Developer. The Developer may only request disbursement of funds when funds are needed for payment of eligible costs, and the amount of the disbursement request must be limited to the amount needed. The City shall only reimburse HOME-eligible expenses. The City may withhold any payment if the Developer has failed to comply with program objectives, contractual terms, or reporting requirements. The City may withhold payment of the final five percent (5%) of the total award amount until the Developer has submitted and the City has accepted all required financial and performance report information required pursuant to either the Grant or City requirements. The following documentation must be submitted for payment requests:

- Invoices, receipts, purchase orders, and/or contracts pertaining to the specific request for disbursement.
- Completed Request for Reimbursement and Progress Report form.

H. DEVELOPER AN INDEPENDENT DEVELOPER

The Developer shall be considered independent from the City, and may not be the agent or employee of City, shall have no authorization, express, implied, or apparent, to bind the City to any agreements, settlements, liability, or understanding except as expressly set forth herein.

I. PERSONNEL

The Developer represents that it has, or shall secure all personnel required in performing the services under this Predevelopment Agreement. All of the services required hereunder shall be performed by the Developer, or under his/her supervision, and all personnel engaged in the work shall be fully qualified and shall be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services provided hereunder, the Developer and any subcontractors shall be properly licensed. The Developer will provide at the time of this agreement; Professional Liability Insurance in the amount of \$1.5 Million carried by the Developer for services related to this agreement. Other professional services subcontracted for by the Developer will provide proof of insurance as required by Montana Law to include Commercial General Liability not less than \$1.5 Million per occurrence and Builder's Risk Insurance for development and construction in an amount not less than the completed value of the whole property or \$1,500,000, whichever is greater.

- Soils Report
- Engineer's Report
- Environmental Reports

The records described above must be retained for a period of five years after project closeout. The records demonstrating compliance with project requirements that apply for the period of affordability must be retained for at least five years after the required period of affordability. If any litigation, claim negotiation, audit or other action has been commenced before the expiration of the regular five-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

Access to the records described above and all other documentation relating to the program is governed by all applicable state and federal laws as they pertain to disclosure of information to the public and to the individual's right of privacy.

P. PROGRESS REPORTING

The Developer will promptly submit status reports on project progress at the request of, and in the format prescribed by, the City of Billings. During the development phase of this project, the Developer will submit reports on project progress **quarterly** to: Dina Billington, Community Development Coordinator, P.O. Box 1178, Billings, MT 59103.

Q. CHDO Provisions

It is understood that the Developer has certified that it is and will maintain CHDO (Community Housing Development Organization) status for the term of this agreement in accordance with 24 CFR 92. Developer agrees to provide information as may be requested by the City to document its continued compliance, including but not limited to an annual board roster and certification of continued compliance. Any funds advanced as CHDO pre-development funds must be in compliance with 24 CFR 92.301, and are forgivable only under the terms in 24 CFR 92.301. Any funds advanced to the CHDO as CHDO Operating Expenses must be expended in compliance with 24 CFR 92.208. Any funds that the CHDO is permitted to retain as CHDO proceeds from this project shall be used in compliance with 24 CFR 92.300(a)(2) or as specified in this Agreement. If the project is rental, the Developer will create and follow a tenant participation plan as required in 24 CFR 92.303

R. AVOIDANCE OF CONFLICT OF INTEREST

The Developer will comply with the provisions of 24 CFR § 92.356; and with § 2-2-125, 2-2-201, 7-3-4367, 7-5-2106, and 7-5-4109, MCA, as applicable, regarding the avoidance of conflict of interest.

A conflict of interest would be any employee of the City or his/her relative that has a financial interest in a project receiving HOME funds from the City, or if a CHDO employee or member of the board occupies a HOME-assisted unit (with exceptions for management and maintenance employees).

S. MODIFICATION AND ASSIGNABILITY OF AGREEMENT

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party who are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement. Any written request to modify or amend agreement will be reviewed by the City and respond to the Developer in writing.

All change orders to the approved scope must be submitted to the City for review and approved at the time the change is needed. If the City is unable to review the work at the time of the change or the change order is held and submitted at the end of construction, the change order may not be approved.

This Agreement does not imply any continuing commitment by the City of Billings beyond the termination date noted herein.

The City & Developer accept responsibility for adherence to the terms of this Agreement by contractor, subcontractor or sub-recipient entities and by its agents, if any, to which it delegates authority to carry out portions hereof. For the purposes of this Agreement, legal actions pending (or in process) are considered a pending modification of the written

agreement and require a written notice to the City as soon as the written agreement becomes part or party to a legal civil or criminal action.

Modification or assignment of this Agreement without prior written notice to the City will be grounds for termination and loss of unexpended funds at the City's discretion. The City reserves the right to seek damages if the termination of this written agreement results in the loss or repayment of funds by the City to HUD.

T. CONSTRUCTION AND VENUE

This Agreement will be construed under and governed by the laws of the State of Montana. In the event of litigation concerning it, venue is in the District Court of the Thirteenth Judicial District in and for the County of Yellowstone, State of Montana.

U. INDEMNIFICATION

The Developer waives any and all claims and recourse against the City, including the right of contribution for loss or damage to persons or property arising from, growing out of, or in any way connected with or incidental to the Developer's or any contractor's, subcontractor's or sub-recipient's performance of this Agreement.

Further, the Developer will indemnify, hold harmless, and defend the City, its officers, agents and employees against any and all losses, claims, demands, damages, costs, expenses, or liability arising out of the Developer's or any contractor's, subcontractor's or sub-recipient's performance of this Agreement or in any way arising or resulting from any intentional or negligent act on the part of the Developer or its agents or employees or which result in personal injury or real or personal property damage to any person or entity including the City. In the event that the City is named as a co-defendant in any action relating to activities to be performed by the Developer or City or sub-recipient under this Agreement, the Developer will immediately notify the City of such fact in writing.

In addition, the City will indemnify, hold harmless, and defend the Developer, its officers, agents and employees against any and all losses, claims, demands, damages, costs, expenses, or liability arising out of the City's performance of this Agreement or in any way arising or resulting from any intentional or negligent act on the part of the City or its agents or employees or which result in personal injury or real or personal property damage to any person or entity including the Developer. In the event that the Developer is named as a co-defendant in any action relating to activities to be performed by the City or Developer under this Agreement, the City will immediately notify the Developer of such fact in writing.

V. TERMINATION OF AGREEMENT

This Agreement may be terminated as follows and is subject to the following provisions in accordance with 24 CFR 85.43, suspension or termination may occur if the Developer materially fails to comply with any term of the agreement (24 CFR 92.504(C)(2)(ix):

Termination Due to Loss of Funding: The parties hereto expressly recognize that Developer is to be paid, reimbursed, or otherwise compensated with federal HOME funds provided to City under the HUD HOME Contract for the purpose of contracting for the services provided for herein or with program income; and therefore, Developer expressly understands and agrees that all its rights, demands, and claims to compensation arising under this contract are contingent upon receipt of such funds by City. In the event that such funds or any part thereof are not received by City, the City may immediately terminate or amend this agreement.

Termination for Cause: If, through any cause, the Developer shall fail to fulfill in a timely and proper manner their obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Developer of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. It is understood that the Developer and City representatives shall enter into negotiations in an attempt to reach a solution mutually acceptable to both parties within ten (10) days of notification of termination, if the City shall so request in writing. If no agreement is reached by the City and Developer then the matter will be referred to HUD for resolution. In any event, the City may terminate the agreement to fund an activity without cause or recourse from the Developer, its agents or subcontractors.

Notwithstanding the above, the Developer shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of contract by the Developer, and the City may withhold any payment to the Developer for the purpose of setoff until such time as the exact amount of damages due to the City from the Developer is determined.

Return of Material: In event of termination, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Developer under this Agreement, shall, at the option of the City, become the City's property, and City shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Remedies: Where either party violates or breaches contract terms, the other party, in its discretion, may, in addition to terminating this Agreement, institute such administrative, contractual, legal or equitable remedies available as may be appropriate. In such event, the party found in violation of the Agreement shall pay the other party's costs and reasonable attorney's fees incurred thereby.

W. CONTRACT SUSPENSION

If the Developer fails to comply with any contractual provision, the City may, after notice to the Developer, suspend the Agreement and withhold further payments to prohibit the Developer from incurring additional obligations of contractual funds or demand repayment of funds expended, pending corrective action by the City or a decision to terminate in accordance with provisions herein. The City may determine to allow such necessary and proper costs which the Developer could not reasonably avoid during the period of suspension, provided such costs were necessary and reasonable for the conduct of the project.

X. COMPLIANCE WITH LAWS

1. **Political Activities:** None of the funds, materials, property or services provided directly or indirectly under this agreement shall be used for any partisan political activities or to further the election or defeat of any candidate for public office. By signing this agreement, the Developer certifies that no HOME funds will be spent on lobbying activities in connection with the assistance, in accordance with 24 CFR 91.225.
2. **Insurance Coverage:** The Developer shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Developer or by any subcontractor or anyone employed by the Developer directly or indirectly. The following insurance policies are required:
 - a. Commercial General Liability in an amount not less than \$1.5 million per occurrence for injuries, including accidental death to any one person.
 - b. For development and construction, Builder's Risk Insurance in an amount not less than the completed value of the whole property, or \$1,500,000, whichever is greater.
 - c. For predevelopment activities, Professional Liability Insurance not less than \$1.5 million per occurrence.

Professional Liability Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above **at the time** the Agreement is signed. The Public Liability Insurance certificate shall be maintained during the life of the Agreement. The Builders Risk Insurance shall be secured prior to initiating construction on the first unit.

All insurance certificates shall name the City as an insured party and contain the following language, "The Company agrees that it will give the City of Billings, Montana 10 days prior written notice of its intent to cancel or materially change the described policy." This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable.

The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Developer will assure all subcontractors performing work on the project maintain

public liability, property, and casualty insurance and statutory workers compensation insurance coverage in compliance with State Law.

3. **Construction Contracts:** The Developer agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24CFR Part 24. The Developer will provide the City with the names of contractors and subcontractors prior to entering into contracts. This restriction applies to any expenditure of federal funds and extends to all subcontracts executed by the Developer.
4. **Environmental Review:** The Developer will carry out each activity in compliance with all federal laws and regulations described in 24 CFR, Part 92, subpart H, except that the Developer does not assume the City's responsibility for the environmental review which will be completed by the City prior to the beginning of construction;
5. **Uniform Relocation Act:** The Developer will be subject to compliance with the federal Uniform Relocation Act and Section 104 (d), 24 CFR 92.353 and all related laws and regulations, be solely responsible for the cost to comply with those requirements, and be subject to termination of this Agreement without cause other than failure to comply with federal regulation. Further, the Developer will maintain the obligation to bear all costs associated with relocation resulting from activities undertaken with HOME funds.
6. **Religious Organization:** The Developer will follow the provisions governing the restriction on the use of HOME funds by religious organizations, as contained in 24 CFR 92.257.
7. **Drug-Free Work Place:** The Developer certifies that it will provide a drug-free work place.
8. **Non-Discrimination:** The Developer will not discriminate against any contractor, subcontractor, or rental applicant due to race, color, creed, religion, ancestry, national origin, sex, disability, or other handicap, age, marital / familial status, or status with regard to direct rental assistance, or other public assistance. The Developer will take affirmative action to ensure all employment practices are free from such discrimination. The Developer agrees to comply with the non-discrimination in employment and Contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607 and (CDBG funding) as revised by Executive Order 13279 or 24 CFR 92.350 (HOME funding).
9. **Labor Standards:** Housing projects with twelve (12) or more HOME-assisted units are subject to conform to the Davis-Bacon Act (40 USC 276a-276a-5), which requires payment of not less than the wages prevailing in the locality to all laborers and mechanics employed in the development of any such housing. Housing projects with HOME-assisted units must also comply with the Contract Work Hours and Safety Standards Act (CWHSSA), the Copeland Act (Anti-Kickback Act), and the Fair Labor Standards Act (FLSA), including the applicable overtime provisions.

Y. GRANT CONTROLS

Notwithstanding any provision herein to the contrary, the performance and administration of this Agreement shall be subject to the applicable provisions of the City's HOME Contract with HUD. Accordingly, the Developer hereby assumes all obligations under the Contract as a condition to Developer's obligation to perform under this Agreement.

